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Federal Register

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Subtitles A and B

9 CFR Chapters I, II, and III

Completion of Interim Rules

AGENCY: Office of the Secretary, USDA.

ACTION: Notification.

SUMMARY: The United States Department of Agriculture is announcing the completion of certain interim rules that published in the **Federal Register** more than 3 years ago. USDA is taking this action because the published interim rules have been fully implemented and no further rulemaking publication is required.

DATES: The interim rules are completed as of September 10, 2019.

FOR FURTHER INFORMATION CONTACT: Michael Poe, Telephone Number: (202) 720–3323.

SUPPLEMENTARY INFORMATION:

Background

To promote transparency in regulatory planning, the Administration, beginning with the Spring 2017 Unified Agenda of Regulatory and Deregulatory Actions, published for the first time an ''inactive'' list of agency regulatory actions that were under review but not included in the Unified Agenda of Regulatory and Deregulatory Actions. Such ''inactive'' actions allow agencies to take additional time to review a regulatory or deregulatory action and to preserve the regulatory identification number (RIN) and title for possible future use. After further review, and to clean out a backlog of older, obsolete RINs, USDA is taking this action to reduce its regulatory backlog and focus its resources on higher priority actions. The Department's actions are part of an overall regulatory reform strategy to reduce regulatory burden on the public and to ensure that future Unified Agendas of Regulatory and Deregulatory Actions provided the public accurate information about rulemakings the Department intends to undertake. USDA reviewed its pending regulatory actions listed as ''inactive.'' This review focused on interim rules that published in the **Federal Register** more than 3 years ago, and for which no final rule has been issued. The agency identified 20 such regulatory actions.

Although not required to do so by the Administrative Procedure Act or by regulations of the Office of the Federal Register, the agency believes the public interest is best served by announcing in the **Federal Register** that it has fully implemented these 20 items. Therefore, for the reasons set forth above, USDA announces that it has fully completed the 20 rulemaking initiatives which were published in the **Federal Register** on the dates indicated in the table below and that no further rulemaking publication is required.

Agency	RIN	Title	Published action	Date	FR cite
OSEC	0503–AA49	Agricultural Career and Employment Grants Program	IFR	11/8/2011	76 FR 69114
FAS	0551–AA80	Trade Adjustment Assistance for Farmers	IFR	3/1/2010	75 FR 9087
NRCS	0578–AA45	Environmental Quality Incentives Program	IFR	1/15/2009	74 FR 2293
NRCS	0578–AA47	Wetlands Reserve Program	IFR	1/15/2009	74 FR 2317
FSA	0560–AH43	Emergency Conservation Program	IFR	5/26/2006	71 FR 30263
FSA	0560–AH66	Interest Rates on Farm Service Agency Farm Loan Programs Guaranteed Loans.	IFR	3/4/2013	78 FR 13999
FSA	0560–AH89	Emergency Forest Restoration Program	IFR	11/17/2010	75 FR 70083
FSA	0560–AH98	Voluntary Public Access and Habitat Incentive Program	IFR	7/8/2010	75 FR 39135
FSA	0560–AI06	Noninsured Disaster Assistance Program	IFR	4/9/2013	78 FR 21015
FSA	0560–AI11	Crop Assistance Program	IFR	10/25/2010	75 FR 65423
FSA	0560–AI20	Noninsured Crop Disaster Assistance Program	IFR	12/15/2014	79 FR 74562
FSA	0560–AI25	Farm Loan Programs, Entity Eligibility Changes	IFR	10/8/2014	79 FR 60739
FSA	0560–AI26	Conservation Compliance	IFR	4/24/2015	80 FR 22873
FSA	0560–AI30	Conservation Reserve Program	IFR	7/16/2015	80 FR 41987
RBS	0570–AA71	Rural Microentrepreneur Assistance Program	IFR	5/28/2010	75 FR 30114
RBS	0570–AA74	Re-Powering Assistance Payments to Eligible Biorefineries	IFR	2/11/2011	76 FR 7916
RBS	0570–AA80	Rural Business Investment Program	IFR	12/23/2011	76 FR 80217
RBS	0570–AA92	Rural Business Development Grant	IFR	3/25/2015	80 FR 15665
RBS	0570–AA94	Strategic Economic and Community Development	IFR	5/20/2015	80 FR 28807
FNS	0584–AD60	Direct Certification and Certification of Homeless, Migrant and Runaway Children.	IFR	4/25/2011	76 FR 22785

Dated: August 28, 2019.

Rebeckah Adcock,

Regulatory Reform Officer and Senior Adviser to the Secretary.

[FR Doc. 2019–19553 Filed 9–9–19; 8:45 am]

BILLING CODE 3410–90–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0268; Product Identifier 2019–NE–08–AD; Amendment 39–19728; AD 2019–18–01]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain International Aero Engines AG (IAE) V2500 model turbofan engines. This AD was prompted by an inspection that determined that material anomalies exist in certain low-pressure turbine (LPT) stage 6 disks. This AD requires removal from service of the affected LPT stage 6 disks and their replacement with a part eligible for installation. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 15, 2019.

ADDRESSES: For service information identified in this final rule, contact International Aero Engines AG, 400 Main Street, East Hartford, CT, 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* internet: *http://fleetcare.pw.utc.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0268.

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–2019–0268; 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 is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Scott Hopper, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7154; fax: 781–238–7199; email: *scott.hopper@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain IAE V2500 model turbofan engines. The NPRM published in the **Federal Register** on May 20, 2019 (84 FR 22743). The NPRM was prompted by an inspection that determined that material anomalies exist in certain LPT stage 6 disks. The NPRM proposed to require removal from service of the affected LPT stage 6 disks and their replacement with a part eligible for installation. The FAA is issuing this AD to address the unsafe condition on these products.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comments received. The Air Line Pilots Association supported the NPRM. The Boeing Company offered no comment on the NPRM.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule as proposed—except for minor editorial changes. The FAA has 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

The FAA reviewed IAE Alert Service Bulletin (ASB) V2500–ENG–72–A0697, Revision No. 1, dated November 27, 2018. The ASB describes procedures for removal of the affected LPT stage 6 disks.

Costs of Compliance

The FAA estimates that this AD affects 1 engine installed on an airplane of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace the LPT stage 6 disk	130 work-hours × $85 per hour = $11,050	$155,560	$166,610	$166,610

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.

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

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

Regulatory Findings

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

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

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

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

(3) 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):

2019–18–01 International Aero Engines AG: Amendment 39–19728; Docket No. FAA–2019–0268; Product Identifier 2019–NE–08–AD.

(a) Effective Date

This AD is effective October 15, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to International Aero Engines AG V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 model turbofan engines with the following engine serial numbers: V10631, V12329, V12494, V13107, V18679, V18681, V18684, and V18690.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an inspection that determined that material anomalies exist in certain low-pressure turbine (LPT) stage 6 disks. The FAA is issuing this AD to prevent failure of the LPT stage 6 disk. The unsafe condition, if not addressed, could result in uncontained release of the LPT stage 6 disk, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

At the next piece part exposure after the effective date of this AD, but not to exceed 5,000 cycles from new, remove from service LPT stage 6 disks, part number 3A2996, and with any of the following serial numbers: MAP04258; MAP04259; MAP04260, MAP04430, MAP04431, MAP08718, MAP08719; and MAP08721. Replace the affected LPT stage 6 disk with a part eligible for installation.

(h) Definition

For the purpose of this AD, piece-part exposure is when the LPT stage 6 disk is removed from the engine and completely disassembled.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Scott Hopper, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7154; fax: 781–238–7199; email: *scott.hopper@faa.gov.*

(k) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on September 4, 2019.

Karen M. Grant,

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

[FR Doc. 2019–19412 Filed 9–9–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0320; Product Identifier 2019–NM–017–AD; Amendment 39–19725; AD 2019–17–05]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A330–200 Freighter, –200, and –300 series airplanes; and certain Airbus SAS Model A340–200, –300, –500, and –600 series airplanes. This AD was prompted by a determination that certain wing slat tracks that were inadvertently indicated as eligible for installation on all Model A330 and A340 series airplanes are unable to sustain the ultimate loads relative to the weight variant of certain airplane configurations. This AD requires identifying affected parts, inspecting for and repairing cracks, and replacing affected parts with serviceable parts, as specified in a European Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 15, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 15, 2019.

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, at Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material 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 in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0320.

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–2019–0320; 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 is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3229.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A330–200 Freighter, –200 and –300 series airplanes; and certain Airbus SAS Model A340–200, –300, –500, and –600 series airplanes. The NPRM published in the **Federal Register** on May 8, 2019 (84 FR 20057). The NPRM was prompted by a determination that certain wing slat tracks that were inadvertently indicated as eligible for installation on all Model A330 and A340 series airplanes are unable to sustain the ultimate loads relative to the weight variant of certain airplane configurations. The NPRM proposed to require inspecting any affected part for cracking, and replacing with a serviceable part.

The FAA is issuing this AD to address installation of affected parts, which could result in slat detachment in flight and consequent reduced control of the airplane.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0026, dated February 4, 2019 (''EASA AD 2019–0026'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A330–200 Freighter, –200, and –300 series airplanes; and certain Airbus SAS Model A340–200, –300, –500, and –600 series airplanes. The MCAI states:

> It was recently determined that, since June 2010, the affected parts were inadvertently indicated as eligible for installation on all A330 and A340 aeroplanes in the applicable Illustrated Part Catalogue (IPC), although in fact, those parts are not valid for some aeroplane configurations (weight variants), because they are unable to sustain ultimate load. Investigation demonstrated that affected parts were never delivered as spare part. However, it cannot be excluded that an affected part was removed in-service from an aeroplane and installed on another.
>
> This condition, if not detected and corrected, could lead to slat detachment in flight, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, Airbus published the applicable SB [service bulletin] to provide instructions to identify affected parts, and instructions to inspect [for cracking of] those affected parts found installed.
>
> For the reasons described above, this [EASA] AD requires a one-time detailed (DET) and special detailed inspection (SDI) of the aft lug of each affected part and replacement of each affected part. This [EASA] AD also prohibits installation of affected parts.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0320.

Comments

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

Request To Include Additional Exceptions to the MCAI

American Airlines (AAL) asked that an airplane records review for the affected part identification be an approved method of compliance in the proposed AD. AAL stated that its maintenance records indicate that no affected #10 slat track was installed in production, or has been installed since aircraft delivery.

The FAA agrees with the commenter's request. The FAA has added paragraph (h)(2) to this AD to allow a review of airplane maintenance records in lieu of the inspections for the part numbers of the wing slat tracks at the #10 position. Subsequent paragraphs have been redesignated accordingly.

AAL also asked that in cases where the slat track part number is not identifiable, instructions be provided in the proposed AD to specify a range for the slat track measured thickness used to identify affected parts. AAL stated that Airbus Service Bulletin A330–57–3144, dated November 12, 2018, which is referenced in EASA AD 2019–0026, specifies that if the slat track part number is not identifiable, the upper thickness of the aft lug must be measured, and if the dimension is ''10.80 mm,'' the part is an affected slat track and must be replaced. AAL questioned whether a slat track with a measurement other than 10.80 mm would be affected. Therefore, AAL requested that Airbus provide a specific tolerance range that would require further inspection and ultimate replacement. AAL stated that Airbus provided a range of between 10.763 mm and 11.275 mm for the part to be an affected slat track, which will be added to the next revision of the referenced service bulletin.

The FAA agrees with the commenter's request for the reasons provided. Paragraph (h)(3) has been added to this AD to specify the measured dimension range of 10.763 mm through 11.275 mm inclusive for an affected part. Subsequent paragraphs have been redesignated accordingly.

Conclusion

The FAA 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. The FAA has 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.

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

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0026 describes procedures for one-time detailed and special detailed (high frequency eddy current) inspections for cracking of the aft lug of each affected wing slat track (including an inspection to first determine if an affected slat track is installed), and replacement of any affected part with a serviceable part. This material 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

The FAA estimates that this AD affects 104 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
7 work-hours × $85 per hour = $595	$0	$595	$61,880

The FAA estimates the following costs to do any necessary on-condition action that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTION

Labor cost	Parts cost	Cost per product
8 work-hours × $85 per hour = $680	$0	$680

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the 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.

The FAA is 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) Will not affect intrastate aviation in Alaska, and

(3) 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):

2019–17–05 Airbus SAS: Amendment 39–19725; Docket No. FAA–2019–0320; Product Identifier 2019–NM–017–AD.

(a) Effective Date

This AD is effective October 15, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) through (6) of this AD, certificated in any category, as identified in European Aviation Safety Agency (EASA) AD 2019–0026, dated February 4, 2019 (''EASA AD 2019–0026'').

(1) Airbus SAS Model A330–223F and –243F airplanes.

(2) Airbus SAS Model A330–201, –202, –203, –223, and –243 airplanes.

(3) Airbus SAS Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Airbus SAS Model A340–211, –212, and –213 airplanes.

(5) Airbus SAS Model A340–311, –312, and –313 airplanes.

(6) Airbus SAS Model A340–541 and –642 airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by a determination that certain wing slat tracks that had been inadvertently indicated as eligible for installation on all Model A330 and A340 series airplanes are unable to sustain the ultimate loads relative to the weight variant of certain airplane configurations. The FAA is issuing this AD to address installation of affected parts, which could result in slat detachment in flight and consequent reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0026.

(h) Exceptions to EASA AD 2019–0026

(1) For purposes of determining compliance with the requirements of this AD:

Where EASA AD 2019–0026 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2019–0026 requires inspecting to determine the part number of the wing slat tracks at the #10 position, this AD allows a review of airplane maintenance records in lieu of the inspection if the part number can be conclusively determined from that review.

(3) EASA AD 2019–0026 refers to Airbus Service Bulletin A330–57–3144, dated November 12, 2018, which specifies that if the slat track part number is not identifiable, the upper thickness of the aft lug must be measured, and if the dimension is 10.80 millimeters (mm), it is an affected part and must be replaced. For this AD, the affected part dimensions range from 10.763 mm through 11.275 mm inclusive.

(4) The ''Remarks'' section of EASA AD 2019–0026 does not apply to this AD.

(i) 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 (j) 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 instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0026 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC 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.

(j) Related Information

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

(k) 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) European Aviation Safety Agency (EASA) AD 2019–0026, dated February 4, 2019.

(ii) [Reserved]

(3) For EASA AD 2019–0026, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this EASA AD 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. EASA AD 2019–0026 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0320.

(5) You may view this material 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 August 22, 2019.

Suzanne Masterson,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–19442 Filed 9–9–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0656; Product Identifier 2019–SW–039–AD; Amendment 39–19722; AD 2019–17–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Airbus Helicopters Deutschland GmbH (Airbus Helicopters) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3 helicopters. This AD requires inspecting certain part-numbered actuators for corrosion, and removing them from service as necessary. This AD also requires reporting certain information to Airbus Helicopters. This AD is prompted by a hard landing of a helicopter and discovery of a ruptured and displaced tie bar inside the piston of the longitudinal single-axis actuator of the main rotor actuator (MRA). The actions of this AD are intended to address an unsafe condition on these products.

DATES: This AD becomes effective September 25, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of September 25, 2019.

The FAA must receive comments on this AD by November 12, 2019.

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

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

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0656; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any service information that is incorporated by reference, the economic evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

For service information identified in this final rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.helicopters.airbus.com/website/*

en/ref/Technical-Support_73.html. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0656.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and the FAA did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, the FAA invites you to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. The FAA will file in the docket all comments that the FAA receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. The FAA will consider all the comments received and may conduct additional rulemaking based on those comments.

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2019–0087–E, dated April 24, 2019, to correct an unsafe condition for Airbus Helicopters Deutschland GmbH (AHD), formerly Eurocopter Deutschland GmbH, Eurocopter España S.A. Model EC135 P1, EC135 P2, EC135 P2+, EC135 P3, EC135 T1, EC135 T2, EC135 T2+, EC135 T3, EC635 P2+, EC635 P3, EC635 T1, EC635 T2+ and EC635 T3 helicopters with a longitudinal single-axis actuator part number (P/N) L673M20A1008 or P/N L673M30A2111; a collective single-axis actuator P/N L673M20A1012, P/N L673M30A1211, or P/N E673M30A1201; or a lateral single-axis actuator P/N L673M20A1011 or P/N L673M30A2311, that have accumulated 6 or more years since manufacturing date or last overhaul, whichever occurred later, installed. EASA advises of a report of a hard landing by a Model EC135 helicopter. Inspection revealed that the tie bar inside the piston of the longitudinal single-axis actuator of the MRA was ruptured and displaced.

EASA states that this condition, if not detected and corrected, could lead to loss of control of the helicopter, possibly resulting in damage to the helicopter and/or injury to occupants. Accordingly, the EASA AD requires a one-time inspection for corrosion, reporting inspection results to AHD, and depending on findings, replacing parts at different compliance times. The EASA AD also allows installing an MRA that has any of the affected parts installed, provided the affected parts are inspected and replaced as required by the AD. The EASA AD states it is considered an interim action and further AD action may follow.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in the EASA AD. The FAA is issuing this AD because the FAA evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Related Service Information Under 1 CFR Part 51

Airbus Helicopters has issued Emergency Alert Service Bulletin No. EC135–67A–039, Revision 1, dated April 23, 2019. This service information specifies reviewing records to determine the date of manufacture or date of last overhaul of certain part-numbered single-axis actuators, procedures to visually inspect the single-axis actuators for the external appearance of corrosion, instruction to take photos of any corroded single-axis actuators, and report certain information to Airbus Helicopters. This service information also specifies replacing single-axis actuators and references Airbus Helicopters Service Bulletin No. EC135–67–040, Revision 0, dated April 25, 2019 (SB EC135–67–040), which is not incorporated by reference in this AD, for inspection criteria of serviceable parts and replacement procedures.

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

Other Related Service Information

Airbus Helicopters has issued SB EC135–67–040, which identifies procedures to inspect the longitudinal, collective, and lateral single-axis actuators for corrosion and to replace those parts.

AD Requirements

This AD requires visually inspecting for corrosion all external surfaces of certain part-numbered longitudinal, collective, and lateral single-axis actuators that have accumulated 6 or more years since manufacturing date or last overhaul, whichever occurs later. Based on the inspection outcome, this AD requires removing the single-axis actuators from service at different compliance times. This AD also requires reporting certain information, along with photos of any corrosion, to Airbus Helicopters.

Differences Between This AD and the EASA AD

The EASA AD applies to Model EC635 P2+, EC635 P3, EC635 T1, EC635 T2+ and EC635 T3 helicopters, whereas this AD does not because none of those models are FAA type-certificated. The EASA AD requires inspecting the single-axis actuators for the, ''external appearance of corrosion,'' whereas this AD requires inspecting for any corrosion. The EASA AD specifies longer compliance times for parts that have accumulated 6 to 10 years that do not have any corrosion. The FAA plans to publish a notice of proposed rulemaking to give the public an opportunity to comment on these longer compliance times.

Interim Action

The FAA considers this AD interim action. If final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this AD affects 311 helicopters of U.S. Registry. Labor costs are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs in order to comply with this AD.

Inspecting the single-axis actuators takes about 2 work-hours for an estimated cost of $170 per helicopter and $52,870 for the U.S. fleet. Replacing

a single-axis actuator takes about 7 work-hours and parts cost about $20,000, for an estimated cost of $20,595 per replacement. Reporting the required information takes about 1 work-hour for an estimated cost of $85 per helicopter and $26,435 for the U.S. fleet.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to 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. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because some of the required actions must be completed within 3 days. Therefore, notice and opportunity for prior public comment are impracticable and contrary to public interest pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the reason(s) stated above, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

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.

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

2. Will not affect intrastate aviation in Alaska.

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

List of Subjects in 14 CFR Part 39

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

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):

2019–17–02 Airbus Helicopters Deutschland GmbH: Amendment 39–19722; Docket No. FAA–2019–0656; Product Identifier 2019–SW–039–AD.

(a) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH (Airbus Helicopters) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3 helicopters, certificated in any category, with any of the following installed that have, as of April 23, 2019, accumulated 6 or more years since manufacturing date or last overhaul, whichever occurs later:

(1) Longitudinal single-axis actuator part number (P/N) L673M20A1008 or P/N L673M30A2111;

(2) Collective single-axis actuator P/N L673M20A1012, P/N L673M30A1211, or P/N E673M30A1201; or

(3) Lateral single-axis actuator P/N L673M20A1011or P/N L673M30A2311.

(b) Unsafe Condition

This AD defines the unsafe condition as corrosion in certain main rotor actuator (MRA) components. This condition could result in failure of the component, failure of the MRA, and loss of control of the helicopter.

(c) Effective Date

This AD becomes effective September 25, 2019.

(d) Compliance

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

(e) Required Actions

(1) Within 3 days, visually inspect all external surfaces of each single-axis actuator for corrosion. Refer to Figure 1 of Airbus Helicopters Emergency Alert Service Bulletin No. EC135–67A–039, Revision 1, dated April 23, 2019 (EASB EC135–67A–039), for example photos of single-axis actuators with corrosion. Refer to Figure 2 of EASB EC135–67A–039 for example photos of single-axis actuators without corrosion.

(i) If there is any corrosion, remove the part from service as follows:

(A) For a part that has accumulated 14 or more years, within 7 days.

(B) For a part that has accumulated 12 or more years, but less than 14 years, within 14 days.

(C) For a part that has accumulated 10 or more years, but less than 12 years, within 30 days.

(D) For a part that has accumulated 8 or more years, but less than 10 years, within 60 days.

(E) For a part that has accumulated 6 or more years, but less than 8 years, within 120 days.

(ii) If there is not any corrosion, remove the part from service as follows:

(A) For a part that has accumulated 14 or more years, within 14 days.

(B) For a part that has accumulated 12 or more years, but less than 14 years, within 30 days.

(C) For a part that has accumulated 10 or more years, but less than 12 years, within 90 days.

(2) Within 7 days after the inspection required by paragraph (e)(1) of this AD, report the information requested in the Reply Form Sheet for EASB ''Check of single-axis actuators'' of EASB EC135–67A–039, along with photos of any corrosion, by email to *support.vehicle.ahd@airbus.com* or by using the QR code to report to Airbus Helicopters. The QR code is available on page 12 of EASB EC135–67A–039.

(f) Special Flight Permits

Special flight permits are prohibited.

(g) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Additional Information

(1) Airbus Helicopters Service Bulletin No. EC135-67-040, Revision 0, dated April 25, 2019, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2019–0087–E, dated April 24, 2019. You may view the EASA AD on the internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2019–0656.

(j) Subject

Joint Aircraft Service Component (JASC) Code: 67000, Rotorcraft Flight Control.

(k) Material Incorporated by Reference

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

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

(i) Airbus Helicopters Emergency Alert Service Bulletin No. EC135–67A–039, Revision 1, dated April 23, 2019.

(ii) [Reserved]

(3) For Airbus Helicopters service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html.*

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

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

Issued in Fort Worth, Texas, on August 21, 2019.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2019–18707 Filed 9–9–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0890; Airspace Docket No. 16–ACE–10]

RIN 2120–AA66

Establishment of Class D and E Airspace; Wichita, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace and Class E airspace designated as surface area, at Beech Factory Airport, Wichita, KS. This action is for the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, December 5, 2019. 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, email *fedreg.legal@nara.gov* 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: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it supports the establishment of Class D airspace and Class E airspace designated as a surface area at Beech Factory Airport, Wichita, KS, to support instrument flight rules (IFR) operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 28436; June 19, 2019) for Docket No. FAA–2017–0890 to propose establishment of Class D and E airspace designated as surface area, at Beech Factory Airport, Wichita, KS. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and E airspace designations are published in paragraph 5000 and 6002, respectively, of FAA Order 7400.11C, dated August 3, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 3, 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 amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 establishes the Class D airspace at Beech Factory Airport, Wichita, KS, extending upward from the surface to and including 2,700 feet MSL within a 4.2-mile radius of Beech Factory Airport, excluding that airspace within the McConnell AFB, KS, excluding that airspace north of a line extending from lat. 37°43′07″ N, long. 97°17′51″ W to lat. 37°43′47″ N, long. 97°08′21″ W, within the Colonel James Jabara Airport, Wichita, KS.

Establishing Class E airspace area designated as surface area at Beech Factory Airport, Wichita, KS, extending upward from the surface to and including 2,700 feet MSL within a 4.2-mile radius of Beech Factory Airport, excluding that airspace within the McConnell AFB, Class D airspace area, and excluding that airspace north of a line extending from lat. 37°43′07″ N, long. 97°17′51″ W to lat. 37°43′47″ N, long. 97°08′21″ W, within the Colonel James Jabara Airport, Wichita, KS.

Controlled airspace is necessary for the safety and management of Standard Instrument Approach Procedures (SIAPs) for IFR operations at this airport.

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, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 3, 2018, and effective September 15, 2018, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ACE KS D Wichita, Beech Factory Airport, KS [New]

Wichita Beech Factory Airport, KS
(Lat. 37°41′38″ N, long. 097°12′54″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.2-mile radius of Beech Factory Airport, excluding that airspace within the McConnell AFB, KS, Class D airspace area, and excluding that portion of Colonel James Jabara Airport, Class E airspace area north of a line from lat. 37°43′07″ N, long. 97°17′51″ W to lat. 37°43′47″ N, long. 97°08′21″ W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6002 Class E Surface Area Airspace.

* * * * *

ACE KS E2 Wichita, Beech Factory Airport, KS [New]

Wichita Beech Factory Airport, KS
(Lat. 37°41′38″ N, long. 097°12′54″ W)

That airspace within a 4.2-mile radius of Beech Factory Airport, excluding that airspace within the McConnell AFB, KS, Class D airspace area, and that portion of Colonel James Jabara Airport, Class E airspace area north of a line from lat. 37°43′07″ N, long. 97°17′51″ W to lat. 37°43′47″ N, long. 97°08′21″ W. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Issued in Fort Worth, Texas, on September 3, 2019.

Christopher L. Southerland,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2019–19424 Filed 9–9–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0450; Airspace Docket No. 19–ASO–12]

RIN 2120–AA66

Amendment of the Class E Airspace; Ashland, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace extending upward from 700 feet above the surface at Ashland Regional Airport, Ashland, KY. This action is due to an airspace review caused the revision of the instrument procedures at the airport, which require additional airspace. The name of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, December 5, 2019. 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, email *fedreg.legal@nara.gov* 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: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Ashland Regional Airport, Ashland, KY, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 28439; June 19, 2019) for Docket No. FAA–2019–0450 to amend the Class E airspace extending upward from 700 feet above the surface at Ashland Regional Airport, Ashland, KY. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, 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 amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies the Class E airspace extending upward from 700 feet above the surface at Ashland Regional Airport, Ashland, KY, by adding an extension 2 miles either side of the 098° bearing from the airport extending from the 6.5-mile radius to 10.4 miles east of the airport; adding an extension 2 miles either side of the 278° bearing from the airport extending from the 6.5-mile radius to 10.5 miles west of the airport; removing the exclusionary language, as it is no longer required; and would update the name of the Ashland Regional Airport (formerly Ashland-Boyd County Airport) to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the amendment of the instrument procedures at the airport, which require additional airspace to comply with FAA Order, 7400.2M, Procedures for Handling Airspace.

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, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO KY E5 Ashland, KY [Amended]

Ashland Regional Airport, KY
(Lat. 38°33′16″ N, long. 82°44′17″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Ashland Regional Airport; and extending 2 miles either side of the 098° bearing from the airport extending from the 6.5-mile radius to 10.4 miles east of the airport; and extending 2 miles either side of the 278° bearing from the airport extending from the 6.5-mile radius to 10.5 miles west of the airport.

Issued in Fort Worth, Texas, on September 4, 2019.

Steve Szukala,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2019–19542 Filed 9–9–19; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34–86721]

Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice

AGENCY: Securities and Exchange Commission.

ACTION: Guidance and interpretation.

SUMMARY: The Securities and Exchange Commission (the ''SEC'' or the ''Commission'') is providing an interpretation and related guidance regarding the applicability of certain rules, which the Commission has promulgated under Section 14 of the Securities Exchange Act of 1934 (the ''Exchange Act'' and such rules the ''federal proxy rules''), to proxy voting advice.

DATES: *Effective:* September 10, 2019.

FOR FURTHER INFORMATION CONTACT: Adam F. Turk, Special Counsel, at (202) 551–3500, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is providing an interpretation and related guidance regarding the applicability of 17 CFR 240.14–1 and 240.14a–9 [Rules 14a–1 and 14a–9] under the Exchange Act [15 U.S.C. 78a *et seq.*] to proxy voting advice.[1]

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III. Other Matters

I. Introduction

As the use of proxy advisory firms by investment advisers and other institutional investors has become more widespread and the services offered by proxy advisory firms have broadened, we and our staff have examined how proxy voting advice provided by proxy advisory firms may be solicitations under the federal proxy rules.[2] In addition, we and our staff have engaged with the public through various forums and statements on a variety of issues related to the proxy voting process, including those discussed below. For example, in 2010, the Commission issued a concept release that sought public comment about, among other things, the role and legal status of proxy advisory firms within the U.S. proxy system.[3] In 2013, the staff held a roundtable on the use of proxy advisory firm services by institutional investors and investment advisers.[4] In 2014, the staff of the Divisions of Investment Management and Corporation Finance issued a Staff Legal Bulletin (''SLB 20'') to provide guidance about the availability and requirements of two exemptions to the federal proxy rules that are often relied upon by proxy advisory firms.[5] Most recently, the staff hosted a roundtable on the proxy process in November 2018 (the ''2018 Roundtable'') that included a panel on the role of proxy advisory firms and their use by investment advisers.[6] In connection with the 2018 Roundtable, the public was invited to provide input on questions that arise regarding the use of proxy advisory firms and their activities.[7] We have carefully considered the feedback received on these topics, and with the benefit of this extensive body of information, historical experience, and engagement, the Commission is today providing an interpretation and related guidance regarding the applicability of the federal proxy rules to proxy voting advice provided by proxy advisory firms.

Specifically, in Section II below, we provide an interpretation and related guidance on whether proxy voting advice constitutes a ''solicitation'' under the federal proxy rules, and the application of Rule 14a–9 under the Exchange Act to proxy voting advice. The interpretation and related guidance discussed below are part of the Commission's review of the overall proxy process. As part of this effort, the staff is also considering recommending that the Commission propose rule amendments to address proxy advisory firms' reliance on the proxy solicitation exemptions in Exchange Act Rule 14a–2(b).[8]

* * * * *

[1] Unless otherwise noted, when we refer to the Exchange Act, or any paragraph of the Exchange Act, we are referring to 15 U.S.C. 78a, at which the Exchange Act is codified, and when we refer to rules under the Exchange Act, or any paragraph of these rules, we are referring to Title 17, part 240 of the Code of Federal Regulations [17 CFR part 240], in which these rules are published.

[2] The Commission today is also publishing guidance regarding the proxy voting responsibilities of investment advisers under Rule 206(4)-6 under the Investment Advisers Act of 1940, Form N–1A, Form N–2, Form N–3, and Form N–CSR under the Investment Company Act of 1940. *See Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers,* Release No. IA–5325 (August 21, 2019) [FR] (''*Investment Adviser Proxy Voting Guidance*'').

[3] *Concept Release on the U.S. Proxy System,* Release No. 34–62495 (July 14, 2010) [75 FR 42982 (July 22, 2010)] (''Concept Release''). The comment letters received in response to the Concept Release are available at *https://www.sec.gov/comments/s7-14-10/s71410.shtml.*

[4] *See* SEC Announces Agenda, Panelists for Roundtable on Proxy Advisory Services, *available at https://www.sec.gov/news/press-release/2013-253.* The letters received in response to the announcement are *available at https://www.sec.gov/comments/4-670/4-670.shtml.*

[5] SEC Staff Legal Bulletin No. 20, Proxy Voting: Proxy Voting Responsibilities of Investment Advisers and Availability of Exemptions from the Proxy Rules for Proxy Advisory Firms (June 30, 2014). SLB 20 represents the views of the staff of the Divisions of Investment Management and Corporation Finance. It is not a rule, regulation, or statement of the Commission. Furthermore, the Commission has neither approved nor disapproved its content. SLB 20, like all staff guidance, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

[6] *See* Chairman Jay Clayton, Statement Announcing SEC Staff Roundtable on the Proxy Process, *available at https://www.sec.gov/news/public-statement/statement-announcing-sec-staff-roundtable-proxy-process.*

[7] *See* Comments on Statement Announcing SEC Staff Roundtable on the Proxy Process; File No. 4–725, *available at https://www.sec.gov/comments/4-725/4-725.htm.*

[8] 17 CFR 240.14a–2(b).

II. Interpretation and Guidance Regarding Applicability of Certain Federal Proxy Rules to Proxy Voting Advice

Question 1: Does proxy voting advice provided by a proxy advisory firm constitute a solicitation under the federal proxy rules?

Response: Generally, yes. Exchange Act Section 14(a) [9] applies to any solicitation for a proxy with respect to any security registered under Exchange Act Section 12 and authorizes the Commission to establish rules and regulations governing such solicitations as necessary or appropriate in the public interest or for the protection of investors.[10] The Commission defined the term ''solicitation'' in Rule 14a–1(l) under the Exchange Act.[11] The Commission's definition is broad and includes, among other things, a ''communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.'' [12]

Consistent with the Commission's broad definition of solicitation and the case law construing that term,[13] the Commission has previously stated that the federal proxy rules apply to any person seeking to influence the voting of proxies by shareholders, regardless of whether the person itself is seeking authorization to act as a proxy.[14] As a result, a person may be engaged in a solicitation in cases where that person is not seeking the procurement, withholding, or revocation of a proxy for itself. In addition, the Commission has indicated that this analysis applies even where the person seeking to influence the vote may be indifferent to its ultimate outcome.[15] Consistent with these statements, the Commission has observed that the breadth of the definition of ''solicitation'' may result in proxy advisory firms being subject to the proxy rules because they provide recommendations that are reasonably calculated to result in the procurement, withholding, or revocation of a proxy.[16] In expressing this view, the Commission stated that, as a general matter, the furnishing of proxy voting advice constitutes a ''solicitation'' within the meaning of Exchange Act Rule 14a–1.[17]

Whether a particular communication is a solicitation often turns on ''the purpose for which the communication was published—*i.e.,* whether the purpose was to influence the shareholders' decisions,'' as evidenced by the substance of the communication and the circumstances under which it was transmitted.[18] With respect to the substance of the communications, the proxy voting advice provided by proxy advisory firms to their clients generally describes the specific proposals that will be presented at the registrant's upcoming meeting and presents a ''vote recommendation'' for each proposal that indicates how the client should vote.[19]

[9] 15 U.S.C. 78n(a). Section 14(a) makes it ''unlawful for any person . . . in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security . . . registered pursuant to section [12] of [the Act].''

[10] Foreign private issuers, however, are exempt from the requirements of Section 14(a). 17 CFR.240.3a12–3(b). In addition, registrants only reporting pursuant to Exchange Act Section 15(d) are not subject to the federal proxy rules.

[11] 17 CFR 240.14a–1(l).

[12] 17 CFR 240.14a–1(l)(iii). We note that, over the years, the Commission has broadened the definition of ''solicitation'' in the context of what was needed or appropriate in the public interest or for the protection of investors, consistent with the purposes of the Exchange Act. *See, e.g., Amended Proxy Rules,* Release No. 1823 (Aug. 11, 1938) [3 FR 1991 (Aug. 13, 1938)]; *Amendment of Regulation X–14,* Release No. 2376 (Jan. 12, 1940) [5 FR 174 (Jan. 12, 1940)] (making clear in each case that any communication by a person soliciting proxy authority, not just the communication delivered with the form of proxy, is a solicitation); *Solicitation of Proxies Under the Act,* Release No. 3347 (Dec. 18, 1942) [7 FR 10655 (Dec. 22, 1942)] (amending the definition of ''solicitation'' of a proxy to include ''any request to revoke a proxy or not to execute a proxy''); *Adoption of Amendments to Proxy Rules,* Release No. 34–5276 (Jan. 17, 1956) [21 FR 577 (Jan. 26, 1956)] (''Amendments to Proxy Rules Release'') (defining a ''solicitation'' to include a ''communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy''). The Commission has noted that this definition potentially applies to, among other things, communications by those who may not be seeking proxy authority for themselves or who may be indifferent to the outcome of a vote. *See Regulation of Communications Among Shareholders,* Release No. 34–31326 (Oct. 16, 1992) [57 FR 48276 (Oct. 22, 1992)] (''Regulation of Communications Release''). In addressing communications by those who may not be seeking proxy authority for themselves or who may be indifferent to the outcome of a vote, the Commission did not narrow the definition of solicitation to exclude these communications, but instead enacted rules to exempt them from the information and filing requirements of the federal proxy rules while preserving the application of the proxy anti-fraud provision, Rule 14a–9. *See, e.g., Shareholder Communications, Shareholder Participation in the Corporate Electoral Process and Corporate Governance Generally,* Release No. 34–16356 (Nov. 21, 1979) [44 FR 68764 (Nov. 29, 1979)] (''Shareholder Participation Adopting Release'')(exempting the furnishing of proxy voting advice by any advisor to any other person with whom the advisor has a business relationship); Regulation of Communications Release (exempting communications among shareholders who are not seeking proxy authority and do not have a substantial interest in the matter subject to a vote).

[13] In considering what constitutes a ''solicitation,'' courts have similarly taken a broad, but flexible, view. *See, e.g., Union Pacific Railroad Co.* v. *Chicago and North Western Railroad Co.,* 226 F. Supp. 400, 408 (N. D. Ill. 1964) (holding that a report provided by a broker-dealer to shareholders of the target company in a contested merger constituted a solicitation because it advised the shareholders that one bidder's offer was ''far more attractive'' than the other and therefore was a communication reasonably calculated to affect the shareholders' voting decisions). *See also SEC* v. *Okin,* 132 F.2d 784 (2d Cir. 1943) (holding that the defendant shareholder who sent a letter to fellow shareholders in connection with an annual meeting asking them not to sign any proxies for the company was engaged in a solicitation); *Sargent* v. *Genesco, Inc.,* 492 F.2d 750 (5th Cir. 1974) (holding that a management letter explaining the corporation's recent financial difficulties and endorsing the terms of a refinancing plan was a solicitation because its purpose was to forestall the shareholders from blocking that plan, notwithstanding that the letter did not expressly call for any shareholder action); *Reserve Life Ins. Co.* v. *Provident Life Insurance Co.,* 499 F.2d 715 (8th Cir. 1974) (holding that letters sent to voting trust certificate holders to extend the term of a voting trust were solicitations of proxies).

[14] *See* Amendments to Proxy Rules Release (in amending the definition of a ''solicitation'' to include any communications to security holders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy, the Commission explained that this definition may include any statements ''made for the purpose of inducing security holders to give, revoke, or withhold a proxy . . . by any person who has solicited or intends to solicit proxies, whether or not such statements are accompanied by an express request to give, revoke, or withhold a proxy. . .''); *Electronic Shareholder Forums,* Release No. 34–57172 (Jan. 18, 2008) [73 FR 4450 (Jan. 25, 2008)]. *See also, Long Island Lighting Co.* v. *Barbash,* 779 F.2d 793 (2d Cir. 1985) (finding newspaper and radio advertisements that encouraged citizens to advocate for a state-run utility company to be solicitations made in connection with an upcoming director election because such advertisements could have indirectly resulted in the furnishing, revocation, or withholding of proxies) *and* Brief of the Securities and Exchange Commission, Amicus Curiae, at p. 7, filed therein (''SEC LILCO Brief'') (''Accordingly, the proxy rules apply not only to direct requests to furnish, revoke or withhold proxies, but also to communications which may indirectly accomplish such a result or constitute a step in a chain of communications designed ultimately to accomplish such a result.'').

[15] *See id.*

[16] *See* Concept Release, 75 FR 43009.

[17] *See id. See also Broker-Dealer Participation in Proxy Solicitations,* Release No. 7208 (Jan. 7, 1964) [29 FR 341 (Jan. 15, 1964)] (''Broker-Dealer Release''). For a discussion of whether proxy voting advice should be viewed as ''unsolicited'' proxy advice, *see infra* text accompanying notes 26–27.

[18] *See* SEC LILCO Brief (describing the factors that should be considered in determining whether an advertisement published in a major newspaper was reasonably calculated to result in the procurement, withholding, or revocation of a proxy and therefore a solicitation).

[19] Examples include:

- one proxy advisory firm's report for a contested election of directors included a detailed evaluation of the candidates presented by the dissident shareholders and management, concluded that management's candidate ''appear[ed] to have more relevant experience than the dissident nominee as a public company director'' and recommended that ''[t]herefore a vote FOR the nominee [] on the management (Blue) card is warranted'';
- another proxy advisory report analyzed the registrant's executive compensation practices and presented a recommendation to vote ''AGAINST [the registrant's advisory vote to ratify named

Continued

These firms often also present their vote recommendations through online platforms established by the firms to facilitate their clients' proxy voting activities. With respect to the circumstances under which this voting advice is provided, proxy advisory firms market their expertise in researching and analyzing matters submitted to a shareholder vote for the purpose of assisting their clients in making voting decisions at shareholder meetings.[20] Many investment advisers retain and pay a fee to proxy advisory firms to provide detailed analyses of various issues, including advice regarding how the investment adviser should vote on the proposals at the registrant's upcoming meeting.[21] In many cases, as discussed below, the proxy advisory firms make recommendations for a particular investment adviser based on the advisory firms' application of the investment adviser's voting criteria.[22]

As a fiduciary, an investment adviser owes each of its clients a duty of care and loyalty with respect to services undertaken on the client's behalf, including voting.[23] Proxy advisory firms provide their voting recommendations to their investment adviser clients with the expectation that those recommendations will be used by their investment adviser clients to assist in fulfilling their fiduciary duties when making their voting decisions. The fact that proxy advisory firms typically provide their recommendations shortly before a shareholder meeting further enhances the likelihood that the recommendations are designed to and will influence the final stages of the investment advisers' decision-making process on voting determinations.[24] Therefore, it is our view that such voting advice provided by a firm marketing its expertise in researching and analyzing proxy issues for purposes of helping its clients make proxy voting determinations (*i.e.,* not merely performing administrative or ministerial services) should be considered a solicitation subject to the federal proxy rules because it is ''a communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.'' We believe this interpretation is consistent with the Commission's long-held view that an advisor who approaches a customer with proxy voting advice is engaging in a solicitation subject to the federal proxy rules.[25]

Even if the proxy advisory firm is providing recommendations based on its application of the client's own tailored voting guidelines (*i.e.,* not merely performing administrative or ministerial services), and recognizing that facts and circumstances may vary, it is our view that such analysis and advice regarding a voting determination generally should be considered a solicitation. The communication generally is in the form of a voting recommendation based on the firm's analysis of the proxy materials and whether a particular matter is consistent with, not consistent with, or not covered by client voting criteria; it is typically transmitted to the client shortly before the meeting to aid the client's voting determination; and it may be a factor in the client's voting determination. Also, as noted above, proxy advisory firms market their services based on their expertise in researching and analyzing proxy issues for purposes of helping their clients make proxy voting determinations. As a result, even when based on the client's own voting guidelines, we believe the communication, if it reflects more than administrative or ministerial work, should be viewed as part of a commercial service that is designed to influence the client's voting decision. We believe this to be the case even in circumstances where the client may not follow this advice.

For similar reasons, we disagree with the view that the proxy voting advice provided by proxy advisory firms falls outside the definition of a solicitation because it should not be viewed as

executive officers' compensation]'' for various reasons; and

• one proxy advisory firm evaluated a proposal submitted by a dissident shareholder group to repeal certain board-adopted bylaw amendments and recommended that a ''vote AGAINST this shareholder proposal is warranted as there appears to be no merit to the dissident campaign.''

[20] For example, one proxy advisor, Institutional Shareholder Services Inc. (''ISS''), promotes itself as ''a recognized industry leader in the field of corporate governance and proxy voting'' and explains to investment advisers that they should consider ISS' ''proven capacity and competence in analyzing proxy issues.'' *See* ISS, Due Diligence Compliance Package (November 2017), *available at https://www.issgovernance.com/file/duediligence/Due-Diligence-Package-November-2017.pdf* (last accessed August 13, 2019).

Another proxy advisor, Glass, Lewis & Co., LLC (''Glass Lewis''), describes its business as ''a leading, independent governance services firm that provides proxy research and vote management services to more than 1,300 clients throughout the world'' and states that ''[w]hile institutional investor clients use Glass Lewis research primarily to help them make proxy voting decisions, they also use Glass Lewis research when engaging with companies before and after shareholder meetings.'' *See* Best Practice Principles for Providers of Shareholder Voting Research & Analysis, Glass Lewis Statement of Compliance for the Period of 1 January 2018 through 31 December 2018, *available at http://www.glasslewis.com/wp-content/uploads/2019/02/GL-Compliance-Statement-2019.pdf* (last accessed August 13, 2019).

[21] As of 2019, ISS reported that it had approximately 2,000 institutional clients. *See https://www.issgovernance.com/about/about-iss/* (last accessed August 13, 2019). Glass Lewis reported that, as of 2019, it had ''1,300+ clients, including the majority of the world's largest pension plans, mutual funds, and asset managers, who collectively manage more than $35 trillion in assets.'' *See https://www.glasslewis.com/company-overview/* (last accessed August 13, 2019).

[22] *See* Letter from ISS, dated Nov. 7, 2018 (''ISS Letter'') (''[a]s of January 1, 2018, approximately 85% of ISS' top 100 clients used a custom proxy voting policy.''), *available at https://www.sec.gov/comments/4-725/4-725.htm;* and Letter from Glass Lewis, dated Nov. 14, 2018 (''[a]s mentioned above, the supermajority of Glass Lewis clients . . . vote according to a custom policy or via a custom process, in what is becoming the standard practice among institutional investors.''), *available at https://www.sec.gov/comments/4-725/4-725.htm.*

[23] *See Investment Adviser Proxy Voting Guidance.*

[24] *See* Letter from Center on Executive Compensation (Nov. 12, 2018) (''. . . proxy reports are released within a short window before the issuer's annual meeting. The data within the reports is subsequently relied upon by institutional investors in fulfilling their fiduciary duties to vote proxies in the best interest of their shareholders.'').

See also, Frank M. Placenti, *Are Proxy Advisors Really A Problem?,* American Council for Capital Formation (October 2018) (in the 2016 and 2017 proxy seasons, 15.3% and 19.3%, respectively, of shareholders' votes were cast within three days after one proxy advisory firm issued its recommendations), *available at http://accf.org/wp-content/uploads/2018/10/ACCF_ProxyProblemReport.pdf; Smallwood* v. *Pearl Brewing Co.,* 489 F.2d 579, 600 (5th Cir. 1974) (stating that in determining whether a communication is a solicitation, ''[i]t is important also to know whether, when the questionable statement is made, proxies have been requested or the time for soliciting proxies is near. In general, the further removed the statement is from an act of shareholder suffrage, the less likely it is that the statement will leave its imprint upon that shareholder action.'').

[25] *See* Broker-Dealer Release. While the Commission recognized that proxy voting advice could be beneficial to shareholders, it nevertheless did not change its view that such advice would likely fall within the definition of a solicitation and instead chose to exempt such solicitations from the information and filing requirements of the proxy rules. *See, generally,* Shareholder Participation Adopting Release, enacting what is now Exchange Act Rule 14a–2(b)(3) [17 CFR 240.14a–2(b)(3)] to exempt the furnishing of proxy voting advice by any advisor to any other person with whom the advisor has a business relationship from the informational and filing requirements of the federal proxy rules, provided the conditions of the rule are met. Rule 14a–2(b)(3) requires that:

(i) the advisor renders financial advice in the ordinary course of his business;

(ii) the advisor discloses to the recipient of the advice any significant relationship with the registrant or any of its affiliates, or a security holder proponent of the matter on which advice is given, as well as any material interests of the advisor in such matter;

(iii) the advisor receives no special commission or remuneration for furnishing the proxy voting advice from any person other than a recipient of the advice and other persons who receive similar advice under this subsection; and

(iv) the proxy voting advice is not furnished on behalf of any person soliciting proxies or on behalf of a participant in an election subject to the provisions of Exchange Act Rule 14a–12(c).) [17 CFR 240.14a–12(c)].

''unsolicited'' voting advice.[26] We view these services provided by proxy advisory firms as distinct from advice prompted by unsolicited inquiries from clients to their financial advisors or brokers on how they should vote their proxies, which remains outside the definition of a solicitation.[27] Rather than merely responding to client inquiries, the communication is invited by the proxy advisory firms themselves through the marketing of their expertise in researching and analyzing proxy issues for purposes of helping clients make proxy voting determinations.

Notwithstanding the foregoing, we note that persons engaged in a solicitation in the form of proxy voting advice, including proxy advisory firms, may avail themselves of the exemptions from the information and filing requirements of the federal proxy rules.[28] Nothing in this interpretation is intended to restrict or limit reliance on those exemptions.

Question 2: Does Exchange Act Rule 14a–9 apply to proxy voting advice?

Response: Yes. Solicitations that are exempt from the federal proxy rules' information and filing requirements remain subject to Exchange Act Rule 14a–9, which prohibits any solicitation from containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact.[29] In addition, such solicitation must not omit to state any material fact necessary in order to make the statements therein not false or misleading.[30] Rule 14a–9 also extends to opinions, reasons, recommendations, or beliefs that are disclosed as part of a solicitation, which may be statements of material facts for purposes of the rule.[31] Where such opinions, recommendations, or similar views are provided, disclosure of the underlying facts, assumptions, limitations, and other information may be needed so that these views do not raise Rule 14a–9 concerns.[32] Accordingly, any person engaged in a solicitation through proxy voting advice must not make materially false or misleading statements or omit material facts, such as information underlying the basis of its advice or which would affect its analysis and judgments, that would be required to make the advice not misleading. For example, the provider of the proxy voting advice should consider whether, depending on the particular statement, it may need to disclose the following types of information in order to avoid a potential violation of Rule 14a–9:[33]

- An explanation of the methodology used to formulate its voting advice on a particular matter (including any material deviations from the provider's publicly-announced guidelines, policies, or standard methodologies for analyzing such matters) where the omission of such information would render the voting advice materially false or misleading;[34]
- to the extent that the proxy voting advice is based on information other than the registrant's public disclosures, such as third-party information sources,[35] disclosure about these information sources and the extent to which the information from these sources differs from the public disclosures provided by the registrant if such differences are material and the failure to disclose the differences would render the voting advice false or misleading; and
- disclosure about material conflicts of interest that arise in connection with providing the proxy voting advice in reasonably sufficient detail so that the client can assess the relevance of those conflicts.[36]

III. Other Matters

Pursuant to the Congressional Review Act,[37] the Office of Information and Regulatory Affairs has designated this guidance and interpretation as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

List of Subjects in 17 CFR Part 241

Securities.

Amendments to the Code of Federal Regulations

For the reasons set out above, the Commission is amending title 17, chapter II of the Code of Federal Regulations as set forth below:

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 1. An authority citation is added for part 241 to read as follows:

Authority: 15 U.S.C. 78a *et seq.*

■ 2. The table is amended by adding an entry for Release No. 34–86721 at the end to read as follows:

[26] *See* ISS Letter (distinguishing between unsolicited and solicited proxy advice and requesting that the Commission confirm that while unsolicited proxy advice is a solicitation, a registered investment adviser who is contractually obligated to furnish vote recommendations based on client-selected guidelines does not provide ''unsolicited'' proxy voting advice, and therefore does not engage in a solicitation).

[27] *See* Broker-Dealer Release (setting forth the opinion of the SEC's General Counsel that a broker is not engaging in a ''solicitation'' if it is merely responding to his customer's request for advice and ''not actively initiating the communication'').

[28] *See, e.g.,* 17 CFR 240.14a–2(b)(1) and 17 CFR 240.14a–2(b)(3).

[29] *See* 17 CFR 240.14a–9. *See also,* Concept Release, 75 FR 43010 (''Even if exempt from the informational and filing requirements of the federal proxy rules, the furnishing of proxy voting advice remains subject to the prohibition on false and misleading statements in Rule 14a–9.'').

[30] 17 CFR 240.14a–9.

[31] *See Virginia Bankshares, Inc.* v. *Sandberg,* 501 U.S. 1083, 1092 (1991) (stating that a board's recommendation that shareholders approve a proposed merger because it viewed the proposal as ''fair'' to the minority shareholders and the offered merger consideration as a ''high'' value were statements of material facts because ''[s]uch statements are factual in two senses: As statements that the directors do act for the reasons given or hold the belief stated and as statements about the subject matter of the reason or belief expressed'').

[32] *See, e.g., Dowling* v. *Narragansett Capital Corp.,* 735 F. Supp. 1105, 1119 (D.R.I. 1990) (denying a motion to dismiss Rule 14a–9 complaints on the basis that ''allegations regarding misrepresentations as to the value of . . . [a corporation's assets] and nondisclosure of the limitations on the information underlying . . . [a] fairness opinion implicate matters at the heart of the decision confronting shareholders.''). The Commission staff has previously raised questions about the appropriateness and adequacy of disclosure under Rule 14a–9 in proxy solicitations. *See, e.g., Interpretative Release Relating to Proxy Rules,* Release No. 34–16833 (May 23, 1980) [45 FR 36374 (May 30, 1980)] (stating the Division of Corporation Finance's view that in proxy contests in which the disposition of a registrant's assets and distribution of the sale proceeds to shareholders were the dissidents' goal, the inclusion of valuations of the sale proceeds in the proxy soliciting material was only appropriate under Rule 14a–9 when, among other things, they were ''accompanied by disclosure which facilitate[d] shareholders' understanding of the basis for and the limitations on the projected realizable values.'').

[33] We understand that some proxy advisory firms currently may be providing some of the disclosures described in the examples listed in this section.

[34] To the extent that the proxy voting advice is materially based on a methodology using a group of peer companies selected by the proxy advisory firm, the disclosure may need to include the identities of the peer group members used as part of its recommendation and the reasons for selecting these peer group members as well as, if material, why its peer group members differ from those selected by the registrant. For example, such disclosure may be needed for a voting recommendation on a registrant's advisory vote on an executive compensation proposal that is based on a comparison of the registrant's executive compensation policies to those of other companies selected by the proxy advisory firm.

[35] Such sources could include third-party research or publications, commercial or financial information databases, or ratings or rankings published by third parties.

[36] Relationships or interests that may create conflicts of interest are commonly found by courts as material information that should be disclosed to avoid Rule 14a–9 violations. *See, e.g., Maldonado* v. *Flynn,* 597 F.2d 789 (2d Cir. 1979) (noting that ''shareholders are entitled to truthful presentation of factual information'' when there is a possibility of self-dealing among directors and emphasizing the importance of Rule 14a–9 in eliciting disclosures of this material information).

[37] 5 U.S.C. 801 *et seq.*

Subject	Release No.	Date	Fed. Reg. vol. and page
* * * *		*	* *
Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice.	34–86721	August 21, 2019	[Insert FR Volume Number] FR [Insert FR Page Number].

By the Commission.

Dated: August 21, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–18355 Filed 9–9–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 271 and 276

[Release Nos. IA–5325; IC–33605]

Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Guidance.

SUMMARY: The Securities and Exchange Commission (the ''SEC'' or the ''Commission'') is publishing guidance regarding the proxy voting responsibilities of investment advisers under its regulations issued under the Investment Advisers Act of 1940 (the ''Advisers Act''), and Form N–1A, Form N–2, Form N–3, and Form N–CSR under the Investment Company Act of 1940 (the ''Investment Company Act'').

DATES: *Effective:* September 10, 2019.

FOR FURTHER INFORMATION CONTACT: Thankam A. Varghese, Senior Counsel; or Holly Hunter-Ceci, Assistant Chief Counsel, at (202) 551–6825 or *IMOCC@sec.gov,* Chief Counsel's Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is publishing guidance regarding the proxy voting responsibilities of investment advisers under 17 CFR 275.206(4)–6 [Rule 206(4)–6 under the Advisers Act [15 U.S.C. 80b]],[1] Form N–1A,[2] Form N–2,[3] Form N–3,[4] and Form N–CSR[5] under the Investment Company Act [15 U.S.C. 80a].[6]

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I. Introduction

Investment advisers regularly are faced with an array of decisions regarding voting of equity securities on behalf of their clients, whether those clients are individual investors, funds or other institutional investors.[7] In various contexts, and in respect of a wide range of matters submitted to shareholders for a vote, investment advisers that have agreed to take on proxy voting authority are called upon to make voting determinations.

In general, matters are put forth for a shareholder vote either by the issuer[8] or by a shareholder or group of shareholders. The submission of matters for a vote by shareholders typically occurs in connection with a meeting of shareholders, including annual shareholder meetings and special shareholder meetings.[9] Some matters appear regularly and consistently at each annual meeting of shareholders, such as the shareholder vote on whether to ratify the issuer's selection of an outside auditor.[10] Other matters, such as shareholder votes on proposed mergers, acquisitions, or other corporate actions and matters proposed by a shareholder or group of shareholders, are generally more idiosyncratic in substance and timing.

Investment advisers are fiduciaries that owe each of their clients duties of care and loyalty with respect to services undertaken on the client's behalf, including voting.[11] In the context of voting, the specific obligations that flow from the investment adviser's fiduciary duty depend upon the scope of voting authority assumed by the adviser.[12] To satisfy its fiduciary duty in making any voting determination, the investment adviser must make the determination in the best interest of the client and must not place the investment adviser's own interests ahead of the interests of the client.

Specifically, an investment adviser's duty of care includes, among other things, the duty to provide advice that

[1] Unless otherwise noted, when we refer to the Advisers Act, or any paragraph of the Advisers Act, we are referring to 15 U.S.C. 80b of the United States Code, at which the Advisers Act is codified, and when we refer to rules under the Advisers Act, or any paragraph of these rules, we are referring to title 17, part 275 of the Code of Federal Regulations [17 CFR part 275], in which these rules are published.

[2] Referenced in 17 CFR 274.11A.

[3] Referenced in 17 CFR 274.11a–1.

[4] Referenced in 17 CFR 274.11b.

[5] Referenced in 17 CFR 274.128.

[6] Unless otherwise noted, when we refer to the Investment Company Act, or any paragraph of the Investment Company Act, we are referring to 15 U.S.C. 80a of the United States Code, at which the Investment Company Act is codified, and when we refer to rules under the Investment Company Act, or any paragraph of these rules, we are referring to title 17, part 270 of the Code of Federal Regulations [17 CFR part 270], in which these rules are published.

[7] Investment advisers owe each of their clients a fiduciary duty under the Advisers Act, which ''must be viewed in the context of the agreed-upon scope of the relationship between the adviser and the client.'' Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Release No. IA–5248 (June 5, 2019), 84 FR 33669, at 33671 (July 12, 2019) (''Fiduciary Interpretation''). In the case of a registered investment company (''fund''), the scope of this relationship is defined by the advisory agreement between the investment adviser and its client (*i.e.,* the fund), and the fund board has the authority to set the scope of voting authority in accordance with its fiduciary duty. With respect to funds, the Investment Company Institute noted that a fund board typically delegates its proxy voting duties to the fund's investment adviser. During the 2017 proxy season, funds cast more than 7.6 million votes for proxy proposals, and the average fund voted on 1,504 separate proxy proposals for U.S. listed portfolio companies (figures exclude companies domiciled outside the United States.). *See* Letter dated Mar. 15, 2019 from Paul Schott Stevens, President and CEO, Investment Company Institute (''ICI Letter II'') at p. 3. Unless otherwise noted, letters cited herein were submitted in response to the Statement Announcing SEC Staff Roundtable on the Proxy Process, July 30, 2018 available at *https://www.sec.gov/comments/4-725/4-725.htm.*

[8] As used in this Release, the terms ''company'' and ''issuer'' refer to the issuer of the securities for which proxies are solicited.

[9] Concept Release on the U.S. Proxy System, Release No. 34–62495 (July 14, 2010), 75 FR 42982 (July 22, 2010) (''Concept Release'').

[10] Many of these matters are required to be submitted to shareholders as a result of federal law, state law, exchange requirements or the company's governance documents. *See, e.g.,* Section 14A(a) of the Securities Exchange Act of 1934 (''say-on-pay'' votes); 8 Del. C. 1953, sec. 211 (annual meeting to elect directors); NYSE Listed Company Manual Section 312.03(b) (shareholder approval for certain related party transactions involving issuances of common stock); and NASDAQ Rule 5635(a) (shareholder approval is required in certain instances prior to the issuance of securities in connection with the acquisition of the stock or assets of another company).

[11] *See* Fiduciary Interpretation, 84 FR 33669, at n. 32.

[12] *See* Fiduciary Interpretation, 84 FR 33669, at 33671–72.

is in the best interest of the client.[13] Where an investment adviser has assumed the authority to vote on behalf of its client, the investment adviser, among other things, must have a reasonable understanding of the client's objectives and must make voting determinations that are in the best interest of the client.[14] As discussed below, for an investment adviser to form a reasonable belief that its voting determinations are in the best interest of the client, it should conduct an investigation reasonably designed to ensure that the voting determination is not based on materially inaccurate or incomplete information.[15] Further, Rule 206(4)–6 under the Advisers Act provides that it is a fraudulent, deceptive, or manipulative act, practice, or course of business for an investment adviser registered or required to be registered with the Commission to exercise voting authority with respect to client securities unless the adviser, among other things, adopts and implements written policies and procedures that are reasonably designed to ensure that the investment adviser votes proxies in the best interest of its clients.[16] We discuss further below how the fiduciary duty and Rule 206(4)–6 relate to an investment adviser's exercise of voting authority on behalf of clients.

When making voting determinations on behalf of clients, many investment advisers retain proxy advisory firms to perform a variety of functions and services. Some of these are administrative, such as providing the investment adviser with an electronic platform that enables the adviser to manage voting mechanics more efficiently. Other services provided by proxy advisory firms relate to the substance of voting, such as: Providing research and analysis regarding the matters subject to a vote; promulgating general voting guidelines that investment advisers can adopt; and making voting recommendations to investment advisers on specific matters subject to a vote.[17] We understand that these voting recommendations may be based on a proxy advisory firm's own voting guidelines or on custom voting guidelines that the investment adviser has created.[18] We understand further that custom guidelines, where they are used, may be more or less detailed, depending on the level of instruction an investment adviser has provided to a proxy advisory firm.[19] Contracting with proxy advisory firms to provide these types of functions and services can reduce burdens for investment advisers (and potentially reduce costs for their clients) as compared to conducting them in-house.

We understand further that an investment adviser that has assumed the authority to vote proxies on behalf of its clients may look to the voting recommendations of a proxy advisory firm when the investment adviser has a conflict of interest, such as if, for example, the investment adviser's interests in an issuer or voting matter differ from those of some or all of its clients. While this third-party input into such an investment adviser's voting decision may mitigate the investment adviser's potential conflict of interest, it does not relieve that investment adviser of (1) its obligation to make voting determinations in the client's best interest, or (2) its obligation to provide full and fair disclosure of the conflicts of interest and obtain informed consent from its clients.[20]

We have solicited feedback on, and our staff has previously provided guidance regarding, various means investment advisers can use to fulfill their proxy voting responsibilities, including the retention and use of proxy advisory firms. In addition, we and our staff have engaged with the public through various forums and statements on a variety of issues related to the proxy voting process, including those discussed below.

For example, in 2010, the Commission issued a concept release that sought public comment about, among other things, the role and legal status of proxy advisory firms within the U.S. proxy system.[21] In 2013, the staff held a roundtable on the use of proxy advisory firm services by institutional investors and investment advisers.[22] In 2014, the staff of the Divisions of Investment Management and Corporation Finance issued a Staff Legal Bulletin (''SLB 20'') to provide (1) the staff's views regarding an investment adviser's responsibilities in voting client proxies and retaining proxy advisory firms, as well as (2) guidance about the availability and requirements of two exemptions to the federal proxy rules that are often relied upon by proxy advisory firms.[23] The SEC's Office of Compliance Inspections and Examinations has also examined investment advisers' compliance with their fiduciary duty when voting proxies on behalf of investors, including review of risk areas related to conflicts of interest, proxy voting policies and procedures, and oversight of proxy

[13] *See* Fiduciary Interpretation, 84 FR 33669, at 33672.

[14] *See* Fiduciary Interpretation, 84 FR 33669, at 33673 (discussing an adviser's obligation to make a reasonable inquiry into its client's financial situation, level of financial sophistication, investment experience and financial goals and have a reasonable belief that the advice it provides is in the best interest of the client based on the client's objectives).

[15] *See* Fiduciary Interpretation, 84 FR 33669, at 33674. *See also* Proxy Voting by Investment Advisers, Release No. IA–2106 (Jan. 31, 2003), 68 FR 6585 (Feb. 7, 2003) (''Proxy Voting Release''), at 6586 (explaining that an adviser's duty of care with respect to proxy voting requires, among other things, an adviser with proxy voting authority to monitor corporate events.)

[16] *See* Rule 206(4)–6 under the Advisers Act. With respect to conflicts of interests, the Commission brought a settled enforcement action against an investment adviser that had voting authority, where the adviser's policies and procedures did not include how the adviser would address potential conflicts that may arise between its interests and those of its clients. *See In the Matter of Intech Investment Management, LLC and David E. Hurley,* Release No. IA–2872 (May 7, 2009).

[17] *See, e.g.,* Letter dated Dec. 31, 2018 from Gail C. Bernstein, General Counsel, Investment Adviser Association (''IAA Letter''), at p. 2; ICI Letter II, at pp. 8–9; Letter dated Jan. 16, 2019 from Dieter Waizenegger, Executive Director, CtW Investment Group at p. 2 (explaining that the value-added analysis provided by proxy advisory firms is especially important during the U.S. proxy season); *see generally* Roundtable on the Proxy Process, Transcript (Nov. 15, 2018) available at *https://www.sec.gov/files/proxy-round-table-transcript-111518.pdf.*

[18] *See, e.g.,* IAA Letter, at 2; Letter dated Nov. 14, 2018 from Paul Schott Stevens, President and CEO, Investment Company Institute (''ICI Letter I''), at p. 34.

[19] *See, e.g.,* Letter dated Nov. 14, 2018 from Katherine Rabin, Chief Executive Officer, Glass Lewis, at p. 2 (noting that institutional investors who engage a proxy advisory firm are opting for such firms to execute increasingly detailed policies).

[20] *See* Fiduciary Interpretation, 84 FR 33669, at 33675–76 (''To meet its duty of loyalty, an adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship. . . . In addition, an adviser must eliminate or at least expose through full and fair disclosure all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.'') (internal citations omitted).

[21] *See* Concept Release, 75 FR 42982. The comment letters received in response to the Concept Release are available at *https://www.sec.gov/comments/s7-14-10/s71410.shtml.*

[22] *See* SEC Announces Agenda, Panelists for Roundtable on Proxy Advisory Services (Nov. 27, 2013), available at *https://www.sec.gov/news/press-release/2013-253.* The letters received in response to the announcement are available at *https://www.sec.gov/comments/4-670/4-670.shtml.*

[23] *See* SEC Staff Legal Bulletin No. 20, Proxy Voting: Proxy Voting Responsibilities of Investment Advisers and Availability of Exemptions from the Proxy Rules for Proxy Advisory Firms (June 30, 2014), available at *https://www.sec.gov/interps/legal/cfslb20.htm.* SLB 20 represents the views of the staff of the Divisions of Investment Management and Corporation Finance. It is not a rule, regulation, or statement of the Commission. Furthermore, the Commission has neither approved nor disapproved its content. SLB 20, like all staff guidance, has no legal force or effect: It does not alter or amend applicable law, and it creates no new or additional obligations for any person.

advisory firms, among other issues.[24] Most recently, the staff hosted a roundtable on the proxy process in November 2018 (the ''2018 Roundtable'') that included a panel on the role of proxy advisory firms and their use by investment advisers.[25] In connection with the 2018 Roundtable, the public was invited to provide input on questions that arise regarding the use of proxy advisory firms and their activities.[26] We have carefully considered the feedback received on these topics, and with the benefit of this extensive body of information, historical experience, and engagement, the Commission is today issuing guidance to investment advisers about their voting responsibilities.[27]

In Section II below, we discuss how the fiduciary duty and Rule 206(4)–6 relate to an investment adviser's exercise of voting authority on behalf of clients. In that Section, we are focused in particular on providing guidance to investment advisers that retain a proxy advisory firm to assist them in some aspect of their proxy voting responsibilities.[28] More specifically, we have followed the question and answer format used by the staff in SLB 20 as we understand that many investment advisers have found that format useful.

In this guidance, we provide examples to help facilitate investment advisers' compliance with their proxy voting responsibilities; however, these examples are not the only way by which investment advisers could comply with their principles-based fiduciary duty imposed on them by the Advisers Act.

We encourage investment advisers and proxy advisory firms to review their policies and practices in light of the guidance below in advance of next year's proxy season. To the extent that firms identify operational or other questions in the course of that review, we encourage them to contact the staff of the Division of Investment Management.

The Commission will consider any questions or other feedback on its guidance regarding the proxy voting responsibilities of investment advisers under their fiduciary duty and Rule 206(4)–6 under the Advisers Act, and Form N–1A, Form N–2, Form N–3, and Form N–CSR under the Investment Company Act to evaluate whether additional guidance might be appropriate in the future. Based on any feedback received, the Commission could supplement this guidance.

II. Guidance Regarding Investment Advisers' Proxy Voting Responsibilities and Disclosures on Form N–1A, Form N–2, Form N–3, and Form N–CSR

Question 1: How may an investment adviser and its client, in establishing their relationship, agree upon the scope of the investment adviser's authority and responsibilities to vote proxies on behalf of that client?

Response: As we recently stated, ''[t]he fiduciary duty follows the contours of the relationship between the adviser and its client, and the adviser and its client may shape that relationship by agreement, provided that there is full and fair disclosure and informed consent.'' [29] Accordingly, an investment adviser is not required to accept the authority to vote client securities, regardless of whether the client undertakes to vote the proxies itself.[30] If an investment adviser does accept voting authority, it may agree with its client, subject to full and fair disclosure and informed consent, on the scope of voting arrangements, including the types of matters for which it will exercise proxy voting authority. While the application of the investment adviser's fiduciary duty in the context of proxy voting will vary with the scope of the voting authority assumed by the investment adviser, the relationship in all cases remains that of a fiduciary to the client.[31]

Differences in agreements between investment advisers and their clients as to the scope of the advisory relationship may result in a variety of arrangements for voting client securities. While a client and its investment adviser may agree that the client will delegate all of its proxy voting authority to its investment adviser, the client and the investment adviser may instead agree (in the manner described above) to other proxy voting arrangements in which the investment adviser would not assume all of the proxy voting authority, or in which the investment adviser would only assume the authority to vote on behalf of the client in limited circumstances or not at all.[32] Following are several non-exhaustive examples of possible voting arrangements to which a client and its investment adviser may agree, subject to full and fair disclosure and informed consent: [33]

- A client and its investment adviser may agree that the investment adviser should exercise voting authority pursuant to specific parameters designed to serve the client's best interest. For example, the client and the investment adviser may agree that, absent receipt of a contrary instruction from the client or a determination by the investment adviser that voting a particular proposal in a different way would be in the client's best interest (*e.g.,* if voting differently would further the investment strategy being pursued by the investment adviser on behalf of the client):
  - The investment adviser will vote in accordance with the voting recommendations of management of the issuer. Such an arrangement could be subject to conditions, for example additional analysis by the investment adviser where the voting recommendation concerns a matter that may present heightened management conflicts of interest or involve a type of matter of particular interest to the investment adviser's client; or

[24] *See, e.g.,* SEC, Office of Compliance Inspections and Examinations, 2015 Examination Priorities for 2015, available at *https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2015.pdf.*

[25] *See* Chairman Jay Clayton, Statement Announcing SEC Staff Roundtable on the Proxy Process, available at *https://www.sec.gov/news/public-statement/statement-announcing-sec-staff-roundtable-proxy-process.*

[26] *See* Comments on Statement Announcing SEC Staff Roundtable on the Proxy Process; File No. 4–725, available at *https://www.sec.gov/comments/4-725/4-725.htm.*

[27] The Commission today is also issuing interpretation and guidance regarding certain rules promulgated under Section 14 of the Securities Exchange Act of 1934 regarding proxy voting advice. Release No. 34–86721 (August 21, 2019), published elsewhere in this issue of the **Federal Register**.

[28] The staff previously provided its views on certain of these questions in SLB 20.

[29] *See* Fiduciary Interpretation, 84 FR at 33677, footnotes 67–70 and accompanying text for a detailed discussion of informed consent and how it is generally considered on an objective basis and may be inferred. *See also* Form ADV, Part 2A, Item 17, and Proxy Voting Release, 68 FR 6585, at n. 19.

[30] We believe, however, that to the extent an investment adviser has discretionary authority to manage the client's portfolio and has not agreed with the client to a narrower scope of voting authority through full and fair disclosure and informed consent, the adviser's responsibility for making voting determinations is implied. *See* Proxy Voting Release, 68 FR 6585 at n. 10.

[31] As we recently stated, ''an adviser's federal fiduciary duty may not be waived, though it will apply in a manner that reflects the agreed-upon scope of the relationship.'' *See* Fiduciary Interpretation, 84 FR 33669, at 33672.

[32] Some letters asked the Commission to clarify the various types of voting arrangements that might be adopted. *See, e.g.,* Letter dated Dec. 21, 2018 from Benjamin Zycher, Ph.D., American Enterprise Institute at p. 5 (seeking clarification about when it is appropriate to vote proxies).

[33] As we stated in the Fiduciary Interpretation, ''[w]hether the disclosure is full and fair will depend upon, among other things, the nature of the client, the scope of the services, and the material fact or conflict. Full and fair disclosure for an institutional client (including the specificity, level of detail, and explanation of terminology) can differ, in some cases significantly, from full and fair disclosure for a retail client because institutional clients generally have a greater capacity and more resources than retail clients to analyze and understand complex conflicts and their ramifications.'' (internal citations omitted). *See* Fiduciary Interpretation, 84 FR 33669, at 33677.

○ The investment adviser will vote in favor of all proposals made by particular shareholder proponents. Such an arrangement could be subject to conditions, for example requiring that the shareholder proponent has particular expertise or an investment strategy that will further the interests of the investment adviser's client.

• A client and its investment adviser may agree that the investment adviser would not exercise voting authority in circumstances under which voting would impose costs on the client, such as opportunity costs for the client resulting from restricting the use of securities for lending in order to preserve the right to vote.[34]

• A client and its investment adviser may agree that the investment adviser will focus voting resources only on particular types of proposals based on the client's preferences, such as proposals relating to corporate events (mergers and acquisition transactions, dissolutions, conversions, or consolidations) or contested elections for directors.

• A client and its investment adviser may agree that the investment adviser would not exercise voting authority on certain types of matters where the cost of voting would be high, or the benefit to the client would be low.[35] This could include, for example:

○ Circumstances where the cost of voting the proxy exceeds the expected benefit to the client, including, for example, casting a vote on a foreign security that could involve the additional costs of hiring a translator or traveling to a foreign country to vote the security in person; or

○ Circumstances under which casting a vote would not reasonably be expected to have a material effect on the value of the client's investment.

While, as noted above, an investment adviser and its client may shape the voting authority through full and fair disclosure and informed consent, we reiterate that an investment adviser that assumes proxy voting authority must make voting determinations consistent with its fiduciary duty and in compliance with Rule 206(4)–6.[36]

Question 2: What steps could an investment adviser that has assumed the authority to vote proxies on behalf of a client take to demonstrate that it is making voting determinations in a client's best interest and in accordance with the investment adviser's proxy voting policies and procedures?

Response: As we discuss in Section I above, an investment adviser is a fiduciary and owes each of its clients a fiduciary duty with respect to services undertaken on the client's behalf, including voting. In that discussion, we explain some of the requirements that follow from an investment adviser's fiduciary duty in the context of voting on behalf of clients, including the need for an investment adviser to conduct a reasonable investigation into matters on which the adviser votes and to vote in the best interest of the client.[37]

An investment adviser should consider how its fiduciary duty and its obligations under Rule 206(4)–6 apply when it has multiple clients. Many investment advisers have multiple clients, including funds, other pooled investment vehicles, and individual investors, with differing investment objectives and strategies.[38] In considering whether an investment adviser's proxy voting policies and procedures are reasonably designed to ensure compliance with Rule 206(4)–6 and to fulfill its fiduciary duty to its clients, an investment adviser should consider whether voting all of its clients' shares in accordance with a uniform voting policy would be in the best interest of each of its clients.[39] In particular, where an investment adviser undertakes proxy voting responsibilities on behalf of multiple funds, pooled investment vehicles, or other clients, it should consider whether it should have different voting policies for some or all of these different funds, vehicles, or other clients, depending on the investment strategy and objectives of each.[40] For example, a growth fund that targets companies with high growth prospects may have a different perspective on certain matters submitted to shareholders than an income or dividend fund that seeks to generate an income stream for shareholders in the form of dividends or interest payments.

Funds that invest in voting securities are also required to disclose in their statements of additional information (''SAI'')[41] or on Form N–CSR,[42] as applicable, the policies and procedures that they use to determine how to vote proxies relating to securities held in their portfolios.[43] As discussed above, if the funds have different voting policies and procedures, these should be reflected in the SAI or on Form N–CSR, as applicable.

An investment adviser should also consider whether certain types of matters may necessitate that the adviser conduct a more detailed analysis than what may be entailed by application of its general voting guidelines, to consider factors particular to the issuer or the voting matter under consideration. Such matters might include, but are not limited to, corporate events (mergers and acquisition transactions, dissolutions, conversions, or consolidations) or contested elections for directors. When determining whether to conduct such an issuer-specific analysis, or an analysis specific

[34] We note, however, that the investment adviser would still have to fulfill its duty of loyalty while exercising its voting authority on behalf of its client. For example, an investment adviser must make any determination regarding whether to retain a security and vote the accompanying proxy or lend out the security in the client's best interest.

[35] *See* Proxy Voting Release, 68 FR 6585 at n. 18 and accompanying text.

[36] Rule 206(4)–6 under the Advisers Act requires an investment adviser that assumes proxy voting authority to adopt and implement policies and procedures that are reasonably designed to ensure it votes client securities in the best interest of clients.

[37] The Commission has noted that an investment adviser uses various means of ensuring that proxy votes are voted in its client's best interest and not affected by the adviser's conflicts of interest, in addition to looking to the voting recommendations of a proxy advisory firm. For example, the Commission has stated that ''[c]learly, an adviser's policy of disclosing the conflict to clients and obtaining their consents before voting satisfies the requirements of the rule and, when implemented, fulfills the adviser's fiduciary obligations under the Advisers Act. . . . Other policies and procedures are also available; their effectiveness (and the effectiveness of any policies and procedures) will turn on how well they insulate the decision on how to vote client proxies from the conflict.'' *See* Proxy Voting Release, 68 FR 6585, at 6587–88.

[38] Such other pooled investment vehicles may include, for example, private funds that are excluded from the definition of investment company by either Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act.

[39] Some letters have noted that proxy voting guidelines allow funds to handle efficiently the large majority of votes that are recurring and non-controversial. *See, e.g.,* ICI Letter I at pp. 9–10; ICI Letter II at p. 4.

[40] As we have noted in the Proxy Voting Release, nothing in Rule 206(4)–6 under the Advisers Act prevents an investment adviser from having different policies and procedures for different clients or different categories of clients. Thus, the board of directors of a fund could adopt and require an investment adviser to use policies and procedures that differ from those the adviser uses with respect to its other clients. Proxy Voting Release, FR 6587 at n. 13.

[41] The SAI is part of a fund's registration statement and contains information about a fund in addition to that contained in the prospectus. The SAI is required to be delivered to investors upon request and is available on the Commission's Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR'').

[42] Form N–CSR is used by open-end funds and closed-end funds to file certified shareholder reports with the Commission on EDGAR.

[43] Open-end funds must disclose their proxy voting policies and procedures in their SAIs. Because closed-end funds do not offer their shares continuously, and are therefore generally not required to maintain an updated SAI to meet their obligations under the Securities Act of 1933, they are required to disclose their proxy voting policies and procedures in their annual reports on Form N–CSR. *See* Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, Release No. IC–25922 (Jan. 31, 2003), 68 FR 6564 (Feb. 7, 2003), Form N–1A, Form N–2, Form N–3, and Form N–CSR.

to the matter to be voted on, an investment adviser should consider the potential effect of the vote on the value of a client's investments. An investment adviser should consider identifying in its voting policy or policies the factors that it will consider in determining which matters require company-specific evaluation, and how it will evaluate voting decisions on such matters.

In addition, an investment adviser should consider reasonable measures to determine that it is casting votes on behalf of its clients consistently with its voting policies and procedures. For example, one way in which an investment adviser could evaluate its compliance with Rule 206(4)–6 would be to sample the proxy votes it casts on behalf of its clients as part of its annual review of its compliance policies and procedures.[44] Such a review could specifically include sampling of proxy votes that relate to proposals that may require more issuer-specific analysis (*e.g.,* mergers and acquisition transactions, dissolutions, conversions, or consolidations), to assist in evaluating whether the investment adviser's voting determinations are consistent with its voting policies and procedures and in its client's best interest.[45]

An investment adviser that retains a proxy advisory firm to provide voting recommendations or voting execution services also should consider additional steps to evaluate whether the investment adviser's voting determinations are consistent with its voting policies and procedures and in the client's best interest before the votes are cast. For example, some steps that an investment adviser could use to evaluate its compliance are:

- *Sampling pre-populated votes:* Where the investment adviser utilizes the proxy advisory firm for either voting recommendations or voting execution (or both), it could assess ''pre-populated'' votes shown on the proxy advisory firm's electronic voting platform before such votes are cast, such as through periodic sampling of the proxy advisory firm's pre-populated votes.
- *Consideration of additional information:* Where the investment adviser utilizes the proxy advisory firm for voting recommendations, it could consider policies and procedures that provide for consideration of additional information that may become available regarding a particular proposal. This additional information may include an issuer's or a shareholder proponent's subsequently filed additional definitive proxy materials or other information conveyed by an issuer or shareholder proponent to the investment adviser that would reasonably be expected to affect the investment adviser's voting determination.
- *Higher degree of analysis:* Where the investment adviser utilizes the proxy advisory firm for either voting recommendations or voting execution (or both), with respect to matters where the investment adviser's voting policies and procedures do not address how it should vote on a particular matter, or where the matter is highly contested or controversial,[46] it could consider whether a higher degree of analysis may be necessary or appropriate to assess whether any votes it casts on behalf of its client are cast in the client's best interest.

Finally, as part of an investment adviser's ongoing compliance program, the adviser must review and document, no less frequently than annually, the adequacy of its voting policies and procedures to ensure that they have been formulated reasonably and implemented effectively, including whether the applicable policies and procedures continue to be reasonably designed to ensure that the adviser casts votes on behalf of its clients in the best interest of such clients.[47]

Question 3: What are some of the considerations that an investment adviser should take into account if it retains a proxy advisory firm to assist it in discharging its proxy voting duties?

Response: When an investment adviser is considering whether to retain or continue retaining a proxy advisory firm to provide research or voting recommendations as an input to the adviser's voting decisions, we believe that an investment adviser should consider, among other things, whether the proxy advisory firm has the capacity and competency to adequately analyze the matters for which the investment adviser is responsible for voting.[48] In this regard, investment advisers could consider, among other things, the adequacy and quality of the proxy advisory firm's staffing, personnel, and/or technology.

Such an investment adviser should also consider whether the proxy advisory firm has an effective process for seeking timely input from issuers and proxy advisory firm clients with respect to, for example, its proxy voting policies, methodologies, and peer group constructions, including for ''say-on-pay'' votes.[49] For example, if peer group comparisons are a component of the substantive evaluation, the investment adviser should consider how the proxy advisory firm incorporates appropriate input in formulating its methodologies and construction of issuer peer groups. Where relevant, an investment adviser should also consider how the proxy advisory firm, in constructing peer groups, takes into account the unique characteristics regarding the issuer, to the extent available, such as the issuer's size; its governance structure; its industry and any particular practices unique to that industry; its history; and its financial performance.

Such an investment adviser should also consider whether a proxy advisory firm has adequately disclosed to the investment adviser its methodologies in formulating voting recommendations, such that the investment adviser can understand the factors underlying the proxy advisory firm's voting recommendations.[50] In addition, the

[44] *See* 17 CFR 275.206(4)–7(b) [Rule 206(4)–7(b) under the Advisers Act].

[45] *Id.*

[46] This may include, for example, major acquisitions involving takeovers or contested director elections where a shareholder has proposed its own slate of directors.

[47] *See* Proxy Voting Release; *see also* 17 CFR 204–2(a)(17)(ii) [Rule 204–2(a)(17)(ii) under the Advisers Act] (requiring an investment adviser to maintain copies of its records documenting the investment adviser's annual review of policies and procedures conducted pursuant to Rule 206(4)–7(b)); Rule 206(4)–7 under the Advisers Act (*e.g.,* requiring investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violation, by the adviser and its supervised person, of the Advisers Act. The rule also requires, among other things, that investment advisers review, no less frequently than annually, the adequacy of their policies and procedures and the effectiveness of their implementation). *See also* Rule 38a–1 under the Investment Company Act (*e.g.,* requiring each fund to adopt and implement written policies and procedures reasonably designed to prevent violation of the federal securities laws by the fund, including policies and procedures that provide for the oversight of compliance by the fund's investment adviser, among others. The rule also requires, among other things, that the fund review, no less frequently than annually, the adequacy of the policies and procedures of the fund and of each investment adviser, principal underwriter, administrator, and transfer agent, and the effectiveness of their implementation).

[48] In Question No. 4, we provide guidance regarding an investment adviser's duties with respect to evaluating the care and competency of the proxy advisory firm with respect to potential factual errors, potential incompleteness, or potential methodological weaknesses that may materially affect the proxy advisory firm's voting recommendations.

[49] 17 CFR 240.14a–21 [Rule 14a–21 under the Securities Exchange Act of 1934] requires, among other things, companies soliciting proxies for an annual or other meeting of shareholders at which directors will be elected to include a separate resolution subject to a shareholder advisory vote to approve the compensation of named executive officers.

[50] If an investment adviser utilizes the proxy advisory firm for research and not voting recommendations, it could still evaluate to what extent, if any, the proxy advisory firm's peer group

investment adviser should consider the nature of any third-party information sources that the proxy advisory firm uses as a basis for its voting recommendations. The investment adviser also should consider what steps it should take to develop a reasonable understanding of when and how the proxy advisory firm would expect to engage with issuers and third parties.

More generally, an investment adviser's decision regarding whether to retain a proxy advisory firm should also include a reasonable review of the proxy advisory firm's policies and procedures regarding how it identifies and addresses conflicts of interest.[51] Some ways in which an investment adviser could conduct this review include, for example, assessing:

- Whether the proxy advisory firm has adequate policies and procedures to identify, disclose, and address actual and potential conflicts of interest, including (1) conflicts relating to the provision of proxy voting recommendations and proxy voting services generally, (2) conflicts relating to activities other than providing proxy voting recommendations and proxy voting services, and (3) conflicts presented by certain affiliations. In the first instance, actual or potential conflicts may include conflicts arising from the provision of recommendations and services to issuers as well as proponents of shareholder proposals regarding matters that may be the subject of a vote. In the third instance, actual or potential conflicts presented by certain affiliations may include whether a third party with significant influence over the proxy advisory firm (*e.g.,* as a shareholder, lender, or significant source of business) has taken a position on a particular voting issue or voting issues more generally;[52]
- Whether the proxy advisory firm's policies and procedures provide for adequate disclosure (*i.e.,* context-specific, non-boilerplate disclosure) of the proxy advisory firm's actual and potential conflicts with respect to the services the proxy advisory firm provides to the investment adviser. This disclosure could include details on, for example, whether the issuer has received consulting services from the proxy advisory firm, and if so, the amount of compensation paid to the firm, if any; whether a proponent of a shareholder proposal or an affiliate of the proponent is or has been a client of the proxy advisory firm; and
- Whether the proxy advisory firm's policies and procedures utilize technology in delivering conflicts disclosures that are readily accessible (for example, usage of online portals or other tools to make conflicts disclosure transparent and accessible).

The steps an investment adviser should take when considering whether to retain or continue retaining a proxy advisory firm could depend on, among other things (1) the scope of the investment adviser's voting authority, and (2) the type of functions and services that the investment adviser has retained the proxy advisory firm to perform. Accordingly, the extent to which an investment adviser takes some or all of the steps described above could vary based on these factors. For example, some of these considerations may be less relevant for an investment adviser that engages a proxy advisory firm solely to execute votes according to detailed voting instructions from the investment adviser, which leaves minimal discretion to the proxy advisory firm. Nevertheless, an investment adviser that retains a proxy advisory firm for this limited purpose should consider what steps to take to understand the proxy advisory firm's own policies and procedures, including its methodologies if applicable, with respect to implementing the investment adviser's voting instructions.

Question 4: When retaining a proxy advisory firm for research or voting recommendations as an input to its voting determinations, what steps should an investment adviser consider taking when it becomes aware of potential factual errors, potential incompleteness, or potential methodological weaknesses in the proxy advisory firm's analysis that may materially affect one or more of the investment adviser's voting determinations?

As discussed in Section I above, for an investment adviser to form a reasonable belief that its voting determinations are in the best interest of the client, it should conduct a reasonable investigation into the matter. In the case of potential factual errors, potential incompleteness, or potential methodological weaknesses in the proxy advisory firm's analysis, the investment adviser's policies and procedures should be reasonably designed to ensure that its voting determinations are not based on materially inaccurate or incomplete information. For example, an investment adviser that has retained a proxy advisory firm for research or voting recommendations as an input to its voting determinations should consider including in its policies and procedures a periodic review of the investment adviser's ongoing use of the proxy advisory firm's research or voting recommendations. Such a review could include an assessment of the extent to which potential factual errors, potential incompleteness, or potential methodological weaknesses in the proxy advisory firm's analysis (that the investment adviser becomes aware of and deems credible and relevant to its voting determinations) materially affected the proxy advisory firm's research or recommendations that the investment adviser utilized.

In reviewing its use of a proxy advisory firm, an investment adviser should also consider the effectiveness of the proxy advisory firm's policies and procedures for obtaining current and accurate information relevant to matters included in its research and on which it makes voting recommendations. As part of this assessment, investment advisers should consider, and in certain cases may wish to communicate with proxy advisory firms, regarding the following:

- The proxy advisory firm's engagement with issuers, including the firm's process for ensuring that it has complete and accurate information about the issuer and each particular matter, and the firm's process, if any, for investment advisers to access the issuer's views about the firm's voting recommendations in a timely and efficient manner;
- The proxy advisory firm's efforts to correct any identified material deficiencies in the proxy advisory firm's analysis;
- The proxy advisory firm's disclosure to the investment adviser regarding the sources of information and methodologies used in formulating

construction methodology may influence how the firm would determine ''say-on-pay'' votes.

Some letters have called for greater transparency to issuers and clients about the formulation of proxy advisory recommendations and guidelines. *See, e.g.,* Letter dated Oct. 10, 2018 from Timothy M. Doyle, Vice President of Policy and General Counsel, American Council for Capital Formation at p. 2; Letter dated July 26, 2019 from Neil A. Hansen, Vice President, Investor Relations and Corporate Secretary, ExxonMobil at 2 (stating that proxy advisory firms' methodology in evaluating executive compensation can undermine the company's ability to offer incentives for management to pursue long-term shareholder value creation).

[51] Some letters have noted concerns about proxy advisory firm conflicts of interest. *See, e.g.,* Letter dated Nov. 9, 2018, Business Roundtable; Letter dated Nov. 29, 2018 from Suanne Estatico; Letter dated Jan. 11, 2019 from Darryl M. Burman, Office of the General Counsel, Group 1 Automotive, Inc.

[52] *See, e.g.,* U.S. Government Accountability Office, Report to Congressional Requesters, Corporate Shareholder Meetings—Issues Relating to Firms That Advise Institutional Investors on Proxy Voting (June 2007).

voting recommendations or executing voting instructions;[53] and

• The proxy advisory firm's consideration of factors unique to a specific issuer or proposal when evaluating a matter subject to a shareholder vote.

Question 5: How can an investment adviser evaluate the services of a proxy advisory firm that it retains, including evaluating any material changes in services or operations by the proxy advisory firm?

Response: In order to act consistently with Rule 206(4)–6, an investment adviser that has retained a third party (such as a proxy advisory firm) to assist substantively with its proxy voting responsibilities and carrying out its fiduciary duty should adopt and implement policies and procedures that are reasonably designed to sufficiently evaluate the third party in order to ensure that the investment adviser casts votes in the best interest of its clients.[54]

For example, a proxy advisory firm's business and/or its policies and procedures regarding conflicts of interest could change after an investment adviser's initial assessment of the proxy advisory firm, and these changes could, for example, materially alter the effectiveness of the proxy advisory firm's policies and procedures and may require the investment adviser to make a subsequent assessment. In this regard, we believe that investment advisers that retain a proxy advisory firm to provide research or voting recommendations (or both) should consider policies and procedures to identify and evaluate a proxy advisory firm's conflicts of interest that can arise on an ongoing basis, in addition to updates regarding the proxy advisory firm's capacity and competency to provide voting recommendations or to execute votes in accordance with an investment adviser's voting instructions.[55] Accordingly, the investment adviser should consider requiring the proxy advisory firm to update the investment adviser regarding business changes the investment adviser considers relevant (*i.e.,* with respect to the proxy advisory firm's capacity and competency to provide independent proxy voting advice or carry out voting instructions). An investment adviser should also consider whether the proxy advisory firm appropriately updates its methodologies, guidelines, and voting recommendations on an ongoing basis, including in response to feedback from issuers and their shareholders.

Question 6: If an investment adviser has assumed voting authority on behalf of a client, is it required to exercise every opportunity to vote a proxy for that client?

Response: No, if either of two situations applies. First, if an investment adviser and its client have agreed in advance to limit the conditions under which the investment adviser would exercise voting authority, as discussed above, the investment adviser need not cast a vote on behalf of the client where contemplated by their agreement.

Second, as the Commission has stated previously, there may be times when an investment adviser that has voting authority may refrain from voting a proxy on behalf of a client if it has determined that refraining is in the best interest of that client.[56] This may be the case where the adviser determines that the cost to the client of voting the proxy exceeds the expected benefit to the client.[57] In making such a determination, the investment adviser may not ignore or be negligent in fulfilling the obligation it has assumed to vote client proxies and cannot fulfill its fiduciary responsibilities to its clients by merely refraining from voting the proxies.[58] Accordingly, before refraining from voting under the circumstances described in this second situation, an investment adviser should consider whether it is fulfilling its duty of care to its client in light of the scope of services to which it and the client have agreed.

III. Other Matters

Pursuant to the Congressional Review Act,[59] the Office of Information and Regulatory Affairs has designated this guidance as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

* * * * *

List of Subjects in 17 CFR Parts 271 and 276

Securities.

Amendments to the Code of Federal Regulations

For the reasons set out above, the Commission is amending title 17, chapter II of the Code of Federal Regulations as set forth below:

PART 271—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 1. An authority citation is added for part 271 to read as follows:

Authority: 15 U.S.C. 80a *et seq.*

■ 2. The table is amended by adding an entry for Release No. IC–33605 at the end to read as follows:

Subject	Release No.	Date	FR vol. and page
*	*	*	*
Commission Guidance Regarding the Proxy Voting Responsibilities of Investment Advisers.	IC–33605	August 21, 2019	[Insert FR Volume Number] FR [Insert FR Page Number].

[53] *See* Question No. 3 above.

[54] *See supra* at n. 47.

[55] *Id.*

[56] *See* Proxy Voting Release, 68 FR 6585, at 6587. We also have stated that ''[w]hether the advice is in a client's best interest must be evaluated in the context of the portfolio that the adviser manages for the client and the client's objectives.'' *See* Fiduciary Interpretation, 84 FR 33669, at 33673.

[57] *See* Proxy Voting Release, 68 FR 6585, at 6587. The Commission stated in that release that ''we do not suggest that an adviser that fails to vote every proxy would necessarily violate its fiduciary obligations. There may even be times when refraining from voting a proxy is in the client's best interest, such as when the adviser determines that the cost of voting the proxy exceeds the expected benefit to the client.'' *Id.* In this second situation, the costs to be considered would necessarily have to be additional costs to the client.

[58] *See* 68 FR 6585, at 6587–88.

[59] 5 U.S.C. 801 *et seq.*

PART 276—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT ADVISERS ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 3. An authority citation is added for part 276 to read as follows:

Authority: 15 U.S.C. 80b *et seq.*

■ 4. The table is amended by adding an entry for Release No. IA–5325 at the end to read as follows:

Subject	Release No.	Date	FR vol. and page
* * *	*	*	* * *
Commission Guidance Regarding the Proxy Voting Responsibilities of Investment Advisers.	IA–5325	August 21, 2019	[Insert FR Volume Number] FR [Insert FR Page Number].

By the Commission.

Dated: August 21, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–18342 Filed 9–9–19; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0760]

RIN 1625–AA00

Safety Zone; Missouri River, Mile Marker 117 to 116.5, Chamois, MO

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Missouri River in a work zone located from Mile Marker (MM) 116.5 through MM 117. 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 (COTP) or a designated representative.

DATES: This rule is effective from October 7, 2019, through October 9, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0760 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 Lieutenant Commander Christian Barger, Waterways Management Division, Sector Upper Mississippi River, U.S. Coast Guard; telephone 314–269–2560, email *Christian.J.Barger@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. We must establish this safety zone by October 7, 2019, 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 Missouri River.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 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 Missouri River will be a safety concern for anyone in the work zone from Mile Marker (MM) 116.5 through MM 117. 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 day period from October 7, 2019 through October 9, 2019 or until the electrical line work is completed, whichever occurs first. The safety zone will be enforced at the work zone on the Missouri River between MM 116.5 and MM 117.

Transit into and through this safety zone is prohibited during periods of enforcement unless given permission by the Captain of the Port or a designated representative. This zone will be enforced for up to ten hours each day from 7 a.m. through 5 p.m. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs) 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 the zone 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 Missouri River for up to ten hours on three consecutive days. Additionally this 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 call or email 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 call or email 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 Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting up to ten hours each day over three consecutive days that will prohibit entry through an electrical wire work zone on the Missouri River. It is categorically excluded from further

review under paragraph L60 (a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. 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 call or email 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, 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: 46 U.S.C. 70034, 70051; 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.T08–0760 to read as follows:

§ 165.T08–0760 Safety Zone; Missouri River, mile marker 117 to 116.5, Chamois, MO.

(a) *Location.* The following area is a safety zone: One work zone on the Missouri River from Mile Marker (MM) 116.5 through MM 117. Transit into and through this safety zone is prohibited during periods of enforcement unless given permission by the Captain of the Port or a designated representative.

(b) *Effective period.* This section is effective from October 7, 2019, through October 9, 2019.

(c) *Enforcement periods.* This section will be enforced each day that electrical line work is to be performed for up to ten hours per day from October 7, 2019, through October 9, 2019, from approximately 7 a.m. through 5 p.m. each day.

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

(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 Notice to Mariners, Local Notices to Mariners, and/or Marine Safety Information Bulletins as appropriate.

Dated: September 3, 2019.

S.A. Stoermer,

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

[FR Doc. 2019–19495 Filed 9–9–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0734]

RIN 1625–AA00

Safety Zone; Kanawha River, Charleston, WV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters on the Kanawha River from mile marker (MM) 60.8 to MM 61.3. The safety zone is needed to protect personnel, vessels, and the marine environment from hazards created by repair work on several large power lines crossing the river. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

DATES: This rule is effective from September 23, 2019 through October 18, 2019. This rule will be enforced from 9 a.m. through 3 p.m. on Mondays through Saturdays, and from 7 a.m. through 11 p.m. on Sundays from September 23, 2019 through October 18, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0734 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 MST3 Wesley Cornelius, MSU Huntington, U.S. Coast Guard; 304–733–0198, *Wesley.P.Cornelius@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. It is impracticable to publish a NPRM because we must establish the safety zone by September 23, 2019 and lack sufficient time to request comments and respond to those comments before the zone must be established.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the power line crossing on the Kanawha River between mile marker (MM) 60.8 and MM 61.3.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The

Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the power line crossing on September 23 through October 18, 2019, will be a safety concern for anyone on the Kanawha River from mile marker (MM) 60.8 to MM 61.3. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the power line are being replaced.

IV. Discussion of the Rule

This rule establishes a safety zone from 9 a.m. through 3 p.m. on Mondays through Saturdays, and from 7 a.m. through 11 p.m. on Sundays from September 23, 2019 through October 18, 2019. The safety zone covers all navigable waters from MM 60.8 to MM 61.3 on the Kanawha River. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters for the duration of the power line crossing is being repaired. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Persons and vessels permitted to enter the safety zone must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size and location of the safety zone. This rule involves a safety zone lasting for less than a month and covering the limited area of less than two miles. In addition, vessel traffic will be able to reach out to the safety boat on scene to coordinate safe passage through the safety zone which will impact one-half mile stretch of the Kanawha River. The Coast Guard will publish a Local Notice to Mariners (LNMs), and issue a Broadcast Notice to Mariners (BNMs) via VHF–FM marine channel 16 about 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 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 call or email 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 call or email 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 Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting from September 23, 2019 through October 18, 2019 that will limit access of the Kanawha River from MM 60.8 to MM 61.3. It is categorically excluded from further review under

paragraph L60(d) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. 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 call or email 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 (waters), 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: 46 U.S.C. 70034, 70051; 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.T08–0734 to read as follows:

§ 165.T08–0734 Safety Zone; Kanawha River, Charleston, WV.

(a) *Location.* The following area is a safety zone: all navigable waters of the Kanawha River from Mile Marker (MM) 60.8 to MM 61.3 near Charleston, WV.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. 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.

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

(c) *Effective period.* This section is effective from September 23, 2019 through October 18, 2019.

(d) *Enforcement periods.* This section will be enforced from 9 a.m. through 3 p.m. on Monday through Saturday, and from 7 a.m. through 11 a.m. on Sundays, from September 23, 2019 through October 18, 2019.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public through Local Notice to Mariners and Broadcast Notices to Mariners of the enforcement periods for the safety zone, as well as any changes in the dates and times of enforcement.

Dated: September 3, 2019.

A.M. Beach,

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

[FR Doc. 2019–19531 Filed 9–9–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0725]

RIN 1625–AA00

Safety Zone; Newtown Creek, New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 300-foot radius of the Kosciuszko Bridge spans crossing Newtown Creek at mile 2.1. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by final stay cable adjustments at each bridge tower anchorage conducted from barges within Newtown Creek. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the U.S. Coast Guard Sector New York Captain of the Port (COTP) or the COTP's designated representative.

DATES: This rule is effective without actual notice from September 10, 2019 through November 30, 2019. For the purposes of enforcement, actual notice will be used from August 27, 2019 through September 10, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0725 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jeff Yunker, Waterways Management Division, U.S. Coast Guard Sector New York, telephone (718) 354–4195, email *Jeffrey.M.Yunker@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port New York
DHS Department of Homeland Security
FR Federal Register
LNM Local Notice to Mariners
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 doing so would be impracticable. The late finalization of project details did not give the Coast Guard enough time to publish an NPRM, take public comments, and issue a final rule before the final stay cable adjustments at each bridge tower anchorage is set to begin. It would be impracticable to delay promulgating this rule as it is necessary to establish this safety zone before the bridge stay cable adjustments begin on, or about, August 27, 2019, to protect the safety of the waterway users, construction crew, and other personnel associated with the bridge replacement project. A delay of the replacement project to accommodate a full notice and comment period would delay necessary operations, result in increased costs, delay the date when the replacement bridge span is expected to be completed and open for normal vehicle traffic on August 28, 2019.

The final stay cable adjustment operations could take place anytime between August 27, 2019 and November 30, 2019. However, we anticipate the installation operations to begin on August 27, 2019. The Coast Guard is publishing this rule to be effective through November 30, 2019 in case the project is delayed due to unforeseen circumstances.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for

making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with final stay cable adjustments conducted from barges in the navigable waters of Newtown Creek prior to the Kosciuszko Bridge westbound span opening for vehicle traffic.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port New York (COTP) has determined that potential hazards associated with final stay cable adjustments starting August 27, 2019, will be a safety concern for anyone within a 300-foot radius of the Kosciuszko Bridge spans at mile 2.1 over Newtown Creek. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge construction is completed.

IV. Discussion of the Rule

This rule establishes a safety zone from August 27, 2019 through November 30, 2019. The safety zone will cover all navigable waters within 300 feet of the Kosciuszko Bridge spans at mile 2.1 over Newtown Creek while vessels and machinery are being used by personnel to make final stay cable adjustments at each bridge tower anchorage. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the bridge cable stays are being adjusted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the following reasons: (1) The safety zone only impacts a small designated area of Newtown Creek, (2) the safety zone will only be enforced for approximately 30 hours from 5 p.m. on August 27, 2019 through 11 p.m. on August 28, 2019, instead of the originally requested 48 hours, during the final stay cable adjustments at each bridge tower anchorage on each side of Newtown Creek, or if there is an emergency or other unforeseen circumstance, (3) the contractor has already contacted previously identified upstream users about this waterway closure and received no negative responses. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, issue a notice in the Local Notice to Mariners, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email 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 call or email 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 Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 30 hours that will prohibit entry within 300 feet of the Kosciuszko Bridge spans crossing Newtown Creek at mile 2.1 while final stay cable adjustments are being made. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. 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 call or email 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: 46 U.S.C. 70034, 70051; 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.T01–0725 to read as follows:

§ 165.T01–0725 Safety Zone, Newtown Creek, New York, NY.

(a) *Location.* The following area is a safety zone: All waters of Newtown Creek within a 300-foot radius of the Kosciuszko Bridge spans at mile 2.1.

(b) *Definitions.* As used in this section:

Designated representative means any Coast Guard commissioned, warrant, petty officer, or designated Patrol Commander of the U.S. Coast Guard who has been designated by the Captain of the Port, Sector New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of the regulations in this section.

Official patrol vessels means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP to enforce this section.

(c) *Regulations.* (1) The general regulations contained in §§ 165.20 and 165.23 apply.

(2) During periods of enforcement, no person or vessel may enter or remain in the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port (COTP) or the COTP's designated representative. However, any vessel that is granted permission by the COTP or the COTP's designated representative must proceed through the area with caution and operate at a speed no faster than that speed necessary to maintain a safe course, unless otherwise required by the Navigation Rules.

(3) During periods of enforcement, any vessels transiting must comply with all orders and directions from the COTP or the COTP's designated representative.

(4) Upon being hailed by a Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed by the Coast Guard.

(5) The COTP will promulgate a notice of the channel closure or restrictions by appropriate means to the affected segments of the public. Such means of notification may include, but are not limited to, LNM and/or Broadcast Notice to Mariners.

(d) *Enforcement periods.* (1) This section is effective without actual notice from September 11, 2019 through November 30, 2019. For the purposes of enforcement, actual notice will be used from August 27, 2019 through September 11, 2019. This section will only be enforced during the final stay cable adjustments at each bridge tower anchorage.

(2) If enforcement is suspended, the COTP will promulgate a notice of the suspension of enforcement by appropriate means. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and/or LNM. Such notification will include the approximate date and time enforcement will be suspended as well as the approximate date and time enforcement will resume.

(3) Violations of the regulations in this section may be reported to the COTP at (718) 354–4353 or on VHF–Channel 16.

Dated: August 21, 2019.

J.P. Tama,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2019–19545 Filed 9–9–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2019–OSERS–0044]

Final Waiver and Extension of the Project Period for Various Grants That Provide Technical Assistance on Transition

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education.

ACTION: Final waiver and extension of project periods.

SUMMARY: The Secretary waives the requirements in the Education Department General Administrative Regulations that generally prohibit project periods exceeding five years and project period extensions involving the obligation of additional Federal funds. The waiver and extension enable 33 projects under Catalog of Federal Domestic Assistance (CFDA) numbers 84.326E, 84.328M, 84.235F, and 84.235G to receive funding for an additional period, not to exceed September 30, 2020.

DATES: The waiver and extension of the project periods are effective September 10, 2019.

FOR FURTHER INFORMATION CONTACT: For the National Technical Assistance Center on Improving Transition to Postsecondary Education and Employment for Students with Disabilities (NTACT), CFDA number 84.326E, contact Selete Avoke, U.S. Department of Education, 400 Maryland Avenue SW, Room 5002, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: 202–245–7260. Email: *Selete.Avoke@ed.gov.* Or contact Kristen Rhinehart-Fernandez, U.S. Department of Education, 400 Maryland Avenue SW, Room 5094, Potomac Center Plaza, Washington, DC 20202–5076.

Telephone: 202–245–6103. Email: *Kristen.Rhinehart@ed.gov.*

For the Office of Special Education Programs (OSEP)—funded Parent Training and Information Centers (PTIs), CFDA number 84.328M, contact Carmen Sanchez, U.S. Department of Education, 400 Maryland Avenue SW, Room 5162, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: 202–245–6595. Email: *Carmen.Sanchez@ed.gov.*

For the Rehabilitation Services Administration (RSA)—funded Parent Information and Training Centers (PTIs), CFDA number 84.235F, and the National Technical Assistance for Parent Information and Training Centers (national PTI TA center), CFDA number 84.235G, contact Tara Jordan, U.S. Department of Education, 400 Maryland Avenue SW, Room 5058E, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: 202–245–7341. Email: *Tara.Jordan@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On June 7, 2019, we published a document in the **Federal Register** (84 FR 26623) proposing an extension of project period and a waiver of the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, as well as a waiver of the requirements in 34 CFR 75.261(a) and (c)(2), which allow the extension of a project period only if the extension does not involve the obligation of additional Federal funds, in order to enable the Secretary to provide additional funds to 33 projects under CFDA numbers 84.326E, 84.328M, 84.235F, and 84.235G for an additional period, not to exceed September 30, 2020.

Background: We are extending 33 projects under four programs in order to align and coordinate all OSERS-funded training and TA services focused on transition-age children and youth with disabilities and their families. The waiver and extensions allow OSERS to align and coordinate, and improve the efficiency and cost-effectiveness of, direct training and TA services focused on transition-age children and youth with disabilities and their families. In addition, the Department of Education (Department) will consider approaches for improving coordination among programs that provide these services to more efficiently and effectively meet the needs of States, service providers, youth with disabilities, and families and to allow for efficient use of the funding available to support these activities.

The projects that provide transition-age TA services (and other TA services for individuals with disabilities and their families) are:

The National Technical Assistance Center on Improving Transition to Postsecondary Education and Employment for Students With Disabilities (NTACT) (CFDA 84.326E)

In September 2014, OSEP and RSA jointly made a 60-month award to the University of North Carolina at Charlotte to establish and operate the NTACT. NTACT was funded under the TA and Dissemination Program as authorized under sections 663 and 681(d) of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1463 and 1481(d), and section 303(b) of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (Rehabilitation Act), 29 U.S.C 773(b). The current project period ends on December 31, 2019.

The purpose of the NTACT is to provide TA to State educational agencies (SEAs), local educational agencies (LEAs), State vocational rehabilitation agencies (SVRAs), and other vocational rehabilitation (VR) service providers to implement evidence-based and promising practices and strategies to ensure that students with disabilities, including those with significant disabilities, graduate from high school with the knowledge, skills, and supports needed for success in postsecondary education and employment.

Specifically, NTACT has five primary goals aligned with OSEP and RSA priorities:

1. Youth and young adults with disabilities receive and participate in evidence-based and promising practices in secondary transition services and supports.

2. SEAs and LEAs implement evidence-based and promising practices and strategies, including early warning and intervention systems to reduce dropout rates and increase graduation rates.

3. Students with disabilities participate in career-related curricula so they are prepared for postsecondary employment and careers.

4. Students with disabilities receive rigorous academic preparation so they are prepared for success in postsecondary education.

5. SEAs, LEAs, SVRAs, and local VR offices use data-driven decision making to develop their respective plans and reports.

OSEP-Funded Parent Training and Information Centers (CFDA 84.328M)

In September 2014, OSEP made twenty-three 60-month awards to the following entities to operate PTIs:

Center	State
Raising Special Kids, Inc	AZ
Advocates for Justice and Education, Inc.	DC
Parent Information Center of Delaware, Inc.	DE
Learning Disabilities Association of Hawaii.	HI
Access for Special Kids Resource Center, Inc.	IA
Idaho Parents Unlimited, Inc	ID
Indiana Resource Center for Families with Special Needs.	IN
Families Helping Families of Greater New Orleans.	LA
Federation for Children with Special Needs, Inc.	MA
PACER Center, Inc	MN
Missouri Parents Act (MPACT)	MO
Mississippi Coalition for Citizens with Disabilities.	MS
Exceptional Children's Assistance Center, Inc.	NC
NH Coalition for Citizens with Disabilities.	NH
Oklahoma Parents Center, Inc	OK
Parent Education and Advocacy Leadership Center.	PA
Rhode Island Parent Information Network.	RI
South Dakota Parent Connection, Inc	SD
Support & Training for Exceptional Parents, Inc.	TN
Parent Educational Advocacy Training Center.	VA
PAVE	WA
WVPTI, Inc	WV
Parents Helping Parents of Wyoming, Inc.	WY

In June 2016, OSEP made a 36-month award to Learning Disabilities Associates of Hawaii to operate a PTI to serve the outlying areas and freely associated States in the Pacific (American Samoa, the Federated States of Micronesia, Guam, the Republic of the Marshall Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau).

All 24 of the OSEP-funded PTIs are funded under the Training and Information for Parents of Children with Disabilities program as authorized under sections 671 and 681(d) of IDEA, 20 U.S.C. 1463 and 1481(d), and all current project periods end on September 30, 2019.

The purpose of the OSEP-funded PTIs is to provide services designed to meet the information and training needs of parents of children with disabilities, and transition-age youth with disabilities. The OSEP-funded PTIs were funded to help youth become

effective self-advocates and provide parents with information, individual assistance, and training to enable them to (a) ensure that their children are included in general education classrooms and extracurricular activities with their peers; (b) help their children meet developmental and academic goals; (c) help their children meet challenging expectations established for all children, including college- and career-ready academic standards; and (d) prepare their children to achieve positive postsecondary outcomes that lead to lives that are as productive and independent as possible.

Specifically, the OSEP-funded PTIs (a) inform parents of children with disabilities and youth with disabilities of how they can benefit from the services provided by the PTI; (b) provide high-quality services that increase parents' capacity to help their children with disabilities improve their early learning, school-aged, and postsecondary outcomes and increase youth's capacity to be effective self-advocates; and (c) work in partnership with any Community Parent Resource Centers (CPRCs) and any other PTIs funded in the State under sections 672 and 671 of IDEA, respectively, and local, State, and national organizations and agencies, such as protection and advocacy agencies and VR agencies, that serve children and youth with disabilities and their families.

RSA-Funded Parent Information and Training Centers (CFDA 84.235F)

In September 2014, RSA made seven 60-month awards to the following entities to operate RSA-funded PTIs:

Center	State
PEAK Parent Center	CO
Statewide Parent Advocacy Network	NJ
Open Doors for Multicultural Families	WA
Federation for Children with Special Needs, Inc.	MA
Resources for Children with Special Needs, Inc.	NY
PACER Center Inc	MN
Missouri Parents Act MPACT	MO

These RSA-funded PTIs are funded under the Parent Information and Training Program as authorized under section 303(c) of the Rehabilitation Act. The current project periods end on September 30, 2019.

These RSA-funded PTIs are designed to meet the unique training and information needs of those individuals who live in the areas to be served, particularly those who are members of populations that have been unserved or underserved by programs under the Rehabilitation Act. The RSA-funded PTIs are geographically distributed to the extent possible throughout the country. The RSA-funded PTIs coordinate and work closely with the OSEP-funded PTIs and with the centers for independent living.

The RSA-funded PTIs provide information and training to individuals with disabilities and their parents, family members, guardians, advocates, and other authorized representatives. Specifically, the RSA-funded PTIs help individuals with disabilities and their families to (a) better understand VR and independent living programs and services; (b) provide follow-up support for transition services and employment programs; (c) communicate effectively with transition and rehabilitation personnel and other relevant professionals; (d) provide support in the development of individualized plans for employment; (e) provide support and expertise in obtaining information about rehabilitation and independent living programs, services, and resources that are appropriate; and (f) understand the provisions of the Rehabilitation Act, particularly provisions relating to employment, supported employment, and independent living.

National Technical Assistance for Parent Information and Training Centers (84.235G)

In September 2014, RSA made one 60-month award to the Statewide Parent Advocacy Network (SPAN), New Jersey, to establish and operate the national PTI TA center. The center is funded under the Parent Information and Training Program as authorized by section 303(c) of the Rehabilitation Act. The current project period ends on September 30, 2019.

The purpose of the national PTI TA center is to ensure that the seven State-level PTI centers funded by RSA are providing consistent information and training to assist individuals with disabilities and their families, including youth with disabilities who are of transition age, to achieve their employment and independent living goals.

The national PTI TA center also disseminates information on promising and evidence-based practices that lead to high-quality employment outcomes and independent living for individuals with disabilities; shares strategies for communicating effectively with individuals from culturally, ethnically, and linguistically diverse backgrounds; and coordinates the seven State-level PTIs funded by RSA and the PTIs funded by OSEP in disseminating information and training materials on transition services, VR, supported employment, independent living, and career development.

Public Comment: In response to our invitation in the notice of proposed waiver and extension of the project periods, 21 parties submitted responsive comments. Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raise concerns not directly related to the proposed waiver and extension.

There are no substantive differences between the proposed waiver and extension and this final waiver and extension, other than updated estimates of the award amounts, as discussed below.

Analysis of Comments and Changes

Comment: Twenty of the 21 commenters provided favorable and supportive comments regarding the proposed waiver and extension of the project periods. These commenters expressed appreciation for the work carried out by these projects. Many of these commenters also noted that since competing the centers late in the fiscal year (FY) is impractical, the extension allows potential applicants to develop more responsive applications in FY 2020.

Discussion: We thank these commenters for their support of extending the project periods, and we agree that extending the project periods will allow for better and more responsive applications for all of these projects in FY 2020.

Changes: None.

Comment: One commenter stated that they did not support the extension of the project periods for the OSEP-funded PTIs, expressing their concern that the centers in some States had become complacent and requesting that OSEP hold a competition in order to allow more responsive organizations to apply for the grants.

Discussion: OSEP intends to compete PTIs in all States in FY 2020. In addition, as other commenters noted, competing the centers this late in the fiscal year would be impractical and less likely to generate new applicants. OSEP project officers will continue to monitor the projects to ensure high-quality services are provided to parents and families.

Changes: None.

Final Waivers and Extensions

We do not believe that it would be in the public interest to run competitions for these programs in FY 2019 because the Department is reviewing the alignment of its training and TA services focused on transition from high

school to college, careers, and adult services for children and youth with disabilities and their families. During the remainder of FY 2019 the Department will consider approaches for improving coordination among programs that provide these services to more efficiently and effectively meet the needs of States, service providers, youth with disabilities, and their families and to allow for more efficient use of the funding available to support these activities.

The Department has also concluded that it would not be in the public interest to have a lapse in the critically needed resources currently provided by these programs. Allowing funding to lapse before the Department establishes a new, coordinated strategy for training and TA services would leave youth and families without access to critical services and assistance that ensure that students with disabilities, including those with significant disabilities, transition from K–12 prepared for postsecondary success.

For these reasons, the Secretary waives the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, and the requirements in 34 CFR 75.261(a) and (c)(2), which allow for the extension of a project period only if the extension does not involve the obligation of additional Federal funds. The waiver allows the Department to issue one-time FY 2019 continuation awards to the projects originally funded in FY 2014 and FY 2016, as follows, with estimates updated from the notice of proposed waiver and extension of project periods to reflect the most recent information available: [1]

CFDA	Recipient	Amount
84.235F	PEAK Parent Center	$130,933
84.235F	Statewide Parent Advocacy Network	130,933
84.235F	Open Doors for Multicultural Families	130,845
84.235F	Federation for Children with Special Needs, Inc	130,886
84.235F	Resources for Children with Special Needs, Inc	130,309
84.235F	PACER Center Inc	130,000
84.235F	Missouri Parents Act MPACT	130,929
84.235G	Statewide Parent Advocacy Network	250,000
84.326E	University of North Carolina	378,000
84.328M	Raising Special Kids, Inc	392,365
84.328M	Advocates for Justice and Education, Inc	200,000
84.328M	Parent Information Center of Delaware, Inc	200,000
84.328M	Learning Disabilities Association of Hawaii (Hawaii PTI)	200,000
84.328M	Access for Special Kids Resource Center, Inc	201,543
84.328M	Idaho Parents Unlimited, Inc	200,000
84.328M	Indiana Resource Center for Families with Special Needs	399,970
84.328M	Families Helping Families of Greater New Orleans	290,932
84.328M	Federation for Children with Special Needs, Inc	346,661
84.328M	PACER Center, Inc	307,684
84.328M	Missouri Parents Act (MPACT)	358,058
84.328M	Mississippi Coalition for Citizens with Disabilities	213,590
84.328M	Exceptional Children's Assistance Center, Inc	590,453
84.328M	NH Coalition for Citizens with Disabilities	200,000
84.328M	Oklahoma Parents Center, Inc	236,936
84.328M	Parent Education and Advocacy Leadership Center	695,235
84.328M	Learning Disabilities Association of Hawaii (Pacific PTI)	200,000
84.328M	Rhode Island Parent Information Network	200,000
84.328M	South Dakota Parent Connection, Inc	200,000
84.328M	Support & Training for Exceptional Parents, Inc	386,028
84.328M	Parent Educational Advocacy Training Center	462,823
84.328M	PAVE	384,480
84.328M	WVPTI, Inc	200,000
84.328M	Parents Helping Parents of Wyoming, Inc	200,000

Any activities carried out during the year of these continuation awards must be consistent with the scope, goals, and objectives of the grantees' applications as approved in either the 2014 or 2016 competitions. The requirements for continuation awards are set forth in 34 CFR 75.253.

Waiver of Delayed Effective Date

The Administrative Procedure Act requires that a substantive rule must be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). All but one of the comments we received supported the proposed waiver and extension, and we have not made any substantive changes to the proposed waiver and extension. A delayed effective date would be contrary to public interest because we would not be able to ensure there is not a lapse in TA services currently provided by the projects. Therefore, the Secretary waives the delayed effective date provision for good cause.

Regulatory Flexibility Act Certification

The Secretary certifies that the waiver and extension of the project periods will not have a significant economic impact on a substantial number of small entities. The only entities that will be affected by the waiver and extension of the project periods are the current grantees and any other potential applicants. Additionally, the extension of an existing project period imposes minimal compliance costs, and the activities required to support the additional year of funding will not

[1] We note that only the funding amount for 84.326E has changed from the notice of proposed waiver and extension of project periods. The $78,000 increase is based on subsequent discussions with the grantee and is necessary to accomplish remaining project goals and objectives during the period of the extension. The updated funding level is below the $2,500,000 the grantee received in each year since FY 2014.

impose additional regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1995

This final waiver and extension of the project periods does not contain any information collection requirements.

Intergovernmental Review

These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Johnny W. Collett,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2019–19554 Filed 9–9–19; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2019–0246; FRL–9999–41–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Amendments to the Control of Emissions of Volatile Organic Compounds From Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the District of Columbia's (the District) state implementation plan (SIP) submitted on August 29, 2018. The portion of the District's SIP revision being approved is an update to the 2002 Mobile Equipment Repair and Refinishing (MERR) model rule to incorporate the Ozone Transport Commission's (OTC) 2009 Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations regulations (MVMERR) model rule, which was adopted by the District in 2016. The MVMERR rules establish volatile organic compounds (VOC) content limits for coating and cleaning solvents used in vehicle refinishing and standards for coating application, work practices, monitoring, and recordkeeping. The remaining part of the August 29, 2018 SIP revision addressed the District's VOC Reasonably Available Control Technology (RACT) requirements for the 2008 ozone national ambient air quality standards (NAAQS). EPA will address the VOC RACT portion of the SIP revision in a separate rulemaking action. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on October 10, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2019–0246. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Gregory A. Becoat, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2036. Mr. Becoat can also be reached via electronic mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: On August 29, 2018, the District of Columbia Department of Energy and Environment (DOEE) submitted a SIP revision for EPA approval which included the District's 2016 update to its 2002 MERR rule, found at Title 20 (Environment), District Municipal Regulations (DCMR) Subtitle A (Air Quality), Chapter 7—Volatile Organic Compounds. The District's 2016 update revised its existing, SIP-approved 2002 MERR rule to include the OTC's 2009 MVMERR model rule. The DOEE's August 29, 2018 SIP revision also addressed all the VOC requirements of RACT set forth by the CAA for the 2008 8-hour ozone NAAQS. The portion addressing the 2008 VOC RACT requirements will be addressed in a separate rulemaking action.

I. Background

Ozone is formed in the atmosphere by photochemical reactions between VOCs and nitrogen oxides (NO_X) in the presence of sunlight. In order to reduce these ozone concentrations, the CAA requires control of VOC and NO_X emission sources to achieve emission reductions in moderate or more serious ozone nonattainment areas.

Section 184(a) of the CAA established a single ozone transport region (OTR), comprising all or part of 12 eastern states and the District.[1] The District is part of the OTR and, therefore, must comply with the RACT requirements in section 184(b)(1)(B) and (2) of the CAA. In December 1999, EPA identified emission reduction shortfalls in several severe 1-hour ozone nonattainment areas, including those located in the OTR. As a result, the OTC developed model rules for a number of source categories. One of the model rules was to reduce VOC emissions from automotive coatings and cleaning solvents associated with non-assembly line refinishing or recoating of motor vehicles, mobile equipment, and their associated parts and components. The

[1] Only a portion of the Commonwealth of Virginia is included in the OTR.

2002 MERR model rule was originally approved by EPA into the District's SIP on December 23, 2004 (69 FR 76857) as part of a regional effort to attain and maintain the 1-hour ozone NAAQS. The 2009 MVMERR Model Rule is a revision of the 2002 MERR Model Rule developed by the OTC. The California Air Resources Board (CARB) Suggested Control Measure (SCM) for Automotive Coatings, published October 2005, formed the basis for the revisions to the 2009 MVMERR Model Rule.

II. Summary of SIP Revision and EPA Analysis

On August 29, 2018, the DOEE submitted a SIP revision which included the District's 2016 update to its 2002, SIP-approved MERR rule to incorporate the OTC's 2009 Model Rule for Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations Regulations. The OTC's 2009 MVMERR model rule was established to reduce VOC emissions from automotive coatings and cleaning solvents associated with the non-assembly line refinishing or recoating of motor vehicles, mobile equipment, and their associated parts and components and developed as part of a regional effort to attain and maintain the 8-hour ozone NAAQS and reduce 8-hour ozone levels.

The District submitted amendments to Sections 714—Control Techniques, Section 718—Mobile Equipment Repair and Refinishing, and Section 799—Definitions, in order to implement the OTC's 2009 MVMERR model rule. Generally, the District's amendments establish revised VOC content limits for automotive coatings and cleaning solvents used in the preparation, application, and drying phases of vehicle refinishing; as well as established coating application standards, work practices, operator training standards, and compliance and recordkeeping standards. More detailed information on these provisions, as well as a detailed summary of EPA's review and rationale for approving these SIP revisions, can be found in the notice of proposed rulemaking (NPR) for this action published on July 8, 2019 (84 FR 32356), which is also available on line at *www.regulations.gov,* Docket number EPA–R03–OAR–2019–0246. EPA received no public comments on the NPR.

After evaluating the SIP revision submittal, EPA concludes that the District's updated MVMERR rule in 20 DCMR Sections 714.3(a)(1), 718, and 799 are consistent with the requirements and limits in the OTC's 2009 MVMERR model rule. The revision will continue to reduce VOC emissions from automotive coatings and cleaning solvents associated with the non-assembly line refinishing or recoating of motor vehicles, mobile equipment, and their associated parts and components and assist in the regional effort to attain and maintain the 8-hour ozone NAAQS and reduce 8-hour ozone levels.

IV. Final Action

EPA is approving the District of Columbia's August 29, 2018 SIP revision submittal that updated the District's 2002 Mobile Equipment Repair and Refinishing model rule to incorporate the OTC's 2009 Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations regulations model rule.

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 revisions to 20 DCMR Sections 714.3(a)(1), 718, and 799. EPA has made, and will continue to make, these materials generally available through *http://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.[2]

VI. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant action 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

[2] 62 FR 27968 (May 22, 1997).

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 12, 2019. 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, which approves the District's update to the 2002 MERR rule, may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 27, 2019.

Diana Esher,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart J—District of Columbia

■ 2. In § 52.470, the table in paragraph (c) is amended under ''Chapter 7 Volatile Organic Compounds'' by revising the entries ''Section 714'', ''Section 718'', and ''Section 799'' to read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS AND STATUTES IN THE DISTRICT OF COLUMBIA SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
District of Columbia Municipal Regulations (DCMR), Title 20—Environment				
*	*	*	*	*
Chapter 7 Volatile Organic Compounds				
*	*	*	*	*
Section 714	Control Techniques Guidelines	12/09/16	9/10/19, [Insert ***Federal Register*** citation].	Revised.
*	*	*	*	*
Section 718	Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations.	12/09/16	9/10/19, [Insert ***Federal Register*** citation].	Title Changed. Revised.
*	*	*	*	*
Section 799	Definitions	12/09/16	9/10/19, [Insert ***Federal Register*** citation].	Revised. Previous Approval dated 4/29/13.
*	*	*	*	*

* * * * *

[FR Doc. 2019–19407 Filed 9–9–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 190904–0021]

RIN 0648–XT006

Atlantic Highly Migratory Species; Adjustments to 2019 Northern Albacore Tuna Quota, 2019 North and South Atlantic Swordfish Quotas, and 2019 Atlantic Bluefin Tuna Reserve Category Quota

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary final rule.

SUMMARY: NMFS adjusts the 2019 baseline quotas for U.S. North Atlantic albacore tuna (northern albacore), North and South Atlantic swordfish, and the Atlantic bluefin Reserve category based on available underharvest of the 2018 adjusted U.S. quotas. 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).

DATES: Effective September 10, 2019, through December 31, 2019.

ADDRESSES: Supporting documents, including Environmental Assessments, as well as the Fishery Management Plans and their amendments that are described below, may be downloaded from the HMS website at *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species.* These documents also are available upon request from Sarah McLaughlin, Steve Durkee, or Larry Redd at the telephone numbers below.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 978–281–9260, Steve Durkee, 202–670–6637, or Larry Redd, 301–427–8503.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of northern albacore, swordfish, and Atlantic bluefin tuna (BFT) by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27(e) implements the northern albacore annual quota recommended by ICCAT and describes the annual northern albacore quota adjustment process. Section 635.27(c) implements the ICCAT-recommended quotas and describes the quota adjustment process for both North and South Atlantic swordfish. Section 635.27(a) implements the ICCAT-recommended quota for and describes the annual BFT quota adjustment process. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quotas.

Note that weight information for northern albacore and BFT below is shown in metric tons (mt) whole weight (ww), and both dressed weight (dw) and ww are shown for swordfish.

Northern Albacore Annual Quota and Adjustment Process

Since 1998, ICCAT has adopted recommendations regarding the northern albacore fishery. ICCAT Recommendation 17–04 on northern albacore (which amends portions of Recommendation 16–06) includes a total allowable catch (TAC) at 33,600 mt for 2018 through 2020 and specific provisions regarding northern albacore conservation and management. The U.S. share of that TAC is a quota for 2019 and 2020 of 632.4 mt, annually, which is codified at § 635.27(e) and will remain in effect until changed.

Portions of ICCAT Recommendation 16–06 remain active. Relevant to the northern albacore quota adjustment in this action, and as codified at § 635.27(e)(2), 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 would be 158.1 mt for the United States.

Adjustment of the 2019 Northern Albacore Quota

Consistent with 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. Under ICCAT Recommendation 17–04, 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 2019, would be 158.1 mt for the United States (25 percent of 632.4 mt).

For 2018, the adjusted quota was 764.15 mt (632.4 mt plus 131.75 mt of 2017 underharvest carried forward to 2018, based on 25 percent of the 527 mt quota in place for 2017) (83 FR 51391, October 11, 2018). The total 2018 northern albacore catch, which includes landings and dead discards, was 102.62 mt, which is an underharvest of 661.53 mt of the 2018 adjusted quota. Of this underharvest, 158.1 mt may be carried forward to the 2019 fishing year. Thus, the adjusted 2019 northern albacore quota is 632.4 mt plus 158.1 mt, totaling 790.5 mt.

North and South Atlantic Swordfish Annual Quota and Adjustment Process

North Atlantic Swordfish

Consistent with the North Atlantic swordfish quota regulations at § 635.27(c), NMFS adjusts the U.S. annual North Atlantic swordfish 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. Under ICCAT Recommendation 17–02, the U.S. North Atlantic swordfish baseline annual quota for 2018 through 2021 is 2,937.6 mt dw (3,907 mt ww). The maximum underharvest that the United States may carry forward from one year to the next is 15 percent of the baseline quota, which equals 440.6 mt dw (586.0 mt ww) for the United States.

The total 2018 U.S. North Atlantic swordfish catch, which includes landings and dead discards, was 958.6 mt dw, leaving a 1,979.0 mt dw underharvest. This underharvest exceeds the 440.6 mt dw underharvest carryover limit allowed under Recommendation 17–02; thus NMFS is carrying forward 440.6 mt dw, the maximum carryover allowed. The 2,937.6 mt dw baseline quota is increased by the underharvest carryover of 440.6 mt dw, resulting in a final adjusted North Atlantic swordfish quota for the 2019 fishing year of 3,378.2 mt dw (2,937.6 + 440.6 = 3,378.2 mt dw). From that adjusted quota, 50 mt dw will be allocated to the Reserve category for inseason adjustments and research, and 300 mt dw will be allocated to the Incidental category, which includes recreational landings and landings by incidental swordfish permit holders, in accordance with regulations at 50 CFR

635.27(c)(1)(i). This results in an allocation of 3,028.2 mt dw (3,378.2 − 50 − 300 = 3,028.2 mt dw) for the directed category, split equally between two seasons in 2019 (January through June, and July through December) (Table 1).

South Atlantic Swordfish

Consistent with the South Atlantic swordfish quota regulations at § 635.27(c), NMFS adjusts the U.S. annual South Atlantic swordfish quota for allowable underharvest, if any, in the previous year. NMFS makes such adjustments consistent with ICCAT limits when complete catch information for the prior year is available and finalized. Under ICCAT Recommendation 17–03, the U.S. South Atlantic swordfish baseline annual quota for 2019 is 75.2 mt dw (100 mt ww) and the amount of underharvest that the United States can carry forward from one year to the next is limited to 100 percent of the baseline quota (75.2 mt dw). Recommendation 17–03 continues to require the United States to transfer a total of 75.2 mt dw (100 mt ww) to other countries. These transfers are 37.6 mt dw (50 mt ww) to Namibia, 18.8 mt dw (25 mt ww) to Côte d'Ivoire, and 18.8 mt dw (25 mt ww) to Belize.

U.S. fishermen landed no South Atlantic swordfish in 2018. The adjusted 2018 South Atlantic swordfish quota was 75.1 mt dw due to nominal landings in previous years. Therefore, 75.1 mt dw of underharvest is available to carry over to 2019. NMFS is carrying forward 75.1 mt dw to be added to the 75.2 mt dw baseline quota. The quota is then reduced by the 75.2 mt dw of annual international quota transfers outlined above, resulting in an adjusted South Atlantic swordfish quota of 75.1 mt dw for the 2019 fishing year (Table 1).

TABLE 1—2019 NORTH AND SOUTH ATLANTIC SWORDFISH QUOTAS

	2018	2019
North Atlantic Swordfish Quota (mt dw):		
Baseline Quota	2,937.6	2,937.6
International Quota Transfer	0	0
Total Underharvest from Previous Year	1,925.7	1,979.0
Underharvest Carryover from Previous Year+	(+) 440.6	(+) 440.6
Adjusted Quota	3,378.2	3,378.2
Quota Allocation:		
Directed Category	3,028.2	3,028.2
Incidental Category	300	300
Reserve Category	50	50
South Atlantic Swordfish Quota (mt dw):		
Baseline Quota	75.2	75.2
International Quota Transfers*	(−)75.2	(−)75.2
Total Underharvest from Previous Year	75.1	75.1
Underharvest Carryover from Previous Year+	75.1	75.1
Adjusted quota	75.1	75.1

+ Allowable underharvest carryover is capped at 15 percent of the baseline quota allocation for the North Atlantic and 75.2 dw (100 mt ww) for the South Atlantic.

* Under Recommendation 17–03, the United States transfers 75.2 mt dw (100 mt ww) annually to Namibia (37.6 mt dw, 50 mt ww), Côte d'Ivoire (18.8 mt dw, 25 mt ww), and Belize (18.8 mt dw, 25 mt ww).

BFT Annual Quota and Adjustment Process

Consistent with the regulations regarding annual BFT quota adjustment at § 635.27(a), NMFS annually announces the addition of available underharvest, if any, to the BFT Reserve category once complete catch information is available and finalized.

NMFS implemented relevant provisions of the current ICCAT western Atlantic BFT recommendation (Rec. 17–06) in a final rule that published in October 2018 (83 FR 51391, October 11, 2018). That rulemaking, implemented the recommended annual U.S. baseline quota of 1,247.86 mt, plus an additional 25 mt to account for bycatch related to pelagic longline fisheries in the Northeast Distant gear restricted area (NED), for a total of 1,272.86 mt. The total annual U.S. BFT quota of 1,272.86 mt is codified at § 635.27(a) and will remain in effect until changed (for instance, if a new ICCAT western Atlantic BFT TAC recommendation is adopted). 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 the United States, is 127.3 mt for 2019 (10 percent of 1,272.86 mt).

Adjustment of the 2019 BFT Reserve Category Quota

The United States may carry forward the full, allowable 127.3 mt for 2019. In 2018, the adjusted BFT quota was 1,381.24 mt (baseline quota of 1,272.86 mt + 108.38 mt of 2017 underharvest carried over to 2018). The total 2018 BFT catch, including landings and dead discards, was 1,027.8 mt, which is 353.44 mt less than the 2018 adjusted quota and exceeds the allowable carryover of 127.3 mt. When carrying over underharvest from one year to the next, NMFS uses it to augment the BFT Reserve category quota. Thus, for 2019, NMFS augments the Reserve category quota with the allowable carryover of 127.3 mt. The codified Reserve category quota is 29.5 mt. Effective February 25, 2019, NMFS adjusted the Reserve category quota for 2019 to 143 mt by reallocating 164.5 mt of Purse Seine quota to the Reserve category (based on 2018 catch by Purse Seine category participants) and also transferred 25 mt of Reserve category quota to the General category (84 FR 6701, February 28, 2019). Effective July 18, 2019, NMFS transferred 30 mt from the Reserve category quota to the Harpoon category (84 FR 35340, July 23, 2019). Effective August 1, 2019 NMFS transferred 15 mt from the Reserve category quota to the Harpoon category (84 FR 38143, August 6, 2019) for a total of 98 mt in the Reserve category plus 127.3 mt carried forward for 2018. Thus, as of the effective date of this action (September 10, 2019), the adjusted 2019 Reserve category quota is 225.3 mt (143 mt − 45 mt + 127.3 mt).

Classification

The Assistant Administrator for NMFS (AA) has determined that this temporary final rule is consistent with

the Magnuson-Stevens Act, the 2006 Consolidated Atlantic HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law.

Pursuant to section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)), the AA finds that it would be unnecessary and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the reasons described below.

The rulemaking processes for Amendment 7 to the 2006 Consolidated HMS FMP in 2015 (79 FR 71509, December 2, 2014) and for the 2016 North and South Atlantic Swordfish Quota Adjustment Rule (81 FR 48719, July 26, 2016) specifically provided prior notice of, and accepted public comment on, the formulaic quota adjustment processes for the northern albacore, Atlantic bluefin tuna, and swordfish fisheries and the manner in which they occur. These processes have not changed, and the application of these formulas in this action does not have discretionary aspects requiring additional agency consideration. Thus it would be unnecessarily duplicative to accept public comment for this action. Because there are no new quotas for 2019 and the quota formulas are the same as in previous years, NMFS is issuing this temporary final rule to adjust the northern albacore, North and South Atlantic swordfish, and western Atlantic BFT quotas for 2019.

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 publication in the **Federal Register**. The fisheries for northern albacore, North and South Atlantic swordfish, and BFT began on January 1, 2019. NMFS monitors northern albacore, North and South Atlantic swordfish, and BFT annual catch and measures the annual catch data against the applicable available quotas. Delaying the effective date of these quota adjustments would complicate the management of the northern albacore, North and South Atlantic swordfish, and BFT fisheries, all of which rely on management flexibility to respond quickly to fishery conditions to ensure that fishermen have a reasonable opportunity to catch the available quotas. For example, under the northern albacore fishery closure regulations, NMFS must close the fishery when the annual fishery quota is reached. Closure of the fishery based only on the baseline (codified) quota versus the adjusted northern albacore quota 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. Adjusting the North and South Atlantic swordfish quota allows the United States to take advantage of the ICCAT allowance to carry over quota underharvest and to comply with the South Atlantic swordfish recommendation's obligation to transfer quota internationally. Adjusting the BFT Reserve category 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 BFT Reserve category is relatively low, and NMFS may need to transfer quota soon in order to reduce the likelihood of fishery closure during the remaining subquota time periods. NMFS could not appropriately adjust the annual quotas for 2019 sooner because the data needed to make the determination (*i.e.,* regarding 2018 underharvest) did not become available until recently, and additional time was needed for agency analysis and consideration of the data.

Additionally, to prevent confusion and potential overharvests, these adjustments should be in place as soon as possible in order to allow the impacted sectors to benefit from any subsequent quota adjustments to the fishing categories, give them a reasonable opportunity to catch available quota, and provide them the opportunity for planning operations accordingly.

This action is being taken under § 635.27(a), (c), (e), and is exempt from review under Executive Order 12866.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: September 4, 2019.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2019–19476 Filed 9–9–19; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 175
Tuesday, September 10, 2019

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Subtitles A and B

9 CFR Chapters I, II, and III

Withdrawal of Certain Proposed Rules

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of withdrawal.

SUMMARY: The United States Department of Agriculture (USDA) is announcing that it has withdrawn certain proposed rules that were either published in the **Federal Register** more than 3 years ago without subsequent action or determined to no longer be candidates for final action. USDA is taking this action to reduce its regulatory backlog and focus its resources on higher priority actions. The Department's actions are part of an overall regulatory reform strategy to reduce regulatory burden on the public and to ensure that future Unified Agendas of Regulatory and Deregulatory Actions provide the public accurate information about rulemakings the Department intends to undertake.

DATES: The pending proposed rules are withdrawn on September 10, 2019.

FOR FURTHER INFORMATION CONTACT: Michael Poe, Telephone Number: (202) 720–3323.

SUPPLEMENTARY INFORMATION:

Background

To promote transparency in regulatory planning, the Administration, beginning with the Spring 2017 Unified Agenda, published for the first time an ''inactive'' list of agency regulatory actions that were under review but not included in the Unified Agenda. Such ''inactive'' actions allow agencies to take additional time to review a regulatory or deregulatory action and to preserve the regulatory identification number (RIN) and title for possible future use. After further review, and to clean out a backlog of older, obsolete RINs, USDA is taking this action to reduce its regulatory backlog and focus its resources on higher priority actions. The Department's actions are part of an overall regulatory reform strategy to reduce regulatory burden on the public and to ensure that future Unified Agendas of Regulatory and Deregulatory Actions provided the public accurate information about rulemakings the Department intends to undertake.

USDA reviewed its pending regulatory actions based on proposed rules that published in the **Federal Register** more than 3 years ago, and for which no final rule or notice of withdrawal has been issued. The agency identified 5 such regulatory actions for withdrawal.

Although not required to do so by the Administrative Procedure Act or by regulations of the Office of the Federal Register, the agency believes the public interest is best served by announcing in the **Federal Register** that it has withdrawn these 5 items. Therefore, for the reasons set forth above, USDA announces that it has withdrawn the pending regulatory actions related to the following documents, which were published in the **Federal Register** on the dates indicated in the table below.

Agency	RIN	Title	Published action	Date	FR Cite
FSIS	0583–AC46	Performance Standards for the Production of Processed Meat and Poultry Products.	NPRM	8/03/2006	71 FR 43992
APHIS	0579–AE02	Livestock Marketing Facilities	NPRM	1/2/2015	80 FR 6
FNS	0584–AD88	Supplemental Nutrition Assistance Program: Farm Bill of 2008 Retailer Sanctions.	NPRM	8/14/2012	77 FR 48461
FNS	0584–AE00	Emergency Supplemental Nutrition Assistance for Victims of Disasters Procedures.	NPRM	5/10/2016	81 FR 28738
Forest Service	0596–AD20	Proposed Directive for Commercial Filming in Wilderness; Special Uses Administration.	NPRM	9/4/2014	79 FR 52626

The withdrawal of these proposals identified in this document does not preclude the Department from reinstituting rulemaking concerning the issues addressed in the proposals listed in the chart. Should we decide to undertake such rulemakings in the future, we will re-propose the actions and provide new opportunities for comment. Furthermore, this notice is only intended to address the specific actions identified in this document, and not any other pending proposals that USDA has issued or is considering. The Department notes that withdrawal of a proposal does not necessarily mean that the preamble statement of the proposal no longer reflects the current position of USDA on the matter addressed. You may wish to review the Department's website (*http://www.USDA.gov*) for any current guidance on these matter matters.

Dated: August 28, 2019.

Rebeckah Adcock,

Regulatory Reform Officer and Senior Adviser to the Secretary.

[FR Doc. 2019–19572 Filed 9–9–19; 8:45 am]

BILLING CODE 3410–90–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 52, 60, 61, 63, 70, 71, and 72

[Docket No. PRM–50–107; NRC–2013–0077]

Requirement To Submit Complete and Accurate Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Discontinuation of rulemaking activity; denial of petition for rulemaking.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is discontinuing a rulemaking activity, ''Requirement to Submit Complete and Accurate Information,'' and denying a petition for rulemaking (PRM), PRM–50–107. This document informs the public of the NRC's action and describes the rationale for the action. The NRC will no longer track this rulemaking activity or PRM.

DATES: As of September 10, 2019, the rulemaking activity is discontinued and PRM–50–107 is denied.

ADDRESSES: Please refer to Docket ID NRC–2013–0077 when contacting the NRC about the availability of information for this action. You can obtain publicly-available information related to this action by using any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0077. Address questions about NRC dockets to Carol Gallagher, telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *The NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the section of this document entitled, Availability of Documents.
- *The NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Yanely Malave, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1519; email: *Yanely.Malave@nrc.gov.*

SUPPLEMENTARY INFORMATION:

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I. Discussion
II. Availability of Documents
III. Conclusion

I. Discussion

The NRC received a PRM dated April 15, 2013 (ADAMS Accession No. ML13113A443), from Mr. James Lieberman (the petitioner), a regulatory and nuclear safety consultant. The petitioner requested that the NRC revise its regulations relating to nuclear reactors at §§ 50.1, 50.9, 52.0, and 52.6 of title 10 of the *Code of Federal Regulations* (10 CFR) to expand its ''regulatory framework to make it a legal obligation for those non-licensees who seek NRC regulatory approvals be held to the same legal standards for the submittal of complete and accurate information as would a licensee or an applicant for a license.''

The PRM was noticed in the **Federal Register** for public comment on June 10, 2013 (78 FR 34604). The NRC received two comments, both supporting the petition.

On September 16, 2013, the petitioner amended the PRM (ADAMS Accession No. ML13261A190) to expand its scope to include the regulatory framework for radioactive materials, waste disposal, transportation, and spent fuel storage (10 CFR parts 30, 40, 60, 61, 63, 70, 71, and 72). In the amended petition, the petitioner also requested that the ''scope'' section for each of the parts be revised to add language to highlight that any person seeking or obtaining NRC approval for a regulated activity would be subject to enforcement action for violation of the completeness and accuracy provision of that part. The applicable sections pertaining to this issue include §§ 30.1, 40.2, 50.1, 52.0, 60.1, 61.1, 63.1, 70.2, 71.0, and 72.2. The amended PRM was noticed in the **Federal Register** for public comment on January 21, 2014 (79 FR 3328). The NRC received one additional comment in support of the amended petition.

The petitioner stated that non-licensees (*e.g.,* vendors and other contractors) who seek NRC regulatory approvals ''should be held to the same legal standards for the submittal of complete and accurate information as would a licensee or an applicant for license.'' When the Commission promulgated the ''Completeness and Accuracy of Information'' rule on December 31, 1987 (52 FR 49362) (the 1987 rule), neither the rule language nor the Statements of Consideration (SOCs) discussed non-licensees submitting information to the NRC for regulatory approvals. The 1987 rule included nearly identical ''Completeness and Accuracy of Information'' requirements in 10 CFR parts 30, 40, 50, 60, 61, 70, 71, and 72. When the Commission added 10 CFR parts 52 and 63 to its regulations, it added ''Completeness and Accuracy of Information'' requirements to these parts (72 FR 49521; August 28, 2007, and 66 FR 55732; November 2, 2001, respectively). The petitioner's specific concern is that NRC regulations do not require all persons who seek NRC approvals to provide the NRC with complete and accurate information in all material respects.

On March 17, 2015 (80 FR 13794), the NRC informed the public that the issues raised in the amended PRM have merit and are appropriate for consideration in the rulemaking process. In addition, the PRM docket, PRM–50–107, was closed. However, the timing for conducting a rulemaking on any issue is dependent on the immediacy of the safety, environmental, or security concerns that have been raised; the rule's priority compared to other rulemakings; and the availability of funding. Using the NRC's Common Prioritization of Rulemaking methodology (ADAMS Accession No. ML15086A074), the NRC prioritized this rulemaking activity as low priority. The petitioner's February 3, 2017 letter (ADAMS Accession No. ML17034A409) identified that this rulemaking had been assigned a medium priority; however, the NRC has confirmed that references to this rulemaking as medium priority in certain locations were errors, due to staff oversight, and that it was prioritized as low priority using the critical power ratio methodology.

The NRC has not identified an immediate safety, environmental, or security concern, and the petitioner did not demonstrate how a lack of requirements in this area would contribute to such a concern. In contrast to the repeated past performance problems in the areas of design, design control, fabrication and quality control with holders of, and applicants for, a Certificate of Compliance under part 72 (*i.e.,* for non-licensed spent fuel storage cask certificate holders that were addressed in a final rule, ''Expand Applicability of Part 72 to Holders of, and Applicants for, Certificates of Compliance'' (64 FR 56114; October 15, 1999), the NRC identified only one other example where an entity other than an NRC licensee or applicant submitted incomplete or inaccurate information that resulted in a significant safety issue. That instance involved the submission of a reactor topical report on a fire retardant product that was based on falsified test data. While the case took several years to conclude, the NRC was able to exercise its current authority under the Atomic Energy Act (AEA) to resolve the safety issue and ultimately sanction the vendor.

The AEA stipulates that licensees or applicants are ultimately responsible for safety. The AEA includes the authority to revoke licenses for material false statements (AEA section 186) and to require written statements from applicants for licenses and licensees (AEA section 182). As described in the 1987 rule, § 50.9 codifies in a more explicit and accessible way requirements already existing under the authority of the AEA (52 FR 49372). The responsibility for safety remains with the licensee or applicant for a license that relies on material provided by a non-licensee. Furthermore, the requirements in 10 CFR part 21, ''Reporting of Defects and Noncompliance,'' apply to subjects such as safety-related analysis associated with component hardware, which may be addressed in the type of topical report referenced by the petitioner. The NRC, as well as licensees and applicants, have procedures in place to ensure that substantial safety hazards identified under 10 CFR part 21 are identified and corrected. Based on these considerations, the NRC finds that the subject rulemaking would likely have minimal practical benefit to the safety or security of NRC-regulated activities.

II. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated. For information on accessing ADAMS, see the **ADDRESSES** section of this document.

Date	Document	ADAMS Accession No./**Federal Register** citation/link
April 15, 2013	Letter from J. Lieberman, ''Completeness and Accuracy of Information,'' PRM–50–107 (Original Petition).	ML13113A443.
June 10, 2013	**Federal Register** notification, ''Submitting Complete and Accurate Information''.	78 FR 34604, *https://www.gpo.gov/fdsys/pkg/FR-2013-06-10/pdf/2013-13684.pdf.*
September 16, 2013	Letter from J. Lieberman, ''Completeness and Accuracy of Information,'' PRM–50–107 (Amended Petition).	ML13261A190.
January 21, 2014	**Federal Register** notification, ''Submitting Complete and Accurate Information''.	79 FR 3328, *https://www.gpo.gov/fdsys/pkg/FR-2014-01-21/pdf/2014-01035.pdf.*
March 17, 2015	**Federal Register** notification, ''Requirement to Submit Complete and Accurate Information''.	80 FR 13794, *https://www.gpo.gov/fdsys/pkg/FR-2015-03-17/pdf/2015-06107.pdf.*
June 23, 2015	Common Prioritization of Rulemaking Methodology	ML15086A074.
February 3, 2017	Letter from J. Lieberman ''PRM 50–217, Rulemaking Petition To Amend the NRC Regulations for Completeness and Accuracy of Information—10 CFR 30.9, 40.9, 50.9, 52.6, 60.10, 61.9a, 63.10, 70.9, 71.7, and 72.11''.	ML17034A409.

III. Conclusion

The NRC is no longer pursuing the ''Requirement to Submit Complete and Accurate Information'' rulemaking and is denying PRM–50–107 for the reasons discussed in this document. In the next edition of the Unified Agenda, the NRC will update the entry for this rulemaking activity with reference to this document to indicate that the rulemaking is no longer being pursued. These rulemaking activities will appear in the completed section of that edition of the Unified Agenda but will not appear in future editions. If the NRC decides to pursue a similar or related rulemaking activity in the future, it will inform the public through a new rulemaking entry in the Unified Agenda.

Dated at Rockville, Maryland, this 4th day of September 2019.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2019–19521 Filed 9–9–19; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0596; Product Identifier 2019–NE–22–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Pratt & Whitney (PW) PW1519G, PW1521G, PW1521GA, PW1524G, PW1525G, PW1521G–3, PW1524G–3, PW1525G–3, PW1919G, PW1921G, PW1922G, PW1923G, and PW1923G–A model turbofan engines. This proposed AD was prompted by reports of in-flight shutdowns due to oil leaking from the connection between the LP10 oil supply tube and the fuel oil cooler (FOC). This proposed AD would require initial and repetitive gap inspections of the LP10 oil supply tube and the FOC and, if a gap is found, replacement of these parts. This proposed AD further requires removal of these parts at the next engine shop visit. The FAA is proposing an AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 25, 2019.

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

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

For service information identified in this NPRM, contact Pratt & Whitney, 400 Main Street, East Hartford, CT, 06118; phone: 800–565–0140; fax: 860–565–5442; email: *help24@pw.utc.com;* internet: *http://fleetcare.pw.utc.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759.

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–2019–0596; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2010–0596; Product Identifier 2019–NE–22–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

The FAA received reports of two in-flight shutdowns due to oil leaking from the connection between the LP10 tube and the fuel oil cooler. This condition, if not addressed, could result in failure of the LP10 oil tube, engine fire and damage to the airplane.

Related Service Information Under 1 CFR Part 51

The FAA reviewed PW Service Bulletin (SB) PW SB PW1000–A–79–00–0004–00B–930A–D, dated March 20, 2019, and PW SB PW1000–A–79–00–0011–00A–930A–D, dated March 20, 2019. PW SB PW1000–A–79–00–0004–00B–930A–D describes procedures for modification or replacement of the FOC on PW1919G, PW1921G, PW1922G, PW1923G, and PW1923G–A model turbofan engines. PW SB PW1000–A–79–00–0011–00A–930A–D describes procedures for modification or replacement of the FOCs on PW1519G, PW1521G, PW1521GA, PW1521G–3, PW1524G, PW1524G–3, PW1525G, and PW1525G–3 model turbofan engines. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

The FAA reviewed PW SB PW SB PW1000–A–79–00–0005–00B–930A–D, dated January 25, 2019; PW SB PW1000–A–79–00–0012–00A–930A–D, dated January 25, 2019; PW SB PW1000–A–79–00–0007–00B–930A–D, dated March 29, 2019, and PW SB PW1000G–A–79–00–0013–00A–930A–D, dated March 29, 2019. These service bulletins describe procedures for inspections of the FOC for gaps as well as replacement of the FOC and the LP10 oil supply tube to prevent oil leaks.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require initial and repetitive gap inspections of the LP10 oil supply tube and the FOC and, if a gap is found, replacement of these parts. This proposed AD would further require removal and replacement of these parts at the next engine shop visit.

Costs of Compliance

The FAA estimates that this proposed AD affects 18 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Perform gap inspection	2 work-hours × $85 per hour = $170	$0	$170	$3,060
Replace FOC	5 work-hours × $85 per hour = $425	69,000	69,425	1,249,650
Replace LP 10 line	2.5 work-hours × $85 per hour = $212.50	1,125	1,337.50	24,075

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.

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pratt & Whitney: Docket No. FAA–2019–0596; Product Identifier 2019–NE–22–AD.

(a) Comments Due Date

The FAA must receive comments by October 25, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Pratt & Whitney (PW) PW1519G, PW1521G, PW1521GA, PW1524G, PW1525G, PW1521G–3, PW1524G–3, PW1525G–3, PW1919G, PW1921G, PW1922G, PW1923G, and PW1923G–A model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7261, Turbine Engine Oil System.

(e) Unsafe Condition

This AD was prompted by reports of two in-flight shutdowns due to oil leaking from the connection between the LP10 oil supply tube and the fuel oil cooler (FOC). The FAA is issuing this AD to prevent failure of the LP10 oil supply tube, engine fire and damage to the airplane. The unsafe condition, if not addressed, could result in engine fire and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within 300 engine cycles from the effective date of this AD, perform an initial gap inspection with a 0.001 inch feeler gauge between the LP10 oil supply tube, part number (P/N) 5312624–01, and the FOC, P/N 5306769.

(i) If any gap is found, remove the LP10 oil supply tube and the FOC and replace with parts eligible for installation prior to further flight.

(ii) If no gap is found, repeat this inspection every 850 engine cycles since the previous inspection.

(2) At the next shop visit after the effective date of this AD, remove the LP10 oil supply tube, P/N 5312624–01, and the FOC, P/N 5306769, and replace with parts eligible for installation.

(h) Terminating Action

Removal of the affected LP10 oil supply tube and the FOC per the requirements of paragraphs (g)(1)(i) or (g)(2) of this AD constitutes terminating action for the inspections required by paragraph (g)(1) of this AD.

(i) Definition

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

(2) For the purpose of this AD, an LP10 tube eligible for installation is any LP10 tube with a P/N other than P/N 5312624–01.

(3) For the purpose of this AD, a FOC eligible for installation is one with a P/N other than P/N 5306769 or an FOC modified per PW SB PW1000G–A–79–00–0004–00B–930A–D or PW SB PW1000G–A–79–00–0011–00A–930A–D, both dated March 20, 2019.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

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

(2) For service information identified in this AD, contact Pratt & Whitney, 400 Main Street, East Hartford, CT 06118; phone: 800–565–0140; fax: 860–565–5442; email: *help24@pw.utc.com;* internet: *http://fleetcare.pw.utc.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Issued in Burlington, Massachusetts, on September 4, 2019.

Karen M. Grant,

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

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–102508–16]

RIN 1545–BN28

Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would update information reporting regulations under section 6033 that are generally applicable to organizations exempt from tax under section 501(a) to reflect statutory amendments and certain grants of reporting relief announced through subregulatory guidance that have been made since the current regulations were adopted, particularly with respect to tax-exempt organizations required to file an annual Form 990 or 990–EZ information return.

DATES: Written or electronic comments and requests for a public hearing must be received by December 9, 2019.

ADDRESSES: Submit electronic submissions via the Federal eRulemaking Portal at *http://www.regulations.gov/* (indicate IRS REG–102508–16) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to: CC:PA:LPD:PR (REG–102508–16), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station,

Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–102508–16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) at (202) 317–3150; concerning submissions of comments and requests for a public hearing, Regina Johnson at (202) 317–6901 (not toll-free numbers), *fdms.database@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

The paragraphs of section 6033 of the Internal Revenue Code (Code) outline various requirements for an annual information return to be filed by organizations that are exempt from tax under section 501(a) or described in section 527, including exceptions to the filing requirement. Section 6033(a)(1) requires certain organizations that are exempt from tax under section 501(a) (''tax-exempt organizations'') to file annual information returns that include gross income, receipts and disbursements, and ''such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe.'' The annual information returns required under section 6033 are Forms 990, ''Return of Organization Exempt From Income Tax;'' 990–EZ, ''Short Form Return of Organization Exempt From Income Tax;'' 990–PF, ''Return of Private Foundation;'' and 990–BL, ''Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons.'' Annual returns filed by tax-exempt organizations, tax-exempt political organizations described in section 527(e) (''section 527 organizations''), and nonexempt private foundations described in section 6033(d) and section 4947(a)(1) trusts (which are both treated as section 501(c)(3) organizations for this purpose) are information returns intended to help ensure that the filing organizations comply with applicable federal tax laws. Additionally, most information on these annual returns under section 6104 of the Code is available for public inspection.

Section 6033(a)(3) provides a list of organizations that are excepted from the filing requirements imposed under section 6033(a)(1). Specifically, section 6033(a)(3)(A)(ii) provides that section 6033(a)(1) shall not apply to any organization (other than a private foundation) that is described in section 6033(a)(3)(C) whose gross receipts are not normally more than $5,000 annually. The list of organizations provided in section 6033(a)(3)(C) includes certain fraternal beneficiary societies, orders or associations described in section 501(c)(8); certain organizations described in section 501(c)(3) (such as religious organizations and educational organizations described in section 170(b)(1)(A)(ii)); and organizations described in section 501(c)(1) that are corporations wholly owned by the United States or any agency or instrumentality thereof or wholly-owned subsidiaries of such corporations.

Section 6033(a)(3)(B) provides discretionary authority to the Secretary to relieve any organization required to file under section 6033(a)(1) (other than supporting organizations described in section 509(a)(3)) from filing an information return where he determines that such filing is ''not necessary to the efficient administration of the internal revenue laws.''

Section 6033(b) provides a list of items that are required to be furnished annually by organizations described in section 501(c)(3), ''at such time and in such manner as the Secretary may by forms or regulations prescribe.'' The statutory list of items required to be furnished annually has been amended by Congress from time to time to account for additional requirements of organizations described in section 501(c)(3). Section 6033(b) was updated by the Taxpayer Bill of Rights 2, Public Law 104–168, in 1996 to include items in sections 6033(b)(10) (relating to taxes imposed on certain lobbying and political expenditures by organizations described in sections 501(c)(3)) and 6033(b)(11) (relating to taxes imposed with respect to an organization, an organization manager, or any disqualified person under section 4958).

Section 6033(g)(2) provides that a political organization (as defined by section 527(e)(1)) that has gross receipts of $25,000 or more for a taxable year [1] shall file an annual return containing the information required by section 6033(a)(1) for organizations exempt from taxation under section 501(a). The statute authorizes the Secretary to modify the information required to be reported to require only information that is necessary for purposes of carrying out section 527 and such other information as the Secretary deems necessary to carry out the provisions of section 6033(g).

Section 6033(h) provides additional reporting requirements for controlling organizations, within the meaning of section 512(b)(13). Section 6033(h) requires controlling organizations to include on their returns any (1) interest, annuities, royalties, or rents received from each controlled entity (within the meaning of section 512(b)(13)), (2) any loans made to each such controlled entity, and (3) any transfers of funds between such controlling organization and each such controlled entity.

Section 6033(k) provides additional reporting requirements for sponsoring organizations described in section 4966(d)(1). Section 6033(k) requires each such organization to report on its annual return (1) the total number of donor advised funds (as defined in section 4966(d)(2)) it owns at the end of such taxable year, (2) the aggregate value of assets held in such funds at the end of such taxable year, and (3) the aggregate contributions to and grants made from such funds during such taxable year.

Section 6033(l) provides additional reporting requirements for supporting organizations described in section 509(a)(3). Section 6033(l) requires each supporting organization to report on its annual return (1) the supported organizations (as defined in section 509(f)(3)) with respect to which such organization provides support; (2) whether the organization meets the requirements of clause (i), (ii), or (iii) of section 509(a)(3)(B); and (3) a certification that the organization meets the requirements of section 509(a)(3)(C).

The general rule of confidentiality of returns is found in section 6103, which states that returns and return information shall be confidential, and, except as authorized by this title, no person having access to this information shall disclose any return or return information obtained by him in any manner.

One of the exceptions to the general rule of confidentiality can be found in section 6104. In general, under section 6104(b), the Secretary must make the annual returns filed under section 6033 available to the public. However, the Secretary is not authorized to disclose to the public the name or address of any contributor to any tax-exempt organization other than a private foundation (as defined in section 509(a), including trusts described in section 4947(a)(1) that are treated as private foundations) or a section 527 organization. Section 301.6104(b)–1(b)(2) provides that although the names

[1] In the case of a qualified State or local political organization described in section 527(e)(5), $25,000 is replaced by $100,000.

and addresses are not to be disclosed, the amounts of contributions to an organization shall be made available for public inspection unless the disclosure of such information can reasonably be expected to identify any contributor.

In addition to the required disclosure by the Secretary, section 6104(d) and § 301.6104(d)–1 require certain tax-exempt organizations to provide their annual information returns upon request by a member of the public. Similar to the restrictions on disclosing contributor information placed on the Secretary by section 6104(b), an organization, other than a private foundation or a section 527 organization, is not required to disclose the names and addresses of its contributors under section 6104(d)(3)(A).

The current Treasury Regulations (''final regulations'') reflect many of the statutory requirements of section 6033. Consistent with section 6033(a)(1), § 1.6033–2(a)(1) of the final regulations states that ''except as provided in section 6033(a)(3) and paragraph (g) [of § 1.6033–2], every organization exempt from taxation under section 501(a) shall file an annual information return specifically setting forth its items of gross income, gross receipts and disbursements, and such other information as may be prescribed in the instructions, issued with respect to the return.''

Although the information to be reported for any particular year is set forth in the form and instructions, the final regulations under section 6033 provide a list of ''information generally required to be furnished by an organization exempt under section 501(a)'' on the annual return. The list provided in § 1.6033–2(a)(2)(ii) of the final regulations generally tracks the list set forth for section 501(c)(3) organizations in section 6033(b), though not all items in section 6033(b) are currently included in the regulations because the statute has been amended following the original issuance of the regulations, and not all statutory changes were subsequently reflected in the regulations. The list in the regulations includes, but is not limited to, gross income for the year; dues and assessments from members and affiliates for the year; expenses incurred within the year attributable to gross income; disbursements (including prior years' accumulations) made within the year for the purposes for which it is exempt; a balance sheet showing its assets, liabilities, and net worth as of the beginning and end of such year; the total of the contributions, gifts, grants and similar amounts received by it during the taxable year; the names and addresses of all officers, directors, or trustees (or any person having responsibilities or powers similar to those of officers, directors or trustees) of the organization; and certain compensation and payment information.

As relevant here, § 1.6033–2(a)(2)(ii)(*f*) provides that organizations required to file an annual information return generally must provide the names and addresses of persons who contribute $5,000 or more during the taxable year. This provision is more expansive than section 6033(b)(5), which applies specifically to organizations described in section 501(c)(3). In addition, § 1.6033–2(a)(2)(iii)(*d*) provides that organizations described in section 501(c)(7) (social clubs), section 501(c)(8) (fraternal beneficiary societies), or section 501(c)(10) (domestic fraternal societies) generally must report the name of each person who contributes more than $1,000 to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

Incorporating section 6033(a)(3), § 1.6033–2(g)(1) provides a list of organizations that are not required to file an annual return under section 6033(a)(1). Within that list, § 1.6033–2(g)(1)(iii) provides that organizations described in section 6033(a)(3)(C) whose gross receipts are generally not more than $5,000 annually are not required to file the return required under section 6033(a)(1). Further, § 1.6033–2(g)(6) provides that the Commissioner may relieve any organization or class of organizations (other than a supporting organization described in section 509(a)(3)) from filing, in whole or in part, the annual return required under section 6033 where the Commissioner ''determines that such returns are not necessary for the efficient administration of the internal revenue laws.''

Accordingly, other than with regard to supporting organizations, section 6033 and the final regulations in this part issued under section 6033 provide the Commissioner with broad discretionary authority to determine what information is reported and to grant relief, in whole or in part, from the annual filing requirements of tax-exempt organizations if it is determined that the information is not necessary for the efficient administration of the internal revenue laws.

For decades, the Commissioner has exercised the discretion under section 6033(a)(3)(B) and § 1.6033–2(g)(6) to relieve organizations of filing requirements in section 6033 through subregulatory guidance such as revenue procedures and annual information return instructions (for example, Rev. Proc. 95–48, 1995–2 C.B. 418, and Rev. Proc. 96–10, 1996–1 C.B. 577). Revenue Procedure 83–23, 1983–1 C.B. 687, represents one such exercise of this discretion. In that revenue procedure, the Commissioner increased to $25,000 the minimum amount of gross receipts normally required to be received in a year by an organization exempt under section 501(a) to trigger a filing requirement under section 6033(a). That revenue procedure also expanded the group of tax-exempt organizations not required to file an annual information return due to a gross receipts threshold beyond those listed in section 6033(a)(3)(C). Revenue Procedure 2011–15, 2011–3 I.R.B. 322, further increased this gross receipts threshold amount to $50,000 for most organizations exempt under section 501(a).[2] Revenue Procedure 2011–15 also relieved most foreign organizations and organizations formed in a United States possession from a filing requirement under section 6033(a) if their gross receipts from sources within the United States do not exceed the $50,000 threshold and if they have no significant activity (including lobbying and political activity and the operation of a trade or business, but excluding investment activity) in the United States.

Similarly, consistent with past exercises of authority under section 6033 and the implementing regulations, the Treasury Department and the IRS issued Rev. Proc. 2018–38, 2018–31 I.R.B. 280, granting tax-exempt organizations required to file the Form 990 or Form 990–EZ, other than those described in section 501(c)(3), relief from reporting the names and addresses of contributors on Schedules B, ''Schedule of Contributors,'' filed with Form 990 or 990–EZ (or completing the similar portions of Part IV of the Form 990–BL). Revenue Procedure 2018–38 also provides that organizations described in sections 501(c)(7), (8), or (10) need not provide, on their annual information returns required under section 6033, the names and addresses of persons who contributed more than $1,000 during the taxable year to be used for exclusively charitable purposes. Revenue Procedure 2018–38 does not affect the information required to be reported on Forms 990, 990–EZ, or

[2] An organization that is not required to file an annual return by virtue of Rev. Proc. 2011–15 must submit a Form 990–N e-Postcard annually in electronic format as described in section 6033(i)(1). Rev. Proc. 2011–15, section 3.03.

990–PF by organizations described in section 501(c)(3) (which for purposes of section 6033 include nonexempt charitable trusts described in section 4947(a)(1) and nonexempt private foundations described in section 6033(d)) or section 527 organizations.

On July 30, 2019, the United States District Court for the District of Montana released its decision in the case of *Bullock, et al.* v. *IRS,* No. 4:18–cv–00103–BMM (D. Mont. Jul. 30, 2019). The court noted that ''the substance of [the Commissioner's] ultimate decision [on reporting the names and addresses of contributors] remains subject to the Commissioner's discretion,'' but set aside Rev. Proc. 2018–38 and held that the IRS should have followed the notice and comment procedures of the APA in providing the reporting relief set forth in Rev. Proc. 2018–38.

Explanation of Provisions

The proposed regulations contained in this notice of proposed rulemaking modify the final regulations under section 6033 to align them with certain statutory amendments to section 6033 that have not previously been reflected in the regulations and to update the regulations to encompass certain instances in which the Commissioner has previously exercised discretion under the statute and regulations to relieve organizations, in whole or in part, from the filing requirements set forth in section 6033 or the regulations in this part issued under section 6033. The Code provides discretion to the Secretary, and his or her delegate,[3] to determine what information is necessary for the efficient administration of the federal tax laws involving tax-exempt organizations. The Secretary has previously exercised that discretion through various forms or guidance. These proposed regulations would incorporate certain past exercises of discretion into a single location for ease of use. These proposed changes are also intended to update the regulations so that they more fully present the current reporting requirements for most tax-exempt organizations.

Specifically, as further discussed later in this preamble, these changes include the following: (1) Adding items listed in section 6033(b)(10) and (11), as applicable, to the list of items generally required to be reported; (2) adding other statutory reporting requirements for controlling organizations, sponsoring organizations, and supporting organizations; (3) amending the gross receipts threshold (with an additional requirement for foreign organizations and United States possession organizations) that triggers a filing requirement under section 6033 for organizations exempt under section 501(a) (other than private foundations and supporting organizations); (4) clarifying that section 527 organizations with gross receipts greater than $25,000 generally are subject to the reporting requirements under section 6033(a)(1) as if they were exempt from taxes under section 501(a); and (5) specifying that only organizations described in section 501(c)(3) and section 527 organizations generally would continue to be required to provide names and addresses of contributors on their Forms 990, Forms 990–EZ, and Forms 990–PF.

The Treasury Department and the IRS request comments on any other grants of section 6033 related reporting relief announced pursuant to past exercises of the Commissioner's discretion that should be incorporated into the regulations or any other clarifications to reflect statutory changes. For example, these proposed regulations do not incorporate Rev. Proc. 96–10, 1996–1 C.B. 138, which relieves from a filing requirement under section 6033(a) certain organizations that are operated, controlled, or supervised by one or more churches, integrated auxiliaries, or conventions or associations of churches because it is unclear whether Rev. Proc. 96–10 currently has practical application. The relevant language provided indicates that these types of organizations are likely supporting organizations under section 509(a)(3). Section 509(a)(3) provides public charity status to organizations, known as supporting organizations, that are operated, supervised, or controlled by, or in connection with, one or more specified organizations described in section 509(a)(1) or (2), which includes churches, conventions or associations of churches, and some integrated auxiliaries of churches.

The Pension Protection Act of 2006, Public Law 109–280, modified the Secretary's general discretion under section 6033(a)(3)(B) so that the Secretary is no longer permitted to relieve a supporting organization of its filing requirements. The Treasury Department and the IRS expect that few, if any, organizations meeting the requirements of Rev. Proc. 96–10 may still rely on this revenue procedure given the 2006 statutory change; thus, incorporating the provisions of Rev. Proc. 96–10 into regulations is unnecessary. However, the Treasury Department and the IRS request comments on the continued usefulness of Rev. Proc. 96–10.

In addition, Rev. Proc. 95–48 grants reporting relief for governmental units and affiliates of governmental units. The Treasury Department and the IRS are considering whether the reporting relief in this revenue procedure should be updated and whether such relief should be incorporated into the regulations under section 6033 and request comments on the relief provided in this revenue procedure, as well as whether any other reporting relief should be specified or added.

Items Required in Annual Information Returns

Section 6033(a)(1) provides that the Secretary, or his or her delegate, may by forms or regulations prescribe ''other information for the purpose of carrying out the internal revenue laws'' to be reported on an annual return required under section 6033. This authority is reflected in § 1.6033–2(a)(1). Consistent with these grants of discretion, § 1.6033–2(a)(2)(ii) provides a general list of items that a tax-exempt organization may expect to provide on its annual information return required by section 6033.

As previously stated in this preamble, the Treasury Department and the IRS have determined that the regulations should be updated to reflect certain additional items listed in section 6033(b) for organizations described in section 501(c)(3).

Therefore, these proposed regulations would amend § 1.6033–2(a)(2)(ii) by adding two new provisions to reflect items that have been added to section 6033(b) but that have not yet been added to the list in the regulations of items generally required to be reported on an organization's annual information return. These items are those found in section 6033(b)(10) (relating to taxes imposed on certain lobbying and political expenditures by organizations described in section 501(c)(3)) and 6033(b)(11) (relating to taxes imposed with respect to an organization, an organization manager, or any disqualified person on any excess benefit transaction under section 4958). In addition, a cross-reference to § 1.6033–2(a)(1) has been added to the introductory sentence of § 1.6033–2(a)(2)(ii).

In an effort to further increase the ability of a taxpayer generally to find its reporting requirements in one place, the Treasury Department and the IRS are also incorporating into the regulations the statutory reporting requirements found in section 6033(h) for controlling organizations (as defined in section

[3] Section 7701(a)(11)(B) provides that the term ''Secretary'' means the Secretary of the Treasury or his delegate, which may include the Commissioner.

512(b)(13)), section 6033(k) for sponsoring organizations (as defined in section 4966(d)(1)), and section 6033(l) for supporting organizations (as defined in section 509(a)(3)).

While these amendments to the regulations are part of an effort to further increase the ability of a taxpayer generally to find its reporting requirements in one place, tax-exempt organizations will continue to find their current annual return reporting requirements in the forms and instructions found at *irs.gov*. The Treasury Department and the IRS request comments on any other requirements in section 6033 that should be incorporated into § 1.6033–2.

Gross Receipts Filing Threshold

Section 6033(a)(1)(B) grants the Secretary, or his or her delegate, discretion to relieve any organization (except an organization described in section 509(a)(3)) from the requirement to file a return if the Secretary determines that the filing is not necessary to the efficient administration of the internal revenue laws and § 1.6033–2(g)(6) specifies that this relief from filing may be granted in whole or in part.

The Treasury Department and the IRS have previously determined that the efficient administration of the tax laws does not require the filing of returns by organizations that are exempt under section 501(a) (other than private foundations and supporting organizations) that normally have less than $50,000 in gross receipts annually, except for foreign organizations and organizations formed in a United States possession that have significant activity (including lobbying and political activity and the operation of a trade or business, but excluding investment activity) in the United States. Rev. Proc. 2011–15. This threshold seeks to balance the efficient use of resources for both tax-exempt organizations and the IRS with ensuring compliance with the tax laws by tax-exempt organizations, particularly since such organizations must continue to file Form 990–N under section 6033(i). This notice of proposed rulemaking proposes to amend § 1.6033–2(g)(1)(iii) to reflect the $50,000 gross receipts filing threshold currently in effect, rather than the $5,000 gross receipts threshold found in section 6033(a)(3)(A)(ii), and the application of the $50,000 threshold to organizations other than those listed in section 6033(a)(3)(C). Thus, the proposed regulations would provide that the gross receipts threshold for all organizations (other than private foundations and supporting organizations) formed in the United States would be $50,000. The notice of proposed rulemaking also proposes simply to incorporate the previously granted relief from the filing requirement under section 6033(a) for foreign organizations and organizations formed in a United States possession (other than private foundations and supporting organizations) that is currently found in Rev. Proc. 2011–15.

The proposed regulations will also specify that the Commissioner retains discretion to provide possible further increases in this amount pursuant to § 1.6033–2(g)(6). Therefore, the Treasury Department and the IRS also propose amending § 1.6033–2(g)(6) to clarify that the Commissioner has authority to further provide relief through forms, instructions to forms, or guidance published in the Internal Revenue Bulletin.

Clarifying the Treatment of Section 527 Organizations

Section 6033(g)(2) provides that section 527 organizations shall file an annual return containing the information required by section 6033(a)(1) for tax-exempt organizations. As noted previously in this preamble, the Treasury Department and the IRS have determined that the regulations should more fully reflect the requirements of section 6033 for tax-exempt organizations. The Treasury Department and the IRS propose to add § 1.6033–2(a)(5) to state the current requirement that section 527 organizations, subject to the filing exceptions provided by section 6033(g)(3) or as permitted under section 6033(g)(4), follow the reporting requirements under section 6033(a)(1) in the same manner as tax-exempt organizations, except when the Commissioner revises those requirements as appropriate to carry out the purposes of section 527. The proposed § 1.6033–2(a)(5) would also state the current requirement that section 527 organizations, like organizations described in section 501(c)(3), must continue to report the names and addresses of contributors on the section 527 organizations' annual Forms 990 or Forms 990–EZ. The addition of § 1.6033–2(a)(5) does not affect the current reporting requirements of section 527 organizations.

The Treasury Department and the IRS request comments on the proposed clarification of the treatment of section 527 organizations found in § 1.6033–2(a)(5).

Reporting of Names and Addresses of Contributors

Section 6033 does not specify that the names and addresses of contributors to tax-exempt organizations, other than those described in section 501(c)(3), be reported on annual information returns. Consistent with the Secretary's broad discretion under section 6033(a) to set forth information reporting requirements ''for the purpose of carrying out the internal revenue laws . . . by forms or regulations,'' § 1.6033–2(a)(2)(ii) of the final regulations provides a list of items that are generally required to be included in the annual filings of organizations exempt under section 501(a). The proposed regulations would amend the final regulations to clarify that the need to provide the names and addresses of substantial contributors will generally apply only to tax-exempt organizations described in section 501(c)(3). This clarification is consistent with the limited application of the requirement in section 6033(b)(5). As discussed in the prior section of this preamble, section 527 organizations must also continue to report the names and addresses of substantial contributors.

In exercising this discretion, the Treasury Department and the IRS seek to balance the IRS's need for the information against the costs and risks associated with reporting of the information. The IRS does not need the names and addresses of substantial contributors to tax-exempt organizations not described in section 501(c)(3) to be reported annually on Schedule B of Form 990 or Form 990–EZ in order to carry out the internal revenue laws, including provisions dealing with transfer taxes. A requirement to annually report such information—rather than providing it to the IRS as required upon examination—increases compliance costs for affected tax-exempt organizations and consumes IRS resources in connection with the redaction of such information as required in section 6104(b). Some have expressed concern regarding the potential use of the names and addresses of substantial contributors when evaluating possible private benefit or inurement. Tax-exempt organizations continue to be required to file Schedule L of Form 990 or Form 990–EZ identifying transactions between the exempt organization and interested persons (including substantial contributors), which may indicate possible risks of private benefit or inurement. The primary utility of the names and addresses of substantial contributors, however, arises during

examination of a tax-exempt organization, at which point such information may be collected from the relevant tax-exempt organization. Under the proposed rule, tax-exempt organizations are still required to report the amounts of contributions from each substantial contributor as required by the Schedule B of the Form 990 and 990–EZ as well as maintain the names and addresses of substantial contributors should the IRS need this information on a case-by-case basis, which the Treasury Department and the IRS have concluded is sufficient for the efficient administration of the Code.

The Treasury Department and the IRS are also concerned that the requirement to report the names and addresses of substantial contributors poses a risk of inadvertent disclosure of information that is not open to public inspection because this information on Schedule B generally must be redacted from an otherwise disclosable information return. The IRS has experienced incidents of inadvertent disclosure and has taken other steps to reduce future occurrences of such disclosures. By reducing the number of organizations providing the names and addresses of contributors on Schedule B, the potential for inadvertent disclosure of names and addresses can be decreased further.

Finally, the Treasury Department and the IRS note that the change in annual reporting to the IRS of the names and addresses of substantial contributors will have no effect on information currently available to the public. Sections 6103 and 6104 prohibit the IRS from publicly disclosing the names and addresses of contributors to tax-exempt organizations (other than private foundations). With respect to such tax-exempt organizations, any names and addresses of substantial contributors on Schedule B are not made public and disclosure restrictions prohibit making such information available for use by other agencies for enforcement purposes, unless a specific exception applies.[4] The Treasury Department and the IRS are aware of concerns raised regarding campaign finance laws; however, Congress has not tasked the IRS with the enforcement of campaign finance laws. Furthermore, the Code generally prohibits the IRS from disclosing any names and addresses of such organizations' substantial contributors to federal agencies for non-tax investigations, including campaign finance matters, except in narrowly prescribed circumstances.[5]

Accordingly, the Treasury Department and the IRS are proposing to modify the regulations to no longer specify that tax-exempt organizations (other than organizations described in section 501(c)(3)) are generally required to report the names and addresses of their substantial contributors on their annual information returns. However, as noted previously in this preamble, tax-exempt organizations must continue to report the amounts of contributions from each substantial contributor as well as maintain the names and addresses of their substantial contributors in their books and records in accordance with section 6001 and § 1.6001–1(a) and (c) in order to permit the IRS to efficiently administer the internal revenue laws through examinations of specific taxpayers. The records retained will enable organizations to substantiate upon examination the number of certain contributors and the amounts of their contributions and to facilitate the reporting of information on certain financial transactions between organizations and certain contributors. The Treasury Department and the IRS request comments on concerns regarding the efficient administration of the Code without the annual reporting of the names and addresses of substantial contributors for tax-exempt organizations other than those described in section 501(c)(3) and section 527 organizations.

The Treasury Department and the IRS propose to revise § 1.6033–2(a)(2)(ii)(*f*) to provide that organizations described in section 501(c)(3) generally would be required to continue to provide names and addresses of contributors of more than $5,000 on their Forms 990, 990–EZ, and 990–PF. Similarly, § 1.6033–2(a)(2)(iii)(*d*) would be revised to remove reference to the provision of names of contributors who contribute over $1,000 for a specific charitable purpose to organizations described in sections 501(c)(7), (8), and (10).

Proposed Effective/Applicability Date

These regulations are proposed to be effective as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. While these regulations are not effective until these rules are adopted as final in the **Federal Register**, under section 7805(b)(7), a tax-exempt organization may choose to apply the final regulations to returns filed after September 6, 2019. After issuing the final regulations, the Treasury Department and the IRS will withdraw any revenue procedures superseded by the final regulations.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations.

Paperwork Reduction Act

The collection of information contained in this notice is reflected in the collection of information for Forms 990 and 990–EZ that have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control numbers 1545–0047 and 1545–1150, respectively. To the extent there is a decrease in burden as a result of this change, the decrease in burden will be reflected in the updated burden estimates for the Forms 990 and 990–EZ. The requirement to maintain records to substantiate information on the Form 990 or 990–EZ is already contained in the burden associated with the control numbers for those forms and remains unchanged.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are

[4] The confidentiality and disclosure of tax returns and return information in both tax and non-tax investigations is governed by section 6103. Section 6103 contains several provisions authorizing the disclosure of returns and return information to Federal law enforcement agencies under prescribed circumstances after meeting specified procedural requirements. For example, these include disclosures to the Department of Justice (DOJ) for the investigation and prosecution of non-tax Federal crimes via an ex parte court order or via a request from the highest ranking official of a Federal agency or the highest officials within DOJ and in the course of an investigation after referral to and approval by DOJ as a Grand Jury Tax Investigation.

In the context of states, sections 6103 and 6104 authorize disclosure of certain returns and return information to the states for specified purposes. Generally, section 6103(d) authorizes disclosure to state tax agencies for state tax administration, while section 6104(c) permits disclosure of return information, in the case of organizations other than those described in section 501(c)(1) or (3), to an appropriate state officer to the extent necessary in administering state laws relating to the solicitation or administration of charitable funds or charitable assets of such organizations. Some states may also independently obtain donor information from the organizations.

[5] See note 4.

confidential, as required by 26 U.S.C. 6103.

Regulatory Flexibility Act

It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations reflect statutory requirements and reporting relief previously announced through forms, instructions to forms, or guidance published in the Internal Revenue Bulletin. The collection of information contained in these proposed regulations instead maintains a current recordkeeping obligation while removing a filing burden. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f), this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are personnel from the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov.*

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.6033–2 is amended by:

■ 1. Revising the section heading;
■ 2. In paragraph (a)(2)(ii) introductory text, removing ''The'' and adding ''Subject to paragraph (a)(1) of this section, the'' in its place;
■ 3. In paragraph (a)(2)(ii)(*f*), revising the first sentence and removing ''subdivision (iii) of this subparagraph'' and adding ''paragraph (a)(2)(iii) of this section'' in its place;
■ 4. Redesignating paragraphs (a)(2)(ii)(*k*) and (*l*) as paragraphs (a)(2)(ii)(*m*) and (*n*);
■ 5. Adding new paragraphs (a)(2)(ii)(*k*) and (*l*);
■ 6. Revising the first sentence of paragraph (a)(2)(iii)(*d*)(*1*);
■ 7. Adding paragraphs (a)(5), (6), (7), and (8);
■ 8. Revising paragraph (g)(1)(iii);
■ 9. Removing the ''or'' at the end of paragraph (g)(1)(vi);
■ 10. Removing the period at the end of paragraph (g)(1)(vii) and adding ''; or'' in its place;
■ 11. Adding paragraph (g)(1)(viii);
■ 12. Revising paragraph (g)(3);
■ 13. Adding paragraph (g)(5) and a sentence at the end of paragraph (g)(6);
■ 14. Redesignating paragraph (k) as paragraph (l);
■ 15. Adding a new paragraph (k); and
■ 16. Adding paragraph (l)(5).

The revisions and additions read as follows:

§ 1.6033–2 Returns by exempt organizations and returns by certain nonexempt organizations.

(a) * * *

(2) * * *

(ii) * * *

(*f*) The total of the contributions, gifts, grants and similar amounts received by it during the taxable year, and, in the case of an organization described in section 501(c)(3), the names and addresses of all persons that contributed, bequeathed, or devised $5,000 or more (in money or other property) during the taxable year. * * *

* * * * *

(*k*) In the case of organizations described in section 501(c)(3), the respective amounts (if any) of the taxes imposed on the organization, or any organization manager of the organization, during the taxable year under any of the following provisions (and the respective amounts (if any) of reimbursements paid by the organization during the taxable year with respect to taxes imposed on any such organization manager under any of such provisions):

(*1*) Section 4911 (relating to tax on excess expenditures to influence legislation);

(*2*) Section 4912 (relating to tax on disqualifying lobbying expenditures of certain organizations); and

(*3*) Section 4955 (relating to taxes on political expenditures of section 501(c)(3) organizations), except to the extent that, by reason of section 4962, the taxes imposed under such section are not required to be paid or are credited or refunded.

(*l*) In the case of organizations described in section 501(c)(3), (4), or (29), the respective amounts (if any) of—

(*1*) The taxes imposed with respect to the organization on any organization manager, or any disqualified person, during the taxable year under section 4958 (relating to taxes on excess benefit transactions); and

(*2*) Reimbursements paid by the organization during the taxable year with respect to taxes imposed under such section, except to the extent that, by reason of section 4962, the taxes imposed under such section are not required to be paid or are credited or refunded.

* * * * *

(iii) * * *

(*d*)(*1*) Organizations described in section 501(c)(7), (8), or (10) that receive contributions or bequests to be used exclusively for purposes described in section 170(c)(4), 2055(a)(3), or 2522(a)(3), must attach a schedule with respect to all gifts that aggregate more than $1,000 from any one person showing the total amount of the contributions or bequests from each such person, the specific purpose or purposes for which such amount was received, and the specific use or uses to which such amount was put. * * *

* * * * *

(5) Political organizations, as defined by section 527(e)(1), that have gross receipts of $25,000 or more for the taxable year (or in the case of a qualified State or local political organization, as defined in section 527(e)(5), that has gross receipts of $100,000 or more for the taxable year) generally must comply

with the requirements of section 6033 and this section in the same manner as organizations exempt from tax under section 501(a), except to the extent that the Commissioner may modify such requirements through forms, instructions to forms, or guidance published in the Internal Revenue Bulletin as appropriate for carrying out the purposes of section 527. For the purposes of this section, all references to organizations exempt from tax under section 501(a) shall include political organizations referred to in section 6033(g), other than those referred to in section 6033(g)(3) and except to the extent the Commissioner exercises discretion under section 6033(g)(4). This discretion may be exercised through forms, instructions to forms, or guidance published in the Internal Revenue Bulletin. In addition to the reporting requirements applicable to organizations exempt under section 501(a), such political organizations generally must report the names and addresses of all persons that contributed, bequeathed, or devised $5,000 or more (in money or other property) during the taxable year.

(6) Each controlling organization (within the meaning of section 512(b)(13)) that is subject to the requirements of section 6033(a) shall include on its annual return such information required by that return regarding—

(i) Any interest, annuities, royalties, or rents received from each controlled entity (within the meaning of section 512(b)(13));

(ii) Any loans made to each such controlled entity; and

(iii) Any transfers of funds between such controlling organization and each such controlled entity.

(7) Every organization described in section 4966(d)(1) shall, on its annual return for the taxable year—

(i) List the total number of donor advised funds (as defined in section 4966(d)(2)) it owns at the end of such taxable year;

(ii) Report the aggregate value of assets held in such funds at the end of such taxable year; and

(iii) Report the aggregate contributions to and grants made from such funds during such taxable year.

(8) Every organization described in section 509(a)(3) shall, on its annual return—

(i) List the supported organizations (as defined in section 509(f)(3)) with respect to which such organization provides support;

(ii) Specify whether the organization meets the requirements of clause (i), (ii), or (iii) of section 509(a)(3)(B); and

(iii) Certify that the organization meets the requirements of section 509(a)(3)(C).

* * * * *

(g) * * *

(1) * * *

(iii) Except as provided in paragraph (g)(1)(viii) of this section, an organization described in section 501(c) (other than a private foundation or a supporting organization described in section 509(a)(3)) the gross receipts of which in each taxable year are normally not more than $50,000 (as described in paragraph (g)(3) of this section);

* * * * *

(viii) A foreign organization (described in paragraph (k)(1) of this section) or a United States possession organization (described in paragraph (k)(2) of this section) (other than a private foundation or a supporting organization described in section 509(a)(3))—

(A) The gross receipts of which in each taxable year from sources within the United States (as determined under paragraph (k)(3) of this section) are normally not more than $50,000 (as described in paragraph (g)(3) of this section); and

(B) That has no significant activity (including lobbying and political activity and the operation of a trade or business, but excluding investment activity) in the United States.

* * * * *

(3) For purposes of paragraphs (g)(1)(iii) and (viii) of this section, the gross receipts (as defined in paragraph (g)(4) of this section) of an organization are normally not more than $50,000 if:

(i) In the case of an organization that has been in existence for 1 year or less, the organization has received, or donors have pledged to give, gross receipts of $75,000 or less during the first taxable year of the organization;

(ii) In the case of an organization which has been in existence for more than one but less than 3 years, the average of the gross receipts received by the organization in its first 2 taxable years is $60,000 or less; and

(iii) In the case of an organization which has been in existence for 3 years or more, the average of the gross receipts received by the organization in the immediately preceding 3 taxable years, including the year for which the return would be required to be filed, is $50,000 or less.

* * * * *

(5) An organization that is not required to file an annual return by virtue of paragraphs (g)(1)(iii) and (viii) of this section must submit an annual electronic notification as described in section 6033(i). See § 1.6033–6.

(6) * * * This discretion may be exercised through forms, instructions to forms, or guidance published in the Internal Revenue Bulletin.

* * * * *

(k) *Foreign organizations and United States possession organizations*—(1) *Foreign organization.* For purposes of this section, a ''foreign organization'' is any organization not described in section 170(c)(2)(A).

(2) *United States possession organization.* For purposes of this section, a ''United States possession organization'' is any organization created or organized in a possession of the United States.

(3) *Source of funds.* For purposes of paragraph (g)(1)(viii) of this section, the source of an organization's gross receipts from gifts, grants, contributions or membership fees is determined by applying the rules found in § 53.4948–1(b) of this chapter. For purposes of paragraph (g)(1)(viii) of this section, the source of an organization's gross receipts other than gifts, grants, contributions, and membership fees is determined by applying the rules in sections 861 through 865 and the regulations in this part issued under section 861 through 865. For purposes of applying this paragraph (k)(3) regarding United States possession organizations, a United States person does not include individuals who are *bona fide* residents of a United States possession.

(l) * * *

(5) Paragraphs (a)(2)(ii)(*f*), (a)(2)(iii)(*d*)(*1*), (g)(1)(iii) and (viii), and (g)(3) of this section apply to annual information returns filed after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**]. Under section 7805(b)(7) an organization may choose to apply the paragraphs listed in this paragraph (l)(5) to returns filed after September 6, 2019.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2019–19501 Filed 9–6–19; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–125710–18]

RIN 1545–BP07

Regulations Under Section 382(h) Related to Built-In Gain and Loss

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding the items of income and deduction which are included in the calculation of built-in gains and losses under section 382 of the Internal Revenue Code (Code), and reflecting numerous changes made to the Code by the enactment of recent tax legislation. These proposed regulations would affect corporations that experience an ownership change for purposes of section 382. This document also proposes to withdraw the following IRS notices and incorporate their subject matter, as appropriate, into these proposed regulations under section 382: Notice 87–79, Notice 90–27, Notice 2003–65, and Notice 2018–30.

DATES: Written or electronic comments must be received by November 12, 2019. Written or electronic requests for a public hearing and outlines of topics to be discussed at the public hearing must be received by November 12, 2019.

ADDRESSES: Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–125710–18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment received to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to: Internal Revenue Service, CC:PA:LPD:PR (REG–125710–18), Room 5203, Post Office Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (indicate REG–125710–18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning proposed regulations, Kevin M. Jacobs at (202) 317–5332 or Marie C. Milnes-Vasquez at (202) 317–7700; concerning submissions of comments or requests for a public hearing, Regina L. Johnson at (202) 317–6901 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Background

I. Overview

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 382 of the Code.

A. Section 382 Generally

Section 382 imposes a value-based limitation (section 382 limitation) on the ability of a ''loss corporation'' to offset its taxable income in periods subsequent to an ''ownership change'' with losses attributable to periods prior to that ownership change. A *loss corporation* is defined under section 382 as a corporation that has one or more of the following tax items: (i) Certain carryovers (including net operating loss (NOL), capital loss, disallowed business interest under section 163(j), and certain credit carryovers), (ii) certain attributes (including an NOL, net capital loss, and certain credits) for the taxable year during which an ownership change occurs, or (iii) a net unrealized built-in loss (NUBIL) as of the ownership change. (Any recognized built-in loss (RBIL) associated with a NUBIL, as well as each of the items in (i) and (ii) is referred to herein as a *pre-change loss*.) For purposes of section 382, an *ownership change* occurs if the percentage of the loss corporation's stock owned by any ''5-percent shareholders'' (that is, a shareholder that owns at least five percent of the loss corporation's stock) increases by more than 50 percentage points during a specified testing period. The section 382 limitation imposed on a loss corporation's use of pre-change losses for each year subsequent to an ownership change generally equals the fair market value of the loss corporation immediately before the ownership change, multiplied by the applicable long-term tax-exempt rate as defined in section 382(f).

Section 382(m) requires the Secretary to prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 382 (as well as section 383, which limits the use of certain credits after an ownership change).

The existing regulations under section 382, which have developed over the past three decades, provide detailed guidance on numerous (but not all) aspects of the relatively detailed statutory rules set forth in section 382. However, in some cases, the Treasury Department and the IRS have found it appropriate to provide guidance to the public through the issuance of notices or other sub-regulatory guidance.

B. Built-In Gains and Losses Generally

Section 382(h) provides rules relating to the determination of a loss corporation's built-in gains and losses as of the date of the ownership change (change date). In general, built-in gains recognized during the five-year period beginning on the change date (recognition period) allow a loss corporation to increase its section 382 limitation, whereas built-in losses recognized during the recognition period are subject to the loss corporation's section 382 limitation. These rules exist to implement the ''neutrality principle'' underlying the statute, which is discussed in more detail in part II.B.2. of the Explanation of Provisions. Under this principle, the built-in gains and losses of a loss corporation, if recognized during the recognition period, generally are to be treated in the same manner as if they had been recognized before the ownership change.

Specifically, section 382(h)(1)(A) provides that, if a loss corporation has a net unrealized built-in gain (NUBIG), the section 382 limitation for any taxable year ending during the recognition period is increased by the recognized built-in gain (RBIG) for the taxable year, with cumulative increases limited to the amount of the NUBIG. Section 382(h)(3)(A) defines NUBIG with respect to a loss corporation as the amount by which the fair market value of its assets immediately before an ownership change exceeds the aggregate adjusted basis of such assets at such time. Section 382(h)(2)(A) defines RBIG as any gain recognized during the recognition period on the disposition of any asset of the loss corporation, to the extent the loss corporation establishes that (i) the loss corporation held the asset on the change date, and (ii) such gain does not exceed the asset's built-in gain on the change date. Section 382(h)(6)(A) also treats as RBIG ''[a]ny item of income which is properly taken into account during the recognition period . . . but which is attributable to periods before the change date.'' Because RBIG can increase the section 382 limitation only up to the amount of NUBIG, section 382(h)(6)(C) provides that NUBIG is increased to reflect amounts that would be treated as RBIG under section 382(h)(6)(A) if such amounts were taken into account during

the recognition period. This adjustment can cause (i) an increase in NUBIG, (ii) a decrease in NUBIL, or even (iii) a change from NUBIL to NUBIG status.

Section 382(h)(1)(B) provides that, if a loss corporation has a NUBIL, the use of any RBIL recognized during the recognition period is subject to the section 382 limitation. Section 382(h)(3)(A) defines NUBIL with respect to a loss corporation as the amount by which the aggregate adjusted basis of the loss corporation's assets immediately before an ownership change exceeds the fair market value of such assets at such time. Section 382(h)(2)(B) defines RBIL as any loss recognized during the recognition period on the disposition of any asset of the loss corporation, except to the extent the loss corporation establishes that (i) the loss corporation did not hold the asset on the change date, or (ii) such loss exceeds the asset's built-in loss on the change date. Section 382(h)(6)(B) also treats as RBIL ''[a]ny amount which is allowable as a deduction during the recognition period (determined without regard to any carryover) but which is attributable to periods before the change date.'' In addition, section 382(h)(6)(C) provides that a loss corporation's NUBIL is properly adjusted for amounts which would be treated as RBIL under section 382(h)(6)(B) if such amounts were properly allowable as a deduction during the recognition period.

Finally, section 382(h)(3)(B) provides that if a loss corporation's NUBIG or NUBIL is not greater than the lesser of (i) 15 percent of the fair market value of the loss corporation's assets immediately before the ownership change, or (ii) $10,000,000, then the loss corporation's NUBIG or NUBIL is zero.

II. Notice 2003–65

The rules for identifying RBIG and RBIL under sections 382(h)(6)(A) and 382(h)(6)(B) are sufficient for determinations regarding dispositions of assets. Section 382(h)(6)(A) and (B) provide that income and deduction items that constitute RBIG and RBIL are those tax items that are ''attributable to periods before the change date'', but are not taken into account for tax purposes until a later time. However, taxpayers historically have expressed uncertainty regarding how to integrate into their RBIG/RBIL and corresponding NUBIG/NUBIL calculations the effects of (i) discharge of indebtedness income, (ii) contingent liabilities, (iii) bad debt deductions, and (iv) cost-recovery deductions. In many instances, the fact-specific characteristics of those items have presented significant complications for such taxpayers in determining whether those items were attributable to periods before the change date. The Treasury Department and the IRS agree with taxpayers that sections 382(h)(6)(A) and 382(h)(6)(B) do not provide sufficient guidance regarding identification of other items of RBIG and RBIL.

To provide interim guidance regarding the identification of those built-in gains and losses under section 382(h), the IRS published Notice 2003–65 (2003–2 C.B. 747). This notice permits taxpayers to rely on safe harbor approaches for applying section 382(h) to an ownership change ''prior to the effective date of temporary or final regulations under section 382(h).'' Notice 2003–65, section V. In addition, the IRS announced its intent in the notice to publish proposed regulations to ''provid[e] a single set of rules for identifying built-in items for purposes of section 382(h).'' *Id.,* section VII. In particular, the notice requested comments regarding ''whether one of the two approaches described in th[e] notice should be adopted and to what extent, if any, the approaches should be combined or modified to produce a set of rules that is both reflective of statutory intent and administrable.'' *Id.*

Notice 2003–65 provides, among other things, a single safe harbor for computing the NUBIG or NUBIL of a loss corporation, which (i) is based on principles underlying the calculation of net recognized built-in gain under section 1374 for purposes of the tax imposed on C corporations that elect to be S corporations, and (ii) analyzes a hypothetical sale or exchange of all assets of the loss corporation to a third party who assumed all of the loss corporation's liabilities. In addition, Notice 2003–65 provides two safe harbors for the computation of a loss corporation's RBIG or RBIL: the 1374 approach and the 338 approach. These safe harbors specifically inform the identification of built-in income and deduction items under section 382(h)(6)(A) and (B), and the adjustments to NUBIG or NUBIL that would result under section 382(h)(6)(C).

The 1374 approach identifies RBIG and RBIL at the time of the disposition of a loss corporation's assets during the recognition period. Generally, this approach relies on accrual method of accounting principles to identify built-in income and deduction items at the time of the ownership change, with certain exceptions. In contrast, the 338 approach identifies items of RBIG and RBIL generally by comparing the loss corporation's actual items of income, gain, deduction, and loss recognized during the recognition period with those that would have been recognized if an election under section 338 (section 338 election) had been made with respect to a hypothetical purchase of all of the outstanding stock of the loss corporation on the change date. Section V. of Notice 2003–65 provides that taxpayers may rely on either the 338 approach or the 1374 approach until the Treasury Department and the IRS issue temporary or final regulations under section 382(h).

Prior to the issuance of Notice 2003–65, the Treasury Department and the IRS issued Notice 87–79 (1987–2 C.B. 387) and Notice 90–29 (1990–1 C.B. 336), which provided much more limited guidance regarding the determination of built-in gains and losses. Notice 87–79, which Notice 2003–65 modified, discussed anticipated regulations regarding the interplay of section 382(h) and discharge of indebtedness income. Notice 90–29 set forth an approach that Notice 2003–65 adopted as part of its section 1374 safe harbor, and similarly discussed anticipated regulations (regarding the application of section 382(h) to gains reported using the installment method under section 453). As discussed in more detail in part I.B.2 of this Explanation of Provisions, the Treasury Department and the IRS published Notice 2018–30 (2018–21 I.R.B. 610) following ''An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,'' Public Law 115–97, 131 Stat. 2054 (2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA). Specifically, Notice 2018–30 makes the section 338 safe harbor of Notice 2003–65 unavailable when computing items arising from bonus depreciation under section 168(k).

III. Response to Notice 2003–65

Over the past fifteen years, the Treasury Department and the IRS have received thoughtful formal and informal commentary highlighting numerous shortcomings of the interim guidance set forth in Notice 2003–65. Examples of these shortcomings include: (i) The overstatement of NUBIG (or understatement of NUBIL) that occurs when a loss corporation has excluded discharge or cancellation of indebtedness income (COD income), (ii) the asymmetry that occurs if certain amounts are included in the NUBIG/NUBIL computation when those amounts cannot be treated as RBIG or RBIL (such as contingent liabilities under the 1374 approach), which appears to contravene section 382(h)(6)(C), and (iii) taxpayer

uncertainty and tax administration challenges that arise from a lack of definitive guidance under section 382(h). Commenters and commentators (collectively, commentators) generally have emphasized the simplicity, objectivity, and administrability of the accrual-based 1374 approach, as well as that approach's close adherence to a plain reading of the statutory text of section 382(h) and section 382(h)'s legislative history. With regard to the 338 approach, commentators generally have appreciated that approach's attempt to quantify and capture items that were economically built-in at the time of the ownership change, rather than simply accrued under tax accounting principles. Commentators have also noted that the 338 approach will reduce the impact of the recognition period's limited duration, by not requiring taxpayers to dispose of certain assets within such period to be treated as RBIG. In sum, commentators have acknowledged merits, as well as weaknesses, unique to each of the 1374 and 338 approaches but have not reached consensus favoring a universal application of either approach during the 15 years since the IRS published Notice 2003–65.

IV. Enactment of the TCJA

On December 22, 2017, Congress enacted the TCJA, which introduced substantial changes to the Code. These changes have generated significant, additional uncertainty regarding the application of section 382 in general, and Notice 2003–65 in particular. As described in greater detail in part II. of the Explanation of Provisions, the changes to various provisions of the Code made by the TCJA have exacerbated longstanding, unresolved issues regarding the application of section 382(h) and created new areas of complexity and ambiguity for taxpayers and the IRS. In particular, the Treasury Department and the IRS have identified numerous issues that would arise from the interaction of the 338 approach with various provisions of the Code following the TCJA's enactment. *See* Explanation of Provisions, part I.B.2.

Consequently, the Treasury Department and the IRS are issuing these proposed regulations to provide clearer and more comprehensive guidance for taxpayers in applying section 382(h) than that currently provided by notice. The Treasury Department and the IRS have determined that the proposed regulations would (i) simplify the application of section 382, (ii) provide more certainty to taxpayers in determining built-in gains and losses for section 382(h) purposes, and (iii) ensure that difficult questions regarding the application of the TCJA do not further complicate the application of section 382(h). The Treasury Department and the IRS note that, as provided in Section V. of Notice 2003–65, taxpayers may rely on the approaches set forth in Notice 2003–65 for purposes of applying section 382(h) to an ownership change that occurred prior to the issuance of Notice 2003–65 or on or after the issuance of the notice and prior to the effective date of temporary or final regulations under section 382(h). After consideration of all comments regarding the proposed regulations set forth in this notice of proposed rulemaking, the Treasury Department and the IRS expect to issue final regulations to adopt the proposed regulations, which may include modifications in response to those comments. It is further expected that the Treasury decision adopting these proposed regulations as final regulations will withdraw and obsolete Notice 2003–65 and other administrative guidance associated with section 382(h) set forth in the Effect on Other Documents section of this notice of proposed rulemaking.

Explanation of Provisions

I. Proposed Adoption of NUBIG/NUBIL Safe Harbor and 1374 Approach

A. Overview

With regard to the computation of NUBIG and NUBIL, these proposed regulations would adopt as mandatory the safe harbor computation provided in Notice 2003–65 based on the principles of section 1374, with modifications described in part II.B. of this Explanation of Provisions. Regarding the identification of RBIG and RBIL, based on study and taxpayer input, and as discussed further in part I.A. and part I.B. of this Explanation of Provisions, the Treasury Department and the IRS have concluded that the 1374 approach is more consistent with the text and the purpose of section 382 than the 338 approach and would simplify tax administration. Accordingly, these proposed regulations would adopt as mandatory the 1374 approach with certain modifications also described in part II.C. of this Explanation of Provisions.

As previously highlighted, the Treasury Department and the IRS, along with numerous commentators, view favorably the simplicity, objectivity, and administrability of the 1374 approach. The accrual-based 1374 approach to be used in determining RBIG and RBIL is simpler to apply than the 338 approach because, among other reasons, corporate taxpayers and their advisors are familiar with the accrual method of accounting. Indeed, a sizable volume of case law, Code provisions, and regulations govern the accrual method (for example, *Schlude* v. *Commissioner,* 372 U.S. 128 (1963), *Brown* v. *Helvering,* 291 U.S. 193 (1934), and *United States* v. *Anderson,* 269 U.S. 422 (1926); sections 446, 451, and 461; and the regulations under those Code provisions). In addition, the accrual-based 1374 approach avoids many facts-and-circumstance inquiries by avoiding tracing, valuation uncertainties, and presumptions regarding whether items of income are realized for Federal income tax purposes.

The Treasury Department and the IRS have determined that the certainty provided by the 1374 approach would streamline (i) the calculation of built-in gains and losses for taxpayers, as well as (ii) the administration of this area for the IRS. The 1374 approach turns on an accrual analysis of the loss corporation's actual transactions and circumstances, and consequently minimizes the importation of new issues arising from changes made by the TCJA, particularly those issues described in detail later in part I.B.2. of this Explanation of Provisions. The Treasury Department and the IRS welcome public comment on the proposed adoption of a modified 1374 approach for determining RBIG and RBIL.

B. Consideration and Proposed Elimination of the 338 Approach

After study, and based on taxpayer input, the Treasury Department and the IRS have decided not to incorporate the 338 approach into these proposed regulations. As described in part I.B.1. of this Explanation of Provisions, the Treasury Department and the IRS have concluded that the 338 approach lacks sufficient grounding in the statutory text of section 382(h). Further, the Treasury Department and the IRS have determined that the mechanics underlying the 338 approach (i) are inherently more complex than the accrual-based 1374 approach, (ii) can result in overstatements of RBIG and RBIL, and (iii) as a result of the TCJA, would require substantial modifications to eliminate increased uncertainty and ensure appropriate results. By eliminating the 338 approach, the Treasury Department and the IRS have determined that these proposed regulations would significantly reduce current and future complexity of section 382(h) computations for taxpayers and the IRS alike. The Treasury Department and the IRS welcome public comment on this proposed elimination of the 338

approach for determining RBIG and RBIL.

1. Historical Weaknesses of the 338 Approach

The 338 approach originated in subregulatory guidance set forth in Notice 2003–65, and possesses significantly less grounding in the statutory text of section 382(h) than the 1374 approach. The comparatively tenuous connection between the 338 approach and the plain meaning of the statutory text of section 382(h) is exemplified by the method by which the 338 approach identifies RBIG. Under the 338 approach, depreciation deductions on certain built-in gain assets give rise to RBIG, even though no actual recognition of gain or income has occurred. However, sections 382(h)(2)(A) and 382(h)(6)(A) do not authorize RBIG treatment in the absence of actual gain or income recognized by the loss corporation.

Further, commentators have noted that difficult questions arise regarding deemed tiered section 338 elections when the 338 approach is applied to a loss corporation that is the parent of other corporations. For example, there are often significant differences between the basis of stock held by a loss corporation in subsidiaries and the basis of the assets held by the subsidiaries, and those differences create disparate outcomes. Tiered section 338 elections, including with respect to controlled foreign corporations, could have significant impacts on the outcomes produced under this approach.

2. Additional Complications of the 338 Approach Following the TCJA

The Treasury Department and the IRS introduced the 338 approach in 2003 after substantial review of the manner in which then-applicable Code provisions would apply to a section 338 election. In the pre-TCJA environment, provisions of the Code largely would have applied to the taxpayer in the same manner under a hypothetical sale resulting from a section 338 election as those provisions would have applied to the taxpayer without that hypothetical-sale treatment. However, certain important changes under the TCJA have caused the treatment of newly purchased assets to diverge from the treatment of historic assets, thus potentially compromising the mechanics of the 338 approach.

For example, the Treasury Department and the IRS have observed that TCJA amendments to section 168(k) invalidate the key assumption underlying application of the 338 approach to depreciable (''wasting'') assets, which is to reflect an estimate of income or expense generated by an asset during a particular period. Consequently, to prevent unintended collateral consequences of the additional first-year depreciation available under amended section 168(k), the Treasury Department and the IRS published Notice 2018–30 (2018–21 I.R.B. 610). Without the additional guidance set forth in Notice 2018–30, the Treasury Department and the IRS concluded that the 338 approach's hypothetical cost recovery deduction resulting from a hypothetical application of additional first-year depreciation under section 168(k) would fail to provide a reasonable estimate of the income or expense produced by a built-in gain or loss asset during the recognition period.

Moreover, the Treasury Department and the IRS have identified additional issues that would arise from the interaction of the 338 approach with other provisions of the TCJA, each of which would require extensive study and potentially the issuance of additional guidance. For example, the limitation on a loss corporation's interest deduction under amended section 163(j) and the modifications to the NOL deduction rules under amended section 172 are each based on variants of taxable income. However, a hypothetical sale of a loss corporation's assets under section 338 upon an ownership change would result in different taxable income computations than before the TCJA. Unanswered questions related to sections 163(j) and 172 would further complicate application of the 338 approach. Further, income inclusions under section 951A may increase existing concerns (including as a result of potential changes in hypothetical QBAI basis from deemed tiered section 338 elections) arising under the 338 approach. Taken as a whole, the Treasury Department and the IRS have determined that the continued application of the 338 approach likely would not be tenable after the changes to the Code enacted by the TCJA. The Treasury Department and the IRS request public comment on the proposed elimination of the 338 approach for determining RBIG and RBIL, including detailed comments with regard to whether it would be appropriate within the limits of the statute to consider special rules for insolvent or bankrupt loss corporations, and whether a redefinition of the date on which the recognition period begins would increase simplification.

II. Description of Proposed NUBIG/NUBIL Safe Harbor and Proposed 1374 Approach

A. Overview

The proposed approach described in this part II incorporates certain modifications to the NUBIG/NUBIL safe harbor and the 1374 approach to ensure greater consistency between (i) amounts that are included in the NUBIG/NUBIL computation and (ii) items that could become RBIG or RBIL during the recognition period. These modifications would better implement the requirements of section 382(h)(6)(C). As described in this part II, the RBIG and RBIL rules remain closely based upon the 1374 approach set forth in Notice 2003–65. However, these proposed regulations would make the modifications described in this part II to improve accuracy, particularly with regard to COD income and deductions for the payment of contingent liabilities.

B. Proposed Rules for Computation of NUBIG or NUBIL

1. In General

The proposed rules regarding the computation of NUBIG/NUBIL set forth in these proposed regulations would capture a range of items that closely tracks the NUBIG/NUBIL safe harbor computation under Notice 2003–65. However, the proposed regulations would enhance the transparency and clarity of that computation by making its component steps more explicit. Specifically, the proposed NUBIG/NUBIL computation first takes into account the aggregate amount that would be realized in a hypothetical disposition of all of the loss corporation's assets in two steps treated as taking place immediately before the ownership change. In the first step, the loss corporation is treated as satisfying any inadequately secured nonrecourse liability by surrendering to each creditor the assets securing such debt. In the second step, the loss corporation is treated as selling all remaining assets pertinent to the NUBIG/NUBIL computation in a sale to an unrelated third party, with the hypothetical buyer assuming no amount of the seller's liabilities. That total hypothetical amount realized by the loss corporation pursuant to steps one and two is then decreased by the sum of the loss corporation's deductible liabilities (both fixed and contingent), and also decreased by the loss corporation's basis in its assets. Finally, the decreased hypothetical total is then increased or decreased, as applicable, by the following: (1) The net amount of the

total RBIG and RBIL income and deduction items that could be recognized during the recognition period (excluding COD income); and (2) the net amount of positive and negative section 481 adjustments that would be required to be included on the previously-described hypothetical disposal of all of the loss corporation's assets.

The Treasury Department and the IRS welcome public comment on all aspects of these proposed rules regarding the computation of NUBIG and NUBIL.

2. Proposed Adjustments To Account for Built-In COD Income

Section 61(a)(12) of the Code provides that gross income includes COD income, except as provided by law. Section 108(a) provides, in part, that gross income of a C corporation does not include COD income of the taxpayer if the discharge occurs in a title 11 case, or the discharge occurs when the taxpayer is insolvent, but only to the extent of the insolvency (excluded COD income).

If a taxpayer has excluded COD income, section 108(b)(1) requires the taxpayer to reduce its tax attributes by the amount excluded. In general, pursuant to section 108(b)(2), tax attributes are reduced in the following order: NOLs and NOL carryovers, general business credits under section 38, minimum tax credits under section 53(b), net capital losses and capital loss carryovers, asset basis, passive activity loss and credit carryovers under section 469(b), and foreign tax credits and foreign tax credit carryovers. Any amount of debt discharge that remains after attribute reduction is not includible in income. See H.R. Rep. No. 96–833 at 11 (1980); S. Rep. No. 96–1035 at 13 (1980).

These provisions are designed to ''preserve the debtor's 'fresh start' after bankruptcy.'' H.R. Rep. No. 96–833 at 9 (1980); see S. Rep. No. 96–1035 at 10 (1980). In addition, they are intended to ''carry out the Congressional intent of deferring, but eventually collecting within a reasonable period, tax on ordinary income realized from debt discharge.'' H.R. Rep. No. 96–833 at 9 (1980); see S. Rep. No. 96–1035 at 10 (1980). By making attributes unavailable to offset income in later years, the provisions offer the debtor a temporary, rather than a permanent, deferral of tax.

As discussed in part II of the Background section, significant uncertainty has existed with regard to administering the built-in gain and loss framework of section 382(h). However, in administering this area, the Treasury Department and the IRS have always sought to implement a guiding principle discussed in the section 382 legislative history, which is commonly referred to as the ''neutrality principle.'' Under this principle, the built-in gains and losses of a loss corporation, once recognized after an ownership change, generally are to be treated in the same manner as if they had been recognized before the ownership change. For example, it is the neutrality principle that causes RBIL to be limited in the same manner as a pre-change NOL carryforward or net capital loss carryforward. Similarly, in the built-in gain context, the neutrality principle dictates that section 382-limited losses be freely usable against RBIG because, had the gain been taken into account before the ownership change, use of the loss would not have been subject to (that is, limited by) section 382. Under section 382(h), RBIG results in a dollar-for-dollar increase in the loss corporation's section 382 limit in order to replicate this pre-ownership change treatment. See S. Rept. 99–313 at 235; H.R. Rept. 99–426 at 261.

In Notice 2003–65, the Treasury Department and the IRS attempted to provide guidance integrating into the NUBIG/NUBIL computation the amount of insolvency of the loss corporation (the amount by which its liabilities exceed the value of its assets) and, therefore, the maximum possible amount of ''built-in'' COD income, as of the change date. However, Notice 2003–65 does not distinguish between the eventual excluded or included nature of COD income actually recognized by the loss corporation during the recognition period. After administrative experience under Notice 2003–65 and as highlighted by commentators, the Treasury Department and the IRS have determined that this failure to distinguish between includable and excludable COD income results in the overstatement of RBIG (or understatement of RBIL) in contravention of section 382(h)(6)(C). This failure also effectively provides for a duplicated benefit under the section 382(h) RBIG rules in certain cases. The Treasury Department and the IRS interpret section 382(h)(6)(C) as requiring inclusion in the NUBIG/NUBIL computation only the amounts that would be treated as RBIG or RBIL if those amounts were properly taken into account during the recognition period.

Further, the Treasury Department and the IRS have determined that the treatment of COD income under Notice 2003–65 violates the neutrality principle previously discussed. The Treasury Department and the IRS have determined that RBIG treatment (as well as the ancillary increase in NUBIG or decrease in NUBIL) should be available only to the extent that the neutrality principle requires an increase in the loss corporation's section 382 limitation.

The application of the attribute reduction rules of section 108(b) to excluded COD income complicates the RBIG and NUBIG calculation. The Treasury Department and the IRS understand that most excluded COD income is offset under section 108(b) by reducing tax attributes of the loss corporation that are treated as pre-change losses under section 382. To the extent that pre-change losses have already been used to offset this pre-change income, the neutrality principle prohibits an increase in the section 382 limitation. Indeed, such an increase could make excluded COD income more attractive than included COD income (or any other built-in gain item) for purposes of section 382. For this reason, the Treasury Department and the IRS have determined that the recognition of such excluded COD income should not generate RBIG. Because NUBIG functions as a ceiling on the amount of RBIG that may be claimed (and the corresponding amount of increase in the section 382 limitation), there does not appear to be a policy need nor a statutory basis for adjusting the NUBIG/NUBIL computation if there is no need to increase the section 382 limitation.

Inclusion of excludable COD income in the calculation of NUBIG/NUBIL would be particularly distortive if a loss corporation deconsolidates from a group as a result of its ownership change, and recognizes excludable COD income on the change date. Under the consolidated return regulations, any excludable COD income recognized on the date of deconsolidation is treated as attributable to the taxable year of the transferor group (rather than post-change, in the loss corporation's separate taxable year). Therefore, such excludable COD income should not be treated as RBIG (pre-change income recognized in the post-change period).

Accordingly, these proposed regulations generally would not allow COD income to be included in the calculation of NUBIG/NUBIL, but would provide certain exceptions. Includable COD by its nature is not complicated by the interaction of section 108(b). Therefore, to satisfy the neutrality principle, all includable COD income of the loss corporation that is recognized on recourse debt during the 12-month period following the change date would be eligible for inclusion in the NUBIG/NUBIL computation, subject to limitations discussed in part II.C.2 of this Explanation of Provisions.

However, these proposed regulations would permit excluded COD income items to be treated as RBIG (and thus affect NUBIG/NUBIL calculation) only to the extent described in part II.C of this Explanation of Provisions. The Treasury Department and the IRS welcome public comment on the proposed regulations' approach regarding excludible and includible COD income in calculating NUBIG and NUBIL, including comments with regard to whether it would be appropriate within the limits of the statute to consider special rules for insolvent or bankrupt loss corporations. Comments are also invited with regard to the possibility of redefining the recognition period to begin on the date after the ownership change, and any issues that might be eliminated or created by such a redefinition.

C. Proposed Rules for Identification of RBIG and RBIL Income and Deduction Items

1. In General

These proposed regulations would apply a methodology for identifying RBIG or RBIL that closely tracks the 1374 approach described in Notice 2003–65. This approach is generally accrual based, with specific exceptions. Many of the special rules incorporated in these proposed regulations originate in regulations underlying section 1374. However, these proposed regulations would make minor changes to improve the computational accuracy of the 1374 approach. For example, in response to comments on Notice 2003–65, these proposed regulations would provide an improved methodology for computing the amount of depreciation deductions treated as RBIL during the recognition period.

In addition, these proposed regulations would significantly modify the 1374 approach set forth in Notice 2003–65 to include as RBIL the amount of any deductible contingent liabilities paid or accrued during the recognition period, to the extent of the estimated value of those liabilities on the change date. Commentators noted that Notice 2003–65 appeared to include this estimated amount in its NUBIG/NUBIL computation, but did not treat deductible liability payments or accruals as RBIL. That incongruity contravenes section 382(h)(6)(C), which requires that items be included in the NUBIG/NUBIL computation if they would be treated as RBIG or RBIL if properly taken into account during the recognition period.

Further, these proposed regulations would add a rule clarifying that certain items do not constitute RBIG. For example, the proposed regulations provide that dividends paid on stock during the recognition period are not RBIG, even if the loss corporation has a NUBIG and there is gain built into the pertinent stock immediately before the ownership change. On the other hand, gain recognized on the disposition of stock generally would be treated as giving rise to RBIG. However, gain taxable as a dividend under section 1248 would generally give rise to a deduction under section 245A, with no net income being generated. Because no losses would be required to offset this item of income, the Treasury Department and the IRS have determined that this income item should not give rise to RBIG.

The Treasury Department and the IRS welcome public comment on the proposed regulations' identification of RBIG and RBIL. In particular, the Treasury Department and the IRS request comments regarding whether dividends paid on built-in gain stock should constitute RBIG, and whether final regulations should clarify the eligibility of other, similar income items for RBIG treatment.

2. Proposed Treatment of COD Income as RBIG

These proposed regulations would provide limitations on the extent to which excluded COD income is treated as RBIG, and thus would impact the calculation of NUBIG/NUBIL. As discussed in part II.B.2 of this Explanation of Provisions, RBIG effectuates the neutrality principle in the post-change period and therefore COD income must be able to be taken into account during the post-change period in order to qualify for RBIG status. Thus, COD income that is taken into account during the pre-change period (for example, excluded COD income recognized by a consolidated group member on an ownership change that causes the member to deconsolidate) should not qualify as RBIG. The proposed regulations also provide that COD income recognized during the post-change period generally would not be treated as RBIG. However, these proposed regulations would provide taxpayers with the option to treat certain COD income recognized during the first 12 months of the recognition period as RBIG (and consequently to make corresponding adjustments to the taxpayer's NUBIG/NUBIL computation). For example, the proposed regulations provide that COD income on recourse debt that is included in a loss corporation's taxable income under section 61(a)(12) during the first 12 months of the post-change period would be treated as RBIG as described in part II.B.2. of this Explanation of Provisions. Therefore, the loss corporation's section 382 limitation would be increased by the amount of such COD income, and pre-change losses may be deducted in the amount of the COD income. The 12-month limitation on RBIG treatment is adopted from the 1374 approach under Notice 2003–65.

Under the proposed regulations, excluded COD income recognized during the post-change period generally would not be treated as RBIG, in order to prevent the duplication of section 382 benefits. For example, if excluded COD income recognized during the post-change period (but not included in a loss corporation's income) is offset by pre-change losses, the loss corporation would receive the same benefit as a loss corporation that recognized included COD income: The ability to offset the COD income with pre-change losses. Therefore, the Treasury Department and the IRS have determined that extending the additional benefit of RBIG treatment (and the resulting increase in NUBIG or decrease in NUBIL) to post-change period excluded COD income generally would result in a duplication of section 382 benefits to the loss corporation.

However, these proposed regulations would provide two exceptions to this general rule to address cases in which excluded COD income recognized by a loss corporation during the first 12 months of its post-change period is offset by post-change tax attributes under section 108(b) or by basis reduction in assets held as of the change date under section 1017. To the extent that excluded COD income is offset by post-change tax attributes, the loss corporation would not yet have used pre-change loss equal to the amount of that excluded COD income. Therefore, the excluded COD income would be treated as RBIG, and the loss corporation's NUBIG/NUBIL would be adjusted accordingly. Similarly, to the extent that excluded COD income is offset by reduction in the tax basis of assets held immediately before the ownership change, the loss corporation would not have used pre-change loss equal to that excluded COD income. Under these proposed regulations (as under Notice 2003–65), that basis reduction would be treated as occurring immediately before the ownership change. As a result of that basis reduction, the corresponding amount of excluded COD income would be included in the NUBIG/NUBIL computation, and no further adjustment would be necessary. Accordingly, the

excluded COD income would not be treated as RBIG, to avoid double-counting. Any additional gain on the disposition of assets during the recognition period resulting from the basis adjustment would be treated as RBIG, to the extent of the NUBIG limitation.

Different treatment is required, to the extent that excluded COD is offset by reduction in the tax basis of assets that were acquired after the ownership change. The basis adjustments to those assets would not result in an adjustment to NUBIG/NUBIL, nor could any RBIG be produced from those assets because assets not held at the time of the ownership change are not included in the NUBIG/NUBIL computation. Similarly, RBIG cannot be generated on the sale of assets that were not held at the time of the ownership change. Therefore, the excluded COD income would be treated as RBIG and the NUBIG/NUBIL would be adjusted accordingly.

The Treasury Department and the IRS welcome public comment on the proposed regulations' approach regarding the treatment of excludible and includible COD income as RBIG. Further, the Treasury Department and the IRS request comments regarding what rules should govern the treatment of COD that is excluded under section 108(a)(1)(C) and (D) (qualified farm indebtedness and qualified real estate business indebtedness).

3. Overall Limitations on Amount of RBIL for COD on Recourse Debt

These proposed regulations set forth two different RBIG ceilings with regard to COD on recourse debt. The first ceiling applies to taxpayers that are in bankruptcy at the time of the ownership change, and have COD income pursuant to that bankruptcy action during the first twelve months of the recognition period. The maximum RBIG for those taxpayers related to excluded COD income would be the amount of indebtedness discharged in that bankruptcy action. The second ceiling applies to all other taxpayers who recognize COD income during the first twelve months of the recognition period. The maximum RBIG for those taxpayers is the excess of liabilities over asset value immediately before the change date, with certain adjustments. Adjustments must be made to avoid double counting amounts of excluded COD that are offset by reductions in asset basis under sections 108(b) and 1017. The Treasury Department and the IRS welcome public comment on these two RBIG ceilings with regard to COD income on recourse debt.

4. Special Rules for Nonrecourse Debt

RBIG status for COD income on nonrecourse debt recognized in the first 12 months of the recognition period is subject to rules similar to those previously described. However, such COD income is treated as built-in gain only to the extent that the nonrecourse debt was under-secured immediately before the ownership change. Because a nonrecourse creditor has a claim only on the assets securing the indebtedness, the amount of the impairment at the time of the ownership change is the appropriate measure of built-in COD in the nonrecourse debt. Further, RBIG recognized on nonrecourse debt during the recognition period does not result in an adjustment to NUBIG/NUBIL, because the amount of the impairment to the nonrecourse debt is already built into the initial NUBIG/NUBIL computation with regard to the deemed disposition of assets. The Treasury Department and the IRS welcome public comment on the treatment of COD income on non-recourse debt, including comments on the treatment of accrued but unpaid interest.

D. Interactions Between Sections 163(j) and 382

The addition of new section 163(j) under the TCJA has created numerous issues concerning the interaction of those interest deduction limitations with section 382. These proposed regulations attempt to eliminate the possibility of duplication of RBIL items, as well as to clarify the treatment under section 382 of certain items that are allocated from a partnership.

1. Elimination of Possible Duplicative Recognized Built-In Loss

Proposed § 1.382–7 addresses the possible duplicative application of section 382 to certain disallowed business interest expense carryforwards, including the portion of any disallowed business interest expense of the old loss corporation that is (i) paid or accrued in the taxable year of the testing date (as defined in § 1.382–2(b)(4)), (ii) attributable to the pre-change period, and (iii) carried forward into later years (collectively, a section 382 disallowed business interest carryforward). Section 382 disallowed business interest carryforwards are subject to section 382 by virtue of section 382(d)(3), which treats any section 163(j)(2) carryover from a pre-change period as a pre-change loss. Additionally, such carryforwards are potentially subject to the section 382 limitation under section 382(h)(6) as RBIL. Section 382(h)(6)(B) provides that any amount allowable as a deduction during the recognition period (within the meaning of section 382(h)(7)), determined without regard to any carryover, that is attributable to periods before the change date is treated as a RBIL for the taxable year for which it is allowable as a deduction. Further, section 382(h)(6)(C) provides that the amount of NUBIG or NUBIL must be properly adjusted for amounts that would be treated as RBIG or RBIL under section 382(h)(6) if such amounts were properly taken into account or allowable as a deduction during the recognition period.

Section 382 disallowed business interest carryforwards should not be counted twice for purposes of the application of section 382. Subjecting the same section 382 disallowed business interest carryforward to the section 382 regime in two different ways could result in a double reduction of the annual section 382 limitation. Moreover, because disallowed business interest expense carryforwards would be absorbed before NOL carryovers under proposed § 1.383–1(d), subjecting the same disallowed business interest expense carryforward to the section 382 regime twice could preclude taxpayers from utilizing their NOL carryovers or other attributes. In addition, treatment of disallowed business interest carryforwards as potential RBIL would result in an unwarranted increase in NUBIL (or decrease in NUBIG).

Accordingly, proposed § 1.382–7(d)(5) would provide that section 382 disallowed business interest carryforwards would not be treated as RBIL under section 382(h)(6)(B) if such amounts were allowable as a deduction during the recognition period.

2. Treatment of Excess Business Interest Expense of a Partnership

Proposed § 1.382–7 addresses the application of section 382(h) to excess business interest expense of a partnership to the extent that the item was not suspended under section 704(d) and is allocable to an old loss corporation (as partner) with regard to a period prior to an ownership change (section 382 excess business interest expense). Section 382(h)(3)(A)(i) provides that the amount of the old loss corporation's NUBIG or NUBIL includes the amount by which the aggregate fair market value of certain assets is more or less than the aggregate adjusted basis of such assets. As provided in section 163(j)(4)(B)(iii) and proposed § 1.163–6(h)(3)(i), if a partner disposes of all or substantially all of its partnership interest, the adjusted basis of the partner in the partnership interest would be increased immediately before the

disposition to reflect the partner's section 382 excess business interest expense from the partnership, if any. Therefore, proposed § 1.382–7(c)(3)(iii)(E) would provide that, for purposes of determining RBIL under section 382(h)(2)(B)(ii), as well as for computing NUBIG or NUBIL under section 382(h)(3)(A), a loss corporation's adjusted basis in a partnership interest is adjusted as if the loss corporation disposed of all or substantially all of its partnership interests immediately before the ownership change.

During the recognition period, a deduction or loss equal to the section 382 excess business interest expense could be recognized either when the loss corporation is able to deduct the section 382 excess business interest expense, or when it sells all or substantially of its partnership interest. In either case, such amount is properly characterized as RBIL. However, in either case, no adjustment to the loss corporation's NUBIG or NUBIL computation would be necessary, because the positive adjustment to the basis of the partnership interest ensures that an amount equal to the section 382 excess business interest expense is included in the computation.

A partner also can be allocated section 382 excess business interest expense that is characterized as negative section 163(j) expense. See § 1.163(j)–6(h)(1) as proposed in REG–106089–18 (83 FR 67490, 67556 (Dec. 28, 2018)). Negative section 163(j) expense does not reduce the partner's basis in the partnership and therefore would not be taken into account if the partner sold all or substantially all of its partnership interest. However, if the loss corporation were able to deduct the negative section 163(j) expense during the recognition period, then such expense presumably could be treated as RBIL pursuant to section 382(h)(6)(B). These proposed regulations do not address whether deductions resulting from negative section 163(j) allocations are RBIL.

The Treasury Department and the IRS request comments as to whether a corporate partner's section 382 excess business interest expense and negative section 163(j) expense should be treated as a built-in item under section 382(h)(6) or as a section 382 disallowed business interest carryforward, and therefore be treated as a pre-change loss.

Applicability Dates

Section 7805(b)(1)(A) and (B) of the Code generally provides that no temporary, proposed, or final regulation relating to the internal revenue laws may apply to any taxable period ending before the earliest of (A) the date on which such regulation is filed with the **Federal Register**, or (B) in the case of a final regulation, the date on which a proposed or temporary regulation to which the final regulation relates was filed with the **Federal Register**.

Except as otherwise provided in the following sentence, these regulations are proposed to be effective for ownership changes occurring after the date the Treasury decision adopting these proposed regulations as final regulations is published in the **Federal Register**. However, taxpayers and their related parties, within the meaning of sections 267(b) and 707(b)(1), may apply these proposed regulations to any ownership change occurring during a taxable year with respect to which the period described in section 6511(a) has not expired, so long as the taxpayers and all of their related parties consistently apply the rules of these proposed regulations to such ownership change and all subsequent ownership changes that occur before the applicability date of final regulations.

Effect on Other Documents

The following publications are proposed to be withdrawn and obsoleted effective the day after the date the Treasury decision adopting these proposed regulations as final regulations is published in the **Federal Register:**

Notice 87–79 (1987–2 C.B. 387)
Notice 90–27 (1990–1 C.B. 336)
Notice 2003–65 (2003–2 C.B. 747)
Notice 2018–30 (2018–21 I.R.B. 610)

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including (i) potential economic, environmental, and public health and safety effects, (ii) potential distributive impacts, and (iii) equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

These proposed regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) (MOA) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. The Office of Information and Regulatory Affairs has designated these proposed regulations as significant under section 1(b) of the MOA. Accordingly, the OMB has reviewed these proposed regulations.

A. Background

In general, section 382 limits the usage of a corporation's tax attributes after that corporation experiences an ownership change. Limited tax attributes include, among other items, NOLs and built-in losses. The limit equals the product obtained by multiplying a prescribed interest rate by the value of the stock of the corporation (referred to as the ''old loss corporation'') on the change date. This product represents a proxy for the amount of income created by the assets held by the corporation prior to the ownership change. The section 382 limit reflects Congress's intent that, generally, NOLs should not be more valuable to an acquirer than to the going concern that created them. In the conference report to the Tax Reform Act of 1986, Congress expressed that the previously described formula ''is necessary to ensure that the value of NOL carryforwards to the buying corporation is not more than their value to the loss corporation.'' H.R. Rep. No. 99–841, at II–185 (1986).

Section 382(h) specifies the treatment of gains and losses accrued by a corporation prior to a change in ownership. As explained in the legislative history, the rules are intended to treat built-in gains and losses that are recognized after the ownership change the same as if they had been recognized before the ownership change. As described by Congress, ''[i]f built-in losses were not subject to limitations, taxpayers could reduce or eliminate the impact of the general rules by causing a loss corporation (following an ownership change) to recognize its built-in losses free of the special limitations (and then invest the proceeds in assets similar to the assets sold).'' Joint Committee on Tax'n, General Explanation of the Tax Reform Act of 1986 (Pub. L. 99–514) (May 4, 1987), JCS–10–87, at p. 298. The neutral treatment of gains and losses recognized before and after a change in ownership is accomplished by allowing the recognition of built in gain to increase the section 382 limitation whereas the recognition of built in loss is subject to the section 382 limitation.

The following example (Example 1) illustrates this principle. Assume that a loss corporation (LossCorp), as of the change date, has $500 in NOL carryforwards and holds only one asset (Asset A) with a fair market value of $100 and a basis of $120. If LossCorp

disposed of Asset A immediately prior to the ownership change, a $20 loss would be recognized. Additionally, assuming the taxpayer made a closing-of-the-books election under § 1.382–6(b), the amount of the NOL carryforwards would be $520. If instead, Asset A was disposed of after the change date, then sections 382(h)(1) and 382(h)(2) recognize that the $20 loss is attributable to the period prior to the ownership change and therefore subject it to a section 382 limitation in the same manner as if it was an NOL carryforward (disregarding a de minimis threshold rule set forth in section 382(h)(3)(B)). In the language of section 382, the $20 loss would be RBIL (that is, recognized built-in loss). These rules operate to eliminate the significance of the disposition's timing and preserve neutrality.

Alternatively, assume in this example (Example 2) that Asset A's fair market value on the change date were $150, and thus LossCorp had a built-in gain on the asset. If LossCorp disposed of Asset A prior to the change date, assuming the taxpayer made a closing-of-the-books election under § 1.382–6(b), then the $30 in income would reduce its NOL carryforward to $470. If instead Asset A were disposed of after the change date, then sections 382(h)(1) and 382(h)(2) recognize that the $30 gain is attributable to the period prior to the ownership change and therefore increases LossCorp's section 382 limitation for the year (disregarding the de minimis threshold rule set forth in section 382(h)(3)(B)), thereby allowing LossCorp to freely use the pre-change NOLs to offset the $30 in income. In the language of section 382, the $30 in income would be RBIG (that is, recognized built-in gain). In this fact pattern, the rules under section 382 would eliminate the significance of the disposition's timing and preserve neutrality by allowing the NOLs to be applied following the ownership change with respect to gain that was ''built-in'' prior to the ownership change.

Under section 382(h), the total amount of RBIL must not exceed NUBIL (that is, net unrealized built-in loss) and the total amount of RBIG must not exceed NUBIG (that is, net unrealized built-in gain). More precisely, at the change date, a loss corporation must compute the difference between the aggregate fair market value and aggregate basis of all of its assets. In general, (i) to the extent that this difference is positive, a NUBIG results; and (ii) to the extent that the difference is negative, a NUBIL results. Both NUBIG and NUBIL are adjusted by section 382(h)(6)(C), as discussed below. NUBIG and NUBIL act as limitations to the aggregate amount of RBIG and RBIL recognized during the recognition period. For illustration, if Example 2 were modified so that LossCorp owned additional assets such that it had NUBIL, the disposition of Asset A would not create RBIG.

These proposed regulations would primarily address the subcomponents of RBIL, RBIG, NUBIL, and NUBIG that are provided for by section 382(h)(6). Specifically, section 382(h)(6)(A) provides that income items that are ''properly taken into account during the recognition period,'' but which are ''attributable to periods before the change date,'' are treated as RBIG. Section 382(h)(6)(B) provides a similar rule for deductions to be treated as RBIL. Section 382(h)(6)(C) provides that the amount of potential income items under section 382(h)(6)(A) increases NUBIG (or reduces NUBIL), whether or not the income items were actually taken into account during the recognition period. Analogously, section 382(h)(6)(C) provides that the amount of potential deduction items under section 382(h)(6)(B) increases NUBIL (or reduces NUBIG), whether or not the deduction items were actually allowable as a deduction during the recognition period. The proposed regulations clarify the definition and calculation of these components.

As is the case for section 382(h) generally, the rules under section 382(h)(6) are again intended to preserve neutrality between pre- and post-change date transactions. Income items recognized prior to the change date may have been freely offset with pre-change NOLs; thus, if those same income items were recognized after the change date, the neutrality principle requires that pre-change NOLs be allowed to freely offset it. RBIG treatment accomplishes this effect. Similar logic applies with respect to deduction items.

In response to substantial uncertainty regarding which income and deduction items qualify under section 382(h)(6), the IRS issued Notice 2003–65. Generally, Notice 2003–65 provides two safe harbors for computing these items. The first safe harbor, referred to as the ''1374 approach'' (named after section 1374, which addresses tax consequences regarding built-in gains of C corporations that become S corporations), relies generally on accrual method of accounting principles. The second safe harbor, referred to as the ''338 approach,'' compares actual amounts of income and deductions to the amounts that would have been realized had a section 338 election been made with respect to a hypothetical stock purchase on the change date. Notice 2018–30 amended Notice 2003–65 by reversing an unintended change to both safe harbors that resulted from TCJA amendments to section 168(k).

Broadly, for reasons discussed below, these proposed regulations would make mandatory the 1374 approach with certain adjustments. These adjustments include technical fixes to calculations involving COD income (that is, cancellation of indebtedness income), deductions for contingent liabilities, and cost recovery deductions. Additionally, these proposed regulations clarify that carryovers of section 163(j) disallowed business interest are counted only once for the purpose of section 382.

B. No-Action Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the proposed regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these proposed regulations.

C. Economic Analysis of Proposed Regulations

1. Framework

In evaluating the economic efficiency of these proposed regulations, this analysis considers two main factors. The first factor regards compliance and administration costs. Mergers and acquisitions can be very complicated transactions; thus, compliance with certain aspects of Federal income tax law can be onerous for taxpayers, and examination can be difficult for the IRS. As discussed further below the Treasury Department projects that the proposed regulations will reduce compliance and enforcement costs relative to the baseline primarily by eliminating duplicative and potentially complicated calculations required to apply the 338 approach. Greater efficiencies will also be gained under the proposed regulations by reducing taxpayer disputes with the IRS regarding the application of the 1374 approach.

The second factor considered is whether changes in mergers and acquisitions potentially induced by the proposed regulations are likely to be efficiency-enhancing or efficiency-reducing. If a merger increases value only because of increased potential NOL usage, then that merger would be economically inefficient (even ignoring antitrust concerns). Section 382 attempts to ensure that the NOLs of the loss corporation can be used to the same extent whether or not the loss

corporation is acquired by another corporation, which implies that no transaction would take place solely to increase NOL use. However, currently issued guidance regarding section 382 may not strike that balance perfectly. It is the determination of the Treasury Department and the IRS that, for the reasons discussed below, the currently issued guidance on section 382(h) allows too much NOL usage relative to the neutral baseline. These proposed regulations would modestly restrict NOL usage by reducing the amount that would qualify as RBIG, reducing the incentive to engage in inefficient, tax-motivated mergers and acquisitions.

The Treasury Department and the IRS have not quantified the expected gains to the U.S. economy arising from the discretionary aspects of the proposed regulations but expect them to be less than $100 million per year ($2019), a threshold established by the MOA and Executive Order 12866. For reasons discussed further in section C.2. of the analysis, the Treasury Department and IRS project that the effect of the proposed regulations on the number of mergers and acquisitions will be small. The Treasury Department and the IRS additionally project that the change (that is, reduction) in compliance costs will also be modest. The Treasury Department and the IRS solicit comments on this conclusion and particularly solicit comments that provide data, evidence, or models that would enhance the rigor by which the non-revenue economic effects might be determined for the final regulations.

2. Making the 1374 Approach Mandatory

The Treasury Department and the IRS have determined that the 1374 approach would be simpler for taxpayers to comply with, and simpler for the IRS to administer. Under Notice 2003–65, as modified by Notice 2018–30, taxpayers subject to section 382 would typically compute estimates of NUBIG/NUBIL and RBIG/RBIL under both the 1374 and 338 approaches to determine which approach would provide the more favorable result. Such duplicative compliance costs are inherently economically wasteful, even if they may have been privately optimal (in other words, they generated expected tax savings for the corporation in excess of compliance costs). Under these proposed regulations, taxpayers would make computations under only one approach, thereby reducing inefficient compliance burdens.

In addition, the 1374 approach has lower compliance costs than the 338 approach. Under the 1374 approach, taxpayers need only record items of income and deductions that they already account for under well-known accrual method of accounting principles. Furthermore, the IRS can easily verify such amounts during an examination. Under the 338 approach, taxpayers must consider a hypothetical transaction involving deemed asset sales. With respect to tiered corporate structures, an ownership change of the corporate parent would require the analysis of deemed asset sales not only at the corporate-parent level, but also an analysis of deemed asset sales at every lower corporate level. The 338 approach would pose significant, iterative complexity for corporate structures with several tiers of subsidiaries.

The Treasury Department and the IRS have determined that between 7,000 and 15,000 firms per year will be affected by these proposed regulations, based on the checkbox on Line 16 of Form 1120, Schedule K and other tax attributes. These firms will see a reduction in compliance costs under the 1374 approach, if they were using the 338 approach or performing calculations under both approaches under the baseline. The Treasury Department and the IRS request public comment on any anticipated changes in compliance costs due to the proposed elimination of the 338 approach.

The Treasury Department and the IRS project that the adoption of the 1374 approach as the sole approach under section 382(h) will not have a large effect on the number of mergers and acquisitions that take place. Such adoption of the 1374 approach will make certain mergers and acquisitions somewhat less attractive. However, the Treasury Department and the IRS have determined that, historically, most acquiring corporations behave as if section 382 will limit the ability to utilize substantially all pre-change NOLs. This heuristic behavior implies that firms will not be highly responsive to the changes set forth by these proposed regulations.

It is important to note that any merger or acquisition dissuaded by these proposed regulations would tend to have been economically inefficient not have been undertaken except for the purpose of reducing tax liability. Recall from Part C.1 of this section that the goal of section 382 is to ensure that NOL usage is approximately unaffected when a loss corporation is acquired by a profitable corporation. The Treasury Department and the IRS have determined that the ability to toggle between the 338 approach and the 1374 approach allows more NOL usage in the case of an acquisition than would be the case if the loss corporation continued independently. By eliminating the 338 approach, these proposed regulations move closer to a neutral, economically efficient position.

In particular, the most notable feature of the 338 approach is that assets with built-in gains can generate RBIG even without a realization event. This is generally advantageous for taxpayers. This treatment follows from the logic that such built-in gain assets would have generated income in subsequent years; in the absence of an acquisition, such income could have been offset freely by the old loss corporation's NOLs. The 338 approach prescribes a proxy for that excess income amount: The extent to which cost recovery deductions (disregarding bonus depreciation under section 168(k), per Notice 2018–30) under a hypothetical purchase of each asset at its current fair market value exceed actual allowable cost recovery deductions.

The Treasury Department and the IRS have determined that this treatment of built-in gain assets under the 338 approach is problematic for two reasons. First, the schedules for cost recovery deductions were never intended to match the production of income from each asset; rather, they were intended to accelerate cost recovery to stimulate investment. Thus, this proxy is likely to, on average, overstate income created by those assets, further increasing NOL usage beyond the neutral baseline. Second, such an adjustment for income created by built-in gain assets is unnecessary, as it is already taken into account by section 382. Section 382 provides that the NOLs of the old loss corporation can be used by the new loss corporation up to the annual limit. This annual limit is equal to a prescribed interest rate multiplied by the value of the stock of the old loss corporation, and serves as a proxy for the income created by the assets of the old loss corporation. Thus, to the extent that the appreciated value of a built-in gain asset is reflected in the value of the stock, the general rule of section 382 allows for the NOLs of the old loss corporation to offset the flow of income created by that asset. Therefore, the treatment created by the 338 approach creates a double benefit. By eliminating this treatment, the proposed regulations reduce the attractiveness of inefficient, tax-motivated acquisitions, which enhances economic efficiency.

3. Modification to Treatment of COD Income

The proposed regulations also modify the treatment of COD income under the 1374 approach. The baseline rules

provide that COD income enters into the NUBIG/NUBIL calculations without regard to whether that income was ultimately included in, or excluded from, income by the new loss corporation under the rules of section 108. This issue is especially relevant under the consolidated return regulations regarding the application of section 108. Such regulations provide that, generally, when a member leaves its consolidated group, excluded COD income will be taken into account by the consolidated group and not the new loss corporation. Therefore, inclusion of the COD amount in the NUBIG/NUBIL calculations does not reflect the economic reality of the taxpayer and may inappropriately influence a taxpayer's decision of whether to voluntarily enter into bankruptcy. The proposed regulations address this issue by ensuring that COD income enters into the RBIG and NUBIG/NUBIL calculations only to the extent actually taken into account by the new loss corporation. The Treasury Department and the IRS have determined that this revision will treat different types of transactions more neutrally. Such treatment will increase economic efficiency by causing taxpayers to choose transactions that are optimal for non-tax reasons rather than for tax reasons.

4. Modification to Treatment of Contingent Liabilities

These proposed regulations would revise the 1374 approach with respect to the treatment of contingent liabilities. Under Notice 2003–65, the estimated value of contingent liabilities (as of the change date) was included in the NUBIG/NUBIL calculation. However, the ultimate payment of such liability did not give rise to RBIL. This asymmetry violates the principle of neutrality between pre-change and post-change deductions. If the old loss corporation were able to pay a third party to assume the liability prior to the ownership change, it would generate a deduction that increases the pre-change NOLs, which would be limited after the ownership change. If the liability were not treated as RBIL, the post-change realization of that liability could freely offset other sources of income. This non-neutrality may distort decision-making and reduce economic efficiency.

These proposed regulations would address this issue by providing that payments of contingent liabilities represent RBIL to the extent of the estimated value of the contingent liability as of the change date.

5. Modification to Treatment of Cost Recovery Deductions

Section 382(h)(6)(B) provides that cost recovery deductions during the recognition period are treated as RBIL, except to the extent that the new loss corporation can establish that the deduction is not attributable to a built-in loss. Intuitively, RBIL includes cost recovery deductions taken against assets whose depreciation deductions are too large relative to the value of the asset. Under the baseline rules of Notice 2003–65, the suggested approach is to compare (1) actual depreciation deductions on a given asset to (2) the depreciation deductions that would be allowable (disregarding bonus depreciation under section 168(k), per Notice 2018–30) if the asset were hypothetically purchased at the change date from a third party at its fair market value. The excess of (1) over (2) is treated as RBIL. Because depreciation deductions under section 168 tend to be larger closer to the beginning of an asset's life, this approach can lead to absurd results. In particular, it is possible to create RBIL even when the fair market value is equal to the adjusted basis.

These proposed regulations would abandon that approach. Instead, the hypothetical cost recovery deduction would be computed by applying the same depreciation schedule actually used by the corporation to the fair market value of the asset. This will generally narrow the role of such RBIL treatment to taxpayers with an asset with a fair market value that is less than adjusted basis. Given the front-loading of depreciation schedules (including under section 168(k)), the Treasury Department and the IRS project that the new rule will cause RBIL to be calculated for far fewer taxpayers and thus the change will reduce compliance burden. Additionally, the new rule will generally cause an increase in allowable NOLs by reducing RBIL, contrary to the other rule changes in these proposed regulations. However, the Treasury Department and IRS project that the effect of this change (in terms of generated RBIL/RBIG) will be quantitatively less significant than other modifications, such as the elimination of the section 338 approach.

6. Clarification of Treatment of Disallowed Business Interest Expense

Section 382(d)(3) provides that carryovers of disallowed interest under section 163(j) (as amended by the TCJA) are to be treated analogously to NOLs, meaning that their use would be limited after an ownership change. Additionally, the general rules of section 382(h)(6) could be interpreted to cause such disallowed interest to be RBIL if recognized during the recognition period, as they may be ''allowable as a deduction during the recognition period'' but ''attributable to periods before the change date.'' Such treatment would cause section 163(j) carryovers to be counted twice for the purpose of section 382.

These proposed regulations would preclude this possibility by clarifying that the use of section 163(j) carryovers during the recognition period would not give rise to RBIL. This proposed clarification would provide certainty to taxpayers that section 382 will operate as intended in this regard.

II. Paperwork Reduction Act

Pursuant to § 1.382–11, a loss corporation must include a statement on or with its tax return for each taxable year that it is a loss corporation in which an owner shift, equity structure shift, or other transaction described in § 1.382–2T(a)(2)(i) occurs. The statement must include, among other things, attributes described in § 1.382–2(a)(1)(i) that caused the corporation to be a loss corporation. One of the attributes described in § 1.382–2(a)(1)(i) is a loss corporation's NUBIL (that is, net unrealized built-in loss), if any. The existing collection of information under § 1.382–11 has been reviewed and approved by the OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA) under OMB control number 1545–2019. The collection of information is necessary to enable the IRS to verify the amount of any attributes that are subject to section 382.

These proposed regulations provide guidance regarding the calculation of built-in gains and losses under section 382, including whether a corporation has a NUBIL. Therefore, these proposed regulations could cause a corporation to have a NUBIL when they would not have had one in the absence of these proposed regulations. As a result, a corporation would have to file a statement under § 1.382–11, or include an item on its statement under § 1.382–11, when the corporation would not have had to do so in the absence of these proposed regulations. The § 1.382–11 statement is a one-time paperwork burden that is required to be filed in the taxable year during which an owner shift, equity structure shift, or other transaction described in § 1.382–2T(a)(2)(i) occurs. On the other hand, these proposed regulations, if finalized, also could cause some firms to no longer have a NUBIL, thereby eliminating their

requirement to file a statement under § 1.382–11. Furthermore, by eliminating the 338 approach, the Treasury Department and the IRS project that compliance burdens will fall for most existing filers of the § 1.382–11 statement. The Treasury Department and the IRS have based this projection on their observations that (i) taxpayers currently incur costs to compute their NUBIG/NUBIL under each of the two methods in order to be able to choose the more beneficial method, and (ii) the 338 approach requires taxpayers to determine hypothetical amounts (for example, what depreciation would have been available in the case of a deemed asset sale under section 338). As a result, removing the hypothetical computations, as well as the optionality, will reduce compliance burden.

For purposes of the PRA, the reporting burden associated with these proposed regulations will be reflected in the collection of information under § 1.382–11 (OMB control number 1545–2019). The aggregate estimates for all collection of information conducted under OMB control number 1545–2019, including the § 1.382–11 statement and other statements, are that 225,000 respondents will require 1 hour and 40 minutes per response for a total annual reporting burden of 375,000 hours and total annual monetized costs of $15,930,000 (2016 dollars). The Treasury Department and the IRS have not estimated the burden, including that of any new information collections, related to the requirements under these proposed regulations.

Based on the checkbox on Line 16 of Form 1120, Schedule K and other tax attributes, the Treasury Department and the IRS estimate that between 7,000 and 15,000 firms per year will be affected by these proposed regulations. The Treasury Department and the IRS estimate that these proposed regulations will, if anything, cause a slight reduction in the total amount of paperwork burden for most affected taxpayers. This reduction in burden is driven by the elimination of the 338 approach. As a result of such elimination, taxpayers may perform fewer calculations when complying with section 382. The Treasury Department and the IRS, however, have not estimated the burden, including that of any new information collections, related to the requirements under the proposed regulations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. The IRS has posted information for taxpayers on their recordkeeping requirements at *https://www.irs.gov/taxtopics/tc305.* Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

The Treasury Department and the IRS request comments on all aspects of information collection burdens relating to these proposed regulations, including (i) estimates for how much time it would take to comply with the paperwork burdens described earlier for each relevant form and (ii) ways for the IRS to minimize the paperwork burden. Proposed revisions to the information collections contained in these proposed regulations will not be finalized until after these regulations take effect and have been approved by OMB under the PRA. The Treasury Department and the IRS have not estimated the burden, including that of any new information collections, related to the requirements under the proposed regulations. The Treasury Department and the IRS estimate PRA burdens on a taxpayer-type basis rather than a provision-specific basis. Those estimates would capture both changes made by the TJCA and those that arise out of discretionary authority exercised in the proposed regulations.

III. Regulatory Flexibility Act

As described in more detail in this section, pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. chapter 6, the Treasury Department and the IRS hereby certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Notwithstanding this certification, the Treasury Department and the IRS invite comments on any impact that these regulations would have on small entities.

These proposed regulations, if finalized, would amend the calculation of certain items under section 382, which pertains to the tax attributes of certain acquired corporations (known as ''loss corporations'') in the hands of the acquiring corporation after an ownership change. Broadly, the proposed regulations, if finalized, would (i) eliminate one safe harbor under which firms were formerly entitled to calculate items of income and deduction under section 382(h)(6), and (ii) make a number of other conforming changes. In particular, these regulations could change the amount of net unrealized built-in gain or loss (NUBIG and NUBIL, respectively) computed by the loss corporation. Importantly, section 382(h)(3)(B) provides a de minimis rule for which it is expected that substantially all small entities will qualify. Specifically, if a loss corporation's NUBIG or NUBIL is not greater than the lesser of (i) 15 percent of the fair market value of the loss corporation's non-cash corporate assets on the ownership change or (ii) $10 million, then the loss corporation's NUBIG or NUBIL is deemed to be zero. Furthermore, these proposed regulations would not change this de minimis rule. Therefore, to the extent that small firms understood that they historically qualified for the de minimis rule, substantially all of them could determine, with little burden, that they will qualify as well under these proposed regulations (if finalized). The Treasury Department and the IRS invite comments on the impact of these proposed rules on small entities.

Comments and Requests for Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be available at *www.regulations.gov* for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, then notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of this notice of proposed rulemaking are Kevin M. Jacobs and Marie C. Milnes-Vasquez of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov.*

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by revising the entry for § 1.382–7 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.382–7 also issued under 26 U.S.C. 382(h)(3)(B)(ii) and (m).

* * * * *

■ **Par. 2.** Section 1.382–1 is amended by:

■ a. Under § 1.382–2, adding reserved entries for (a)(7) and (8) and entries for (a)(9) through (13), and (b)(4); and

■ b. Revising the entry for § 1.382–7.

The additions and revision read as follows:

§ 1.382–1 Table of contents.

* * * * *

§ 1.382–2 General rules for ownership change.

(a) * * *

(7) [Reserved]

(8) [Reserved]

(9) Net unrealized built-in gain.

(10) Net unrealized built-in loss.

(11) Recognized built-in gain.

(12) Recognized built-in loss.

(13) Section 382 regulations.

(b) * * *

(4) Rules provided in paragraphs (a)(9) through (13) of this section.

* * * * *

§ 1.382–7 Built-in gains and losses.

(a) Overview.

(b) Definitions.

(1) Change year.

(2) Cost recovery deduction.

(3) First-year nonrecourse COD income.

(4) First-year recourse COD income.

(5) Inadequately secured nonrecourse liabilities.

(6) Negative section 163(j) expense.

(7) Nonrecourse liabilities.

(8) Pre-change excess recourse liabilities.

(9) Recognition period.

(10) Section 382 asset.

(11) Section 382 excess business interest expense.

(12) Taxable income or timing limitation.

(c) Net unrealized built-in gains and losses.

(1) In general.

(2) Consistency rules.

(i) In general.

(ii) Members of consolidated groups.

(3) Computation of net unrealized built-in gain and net unrealized built-in loss.

(i) In general.

(ii) Adjustments related to discharge of indebtedness.

(A) In general.

(B) Exception for first-year recourse COD income.

(*1*) Discharge of indebtedness income included in gross income.

(*2*) Excluded discharge of indebtedness income reducing post-ownership change attributes.

(*3*) Excluded discharge of indebtedness income reducing basis.

(iii) Additional operating rules.

(A) Value of contingent liabilities.

(B) Inventory.

(C) Limitation on total amount of adjustment to NUBIL/NUBIG regarding recourse COD income.

(D) Timing of adjustments described in paragraphs (c)(3)(ii)(B)(*1*) through (*3*) of this section.

(E) Adjusted basis of the loss corporation's section 382 assets.

(F) [Reserved]

(d) Recognized built-in gain and loss.

(1) In general.

(2) Recognized built-in gain.

(i) In general.

(ii) Disposition of an asset.

(iii) Income from discharge of indebtedness attributable to certain recourse liabilities.

(iv) Income from discharge of indebtedness attributable to certain nonrecourse liabilities.

(A) Treatment as RBIG.

(B) Adjustment to basis.

(C) Limitation on total amount of RBIG regarding nonrecourse COD income.

(D) No adjustment to the NUBIG/NUBIL computation.

(v) Installment method.

(vi) Prepaid income.

(3) Recognized built-in loss.

(i) In general.

(ii) Disposition of an asset.

(iii) Cost recovery deductions.

(iv) Bad debt expense.

(v) Deductions for payments on certain liabilities.

(vi) Deduction for section 382 excess business interest expense.

(A) In general.

(B) No adjustment to the NUBIG/NUBIL computation.

(4) Additional recognized built-in gain and loss items.

(5) Section 382 disallowed business interest carryforwards.

(e) General operating rules.

(1) Anti-duplication rule.

(2) References to the principles of regulations under section 1374.

(f) Examples.

(g) Applicability dates.

(1) In general.

(2) Paragraph (d)(2)(vi) of this section.

* * * * *

■ **Par. 3.** Section 1.382–2 is amended by adding reserved paragraphs (a)(7) and (8) and paragraphs (a)(9) through (13) and (b)(4) to read as follows:

§ 1.382–2 General rules for ownership change.

(a) * * *

(7)–(8) [Reserved]

(9) *Net unrealized built-in gain.* The term *net unrealized built-in gain* means a positive amount determined under § 1.382–7(c)(3).

(10) *Net unrealized built-in loss.* The term *net unrealized built-in loss* means a negative amount determined under § 1.382–7(c)(3).

(11) *Recognized built-in gain.* The term *recognized built-in gain* has the meaning provided in § 1.382–7(d)(2).

(12) *Recognized built-in loss.* The term *recognized built-in loss* has the meaning provided in § 1.382–7(d)(3).

(13) *Section 382 regulations.* The term *section 382 regulations* means this section and §§ 1.382–3 through 1.382–12.

(b) * * *

(4) *Rules provided in paragraphs (a)(9) through (13) of this section.* The rules of paragraphs (a)(9) through (13) of this section apply to any ownership change occurring after date of publication of Treasury decision adopting these proposed regulations as final regulations in the **Federal Register**. However, taxpayers and their related parties, within the meaning of sections 267(b) and 707(b)(1), may apply the rules of paragraphs (a)(9) through (13) of this section to any ownership change occurring during a taxable year with respect to which the period described in section 6511(a) has not expired, so long as the taxpayers and their related parties consistently apply the rules of paragraphs (a)(9) through (13) of this section and § 1.382–7 to such ownership change and all ownership changes occurring in subsequent taxable years.

■ **Par. 4.** Section 1.382–7 is revised to read as follows:

§ 1.382–7 Built-in gains and losses.

(a) *Overview.* This section provides rules governing the determination of a loss corporation's net unrealized built-in gain or net unrealized built-in loss, as well as its recognized built-in gains and recognized built-in losses for purposes of section 382 and the section 382 regulations. Paragraph (b) of this section

provides definitions of terms used for purposes of this section. Paragraph (c) of this section provides the rules regarding the determination of a loss corporation's net unrealized built-in gain or net unrealized built-in loss. Paragraph (d) of this section provides the rules regarding the determination of a loss corporation's recognized built-in gain or recognized built-in loss. Paragraph (e) of this section provides an anti-duplication rule to prevent duplicate inclusion of items in the computation of net unrealized built-in gain or net unrealized built-in loss, or in the computation of recognized built-in gain or recognized built-in loss. Paragraph (f) of this section provides examples illustrating the rules of this section. Paragraph (g) of this section provides applicability dates for the rules of this section.

(b) *Definitions.* The following definitions apply for purposes of this section.

(1) *Change year.* The term *change year* has the meaning provided in § 1.382–6(g)(1).

(2) *Cost recovery deduction.* The term *cost recovery deduction* means any deduction for depreciation under section 167 or section 168, any deduction for the amortization of intangibles (for example, under section 167 or 197) and amortizable expenditures (for example, under section 195(b)(1)(B), section 248 or section 1245(a)(2)(C)), or any deduction for depletion under section 611.

(3) *First-year nonrecourse COD income.* The term *first-year non-recourse COD income* means any income from discharge of indebtedness that the loss corporation recognizes (including income that is excluded from gross income under section 108(a)(1)) during the first twelve months of the recognition period on inadequately secured nonrecourse liabilities.

(4) *First-year recourse COD income.* The term *first-year recourse COD income* means any income from discharge of indebtedness (including from liabilities described in paragraph (c)(3)(i)(C) of this section) that the loss corporation recognizes (including income that is excluded from gross income under section 108(a)(1)) during the first twelve months of the recognition period on all of the loss corporation's liabilities immediately before the ownership change (excluding nonrecourse liabilities) to the extent of its pre-change excess recourse liabilities.

(5) *Inadequately secured nonrecourse liabilities.* The term *inadequately secured nonrecourse liabilities* means any nonrecourse liability of which, immediately before the ownership change:

(i) The adjusted issue price (within the meaning of § 1.1275–1(b)) of the nonrecourse liability; exceeds

(ii) The fair market value of the property (determined without regard to section 7701(g) and § 1.1001–2(a)(4)(i)) which secures such nonrecourse liability.

(6) *Negative section 163(j) expense.* The term *negative section 163(j) expense* has the meaning provided in § 1.163(j)–6(h)(1).

(7) *Nonrecourse liabilities.* The term *nonrecourse liabilities* has the same meaning as the term nonrecourse liability has in § 1.1001–2(a)(4)(i).

(8) *Pre-change excess recourse liabilities.* The term *pre-change excess recourse liabilities* means:

(i) If the loss corporation is under the jurisdiction of a court under title 11 of the United States Code on the change date, in an action that results in a discharge of recourse liabilities of the loss corporation, then the amount of all of the loss corporation's liabilities immediately before the ownership change (excluding nonrecourse liabilities) that are discharged by order of the court in that action; or

(ii) In all other cases, an amount equal to the excess, if any, of:

(A) The aggregate adjusted issue price (within the meaning of § 1.1275–1(b)) of the loss corporation's liabilities immediately before the ownership change, excluding—

(*1*) Recourse liabilities to the extent that they would not be included in the determination of whether the loss corporation is insolvent within the meaning of section 108(d)(3), and

(*2*) Nonrecourse liabilities; over

(B) The sum of the fair market value of the assets that the loss corporation owns immediately before the ownership change, reduced, but not below zero, by the amount of nonrecourse liabilities that is secured by such assets immediately before the ownership change.

(9) *Recognition period.* The term *recognition period* has the meaning provided in section 382(h)(7)(A).

(10) *Section 382 asset.* The term *section 382 asset* means any asset that the loss corporation owns immediately before the ownership change, including goodwill and other intangible assets, but excluding those assets described in section 382(h)(3)(B)(ii). For purposes of this definition, all accounts receivable, other than those that were acquired in the ordinary course of the loss corporation's business, are treated as items described in section 382(h)(3)(B)(ii).

(11) *Section 382 excess business interest expense.* The term *section 382 excess business interest expense* means the amount of business interest expense of a partnership for a taxable year that was disallowed under § 1.163(j)–2(b) but not suspended under section 704(d).

(12) *Taxable income or timing limitation.* The term *taxable income or timing limitation* means:

(i) A limitation set forth in the Internal Revenue Code of 1986, as amended (Code), on the amount of a deduction that may otherwise be claimed by a loss corporation, based on, or derived from, any amount of a loss corporation's taxable income (see, for example, section 170(b)(2)(A)); or

(ii) A limitation set forth in the Code that defers the timing of a deduction that is otherwise allowable under the Code or regulations (see, for example, sections 267(a)(2) and 469).

(c) *Net unrealized built-in gains and losses*—(1) *In general.* This paragraph (c) provides rules regarding the calculation of a loss corporation's net unrealized built-in gain or net unrealized built-in loss for purposes of section 382 and the section 382 regulations. See paragraph (e)(1) of this section (regarding anti-duplication).

(2) *Consistency rules*—(i) *In general.* No amount is included in the calculation of net unrealized built-in gain or net unrealized built-in loss if the amount is properly allocable to the pre-change period (within the meaning of § 1.382–6(g)(2)) pursuant to § 1.382–6 and is included in the determination of the loss corporation's taxable income or net operating loss for the change year.

(ii) *Members of consolidated groups.* If a loss corporation enters or leaves a consolidated group on the date of an ownership change for purposes of section 382, the principles of § 1.1502–76(b) apply in determining the treatment of any taxable item for purposes of this section. Accordingly, items that are includible (under the end of the day rule (within the meaning of § 1.1502–76(b)(1)(ii)(A)) or otherwise) in the taxable year that ends as a result of the change in status of a loss corporation (S) are not treated as recognized or taken into account during the recognition period for purposes of section 382 and the section 382 regulations. See § 1.1502–28(b)(11) (regarding allocation of excluded COD income under end of the day rule principles). Moreover, no such item is included in the determination of net unrealized built-in gain or net unrealized built-in loss. For example, if income from the discharge of indebtedness is includable in the taxable year that ends as a result of S's

change in status, that income is neither treated as taken into account during the recognition period nor included in the determination of net unrealized built-in gain or net unrealized built-in loss. Further, the determination of net unrealized built-in gain or net unrealized built-in loss excludes the fair market value and basis of any asset that is disposed of on the change date if the gain or loss from that asset is includible in the taxable year that ends as a result of S's change in status. In contrast, items that are includible (under the next day rule (within the meaning of § 1.1502–76(b)(1)(ii)(B)) or otherwise) in the taxable year that begins as a result of S's change in status are treated as occurring in the recognition period, and those items (and the basis and fair market value of any assets that generate those items) are among the amounts included in the determination of net unrealized built-in gain or loss.

(3) *Computation of net unrealized built-in gain and net unrealized built-in loss*—(i) *In general.* A loss corporation's *net unrealized built-in gain,* if positive, or *net unrealized built-in loss,* if negative, is the amount equal to—

(A) The sum of the amount that would be realized (taking into account section 382(h)(8)) if, immediately before the ownership change, the loss corporation—

(*1*) Had satisfied each inadequately secured nonrecourse liabilities by surrendering to the creditor all of the assets securing that debt; and

(*2*) Had sold all of its section 382 assets (other than those assets described in paragraph (c)(3)(i)(A)(*1*) of this section) at fair market value to an unrelated third party with the hypothetical buyer assuming no liabilities; decreased by

(B) The aggregate adjusted basis of the loss corporation's section 382 assets immediately before the ownership change; decreased by

(C) The amount of any non-contingent liability of the loss corporation immediately before the ownership change for which the loss corporation would be allowed a deduction (including a deduction for a capital loss) on payment of the liability (determined without regard to any taxable income or timing limitation); decreased by

(D) The estimated value of any liability of the loss corporation that is contingent immediately before the ownership change, for which, upon the removal of the contingency, the loss corporation would be allowed a deduction (including a deduction for a capital loss) on payment or accrual (determined without regard to any taxable income or timing limitation); increased or decreased by

(E) The loss corporation's section 481 adjustments that would be taken into account on the sale referred to in paragraph (c)(3)(i)(A) of this section; increased by

(F) The amount that would be treated as recognized built-in gain under paragraph (d)(2) of this section if all amounts (except for amounts described in paragraph (d)(2)(ii) of this section) were properly taken into account during the recognition period; decreased by

(G) The amount that would be treated as recognized built-in loss under paragraph (d)(3) of this section if all amounts (except for amounts described in paragraph (d)(3)(ii) of this section) were properly taken into account during the recognition period.

(ii) *Adjustments related to discharge of indebtedness*—(A) *In general.* Except as provided in paragraph (c)(3)(ii)(B) of this section, no amount of discharge of indebtedness income recognized during the recognition period that is included in gross income under section 61(a)(12) or excluded under section 108(a) is added to the computation of the loss corporation's net unrealized built-in gain or net unrealized built-in loss. See paragraphs (c)(2) and (c)(3)(iii)(C) of this section for limitations on amounts that can be included in the computation of net unrealized built-in gain and net unrealized built-in loss.

(B) *Exception for first-year recourse COD income.* A loss corporation may apply the provisions of this paragraph (c)(3)(ii)(B) to all of its first-year recourse COD income, subject to the timing rules of paragraphs (c)(3)(iii)(D) of this section. An adjustment that is made pursuant to this paragraph (c)(3)(ii)(B) can cause a loss corporation that would otherwise have a net unrealized built-in loss to have a net unrealized built-in gain or to meet the requirements of section 382(h)(3)(B) such that the loss corporation's net unrealized built-in gain or net unrealized built-in loss is zero. See paragraphs (c)(2) and (c)(3)(iii)(C) of this section for limitations on amounts that can be included in the computation of net unrealized built-in gain and net unrealized built-in loss.

(*1*) *Discharge of indebtedness income included in gross income.* The amount calculated under paragraph (c)(3)(i) of this section is increased by the amount of all first-year recourse COD income that is included in gross income under section 61(a)(12). This amount of first-year recourse COD income is treated as recognized built-in gain. See paragraph (d)(2)(iii) of this section.

(*2*) *Excluded discharge of indebtedness income reducing post-ownership change attributes.* The amount calculated under paragraph (c)(3)(i) of this section is increased by the amount of all first-year recourse COD income that is excluded under section 108(a), to the extent section 108(b) reduces attributes that are not pre-change losses, as defined in § 1.382–2(a)(2), including reduction under section 1017(a) of the basis of the loss corporation's assets that were not held at the time of the ownership change. This amount of first-year recourse COD income is treated as recognized built-in gain. See paragraph (d)(2)(iii) of this section. This paragraph (c)(3)(ii)(B)(*2*) does not apply to amounts of first-year recourse COD income corresponding to debt whose discharge results in reduction under section 1017(a) of the basis of the loss corporation's assets that were held at the time of the ownership change.

(*3*) *Excluded discharge of indebtedness income reducing basis.* A loss corporation decreases the amount of basis that is described in paragraph (c)(3)(i)(B) of this section by the amount of first-year recourse COD income that is excluded under section 108(a), to the extent that section 1017(a) reduces the basis of the loss corporation's section 382 assets. No other adjustment to the computation in paragraph (c)(3)(i) of this section is made with respect to the first-year recourse COD income described in this paragraph (c)(3)(ii)(B)(*3*), and this amount of first-year recourse COD income is not treated as recognized built-in gain.

(iii) *Additional operating rules*—(A) *Value of contingent liabilities.* If any liability described in paragraph (c)(3)(i)(C) of this section is reflected on the face of the most recently issued applicable financial statement, within the meaning of section 451(b)(3) and the regulations in this part under section 451 of the Internal Revenue Code (determined without regard to whether the taxpayer has another statement described in section 451(b)(3) and the regulations in this part under section 451 of the Internal Revenue Code), then the estimated value of a liability is the amount of such liability reflected on the most current applicable financial statement as of the change date. The estimated value of any liability described in paragraph (c)(3)(i)(C) of this section is not adjusted to reflect the actual amount of liability that is established on removal of the contingency.

(B) *Inventory.* The principles of § 1.1374–7 apply to determine the amount realized under paragraph

(c)(3)(i)(A) of this section with regard to inventory.

(C) *Limitation on total amount of adjustment to NUBIL/NUBIG regarding recourse COD income.* The total amount of increases in the calculation of net unrealized built-in gain or loss under paragraph (c)(3)(i) of this section related to first-year recourse COD income under paragraph (c)(3)(ii)(B) of this section is limited to the loss corporation's liabilities immediately before the ownership change (excluding nonrecourse liabilities) to the extent of its pre-change excess recourse liabilities defined in paragraph (b)(8)(i) or (ii) of this section, as applicable.

(D) *Timing of adjustments described in paragraphs (c)(3)(ii)(B)(1) through (3) of this section.* If a loss corporation chooses to apply the provisions of this paragraph (c)(3)(iii)(D) to all of its first-year recourse COD income, then it must make the adjustments described in paragraphs (c)(3)(ii)(B)(*1*) through (*3*) of this section, in their entirety as of the change date. However, a loss corporation may make these adjustments only if—

(*1*) The statement described in § 1.382–11 reflects such adjustments or;

(*2*) The loss corporation files an amended return for the taxable year that includes the change date and includes an amended § 1.382–11 statement (entitled ''AMENDED STATEMENT PURSUANT TO § 1.382–11(a) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF TAXPAYER], A LOSS CORPORATION,'') to reflect such adjustments.

(E) *Adjusted basis of the loss corporation's section 382 assets.* The adjustments of this paragraph (c)(3)(iii)(E) apply for purposes of determining the adjusted basis of loss corporation's assets under section 382(h)(2)(A)(ii)(II) and (B)(ii)(I) and the computation of net unrealized built-in gain and loss under section 382(h)(6)(C) and paragraph (c)(3)(i)(B) of this section. The loss corporation's basis in its section 382 assets is adjusted immediately before the ownership change by the amount of any adjustment that would apply if the section 382 asset were sold immediately before the ownership change. For example, the loss corporation's basis in a partnership interest is adjusted to the extent § 1.163(j)–6(h)(3)(i) would have required an adjustment if the loss corporation had disposed of all or substantially all of its partnership interest immediately before the ownership change.

(F) [Reserved]

(d) *Recognized built-in gain and loss*—(1) *In general.* This paragraph (d) provides rules for determining whether an item is recognized built-in gain or recognized built-in loss for purposes of section 382(h) and the section 382 regulations . Except as expressly provided in this paragraph (d), no amount is treated as recognized built-in gain or recognized built-in loss if that amount was not properly included in the computation of the loss corporation's net unrealized built-in gain or net unrealized built-in loss pursuant to paragraph (c)(3) of this section.

(2) *Recognized built-in gain*—(i) *In general.* Except as otherwise provided in this paragraph (d)(2) and in paragraph (d)(4) of this section, subject to section 382(h)(1)(A)(ii), an item of income that is properly taken into account during the recognition period is a recognized built-in gain only if the item would have been properly included in gross income before the change date by an accrual method taxpayer (disregarding any method of accounting for which an election by the taxpayer must be made unless the taxpayer actually elected that method). As a result, for example, cost recovery deductions on an appreciated asset claimed during the recognition period are not treated as generating recognized built-in gain.

(ii) *Disposition of an asset.* The gain recognized on the disposition of an asset during the recognition period is recognized built-in gain to the extent provided in section 382(h)(2)(A). Income included as a dividend under section 61(a)(7) (including amounts treated as dividends under section 1248) and inclusions of income with respect to stock (excluding gain recognized on the disposition of stock), for example under section 951(a) and 951A(a), are not treated as recognized built-in gain.

(iii) *Income from discharge of indebtedness attributable to certain recourse liabilities.* If a loss corporation chooses to apply the provisions of paragraph (c)(3)(ii)(B) of this section, then the amounts described in paragraphs (c)(3)(ii)(B)(*1*) and (*2*) of this section are treated as recognized built-in gain on the date recognized. Otherwise, no income from the discharge of indebtedness attributable to recourse liabilities is recognized built-in gain.

(iv) *Income from discharge of indebtedness attributable to certain nonrecourse liabilities.* Except as provided in this paragraph (d)(2)(iv), no income from the discharge of indebtedness attributable to nonrecourse liabilities is recognized built-in gain.

(A) *Treatment as RBIG.* Notwithstanding paragraph (d)(2)(i) of this section, the amount of all first-year nonrecourse COD income that is included in gross income under section 61(a)(12) or first-year nonrecourse COD income that is excluded under section 108(a), to the extent section 108(b) reduces attributes that are not pre-change losses, as defined in § 1.382–2(a)(2), is recognized built-in gain on the date recognized. This paragraph (d)(2)(iv)(A) does not apply to amounts of first-year nonrecourse COD income corresponding to debt whose discharge results in reduction of basis described in section 1017(a).

(B) *Adjustment to basis.* First-year nonrecourse COD income that is excluded under section 108(a) and reduces the basis of the loss corporation's assets that the loss corporation owned immediately before the ownership change is not recognized built-in gain. However, first-year nonrecourse COD income that is excluded under section 108(a) and reduces the basis of assets that the loss corporation did not own immediately before the ownership change is recognized built-in gain.

(C) *Limitation on total amount of RBIG regarding nonrecourse COD income.* The amount of first-year non-recourse COD income treated as recognized built-in gain under this paragraph (d)(2)(iv) is limited to the excess of adjusted issue price of debt over fair market value of property measured under paragraph (e)(5) of this section.

(D) *No adjustment to the NUBIG/NUBIL computation.* The computation under paragraph (c)(3)(i) of this section is not adjusted to reflect recognized built-in gain amounts related to this paragraph (d)(2)(iv). Nonetheless, for purposes of determining the limitations on amounts of recognized built-in gain or loss under section 382(h)(2)(A)(ii)(II) and (B)(ii)(I), the adjusted basis of the loss corporation's section 382 assets reflects the reduction, if any, described in paragraph (d)(2)(iv)(B) of this section.

(v) *Installment method.* The amount of income reported under the installment method (see section 453) that is treated as recognized built-in gain is determined under the principles of § 1.1374–4(h) (determined without regard to § 1.1374–2(a)(2)). Further, if a loss corporation that is a member (selling or distributing member) of a consolidated group (as defined in § 1.1502–1(h)) transfers a built-in gain asset to a member of the same consolidated group (transferee member) before or during the recognition period, the gain is deferred under § 1.1502–13,

and before the close of the recognition period, the transferee member sells the built-in gain asset in a sale reportable under the installment method, then any deferred gain is RBIG when taken into account by the selling or distributing member, even if the gain is taken into account after the close of the recognition period.

(vi) *Prepaid income.* Any amount received prior to the change date that is attributable to performance occurring on or after the change date is not recognized built-in gain. Examples to which this paragraph (c)(2)(vi) applies include income received prior to the change date that is deferred under sections 451(c) or 455.

(3) *Recognized built-in loss*—(i) *In general.* Except as otherwise provided in paragraphs (d)(3) and (4) of this section, subject to section 382(h)(1)(B)(ii), any deduction properly allowed during the recognition period is treated as recognized built-in loss if an accrual-method taxpayer would have been allowed a deduction for the item against gross income before the change date (taking into account any additional methods of accounting actually used by the loss corporation). For purposes of this paragraph (d)(3), in determining whether an accrual-method taxpayer would have been allowed a deduction before the change date, no taxable income or timing limitation applies. See paragraph (e) of this section for an anti-duplication rule.

(ii) *Disposition of an asset.* The loss recognized on the disposition of an asset during the recognition period is treated as a recognized built-in loss to the extent provided in section 382(h)(2)(B).

(iii) *Cost recovery deductions.* The amount of cost recovery deductions with respect to any section 382 asset for any taxable year during the recognition period is treated as recognized built-in loss to the extent of the excess, if any, of—

(A) The greater of the amount of cost recovery deductions allowed or allowable with respect to the period; over

(B) The amount of cost recovery deductions that would have been allowable if the adjusted basis on the change date equaled the fair market value of the section 382 asset, taking into account the depreciation or amortization method, as applicable; the useful life; the recovery period or amortization period, as applicable; and the convention (cost recovery schedule) actually used by the loss corporation.

(iv) *Bad debt expense.* Any bad debt deduction under section 166 that arises during the recognition period from debt owed to the loss corporation immediately before the ownership change is a recognized built-in loss to the extent it does not exceed the amount described in section 382(h)(2)(B)(ii).

(v) *Deductions for payments on certain liabilities.* A deduction for the payment of a liability that is described in paragraph (c)(3)(i)(C) or (D) of this section is a recognized built-in loss to the extent of the amount or the estimated amount of the liability, as applicable, immediately before the ownership change, that was included in the loss corporation's computation of net unrealized built-in loss or net unrealized built-in gain under paragraph (c)(3) of this section.

(vi) *Deduction for section 382 excess business interest expense*—(A) *In general.* A deduction attributable to section 382 excess business interest expense during the recognition period is recognized built-in loss to the extent the section 382 excess business interest expense is allocated to the loss corporation pursuant to § 1.163(j)–6(f)(2) and is attributable to either a pre-change period (within the meaning of § 1.382–6(g)(2)) or a taxable year prior to the ownership change. Solely for purposes of determining whether this paragraph (d)(3)(vi) applies;

(*1*) The principles of § 1.382–6(a) apply (unless the taxpayer made an election pursuant to § 1.382–6(b), in which case the principles of § 1.382–6(b) apply) to determine the extent the section 382 excess business interest expense is attributable to a pre-change period and

(*2*) Section 1.163(j)–6(g)(2)(i) applies to section 382 excess business interest expense that was allocated to the loss corporation in the order of the taxable years in which the section 382 excess business interest expense was allocated to the loss corporation pursuant to § 1.163(j)–6(f)(2), beginning with the earliest taxable year.

(B) *No adjustment to the NUBIG/NUBIL computation.* The computation of a loss corporation's net unrealized built-in gain or net unrealized built-in loss is not adjusted to reflect recognized built-in loss amounts related to this paragraph (d)(3)(vi).

(4) *Additional recognized built-in gain and loss items.* The following additional items of income, gain, deduction, or loss are treated as recognized built-in gain or recognized built-in loss, as applicable:

(i) Positive and negative section 481(a) adjustments, to the extent provided in § 1.1374–4(d)(1);

(ii) Any item of income properly taken into account during the recognition period under the completed contract method (as described in § 1.460–4(d)) and similar items of deduction, to the extent provided in § 1.1374–4(g); and

(iii) The distributive share of a partnership item to the extent provided by the principles of § 1.1374–4(i).

(5) *Section 382 disallowed business interest carryforwards.* Section 382 disallowed business interest carryforwards are not treated as recognized built-in losses.

(e) *General operating rules*—(1) *Anti-duplication rule.* Appropriate adjustments must be made in applying the provisions of this section to ensure that no item of economic gain or loss is duplicated in the computation of net unrealized built-in gain or net unrealized built-in loss, or in the computation of recognized built-in gain or recognized built-in loss. Additionally, appropriate adjustments must be made in applying the provisions of this section to ensure that no amount of net unrealized built-in gain or net unrealized built-in loss is utilized in a duplicative manner, and that the limitations on the total amount of adjustment to net unrealized built-in loss and net unrealized built-in gain take into account amounts of income from discharge of indebtedness that are excluded under section 108(a) and reduce the basis of the loss corporation's assets.

(2) *References to the principles of other regulatory provisions under section 1374.* All references in this section to the principles cross-referenced in other regulatory provisions in this part under section 1374 of the Internal Revenue Code must be interpreted, as necessary, to be consistent with the requirements and principles of this section.

(f) *Examples.* The examples in this paragraph (f) illustrate the application of the provisions of this section. For purposes of the examples in this paragraph (f), LossCo is a loss corporation that files its return on a calendar year basis, that uses the accrual method of accounting, and that has an ownership change on the last day of the taxable year (Year 0). Further, LossCo satisfies the threshold requirement of section 382(h)(3)(B)(i). Additionally, the stated facts of the example include all relevant corporate activity, property, and taxable items.

(1) *Example 1. Impact of certain liabilities on computation of net unrealized built-in loss and amount treated as recognized built-in loss*—(i) *Facts.* Immediately before the ownership change, LossCo has a section 382 asset with a fair market value of $100 and an adjusted basis of $90, a liability of $30 for which LossCo will be allowed a deduction upon payment (fixed liability), and an estimated contingent liability of $20, for

which, upon removal of the contingency and payment, LossCo will be allowed a deduction (contingent liability). In Year 1, LossCo settles and pays off the contingent liability for $25. In Year 2, LossCo pays off the fixed liability for $30.

(ii) *Analysis*—(A) *Computation of net unrealized built-in loss.* Under paragraph (c)(3)(i) of this section, LossCo has a net unrealized built-in loss of $40 ($100, the amount LossCo would realize if it sold all its assets to an unrelated third party (paragraph (c)(i)(A)(*2*) of this section), decreased by $140 (the sum of the fixed liability ($30) (paragraph (c)(i)(B) of this section), the estimated value of the contingent liability ($20) (paragraph (c)(i)(C) of this section) and the aggregate adjusted basis in the asset ($90) (paragraph (c)(i)(D) of this section)).

(B) *Settlement of the contingent liability.* Upon settlement and payment of the contingent liability in Year 1, LossCo is entitled to a deduction of $25 (disregarding application of any limitation). Under paragraph (d)(3)(vi) of this section, $20 of the deduction (the estimated value of the liability at the time of the ownership change) is recognized built-in loss and $5 is not subject to section 382. After Year 1, pursuant to section 382(h)(1)(B)(ii), the maximum amount of recognized built-in loss that LossCo can have is $20 ($40 net unrealized built-in loss, less the $20 recognized built-in loss in Year 1).

(C) *Payment of the fixed liability.* Upon paying the fixed liability in Year 2, LossCo is entitled to a deduction of $30 (disregarding application of any limitation). Under paragraph (d)(3)(vi) of this section, $30 of the deduction would have been recognized built-in loss, but the amount of recognized built-in loss is limited by section 382(h)(1)(B)(ii). As a result, of the $30 deduction, $20 is a recognized built-in loss and $10 is not subject to section 382.

(2) *Example 2. Cost recovery deductions*—(i) *Facts.* Immediately before the ownership change, LossCo has a net unrealized built-in loss of $300 that is attributable to a non-depreciable asset with a fair market value of $500 and an adjusted basis of $650, and a patent with a fair market value of $125 and an adjusted basis of $275. The patent is an ''amortizable section 197 intangible'' as defined in section 197(c) and has a 15-year amortization period. As of the change date in Year 0, the patent has a remaining amortization period under section 197 of 5 years. For Year 1, LossCo calculates a $55 amortization deduction for the patent.

(ii) *Analysis.* Under paragraph (d)(3)(iii) of this section, the amount of cost recovery deduction on the patent that is a recognized built-in loss is the excess, if any, of the amount of cost recovery deductions allowed or allowable over the amount of cost recovery deductions that would have been allowable if the adjusted basis on the change date had equaled the fair market value of the patent, taking into account the amortization method, amortization period, and convention (cost recovery schedule) actually used by the loss corporation. LossCo would have been allowed a cost recovery deduction of $25 if the adjusted basis of the patent on the change date had equaled its fair market value taking into account the cost recovery schedule actually used by LossCo, ($125 fair market value divided by remaining amortization period of 5 years). Accordingly, $30 of the Year 1 cost recovery deduction is recognized built-in loss ($55 allowed and allowable cost recovery deduction, less the $25 cost recovery deduction that would have been allowable if the adjusted basis on the change date equaled the fair market value of the patent). The remaining $25 is not subject to section 382.

(3) *Example 3. Forgiveness of pre-change excess recourse liabilities*—(i) *Facts.* On Date 1, immediately before the ownership change, LossCo has two assets: Asset 1, which has a fair market value of $100, an adjusted basis of $80, and is subject to a nonrecourse liability with an adjusted issue price of $120 (Liability 1); and Asset 2, which has a fair market value of $100, an adjusted basis of $90, and is subject to a nonrecourse liability with an adjusted issue price of $60 (Liability 2). Additionally, LossCo has a recourse liability with an adjusted issue price of $60. On Date 2, eleven months after the change date, the creditor forgives $20 of the recourse liability, which gives rise to discharge of indebtedness income that is excluded under 108(a), and for which LossCo elects to reduce the basis of Asset 1 and Asset 2 pursuant to section 108(b)(5).

(ii) *Analysis*—(A) *Calculation of net unrealized built-in gain.* The nonrecourse liability to which Asset 1 is subject is an inadequately secured nonrecourse liability, because the adjusted issue price of the liability ($120) exceeds the fair market value of the property securing the liability ($100). As a result, pursuant to paragraph (c)(3)(i)(A)(*1*) of this section, in determining its net unrealized built-in gain, LossCo is treated as satisfying Liability 1 by surrendering to the creditor Asset 1, resulting in an amount realized of $120. Additionally, pursuant to paragraph (c)(3)(i)(A)(*2*) of this section, LossCo is treated as selling Asset 2 and having an amount realized of $100. As a result, LossCo has a net unrealized built-in gain of $50 ($120 amount realized on Asset 1, plus the $100 amount realized on Asset 2, less the $170 aggregate adjusted basis of LossCo's section 382 assets). See paragraph (c)(3)(i) of this section.

(B) *Forgiveness of the recourse liability.* Pursuant to paragraph (c)(3)(ii)(A) of this section, the forgiveness of the recourse liability will not impact the calculation of LossCo's net unrealized built-in gain, unless it chooses to apply the provisions of paragraph (c)(3)(ii)(B) of this section to all of its first-year recourse COD income. The recourse liability is a pre-change excess recourse liability to the extent its adjusted issue price ($60) exceeds the fair market value of LossCo's section 382 assets, reduced, but not below zero, by the amount of nonrecourse liability that is secured by such assets immediately before the ownership change ($0 for Asset 1 and $40 for Asset 2), or $20. As a result, the first-year recourse COD income is $20 (the $20 income to the extent of the pre-change excess recourse liability). If LossCo chooses to apply the provisions of (c)(3)(ii)(B) of this section, then, pursuant to paragraph (c)(3)(ii)(B)(*3*) of this section, LossCo decreases by $20 the amount of basis it uses to compute its net unrealized built-in gain. As a result, LossCo has a net unrealized built-in gain of $70 ($120 amount realized on Asset 1, plus $100 amount realized on Asset 2, less $150 aggregate adjusted basis of LossCo's section 382 assets. See paragraph (c)(3)(i)(D) of this section. The first-year recourse COD income is not recognized built-in gain.

(4) *Example 4. Forgiveness of a recourse liability that is not a pre-change excess recourse liability*—(i) *Facts.* The facts are the same as in paragraph (f)(3)(i) (*Example 3*) of this section, except that, as of the date of the ownership change, LossCo also owns Asset 3, which has a fair market value of $80 and an adjusted basis of $50. Additionally, LossCo includes the $20 of cancellation of indebtedness income in gross income that was recognized on Date 2 under section 61(a)(12).

(ii) *Analysis*—(A) *Calculation of net unrealized built-in gain.* As in paragraph (f)(3)(ii)(A) (*Example 3*) of this section, the nonrecourse liability on Asset 1 is an inadequately secured nonrecourse liability, and as a result, pursuant to paragraph (c)(3)(i)(A)(*1*) of this section, the amount realized with respect to Asset 1 is $120. Additionally, pursuant to paragraph (c)(3)(i)(A)(*2*) of this section, LossCo is treated as selling Asset 2 and Asset 3 for an amount realized of $180 ($100, plus $80). As a result, LossCo has a net unrealized built-in gain of $80 ($120 amount realized on Asset 1, plus $100 amount realized on Asset 2, plus $80 amount realized on Asset 3, less $220 aggregate adjusted basis of LossCo's section 382 assets. See paragraph (c)(3)(i)(D) of this section.

(B) *Forgiveness of the recourse liability.* The forgiveness of the recourse liability will not impact the calculation of LossCo's net unrealized built-in gain under paragraph (c)(3)(ii)(A) of this section. The adjustment provided under paragraph (c)(3)(ii)(B) of this section for certain recourse liabilities is not available (and the cancellation of indebtedness is not recognized built-in loss) because the recourse liability does not constitute a pre-change excess recourse liability. See paragraph (b)(4) and (8) of this section. The recourse liability is not a pre-change excess recourse liability because its adjusted issue price ($60) does not exceed the fair market value of the LossCo's section 382 assets, reduced, but not below zero, by the amount of nonrecourse liability that is secured by such assets immediately before the ownership change ($0 for Asset 1, $40 for Asset 2, and $80 for Asset 3).

(5) Example 5. Computing net unrealized built-in gain or loss of a partner that is allocated section 382 excess business interest expense—(i) *Facts.* LossCo and unrelated Corp A are equal partners in partnership PRS. LossCo has a basis of $100 in its PRS interest, which has a fair market value of $90. In Year 1, PRS pays or accrues $100 of section 382 excess business interest expense, which is allocated equally to LossCo and Corp A. At the end of Year 1, LossCo has an ownership change. In Year 2, PRS has $80 of excess taxable income (within the meaning of § 1.163(j)–1(b)(15)), of which $40 is allocated

to LossCo pursuant to § 1.163(j)–6(f)(2). LossCo's section 163(j) limitation (within the meaning of § 1.163(j)–1(b)(31)) for Year 2 is $25, and LossCo pays or accrues $60 of other business interest expense in Year 2. LossCo's section 382 limitation for Year 2 is $30.

(ii) *Analysis*—(A) *Year 1*—(*1*) *Basis reduction to reflect allocation of excess business interest expense.* Pursuant to section 163(j)(4) and § 1.163(j)–6, a partner in a partnership reduces its adjusted basis in its partnership interest by the amount of excess business interest expense allocated to that partner. As a result, LossCo's basis in its PRS interest is reduced from $100 to $50 in Year 1.

(*2*) *Calculation of net unrealized built-in gain or loss.* LossCo experiences an ownership change at the end of Year 1. Paragraph (c)(3)(iii)(E) of this section provides that, in computing a loss corporation's net unrealized built-in gain or loss, the amount of the corporation's basis in its section 382 assets is adjusted immediately before the ownership change by the amount of any adjustment that would apply if the section 382 asset were sold immediately before the ownership change. If LossCo had sold its PRS interest immediately before the ownership change, § 1.163(j)–6(h)(3)(i) would have required LossCo to increase its basis in the PRS interest by $50, the amount of its remaining excess business interest expense. As a result, for purposes of section 382(h)(6)(C) and paragraph (c)(3)(i)(B) of this section, LossCo's basis in its PRS interest is adjusted by the same amount. Thus, for purposes of computing LossCo's net unrealized gain or loss, LossCo's basis in its PRS interest is increased to $100 immediately before the ownership change.

(B) *Year 2*—(*1*) *Treatment of excess business interest expense as paid or accrued.* Pursuant to § 1.163(j)–6(g)(2)(i), because LossCo is allocated $40 of excess taxable income from PRS in Year 2, LossCo treats $40 of its excess business interest expense (from Year 1) as paid or accrued in Year 2. LossCo's remaining $10 of excess business interest expense from Year 1 continues to be characterized as excess business interest expense in succeeding years. See § 1.163(j)–6(g)(2)(ii).

(*2*) *Section 163(j) deduction.* In Year 2, LossCo is treated as having paid or accrued $100 of business interest expense ($40 of excess business interest expense that is treated as business interest expense under § 1.163(j)–6(g)(2)(i), and $60 of business interest expense that LossCo actually paid or accrued in Year 2). Because LossCo has a section 163(j) limitation of $25, LossCo can deduct only $25 of its $100 Year 2 business interest expense (see § 1.163(j)–2(b)). Pursuant to § 1.383–1(d)(1)(ii), LossCo is treated as deducting $25 of its section 382 excess business interest expense that is treated as business interest expense in Year 2, because this amount is a recognized built-in loss. No adjustment is made to the computation of LossCo's net unrealized built-in gain or loss to reflect the $25 of LossCo's recognized built-in loss. See paragraph (c)(3)(vi) of this section. Both LossCo's $15 of Year 1 excess business interest expense that was treated as business interest expense in Year 2 and the $60 of other business interest expense that was paid or accrued in Year 2 is disallowed in Year 2 under § 1.163(j)–2(b). These amounts are treated as disallowed business interest expense carryforwards into Year 3 under § 1.163(j)–2(c), with the $15 carryforward being subject to section 382 limitation. See paragraph (d)(3)(vi) of this section.

(g) *Applicability dates*—(1) *In general.* This section applies to any ownership change occurring after date of publication of Treasury decision adopting these proposed regulations as final regulations in the **Federal Register**. For ownership changes occurring on or before the date the Treasury decision adopting these proposed regulations as final regulations is published in the **Federal Register**, see § 1.382–7 as contained in 26 CFR part 1, revised April 1, 2019. However, taxpayers and their related parties, within the meaning of sections 267(b) and 707(b)(1), may apply the rules of this section to any ownership change occurring during a taxable year with respect to which the period described in section 6511(a) has not expired, as long as the taxpayers and their related parties consistently apply the rules of this section and § 1.382–7(a)(9) through (13) to such ownership change and all subsequent ownership changes that occur before the applicability date of final regulations.

(2) *Paragraph (d)(2)(vi) of this section.* Paragraph (d)(2)(vi) of this section applies to loss corporations that have undergone an ownership change on or after June 11, 2010. For loss corporations that have undergone an ownership change before June 11, 2010, see § 1.382–7T as contained in 26 CFR part 1, revised April 1, 2009.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2019–18152 Filed 9–9–19; 8:45 am]

BILLING CODE 4830–01–P

Notices

Federal Register

Vol. 84, No. 175

Tuesday, September 10, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2019–0021]

Notice of Request To Renew an Approved Information Collection: Specified Risk Materials

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to renew the approved information collection regarding specified risk materials in cattle. The approval for this information collection will expire on February 29, 2020. There are no changes to the information collection.

DATES: Submit comments on or before November 12, 2019.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2019–0021. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, call (202) 720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250–3700; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Title: Specified Risk Materials.

OMB Control Number: 0583–0129.

Expiration Date: 2/29/2020.

Type of Request: Renewal of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). FSIS protects the public by verifying that meat and poultry products are safe, wholesome, not adulterated, and correctly labeled.

FSIS requires official establishments that slaughter cattle or process carcasses or parts of cattle to develop written procedures for the removal, segregation, and disposition of SRMs. The Agency requires that these establishments maintain daily records to document the implementation and monitoring of their procedures for the removal, segregation, and disposition of SRMs, as well as any corrective actions that they take to ensure that the procedures are effective (9 CFR 310.22).

FSIS also requires official slaughter establishments that transport carcasses or parts of cattle 30 months of age and older and containing vertebral columns to other federally inspected establishments to maintain records verifying that the receiving establishments removed and properly disposed of the portions of the vertebral column designated as SRMs (9 CFR 310.22(g)).

This monitoring and recordkeeping is necessary for establishments to ensure, in a manner that can be verified by FSIS, that meat and meat products distributed in commerce for use as human food do not contain SRMs.

The approval for this information collection will expire on February 29, 2020. There are no changes to the existing information collection. FSIS has made the following estimates for the renewal information collection:

Estimate of Burden: FSIS estimates that it will take respondents an average of approximately .116 hours per response.

Respondents: Official establishments that slaughter cattle or process parts of cattle.

Estimated No. of Respondents: 3,512.

Estimated No. of Annual Responses per Respondent: 303.

Estimated Total Annual Burden on Respondents: 123,916 hours.

Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250–3700; (202) 720–5627.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How to File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Carmen M. Rottenberg,

Administrator.

[FR Doc. 2019–19443 Filed 9–9–19; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ashley National Forest, Utah and Wyoming; Revision of Ashley National Forest Land and Resource Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service is revising the Land Management Plan (Forest Plan) for the Ashley National Forest and preparing an environmental impact statement (EIS). This notice describes the documents available for review and how to obtain them; summarizes the preliminary needs for changing the existing forest plan; summarizes the proposal to revise the forest plan, provides information concerning public participation and collaboration, including the process for submitting comments; provides an estimated schedule for the planning process, including the time available for comments, and includes the names and addresses of agency contacts who can provide additional information.

DATES: Comments concerning the scope of the analysis must be received by November 8, 2019. The agency expects to release a draft revised Forest Plan and EIS by fall 2020 and a final revised Forest Plan and EIS by summer 2021.

ADDRESSES: Send written comments to Ashley National Forest, Attention: Plan Revision, 355 North Vernal Avenue, Vernal, Utah 84078–1703. Comments may also be sent via email to *AshleyForestPlan@usda.gov,* or via facsimile to (435) 781–5142.

FOR FURTHER INFORMATION CONTACT: Cathleen Neelan, Forest Plan Revision Team Leader, at (435) 781–5120. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. More information on the planning process may be found on the Ashley National Forest's Planning website at *https://www.fs.usda.gov/main/ashley/landmanagement/planning.*

SUPPLEMENTARY INFORMATION:

Proposed Action, Purpose and Need, and Need To Change

The proposed action is to revise the Forest Plan to address the identified need to change the existing Forest Plan. According to the National Forest Management Act (NFMA), forest plans are to be revised on a 10 to 15-year cycle. The purpose and need for revising the current Forest Plan is (1) the Forest Plan is over 30 years old and has been amended 24 times, (2) since the Forest Plan was approved in 1986, there have been changes in economic, social, and ecological conditions, new policies and priorities, and new information based on monitoring and scientific research, and (3) to address the preliminary need to change to the existing plan, which is summarized below.

Extensive public and employee involvement, along with science-based evaluations, will help shape the preliminary need to change the existing Forest Plan, so a proposed plan can be developed and analyzed in an EIS.

The Ashley National Forest planning team has developed preliminary need to change statements in the document ''Preliminary Need to Change the Ashley National Forest Land Management Plan,'' available for review on the Ashley forest plan revision website at *https://www.fs.usda.gov/main/ashley/landmanagement/planning.* This document was developed based on public comments on and information in the Ashley National Forest Assessment. The responsible official will use public comments on the preliminary need to change information to develop an identified need to change that will provide the basis for revising the Forest Plan.

The preliminary need to change the Forest Plan has been organized into five focus topics. Focus topics make it easier to ensure the purpose and need to revise the Forest Plan are met. The focus topics are as follows:

1. There is need for sustainable recreation (balance recreation use with ecological integrity, address population increases and aging populations; and address shifts in types of preferred recreation.)

2. There is need for economic resiliency (balancing local communities and economies with ecosystem services generated on the Ashley National Forest) including municipal water, recreation activities, employments and tourism.

3. There is need to manage traditional resource uses (conserve and encourage

traditional uses such as mineral development, livestock grazing, timber and woodland products use, fuelwood collection, etc.) and balance them with other multiple uses while transitioning from commodity based goods to a focus on restoration, resiliency and sustainability within emerging economic opportunities.

4. There is need to manage cultural resources, improving tribal relationships and partnerships, to provide for subsistence and other cultural activities, including guidance to manage areas of tribal importance.

5. There is need to manage for resilient ecosystems and watersheds (protect and restore terrestrial and aquatic ecosystems and reduce conifer encroachment in vegetation communities associated with wildlife diversity and grazing).

The preliminary need to change information has led to development of a ''Proposal to Revise the Land Management Plan.'' Public review and comments on these documents will help the Ashley National Forest responsible official and planning team to refine the need to change the Forest Plan and develop a proposed revised Forest Plan that will be analyzed in a draft EIS.

Lead and Cooperating Agencies

The Ashley National Forest is the lead agency for the environmental analysis process during the revision of the Forest Plan. The following counties have been formally identified as cooperating agencies for Utah: Daggett, Duchesne, Summit, Utah and Uintah Counties. The State of Utah—Public Lands Policy Coordinating Office and the Conservation Districts for Daggett, Uintah and Duchesne also serve as cooperating agencies. Entities formally identified as cooperating agencies for Wyoming include the State of Wyoming Governor's Policy Office, Sweetwater County and two Conservation Districts for Wyoming; Sweetwater and Uinta. The Ute and Eastern Shoshone Tribes did not sign formal agreements with the Ashley National Forest but are treated similar to cooperators because of their sovereign status.

Responsible Official

Mike Richardson, Acting Forest Supervisor, Ashley National Forest

Nature of the Decision To Be Made

The Ashley National Forest is preparing an EIS to revise the existing 1986 Forest Plan. The environmental analysis process is meant to inform the Forest Supervisor so he can decide which alternative best maintains and restores National Forest System terrestrial and aquatic resources while providing ecosystem services and multiple uses, as required by the NFMA and the Multiple Use Sustained Yield Act.

The revised Forest Plan will describe the strategic intent of managing the Ashley National Forest for the next 10 to 15 years and will address the identified need to change the existing Forest Plan. The revised Forest Plan will provide management direction in the form of desired conditions, objectives, standards, guidelines, and suitability of lands. The revised Forest Plan will identify management areas and geographic areas, the timber sale program quantity, and the river segments found eligible for inclusion in the National Wild and Scenic Rivers System. The revised Forest Plan may also include preliminary administration recommendations for wilderness designation by Congress. The revised Forest Plan will identify suitable uses of the Ashley National Forest, and it will identify a variety of recreation opportunities. The revised Forest Plan will provide a description of the plan area and its distinctive roles and contributions within the broader landscape, identify watersheds that are a priority for maintenance or restoration, include a monitoring program, and contain information reflecting expected possible actions over the life of the plan.

The revised Forest Plan will provide broad, strategic guidance that is consistent with other laws and regulations. Though strategic guidance will be provided, no decisions will be made regarding the regulation of public activities and access to federal lands; the management of individual roads, trails, or areas associated with the Travel Management Rule (36 CFR part 212); or permitted activities, such as outfitters and guides, or grazing. These activities, projects, and site-specific management actions are managed through separate administrative and regulatory processes. Similarly, no decision regarding oil and gas leasing availability will be made, although plan components may be brought forward or developed in the future that will help guide oil and gas leasing availability decisions that may be necessary. Some actions (such as hunting regulations), although important, are outside Forest Service authority and cannot be included in the proposed action.

Documents Available for Review and Comment

The ''Preliminary Need to Change the Ashley National Forest Land Management Plan'' and the ''Proposal to Revise the Land Management Plan'' are available for review at the Ashley National Forest Planning website at: *https://www.fs.usda.gov/main/ashley/landmanagement/planning.* In addition to these documents, the Ashley National Forest is requesting review and comment on the Wilderness Evaluation Report and the Wild and Scenic Rivers Eligibility Report, also available on the website. Congress has the authority to make wilderness and wild and scenic river designations; however, the 2012 Planning Rule requires the Forest Service to evaluate and make recommendations for such designations through the plan revision process. Both evaluations are a multi-step process that require public feedback throughout the forest plan revision process. Further opportunities for public participation will be provided on the inventories, evaluations, analyses, and, for wilderness, preliminary administrative recommendations.

Scoping Process

This Notice of Intent initiates the scoping process, which guides the development of the EIS. The Ashley National Forest uses multiple means of communication and notification about forest plan revision information and events. These include newspaper, radio, TV, posters, social media and electronic notices. Informal phone networks have been developed to get information to members of the public that do not use electronic communication along with a newsletter update for important steps in the process that is mailed by postal mail. The Ashley National Forest encourages all those interested to sign up for information electronically on the Ashley National Forest Planning website *https://www.fs.usda.gov/main/ashley/landmanagement/planning,* submit comments, and continue to monitor the website for updates.

Written comments received in response to this notice will be considered to determine the need to change the existing plan, further develop the proposed action, and identify potential significant issues. Significant issues will help form the basis for developing alternatives to the proposed action. Comments received on the Wilderness Evaluation Report and the Wild and Scenic Rivers Eligibility Report will be considered to refine report findings as well as the process.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly

articulate the reviewer's issues and contentions, and make suggestions for changes or inclusions. Comments received in response to this notice, including the names and addresses of those who comment, will be part of the public record. Comments submitted anonymously will be accepted and considered in the environmental analysis process; however, anonymous comments will not provide the Ashley National Forest the ability to provide the respondent with subsequent environmental documents. Refer to the Ashley National Forest website *https://www.fs.usda.gov/main/ashley/landmanagement/planning* for information on when public meetings will be scheduled for refining the proposed action and to begin identifying possible alternatives.

The decision to approve the revised Forest Plan will be subject to the objection process for the planning process (36 CFR part 219, subpart B). Only those individuals and entities who submit substantive formal comments related to this Forest Plan revision during the opportunities for public comment as provided in 36 CFR part 219, subpart A, may file an objection. The burden is on the objector to demonstrate compliance with requirements for objection (36 CFR 219.53).

Applicable Planning Rule

Preparation of the revised Forest Plan for the Ashley National Forest began with the publication of a notice of initiation in the **Federal Register** on July 22, 2016 (81 FR 47749) using the 2012 Forest Service planning rule (36 CFR 219 (2012)).

Dated: September 4, 2019.

Frank R. Beum,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2019–19503 Filed 9–9–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Announcement of the Availability of Disaster Relief Act 2019 Grant Funds for Community Facilities

AGENCY: Rural Housing Service, USDA.

ACTION: Notice of funds availability.

SUMMARY: As part of the Additional Supplemental Appropriations for Disaster Relief Act, 2019, the Rural Housing Service's Community Facilities Program (CF) received supplemental grant funding available for necessary expenses related to the consequences of Hurricanes Michael and Florence and wildfires occurring in calendar year 2018, tornadoes and floods occurring in calendar year 2019, and other natural disasters, to remain available until expended. The authority for the Agency to administer the Community Facilities Grant Program is provided in the Consolidated Farm and Rural Development Act (CONAct). The grant funds will be administered in accordance with this notice of funds availability.

DATES: Applications will be accepted on a continual basis, beginning on the publication date of this Notice, until funds are exhausted.

ADDRESSES: Applications will be submitted to a processing office as designated by the USDA Rural Development State Office in the state where the applicant's project is located. Agency state office contact information is available at *https://www.rd.usda.gov/about-rd/offices/state-offices.*

FOR FURTHER INFORMATION CONTACT: Karla Peiffer, USDA Rural Development, Community Facilities Program at (515) 238–6668 or via email at *karla.peiffer@usda.gov.*

SUPPLEMENTARY INFORMATION:

Language for Funding Opportunities

The Agency encourages applications that will help improve life in rural America. See information on the Interagency Task Force on Agriculture and Rural Prosperity found at *www.usda.gov/ruralprosperity.* Applicants are encouraged to consider projects that provide measurable results in helping rural communities build robust and sustainable economies through strategic investments in infrastructure, partnerships and innovation.

Key strategies include:

- Achieving e-Connectivity for Rural America
- Developing the Rural Economy
- Harnessing Technological Innovation
- Supporting a Rural Workforce
- Improving Quality of Life

To leverage investments in rural property, the Agency also encourages projects located in rural Opportunity Zones where projects should provide measurable results in helping communities build robust and sustainable economies. An Opportunity Zone is an economically-distressed community where new investments, under certain conditions, may be eligible for preferential tax treatment. Localities qualify as Opportunity Zones if they have been nominated for that designation by the state and that nomination has been certified by the Secretary of the U.S. Treasury via his delegation of authority to the Internal Revenue Service.

To combat a key threat to economic prosperity, rural workforce and quality of life, the Agency also encourages applications that will support the Administration's goal to reduce the morbidity and mortality associated with Substance Use Disorder (including opioid misuse) in high-risk rural communities by strengthening the capacity to address prevention, treatment and/or recovery at the community, county, state, and/or regional levels:

Key strategies include:

- *Prevention:* Reducing the occurrence of Substance Use Disorder (including opioid misuse) and fatal substance-related overdoses through community and provider education and harm reduction measures such as the strategic placement of overdose reversing devices, such as naloxone;
- *Treatment:* Implementing or expanding access to evidence-based treatment practices for Substance Use Disorder (including opioid misuse) such as medication-assisted treatment (MAT); and
- *Recovery:* Expanding peer recovery and treatment options that help people start and stay in recovery.

To focus investments in areas with the largest opportunity for growth in prosperity, the Agency encourages applications that serve the smallest communities with the lowest incomes, with an emphasis on areas where at least 20 percent of the population is living in poverty, according to the American Community Survey data by census tracts (or Reservation boundary for Indian tribes).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with the CF Program, as covered in this Notice, have been approved by the Office of Management Budget (OMB) under OMB Control Number 0575–0173.

Overview

Federal Agency Name: Rural Housing Service (''RHS,'' an Agency of USDA in the Rural Development mission area).

Solicitation Opportunity Title: Announcement of the Availability of Disaster Relief Act 2019 Grant Funds for Community Facilities.

Announcement Type: Notice of Funds Availability.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.766.

Dates: Applications will be accepted on a continual basis, beginning on the publication date of this Notice, until funds are exhausted.

A. Program Description

This program is designed to provide supplemental grant funding for eligible CF applicants and eligible CF projects related to the consequences of Hurricanes Michael and Florence and wildfires occurring in calendar year 2018, tornadoes and floods occurring in calendar year 2019, and other natural disasters.

Details on eligible CF applicants and eligible CF projects may be found in Section C. Eligibility Information below.

The applicable Statutory or Regulatory authorities for this action are incorporated by reference and include the following:

- Additional Supplemental Appropriations for Disaster Relief Act, 2019, Public Law 116–20, dated June 6, 2019, Rural Development Rural Community Facilities Program Account.
- 7 U.S.C. 1926(a)(19), The Consolidated Farm and Rural Development Act.
- 2 CFR parts 200 and 400, uniform Federal grant awards regulations.
- 7 CFR 3570, subpart B, Community Facilities Grant Program regulations.

B. Federal Award Description—Disaster Relief Act 2019

The Additional Supplemental Appropriations for Disaster Relief Act, 2019, Public Law 116–20, dated June 6, 2019, provides the Rural Housing Service's CF Program $150,000,000 in supplemental grant funding of which $150,000,000 is available for eligible CF applicants and eligible CF projects related to the consequences of Hurricanes Michael and Florence and wildfires occurring in calendar year 2018, tornadoes and floods occurring in calendar year 2019, and other natural disasters.

Funds will be allocated to the USDA Rural Development State Offices with a disaster(s) identified in the Disaster Relief Act 2019. The allocation of funds will be based on an adaption of 7 CFR 1940, subpart L, Methodology and Formulas for Allocation of Loan and Grant Program Funds.

C. Eligibility Information

1. Applicant eligibility. An eligible CF applicant must:

(i) Be one of the types of entities outlined in 7 CFR 3570.61(a);

(ii) Be unable to finance the proposed project from its own resources, or through commercial credit as outlined in 7 CFR 3570.61(c); and

(iii) Have the legal authority and responsibility to own, construct, operate, and maintain the proposed facility as outlined in 7 CFR 3570.61(e).

2. Project Eligibility. An eligible CF project must:

(i) Be an eligible facility as outlined in 7 CFR 3570.61(b);

(ii) Be financially feasible as outlined in 7 CFR 3570.61(d); and

(iii) Be for public use as outlined in 7 CFR 3570.61(f).

3. Eligible use of grant funds.

(i) Grant funds may be used for purposes outlined in 7 CFR 3570.62;

(ii) Grant funds may not be used for purposes outlined in 7 CFR 3570.63(a); and

(iii) The project expenses do not need to be in direct relationship or a result of an eligible Disaster Relief Act 2019 disaster.

4. Project Location Eligibility. To be eligible for CF grant funds under this Notice:

(i) The eligible CF project must be located in a rural area in a county (or a rural area of a Reservation for Indian tribes) with a Major Disaster Declaration as declared by the President of the United States;

(ii) The Major Disaster Declaration must be related to the consequences of Hurricanes Michael and Florence and wildfires occurring in calendar year 2018, tornadoes and floods occurring in calendar year 2019, and other natural disasters.

(iii) The Federal Emergency Management Agency (FEMA) must have provided a notice declaring the Major Disaster Declaration and assigned a FEMA disaster recovery (DR) number.

The term rural or rural area is defined in section 343(a)(13)(C) of the CONAct (7 U.S.C. 1991(a)(13)) as a city, town or, unincorporated area that has a population of not more than 20,000 inhabitants. The boundaries for unincorporated areas in determining populations will be based on the Census Designated Places(s)(CDP). Data from the most recent decennial census of the United States will be used in determining population. Any rural community impacted by a major declared disaster DR–4407 may have the governor in the affected state, or the governor's designee, certify the area's population as a rural area with respect to eligibility for loans, grants, and technical assistance under rural development programs funded by the Department of Agriculture until data from the 2020 United States Census is available. The certification will be provided to the Rural Development State Director of California.

For information on determining if a project is located in an area with a Major Disaster Declaration, go to the Community Facilities section of the Rural Development Disaster Assistance site located at: *https://www.rd.usda.gov/programs-services/services/rural-development-disaster-assistance.*

5. Eligible grant amounts. Grant assistance will be provided on a graduated scale with smaller communities with the lowest median household income being eligible for a higher proportion of grant funds. Grant funds will be limited to:

(i) The percentages of eligible projects costs outlined in 7 CFR 3570.63(b); and

(ii) The maximum grant assistance allowed in accordance with 7 CFR 3570.66.

D. Application and Submission Information

The requirements for submitting an application can be found at 7 CFR 3570.65. Applications will be processed in the processing office designated by the USDA Rural Development State Office in the state where the applicant's project is located. Agency state office contact information is available at *https://www.rd.usda.gov/about-rd/offices/state-offices.* Applications will be accepted on a rolling basis until funds are exhausted.

E. Application Review Information

Applications will be reviewed in accordance with 7 CFR 3570.71 (a)–(d) and scored on a priority basis in accordance with 7 CFR 3570.67. If at anytime the demand for grant funds is greater than the amount of grant funds available, a priority ranking scoring system will be used to determine which projects are funded.

F. Federal Award Information

Applicants selected for funding will be provided a Letter of Conditions. Upon acceptance of the conditions, the applicant will sign and return to the processing office Forms RD 1942–46, ''Letter of Intent to Meet Conditions,'' and RD 1940–1, ''Request for Obligation of Funds.'' The grant is approved on the date an Agency signed copy of Form RD 1940–1, ''Request for Obligation of Funds,'' is mailed to the applicant.

Prior to the disbursement of grant funds, applicants approved for funding will be required to sign an Agency approved Grant Agreement, meet any pre-disbursement conditions outlined in the Letter of Conditions, and meet the applicable Statutory or Regulatory authority for this action listed in Section A. Program Description.

In the event the application is not approved, the applicant will be notified in writing of the reasons for rejection and provided applicable review and appeal rights in accordance with 7 CFR part 11.

G. Federal Awarding Contacts

USDA Rural Development State Office in the state where the applicant's project is located. Agency state office contact information is available at *https://www.rd.usda.gov/about-rd/offices/state-offices.*

H. Other Information

1. Civil Rights. Programs referenced in this Notice are subject to applicable Civil Rights Laws. These laws include the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended in 1988, and Section 504 of the Rehabilitation Act of 1973.

2. Non-Discrimination Statement. In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, familial/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Bruce W. Lammers,

Administrator, Rural Housing Service.

[FR Doc. 2019–19552 Filed 9–9–19; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the California Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the California Advisory Committee (Committee) to the Commission will be held at 1:00 p.m. (Pacific Time) Monday, September 23, 2019. The purpose of the meeting is for the Committee to continue planning their briefing on the impact of immigration enforcement on California children.

DATES: The meeting will be held on Monday, September 23, 2019 at 1:00 p.m. PT.

Public Call Information:

Dial: 800–367–2403.

Conference ID: 7887893.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes at *afortes@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–367–2403, conference ID number: 7887893. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and 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 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for publicv viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkUAAQ.*

Please click on ''Committee Meetings'' tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Planning Discussion
  a. Vote on Speakers
  b. Vote on Panel Titles
  c. Logistics
  d. Publicity
III. Public Comment
IV. Next Steps
V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of recovery from the government shutdown.

Dated: September 5, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–19524 Filed 9–9–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the California Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the California Advisory Committee (Committee) to the Commission will be held at 11:00 a.m. (Pacific Time) Thursday, October 10, 2019. The purpose of the meeting is for the Committee to continue planning briefing on the immigration enforcement impacting California children.

DATES: The meeting will be held on Thursday, October 10, 2019 at 11:00 a.m. PT.

Public Call Information: Dial: 800–353–6461, Conference ID: 9209019.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes at *afortes@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–353–6461 conference ID number: 9209019. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and 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 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov*. Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkUAAQ*.

Please click on ''Committee Meetings'' tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Planning Discussion
  a. Speakers/Panels
  b. Logistics
  c. Publicity
III. Public Comment
III. Next Steps
IV. Adjournment

Dated: September 5, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–19525 Filed 9–9–19; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–53–2019]

Foreign-Trade Zone (FTZ) 26—Atlanta, Georgia; Notification of Proposed Production Activity; Patterson Pump Company (Specialty Pumps), Toccoa, Georgia

Patterson Pump Company (Patterson) submitted a notification of proposed production activity to the FTZ Board for its facility in Toccoa, Georgia. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on August 29, 2019.

The applicant has submitted a separate application for FTZ designation at the company's facility under FTZ 26. The facility is used for the production of specialty pumps for the fire, municipal, industrial, flood-control, plumbing, and HVAC markets. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Patterson from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Patterson would be able to choose the duty rates during customs entry procedures that apply to fire pumps; HVAC pumps; custom pumps; liquid elevators; cast stainless steel pump components; cast bronze pump components; valve parts including gaskets, O-rings, springs, and fittings; pump control cabinets less than and greater than 1,000 volts with motor controls; pump control cabinets less than and greater than 1,000 volts with programmable logic controls; pump control cabinets less than and greater than 1,000 volts; control cabinet parts including fuses and relays; stainless steel pump parts including impellers; ductile iron pump cases; cast iron pump cases; stainless steel impellers; cast iron pump cases; steel shaft couplings; brass pump castings; complete pump systems with motors; and, custom metal fabrications including stainless steel gas turbine parts and frames (duty rate ranges from duty-free to 6.6%). Patterson would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Bronze and brass castings; steel castings; steel pump shims; stainless steel pump shims; centrifugal water pumps; cast stainless steel pump casings and impellers; cast brass/bronze pump casings and impellers; bronze pressure reducing valves; ductile iron pressure reducing valves; cast iron pressure reducing valves; brass check valves; iron and steel check valves; ductile iron pressure relief valves; brass hose valves; bronze air relief valves; stainless steel air relief valves; valve parts including gaskets, O-rings, springs, and threaded connectors; pump control cabinets less than and greater than 1,000 volts with motor controls; pump control cabinets less than and greater than 1,000 volts with programmable logic controls; pump control cabinets less than and greater than 1,000 volts; control cabinet parts including fuses and relays; stainless steel pump shafts, sleeves, rings and impellers; liquid elevating pumps; ductile iron pump cases; cast iron pump cases; cast iron suction diffusers; stainless steel impellers; carbide steel mechanical seals for pumps; cast iron valves; cast iron pump cases; steel shaft couplings; brass pump castings; cast iron pump cases; ductile iron pump cases; centrifugal water pumps with motors; and, stainless steel gas turbine frames, rings and, clamps (duty rate ranges from duty-free to 6.6%). The request indicates that certain materials/components are subject to special duties under Section 232 of the

Trade Expansion Act of 1962 (Section 232) and Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 232 and Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is October 21, 2019.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov* or (202) 482–1963.

Dated: September 3, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–19508 Filed 9–9–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–864]

Certain Fabricated Structural Steel From Canada: Preliminary Negative Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain fabricated structural steel (fabricated structural steel) from Canada is not being, or is not likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2018 through December 31, 2018. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable September 10, 2019.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Ajay Menon, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–1993, 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 March 4, 2019.[1] On July 1, 2019, Commerce postponed the preliminary determination of this investigation and the revised deadline is now September 3, 2019.[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 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 product covered by this investigation is fabricated structural steel from Canada. 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 (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted on the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memoranda.[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. Commerce calculated constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Determination

For this preliminary determination, Commerce calculated a zero or *de minimis* estimated weighted-average dumping margin for each individually examined producer and/or exporter of the subject merchandise. Consistent with section 733(b)(3) of the Act, Commerce disregards *de minimis* rates and preliminarily determines that these individually examined respondents with *de minimis* rates have not made sales of subject merchandise at LTFV.

Exporter/producer	Estimated weighted-average dumping margin (percent)
Les Constructions Beauce-Atlas, Inc[7].	0.69 (*de minimis*).
Canatal Industries, Inc	0.00.

Consistent with section 733(d) of the Act, Commerce has not calculated an estimated weighted-average dumping margin for all other producers and exporters because it has not made an

[1] *See Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations,* 84 FR 7330 (March 4, 2019) (*Initiation Notice*).

[2] *See Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 84 FR 31301 (July 1, 2019).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from Canada'' 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,* 83 FR at 7331.

[6] *See* Memorandum, ''Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Preliminary Scope Decision Memorandum,'' dated July 5, 2019; *see also* Memorandum, ''Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Second Preliminary Scope Memorandum,'' dated concurrently with this notice (collectively, Preliminary Scope Decision Memoranda).

[7] Commerce preliminarily determined that Beauce-Atlas, Fabrication Beauce-Atlas, and Structure Beauce-Atlas are a single entity. *See* Memorandum, ''Antidumping Duty Investigation of Fabricated Structural Steel from Canada: Les Constructions Beauce-Atlas Preliminary Affiliation and Collapsing Memorandum,'' dated August 9, 2019.

affirmative preliminary determination of sales at LTFV.

Suspension of Liquidation

Because Commerce has made a negative preliminary determination of sales at LTFV with regard to subject merchandise, Commerce will not direct U.S. Customs and Border Protection to suspend liquidation or to require a cash deposit of estimated antidumping duties for any such entries.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any 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 the 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 verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[8] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Interested parties may address Commerce's preliminary scope determinations in scope briefs which may be submitted no later than 21 days after the publication of the preliminary antidumping duty (AD) determinations on fabricated structural steel from Canada, China, and Mexico in the **Federal Register**. Scope rebuttal briefs, limited to issues raised in the scope case briefs, may be submitted no later than five days after the deadline for the scope case briefs. These deadlines, which are based on publication in the **Federal Register** of the preliminary determinations in the AD investigations of fabricated structural steel, apply to both the on-going AD and countervailing duty (CVD) fabricated structural steel investigations. Thus, there is only one briefing schedule for scope case and rebuttal briefs in the AD and CVD fabricated structural steel investigations. For all scope issues, parties must file separate and identical documents on the records of all of the ongoing AD and CVD investigations of fabricated structural steel from Canada, China, and Mexico through ACCESS. No new factual information may be included in scope case or rebuttal briefs.

Parties should include all arguments about scope-related issues in the scope case and rebuttal briefs. Commerce does not intend to permit arguments about scope-related issues in the investigation-specific case and rebuttal briefs regarding other issues. Should these investigations result in the imposition of orders, interested parties may submit requests for a scope ruling after the publication of any such orders in the **Federal Register**.

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.

Postponement of Final Determination

Section 735(a)(2)(B) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. On July 23, 2019, the petitioner requested that Commerce postpone the final determination.[9] In accordance with section 735(a)(2)(B) of the Act, because the preliminary determination is negative, and the petitioner has requested the postponement of the final determination, Commerce is postponing the final determination. Accordingly, Commerce will make its final determination by no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

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. If the final determination is affirmative, the ITC will determine 75 days after the final determination whether these imports 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: September 3, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by the investigation is carbon and alloy fabricated structural steel. Fabricated structural steel is made from steel in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is two percent or less by weight. Fabricated structural steel products are steel products that have been fabricated for erection or assembly into structures, including, but not limited to, buildings (commercial, office, institutional, and multi-family residential); industrial and utility projects; parking decks; arenas and convention centers; medical facilities; and ports, transportation and infrastructure facilities. Fabricated structural steel is manufactured from carbon and alloy (including stainless) steel products such as angles, columns, beams, girders, plates, flange shapes (including manufactured structural shapes utilizing welded plates as a substitute for rolled wide flange sections), channels, hollow structural section (HSS) shapes, base plates, and plate-work components. Fabrication includes, but is not limited to cutting, drilling, welding, joining, bolting, bending, punching, pressure fitting, molding, grooving, adhesion, beveling, and riveting and may include items such as fasteners, nuts, bolts, rivets, screws, hinges, or joints.

The inclusion, attachment, joining, or assembly of non-steel components with fabricated structural steel does not remove the fabricated structural steel from the scope.

Fabricated structural steel is covered by the scope of the investigation regardless of whether it is painted, varnished, or coated

[8] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[9] *See* Petitioner's Letter, ''Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Request to Extend Final Determination,'' dated July 23, 2019.

with plastics or other metallic or non-metallic substances and regardless of whether it is assembled or partially assembled, such as into modules, modularized construction units, or sub-assemblies of fabricated structural steel.

Subject merchandise includes fabricated structural steel that has been assembled or further processed in the subject country or a third country, including but not limited to painting, varnishing, trimming, cutting, drilling, welding, joining, bolting, punching, bending, beveling, riveting, galvanizing, coating, and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the fabricated structural steel.

All products that meet the written physical description of the merchandise covered by the investigation are within the scope of the investigation unless specifically excluded or covered by the scope of an existing antidumping duty order.

Specifically excluded from the scope of the investigation are:

1. Fabricated steel concrete reinforcing bar (rebar) if: (i) It is a unitary piece of fabricated rebar, not joined, welded, or otherwise connected with any other steel product or part; or (ii) it is joined, welded, or otherwise connected only to other rebar.

2. Fabricated structural steel for bridges and bridge sections that meets American Association of State and Highway and Transportation Officials (AASHTO) bridge construction requirements or any state or local derivatives of the AASHTO bridge construction requirements.

3. Pre-engineered metal building systems, which are defined as complete metal buildings that integrate steel framing, roofing and walls to form one, pre-engineered building system, that meet Metal Building Manufacturers Association guide specifications. Pre-engineered metal building systems are typically limited in height to no more than 60 feet or two stories.

4. Steel roof and floor decking systems that meet Steel Deck Institute standards.

5. Open web steel bar joists and joist girders that meet Steel Joist Institute specifications.

6. Also excluded from the scope of the investigation is scaffolding, and parts and accessories thereof, that comply with ANSI/ASSE A10.8—2011—Scaffolding Safety Requirements, and/or Occupational Safety and Health Administration regulations at 29 CFR part 1926 subpart L—Scaffolds. The outside diameter of the scaffold tubing covered by this exclusion ranges from 25mm to 150mm.

7. Excluded from the scope of the investigation are access flooring systems panels and accessories, where such panels have a total thickness ranging from 0.75 inches to 1.75 inches and consist of concrete, wood, other non-steel materials, or hollow space permanently attached to a top and bottom layer of galvanized or painted steel sheet or formed coil steel, the whole of which has been formed into a square or rectangle having a measurement of 24 inches on each side +/− 0.1 inch; 24 inches by 30 inches +/− 0.1 inch; or 24 by 36 inches +/− 0.1 inch.

8. Excluded from the investigation are the following types of steel poles, segments of steel poles, and steel components of those poles:

- Steel Electric Transmission Poles, or segments of such poles, that meet (1) the American Society of Civil Engineers (ASCE)—Design of Steel Transmission Pole Structures, ASCE/SEI 48 or (2) the USDA RUS bulletin 1724E–214 Guide specification for standard class Steel Transmission Poles. The exclusion for steel electric transmission poles also encompasses the following components thereof: Transmission arms which attach to poles; pole bases; angles that do not exceed 8″ x 8″ x 0.75″; steel vangs, steel brackets, steel flanges, and steel caps; safety climbing cables; ladders; and steel templates.
- Steel Electric Substation Poles, or segments of such poles, that meet the American Society of Civil Engineers (ASCE)—Manuals and Reports on Engineering Practice No. 113. The exclusion for steel electric substation poles also encompasses the following components thereof: Substation dead end poles; substation bus stands; substation mast poles, arms, and cross-arms; steel brackets, steel flanges, and steel caps; pole bases; safety climbing cables; ladders; and steel templates.
- Steel Electric Distribution Poles, or segments of such poles, that meet (1) American Society of Civil Engineers (ASCE)—Design of Steel Transmission Pole Structures, ASCE/SEI 48, (2) USDA RUS bulletin 1724E–204 Guide specification for steel single pole and H-frame structures, or (3) ANSI 05.1 height and class requirements for steel poles. The exclusion for steel electric distribution poles also encompasses the following components thereof: Distribution arms and cross-arms; pole bases; angles that do not exceed 8″ x 8″ x 0.75″; steel vangs, steel brackets, steel flanges, and steel caps; safety climbing cables; ladders; and steel templates.
- Steel Traffic Signal Poles, Steel Roadway Lighting Poles, Steel Parking Lot Lighting Poles, and Steel Sports Lighting Poles, or segments of such poles, that meet (1) the American Association of State Highway and Transportation Officials (AASHTO)—Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, (2) any state or local derivatives of the AASHTO highway sign, luminaries, and traffic signals requirements, or (3) American National Standard Institute (ANSI) C136—American National Standard for Roadway and Area Lighting Equipment standards. The exclusion for steel traffic signal poles, steel roadway lighting poles, steel parking lot lighting poles, and steel sports lighting poles also encompasses the following components thereof: Luminaire arms; hand hole rims; hand hole covers; base plates that connect to either the shaft or the arms; mast arm clamps; mast arm tie rods; transformer base boxes; formed full base covers that hide anchor bolts; step lugs; internal cable guides; lighting cross arms; lighting service platforms; angles that do not exceed 8″ x 8″ x 0.75″; stainless steel hand hole door hinges and wind restraints; steel brackets, steel flanges, and steel caps; safety climbing cables; ladders; and steel templates.
- Communication Poles, or segments of such poles, that meet (1) Telecommunications Industry Association (TIA) ANSI/TIA–222 Structural Standards for Steel Antenna Towers and Antenna Supporting Structures, or (2) American Association of State Highway and Transportation Officials (AASHTO)—Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals. The exclusion for communication poles also encompasses the following components thereof: Luminaire arms; hand hole rims; hand hole covers; base plate that connects the pole to the foundation or arm to the pole; safety climbing cables; ladders; service ground platforms; step lugs; pole steps; steel brackets, steel flanges, and steel caps; angles that do not exceed 8″ x 8″ x 0.75″, coax, and safety brackets; subcomponent kits for antenna mounts weighing 80 lbs. or less; service platforms; ice bridges; stainless steel hand hole door hinges and wind restraints; and steel templates.
- OEM Round or Polygonal Tapered Steel Poles, segments or shaft components of such poles, that meet the (1) ASCE 48 or AASHTO, (2) ANSI/TIA 222, (3) ANSI 05.1, (4) RUS bulletin 1724E–204, or (5) RUS bulletin 1724E–214. The exclusion for OEM round or polygonal tapered steel poles also encompasses the following components thereof: Subcomponent kits for antenna mounts weighing 80 lbs. or less; mounts and platforms; steel brackets, steel flanges, and steel caps; angles that do not exceed 8″ x 8″ x 0.75″; bridge kits; safety climbing cables; ladders; and steel templates.

The inclusion or attachment of one or more of the above-referenced steel poles in a structure containing fabricated structural steel (FSS) does not remove the FSS from the scope of the investigation. No language included in this exclusion should be read or understood to have applicability to any other aspect of this scope or to have applicability to or to exclude any product, part, or component other than those specifically identified in the exclusion.

9. Also excluded from the scope of the investigation are Shuttering, Formworks, Propping and Shoring and parts and accessories thereof that comply with ANSI/ASSE A10.9—Safety Requirements for Concrete and Masonry Work and ACI–347—Recommended Practice for Concrete Formwork. For Shoring and propping made from tube, the outside diameter of the tubing covered by this exclusion ranges from 48mm to 250mm. For Shuttering and Formworks, the panel sizes covered by this exclusion range from 25mm X 600mm to 3000mm X 3000mm.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings: 7308.90.3000, 7308.90.6000, and 7308.90.9590.

The products subject to the investigation may also enter under the following HTSUS subheadings: 7216.91.0010, 7216.91.0090, 7216.99.0010, 7216.99.0090, 7222.40.6000, 7228.70.6000, 7301.10.0000, 7301.20.1000, 7301.20.5000, 7308.40.0000, 7308.90.9530, and 9406.90.0030.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Postponement of the Final Determination
V. Scope Comments
VI. Scope of the Investigation
VII. Affiliation and Collapsing
VIII. Discussion of the Methodology
IX. Date of Sale
X. Universe of Sales Examined
XI. Product Comparisons
XII. Export Price/Constructed Export Price
XIII. Normal Value/Constructed Value
XIV. Currency Conversion
XV. Recommendation

[FR Doc. 2019–19511 Filed 9–9–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Review: Notice of NAFTA Panel Decision

AGENCY: United States Section, NAFTA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of NAFTA Interim Panel Decision and Order in the matter of Softwood Lumber from Canada (Secretariat File Number: USA–CDA–2018–1904–03).

SUMMARY: On September 4, 2019, the Binational Panel issued its Interim Decision and Order in the matter of Softwood Lumber from Canada. The Binational Panel affirmed in part and remanded in part the Final Determination by the United States International Trade Commission (Commission).

FOR FURTHER INFORMATION CONTACT: Paul E. Morris, United States Secretary, NAFTA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of Article 1904 of NAFTA provides a dispute settlement mechanism involving trade remedy determinations issued by the Government of the United States, the Government of Canada, and the Government of Mexico. Following a Request for Panel Review, a Binational Panel is composed to review the trade remedy determination being challenged and issue a binding Panel Decision. There are established *NAFTA Rules of Procedure for Article 1904 Binational Panel Reviews* (Rules) and the NAFTA Panel Decision has been notified in accordance with Rule 70. For the complete Rules, please see *https://www.nafta-sec-alena.org/Home/Texts-of-the-Agreement/Rules-of-Procedure/Article-1904.*

Panel Decision: On September 4, 2019, the Binational Panel issued its Interim Decision and Order which affirmed in part and remanded in part the Final Determination by United States International Trade Commission. In accordance with NAFTA Article 1904.8, for reasons more fully set forth in within the Analysis section of the Decision (which shall be controlling in the event of conflict), and based upon the evidence in the administrative record, the applicable law, the written submissions of the Parties, and oral argument at the Panel's hearing, the Panel remands the Commission's determinations as follows:

With respect to the Business Cycle and Conditions of Competition, the Panel remands this issue to the Commission and directs the Commission to reconsider the record evidence in relation to the business cycle(s) distinctive to the U.S. lumber industry, and to apply its findings in its analysis of volume, price effects, impact, and causation.

With respect to the use of Post-Petition data, the Panel remands the Commission's decision to reduce the weight it accorded to interim 2017 data and directs the Commission to provide a reasoned determination on whether or not to reduce the weight accorded to interim 2017 data;

The Panel directs the Commission to clarify whether or not it is also reducing the weight accorded to third- and fourth-quarter 2017 data. If, upon reconsideration, the Commission decides to reduce the weight given to post-petition data, the Commission is further directed to clarify what weight, if any, it is giving to post-petition data and the reasons for this determination.

With respect to the Substitutability conclusions, the Panel remands the matter to the Commission, and directs it to reconsider its calculation of substitution elasticity, explaining how it reached its conclusion and demonstrating how that conclusion was applied in the Commission's analysis of volume, price effects, impact, and causation; and demonstrate how, and to what extent, the limitations to substitutability implied in its conclusion that the goods were ''at least moderately substitutable'' factored into the Commission's analysis of volume, price effects, impact, and causation.

With respect to the Volume analysis, the Panel remands this determination to the Commission and directs the Commission to consider all record evidence to demonstrate how, and to what extent, the limitations to substitutability implied in its conclusion that the goods were ''at least moderately substitutable'' factored into its conclusion that subject imports experienced significant gains in market share directly at the expense of the domestic industry. The Panel directs the Commission to further reconsider its volume analysis as the Commission determines appropriate.

With respect to the Price Effects analysis, as to the Domestic Capacity aspect of the price suppression analysis, the Panel remands this determination to the Commission and directs the Commission to consider whether to take the more recent Forest Economic Advisors (''FEA'') data into account in its domestic capacity analysis, explain its decision, and, if it decides to take the updated FEA data into account, reconsider its price effects analysis as it determines is appropriate.

As to the Different Softwood Species aspect of the price suppression analysis, the Panel remands this determination to the Commission and directs the Commission to reconsider its conclusion that the prices of different species closely track each other to take into consideration that price movements of one species ''affect'' prices of other species, the existence of a ''great difference in price movement'' of one species compared to another, and that prices for different species ''generally track'' each other, as well as any other record evidence, and to determine what effect such reconsideration has on its price suppression analysis.

As to the Cost of Goods Sold (''COGS'') and Pricing Trends aspect of the price suppression issue, the Panel remands this determination to the Commission and directs the Commission to reconsider its COGS and price trends analysis to take into account the Commission's finding that subject imports and domestic products are at least moderately substitutable, and determine what effect such reconsideration has on its finding that subject imports prevented price increases which otherwise would have occurred to a significant degree.

With respect to the Questionnaire Responses aspect of the price suppression analysis, the Panel remands this determination to the Commission and directs the Commission to reconsider the record evidence, its conclusion that purchasers confirmed purchasing subject imports rather than

domestic product solely due to their lower prices, and to determine what effect such reconsideration has on its price suppression analysis.

With respect to the Impact issue, the Panel found that the Commission's finding of adverse impact is lawful and supported by substantial evidence in light of its determinations regarding post-petition data, substitutability, volume, price effects, and the business cycle, which have been remanded elsewhere in this decision. If, in any of these remands, the Commission reaches a different finding or conclusion on the particular issue, then the Panel directs the Commission to determine and explain what effect such reconsideration has on its impact analysis.

With respect to the Causation issue, the Panel found that the Commission's finding of causation is lawful and supported by substantial evidence in light of its determinations regarding volume, price effect, and impact. If, after reconsideration, the Commission reaches a different finding or conclusion on any of these issues, then the Panel directs the Commission to determine and explain what effect such reconsideration has on its causation analysis.

The Panel ordered the Commission to submit its redetermination on remand within 90 days from the issuance of the Interim Panel Decision and Order. For the full Interim Panel Decision and Order, please see *https://www.nafta-sec-alena.org/Home/Dispute-Settlement/Decisions-and-Reports.*

Dated: September 5, 2019.

Paul E. Morris,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 2019–19533 Filed 9–9–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–046]

1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty (CVD) order on 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from the People's Republic of China (China) for the period January 1, 2018, through December 31, 2018.

DATES: Applicable September 10, 2019.

FOR FURTHER INFORMATION CONTACT: Justin Neuman, 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) 482–0486.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the CVD order on HEDP from China for the period January 1, 2018, through December 31, 2018.[1] On May 31, 2019, Compass Chemical International LLC (Compass Chemical), a domestic interested party, filed a timely request for review with respect to Shandong Taihe Chemicals Co., Ltd., Shandong Taihe Water Treatment Technologies Co., Ltd., and Henan Qingshuiyuan Technology Co., Ltd., in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b).[2] Pursuant to this request, and in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of these companies.[3] On August 26, 2019, Compass Chemical filed a timely withdrawal of request for the administrative review.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. As noted above, Compass Chemical, the only party to file a request for review, withdrew its request by the 90-day deadline. Accordingly, we are rescinding the administrative review of the CVD order on HEDP from China for the period January 1, 2018, through December 31, 2018, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess CVD duties on all appropriate entries of HEDP from China. CVD duties shall be assessed at rates equal to the cash deposit of estimated CVD duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of CVD duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of CVD duties occurred and the subsequent assessment of doubled CVD duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to all parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: September 4, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–19507 Filed 9–9–19; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 84 FR 18479 (May 1, 2019).

[2] *See* Letter from Compass Chemical, ''Request for Administrative Review: 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China,'' dated May 31, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 33739 (July 15, 2019).

[4] *See* Letter from Compass Chemical, ''1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China,'' dated August 26, 2019.

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is

automatically initiating the five-year review (Sunset Review) of the antidumping (AD) order listed below. The International Trade Commission (the Commission) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order.

DATES: Applicable (September 1, 2019).

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Review of the following AD order:

DOC case No.	ITC case No.	Country	Product	Commerce contact
A–570–882	731–TA–1022	China	Refined Brown Aluminum Oxide (3rd Review).	Joshua Poole, (202) 482–1293.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerces's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *http://enforcement.trade.gov/sunset/.* All submissions in this Sunset Review must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.[1]

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties must use the certification formats provided in 19 CFR 351.303(g).[3] Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

On April 10, 2013, Commerce modified two regulations related to AD/CVD proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[4] Parties are advised to review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *http://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt,* prior to submitting factual information in this segment.[5]

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for this proceeding. Parties wishing to participate in this five-year review must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in the Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[6]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[4] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013).

[5] *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013).

[6] *See* 19 CFR 351.218(d)(1)(iii).

parties. Also, note that Commerce's information requirements are distinct from the Commission's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: August 19, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–19509 Filed 9–9–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–850]

Certain Fabricated Structural Steel From Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain fabricated structural steel (fabricated structural steel) from Mexico is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2018 through December 31, 2018. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable September 10, 2019.

FOR FURTHER INFORMATION CONTACT: Krisha Hill or Aleksandras Nakutis, 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) 482–4037 or (202) 482–3147, 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 March 4, 2019.[1] On July 1, 2019, Commerce postponed the preliminary determination of this investigation and the revised deadline is now September 3, 2019.[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 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 product covered by this investigation is fabricated structural steel from Mexico. 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 (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted on the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memoranda.[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. Commerce calculated constructed export prices in accordance with section 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Pursuant to section 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available, with adverse inferences, to assign an antidumping margin to several companies that failed to properly respond to Commerce's quantity and value questionnaire (the non-responsive companies).[7] For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(ii) of the Act provides that Commerce shall preliminarily determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, Commerce preliminarily found a zero rate for Corey S.A. de C.V./Industrias Recal S.A. de C.V.[8] Therefore, the only rate that is not

[1] *See Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations,* 84 FR 7330 (March 4, 2019) (*Initiation Notice*).

[2] *See Certain Fabricated Structural Steel From Canada, Mexico, and the People's Republic of China: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 84 FR 31301 (July 1, 2019).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from Mexico'' 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 Notic*e, 83 FR at 7331.

[6] *See* Memorandum, ''Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Preliminary Scope Decision Memorandum,'' dated July 5, 2019; *see also* Memorandum, ''Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Second Preliminary Scope Memorandum,'' dated concurrently with this notice (collectively, Preliminary Scope Decision Memoranda).

[7] The non-responsive companies are: Acero Technologia, S.A. de C.V.; Construcciones Industriales Tapia S.A. de C.V.; Estructuras Metalicas la Popular S.A. de C.V./MSCI; and Operadora CICSA, S. A. de C. V. Swecomex—Guadalajara.

[8] Commerce preliminarily determines that Corey S.A. de C.V. and Industrias Recal S.A. de C.V. are a single entity, hereafter, collectively referred to as ''Corey.'' *See* Memorandum, ''Antidumping Duty Investigation of Fabricated Structural Steel from Mexico: Preliminary Affiliation and Collapsing Memorandum for Corey S.A. de C.V.,'' dated concurrently with this notice.

zero, *de minimis,* or based entirely on facts otherwise available is the rate calculated for Building Systems de Mexico, S.A. de C.V. (BSM). Consequently, the rate calculated for BSM is also assigned as the rate for all other producers and exporters.

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 offset(s)) (percent)
Building Systems de Mexico, S.A. de C.V	10.58	Not Applicable.[9]
Corey S.A. de C.V./Industrias Recal S.A. de C.V	0	Not Applicable.
Acero Technologia, S.A. de C.V	30.58	16.96.
Construcciones Industriales Tapia S.A. de C.V	30.58	16.96.
Estructuras Metalicas la Popular S.A. de C.V./MSCI	30.58	16.96.
Operadora CICSA, S. A. de C. V. Swecomex—Guadalajara	30.58	16.96.
All Others	10.58	0.

Consistent with section 733(b)(3) of the Act, Commerce disregards *de minimis* rates and preliminarily determines that Corey, which had a *de minimis* rate, have not made sales of subject merchandise at LTFV.

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 entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. 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 estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise except as explained below; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Because the estimated weighted-average dumping margin for Corey is zero or *de minimis,* certain entries of shipments of subject merchandise from Corey will not be subject to suspension of liquidation or cash deposit requirements. In such situations, Commerce applies the exclusion to the provisional measures to the producer/exporter combination that was examined in the investigation. Accordingly, Commerce is directing CBP not to suspend liquidation of entries of subject merchandise produced and exported by Corey. Entries of shipments of subject merchandise from Corey in any other producer/exporter combination, or by third parties that sourced subject merchandise from the excluded Corey producer/exporter combination, are subject to the provisional measures.

Should the final estimated weighted-average dumping margin be zero or *de minimis* for subject merchandise produced and exported by Corey, entries of subject merchandise produced and exported by Corey will be excluded from the potential antidumping duty order. An exclusion for subject merchandise produced and exported by Corey is not applicable to subject merchandise from Corey in any other producer/exporter combination or by third parties that sourced subject merchandise from the excluded Corey producer/exporter combination.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. Accordingly, where Commerce preliminarily made an affirmative determination for countervailable export subsidies, Commerce has offset the estimated weighted-average dumping margin by the appropriate CVD rate. Any such adjusted cash deposit rate may be found in the Preliminary Determination section 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 estimated antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expire. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any 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 the 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 verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[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.

Interested parties may address Commerce's preliminary scope

[9] *See* Memorandum, ''Antidumping Duty Investigation of Fabricated Structural Steel from Mexico: Preliminary Analysis Memorandum for Building Systems de Mexico, S.A. de C.V.'' dated concurrently with this notice.

[10] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

determinations in scope briefs which may be submitted no later than 21 days after the publication of the preliminary antidumping (AD) determinations on fabricated structural steel from Canada, China and Mexico in the **Federal Register**. Scope rebuttal briefs, limited to issues raised in the scope case briefs, may be submitted no later than five days after the deadline for the scope case briefs. These deadlines, which are based on publication in the **Federal Register** of the preliminary determinations in the AD investigations of fabricated structural steel, apply to both the on-going AD and CVD fabricated structural steel investigations. Thus, there is only one briefing schedule for scope case and rebuttal briefs in the AD and CVD fabricated structural steel investigations. For all scope issues, parties must file separate and identical documents on the records of all of the ongoing AD and CVD investigations of fabricated structural steel from Canada, China, and Mexico through ACCESS. No new factual information may be included in scope case or rebuttal briefs.

Parties should include all arguments about scope-related issues in the scope case and rebuttal briefs. Commerce does not intend to permit arguments about scope-related issues in the investigation-specific case and rebuttal briefs regarding other issues. Should these investigations result in the imposition of orders, interested parties may submit requests for a scope ruling after the publication of any such orders in the **Federal Register**.

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.

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

From July 22 through July 24, 2019, the Full Member Subgroup of the American Institute of Steel Construction, LLC (the petitioner), Corey, and BSM requested that Commerce postpone the final determination.[11] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

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. 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 these imports 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: September 3, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by the investigation is carbon and alloy fabricated structural steel. Fabricated structural steel is made from steel in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is two percent or less by weight. Fabricated structural steel products are steel products that have been fabricated for erection or assembly into structures, including, but not limited to, buildings (commercial, office, institutional, and multi-family residential); industrial and utility projects; parking decks; arenas and convention centers; medical facilities; and ports, transportation and infrastructure facilities. Fabricated structural steel is manufactured from carbon and alloy (including stainless) steel products such as angles, columns, beams, girders, plates, flange shapes (including manufactured structural shapes utilizing welded plates as a substitute for rolled wide flange sections), channels, hollow structural section (HSS) shapes, base plates, and plate-work components. Fabrication includes, but is not limited to cutting, drilling, welding, joining, bolting, bending, punching, pressure fitting, molding, grooving, adhesion, beveling, and riveting and may include items such as fasteners, nuts, bolts, rivets, screws, hinges, or joints.

The inclusion, attachment, joining, or assembly of non-steel components with fabricated structural steel does not remove the fabricated structural steel from the scope.

Fabricated structural steel is covered by the scope of the investigation regardless of whether it is painted, varnished, or coated with plastics or other metallic or non-metallic substances and regardless of whether it is assembled or partially assembled, such as into modules, modularized construction units, or sub-assemblies of fabricated structural steel.

Subject merchandise includes fabricated structural steel that has been assembled or further processed in the subject country or a third country, including but not limited to painting, varnishing, trimming, cutting, drilling, welding, joining, bolting, punching, bending, beveling, riveting, galvanizing, coating, and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the fabricated structural steel.

All products that meet the written physical description of the merchandise covered by the investigation are within the scope of the investigation unless specifically excluded or covered by the scope of an existing antidumping duty order.

Specifically excluded from the scope of the investigation are:

[11] *See* Petitioner's Letter, ''Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Request to Extend Final Determination,'' dated July 23, 2019; *see also* BSM's Letter, ''Certain Fabricated Structural Steel from Mexico: Request to Postpone Final Determination,'' dated July 22, 2019; and Corey's Letter, ''Certain Fabricated Structural Steel from Mexico: Corey S.A. de C.V.'s Request to Postpone Final Determination,'' dated July 24, 2019.

1. Fabricated steel concrete reinforcing bar (rebar) if: (i) It is a unitary piece of fabricated rebar, not joined, welded, or otherwise connected with any other steel product or part; or (ii) it is joined, welded, or otherwise connected only to other rebar.

2. Fabricated structural steel for bridges and bridge sections that meets American Association of State and Highway and Transportation Officials (AASHTO) bridge construction requirements or any state or local derivatives of the AASHTO bridge construction requirements.

3. Pre-engineered metal building systems, which are defined as complete metal buildings that integrate steel framing, roofing and walls to form one, pre-engineered building system, that meet Metal Building Manufacturers Association guide specifications. Pre-engineered metal building systems are typically limited in height to no more than 60 feet or two stories.

4. Steel roof and floor decking systems that meet Steel Deck Institute standards.

5. Open web steel bar joists and joist girders that meet Steel Joist Institute specifications.

6. Also excluded from the scope of the investigation is scaffolding, and parts and accessories thereof, that comply with ANSI/ASSE A10.8—2011—Scaffolding Safety Requirements, and/or Occupational Safety and Health Administration regulations at 29 CFR part 1926 subpart L—Scaffolds. The outside diameter of the scaffold tubing covered by this exclusion ranges from 25mm to 150mm.

7. Excluded from the scope of the investigation are access flooring systems panels and accessories, where such panels have a total thickness ranging from 0.75 inches to 1.75 inches and consist of concrete, wood, other non-steel materials, or hollow space permanently attached to a top and bottom layer of galvanized or painted steel sheet or formed coil steel, the whole of which has been formed into a square or rectangle having a measurement of 24 inches on each side +/− 0.1 inch; 24 inches by 30 inches +/− 0.1 inch; or 24 by 36 inches +/− 0.1 inch.

8. Excluded from the investigation are the following types of steel poles, segments of steel poles, and steel components of those poles:

- Steel Electric Transmission Poles, or segments of such poles, that meet (1) the American Society of Civil Engineers (ASCE)—Design of Steel Transmission Pole Structures, ASCE/SEI 48 or (2) the USDA RUS bulletin 1724E–214 Guide specification for standard class Steel Transmission Poles. The exclusion for steel electric transmission poles also encompasses the following components thereof: Transmission arms which attach to poles; pole bases; angles that do not exceed 8″ x 8″ x 0.75″; steel vangs, steel brackets, steel flanges, and steel caps; safety climbing cables; ladders; and steel templates.
- Steel Electric Substation Poles, or segments of such poles, that meet the American Society of Civil Engineers (ASCE)—Manuals and Reports on Engineering Practice No. 113. The exclusion for steel electric substation poles also encompasses the following components thereof: Substation dead end poles; substation bus stands; substation mast poles, arms, and cross-arms; steel brackets, steel flanges, and steel caps; pole bases; safety climbing cables; ladders; and steel templates.
- Steel Electric Distribution Poles, or segments of such poles, that meet (1) American Society of Civil Engineers (ASCE)—Design of Steel Transmission Pole Structures, ASCE/SEI 48, (2) USDA RUS bulletin 1724E–204 Guide specification for steel single pole and H-frame structures, or (3) ANSI 05.1 height and class requirements for steel poles. The exclusion for steel electric distribution poles also encompasses the following components thereof: Distribution arms and cross-arms; pole bases; angles that do not exceed 8″ x 8″ x 0.75″; steel vangs, steel brackets, steel flanges, and steel caps; safety climbing cables; ladders; and steel templates.
- Steel Traffic Signal Poles, Steel Roadway Lighting Poles, Steel Parking Lot Lighting Poles, and Steel Sports Lighting Poles, or segments of such poles, that meet (1) the American Association of State Highway and Transportation Officials (AASHTO)—Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, (2) any state or local derivatives of the AASHTO highway sign, luminaries, and traffic signals requirements, or (3) American National Standard Institute (ANSI) C136—American National Standard for Roadway and Area Lighting Equipment standards. The exclusion for steel traffic signal poles, steel roadway lighting poles, steel parking lot lighting poles, and steel sports lighting poles also encompasses the following components thereof: Luminaire arms; hand hole rims; hand hole covers; base plates that connect to either the shaft or the arms; mast arm clamps; mast arm tie rods; transformer base boxes; formed full base covers that hide anchor bolts; step lugs; internal cable guides; lighting cross arms; lighting service platforms; angles that do not exceed 8″ x 8″ x 0.75″; stainless steel hand hole door hinges and wind restraints; steel brackets, steel flanges, and steel caps; safety climbing cables; ladders; and steel templates.
- Communication Poles, or segments of such poles, that meet (1) Telecommunications Industry Association (TIA) ANSI/TIA–222 Structural Standards for Steel Antenna Towers and Antenna Supporting Structures, or (2) American Association of State Highway and Transportation Officials (AASHTO)—Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals. The exclusion for communication poles also encompasses the following components thereof: Luminaire arms; hand hole rims; hand hole covers; base plate that connects the pole to the foundation or arm to the pole; safety climbing cables; ladders; service ground platforms; step lugs; pole steps; steel brackets, steel flanges, and steel caps; angles that do not exceed 8″ x 8″ x 0.75″, coax, and safety brackets; subcomponent kits for antenna mounts weighing 80 lbs. or less; service platforms; ice bridges; stainless steel hand hole door hinges and wind restraints; and steel templates.
- OEM Round or Polygonal Tapered Steel Poles, segments or shaft components of such poles, that meet the (1) ASCE 48 or AASHTO, (2) ANSI/TIA 222, (3) ANSI 05.1, (4) RUS bulletin 1724E–204, or (5) RUS bulletin 1724E–214. The exclusion for OEM round or polygonal tapered steel poles also encompasses the following components thereof: Subcomponent kits for antenna mounts weighing 80 lbs. or less; mounts and platforms; steel brackets, steel flanges, and steel caps; angles that do not exceed 8″ x 8″ x 0.75″; bridge kits; safety climbing cables; ladders; and steel templates.

The inclusion or attachment of one or more of the above-referenced steel poles in a structure containing fabricated structural steel (FSS) does not remove the FSS from the scope of the investigation. No language included in this exclusion should be read or understood to have applicability to any other aspect of this scope or to have applicability to or to exclude any product, part, or component other than those specifically identified in the exclusion.

9. Also excluded from the scope of the investigation are Shuttering, Formworks, Propping and Shoring and parts and accessories thereof that comply with ANSI/ASSE A10.9—Safety Requirements for Concrete and Masonry Work and ACI–347—Recommended Practice for Concrete Formwork. For Shoring and propping made from tube, the outside diameter of the tubing covered by this exclusion ranges from 48mm to 250mm. For Shuttering and Formworks, the panel sizes covered by this exclusion range from 25mm x 600mm to 3000mm x 3000mm.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings: 7308.90.3000, 7308.90.6000, and 7308.90.9590.

The products subject to the investigation may also enter under the following HTSUS subheadings: 7216.91.0010, 7216.91.0090, 7216.99.0010, 7216.99.0090, 7222.40.6000, 7228.70.6000, 7301.10.0000, 7301.20.1000, 7301.20.5000, 7308.40.0000, 7308.90.9530, and 9406.90.0030.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Postponement of Final Determination and Extension of Provisional Measures
V. Scope Comments
VI. Scope of the Investigation
VII. Application of Facts Available and Use of Adverse Inferences
VIII. Affiliation and Collapsing
IX. Discussion of the Methodology
X. Date of Sale
XI. Universe of Sales Examined
XII. Product Comparisons
XIII. Export Price/Constructed Export Price
XIV. Normal Value/Constructed Value
XV. Currency Conversion

XVI. Recommendation

[FR Doc. 2019–19513 Filed 9–9–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–102]

Certain Fabricated Structural Steel From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain fabricated structural steel (fabricated structural steel) from the People's Republic of China (China) is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2018 through December 31, 2018. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable September 10, 2019.

FOR FURTHER INFORMATION CONTACT: Andrew Medley or Manuel Rey, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4987 or (202) 482–5518, 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 March 4, 2019.[1] On July 1, 2019, Commerce published the postponement of the preliminary determination of this investigation, and the revised deadline is now September 3, 2019.[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 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 product covered by this investigation is fabricated structural steel from China. 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 (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted on the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memoranda.[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. Export prices were calculated in accordance with section 772(a) of the Act. Commerce calculated constructed export prices in accordance with section 772(b) of the Act. Because China is a non-market economy within the meaning of section 771(18) of the Act, normal value (NV) was calculated in accordance with section 773(c) of the Act.

In addition, Commerce has relied on facts available under section 776(a) of the Act to determine the cash deposit rate assigned to the China-wide entity. Furthermore, pursuant to section 776(a) and (b) of the Act, because the China-wide entity did not cooperate to the best of its ability in responding to Commerce's requests for data, Commerce preliminarily has relied upon facts otherwise available, with adverse inferences, for the China-wide entity. 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 exporter/producer combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[8] For a list of the respondents that established eligibility for their own separate rates and the exporter/producer combination rates applicable to these respondents, *see* Appendix III.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

[1] *See Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations,* 84 FR 7330 (March 4, 2019) (*Initiation Notice*).

[2] *See Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 84 FR 31301 (July 1, 2019).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from the People's Republic of China,'' 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,* 84 FR at 7331.

[6] *See* Memorandum, ''Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Preliminary Scope Decision Memorandum,'' dated July 5, 2019; *see also* Memorandum, ''Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Second Preliminary Scope Memorandum,'' dated concurrently with this notice (collectively, Preliminary Scope Decision Memoranda).

[7] *See Initiation Notice,* 84 FR at 7335–36.

[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.*

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset) (percent)
Jinhuan Construction Group Co., Ltd	Jinhuan Construction Group Co., Ltd	57.86	47.32
Modern Heavy Industries (Taicang) Co., Ltd	Modern Heavy Industries (Taicang) Co., Ltd	0.00	0.00
Wison (Nantong) Heavy Industry Co., Ltd. or Wison Offshore & Marine (Hong Kong) Limited [9].	Wison (Nantong) Heavy Industry Co., Ltd	52.09	41.55
Non-Individually Examined Exporters Receiving Separate Rates (*see* Appendix III).	Producers Supplying the Non-Individually-Examined Exporters Receiving Separate Rates (*see* Appendix III).	55.76	45.22
China-Wide Entity [10]	China-Wide Entity	141.38	130.84

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 Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, except for entries of subject merchandise produced and exported by Modern Heavy. Because the estimated weighted-average dumping margin for Modern Heavy is zero, we are not directing CBP to suspend liquidation of entries of the merchandise produced and exported by this company.

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 NV exceeds U.S. price, and, where appropriate, adjusted for export subsidies and estimated domestic subsidy pass-through as indicated in the chart above, as follows: (1) For the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the combination listed in the table; (2) for all combinations of Chinese 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 rate established for the China-wide entity; and (3) for all third-country exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Chinese exporter/producer combination (or the China-wide entity) that supplied that third-country exporter.

Because the estimated weighted-average dumping margin for Modern Heavy is zero, entries of shipments of subject merchandise from this company will not be subject to suspension of liquidation or cash deposit requirements. In such situations, Commerce applies the exclusion to the provisional measures to the producer/exporter combination that was examined in the investigation. Accordingly, Commerce is directing CBP not to suspend liquidation of entries of subject merchandise produced and exported by Modern Heavy. Entries of shipments of subject merchandise from this company in any other producer/exporter combination, or by third parties that sourced subject merchandise from the excluded producer/exporter combination, are subject to the provisional measures at the China-wide rate.

Should the final estimated weighted-average dumping margin be zero or *de minimis* for Modern Heavy, entries of shipments of subject merchandise from this producer/exporter combination will be excluded from the potential antidumping duty order. The exclusion is not applicable to merchandise exported to the United States by this respondent in any other producer/exporter combinations or by third parties that sourced subject merchandise from the excluded producer/exporter combination.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding or domestic subsidy pass-through, when CVD provisional measures are in effect. Accordingly, where Commerce preliminarily made an affirmative determination for domestic subsidy pass-through or countervailable export subsidies, Commerce has offset the estimated weighted-average dumping margin by the appropriate CVD rate(s). As explained in the Preliminary Decision Memorandum, we have not adjusted for any cash deposit rates for domestic subsidy pass-through, but we have adjusted rates for export subsidies. Any such adjusted cash deposit rate may be found in the Preliminary Determination section 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 estimated antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expire. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any 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 verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are

[9] Commerce preliminarily determines that Wison (Nantong) Heavy Industry Co., Ltd. and Wison Offshore & Marine (Hong Kong) Limited are a single entity. *See* Preliminary Decision Memorandum.

[10] Commerce preliminarily determines that various companies failed to establish their eligibility for a separate rate and, therefore, preliminarily determines that these companies are part of the China-wide entity. *See* Preliminary Decision Memorandum.

[11] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

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.

Interested parties may address Commerce's preliminary scope determinations in scope briefs which may be submitted no later than 21 days after the publication of the preliminary antidumping duty (AD) determinations on fabricated structural steel from Canada, China, and Mexico in the **Federal Register**. Scope rebuttal briefs, limited to issues raised in the scope case briefs, may be submitted no later than five days after the deadline for the scope case briefs. These deadlines, which are based on publication in the **Federal Register** of the preliminary determinations in the AD investigations of fabricated structural steel, apply to both the ongoing AD and CVD fabricated structural steel investigations. Thus, there is only one briefing schedule for scope case and rebuttal briefs in the AD and CVD fabricated structural steel investigations. For all scope issues, parties must file separate and identical documents on the records of all of the ongoing AD and CVD investigations of fabricated structural steel from Canada, China, and Mexico through ACCESS. No new factual information may be included in scope case or rebuttal briefs.

Parties should include all arguments about scope-related issues in the scope case and rebuttal briefs. Commerce does not intend to permit arguments about scope-related issues in the investigation-specific case and rebuttal briefs regarding other issues. Should these investigations result in the imposition of orders, interested parties may submit requests for a scope ruling after the publication of any such orders in the **Federal Register**.

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.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by respondents for postponement of a final AD determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

From July 19 through July 23, 2019, the Full Member Subgroup of the American Institute of Steel Construction, LLC (the petitioner), Jinhuan Construction Group Co., Ltd. (Jinhuan), and Modern Heavy Industries (Taicang) Co., Ltd. (Modern Heavy) requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[12] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

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: September 3, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by the investigation is carbon and alloy fabricated structural steel. Fabricated structural steel is made from steel in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is two percent or less by weight. Fabricated structural steel products are steel products that have been fabricated for erection or assembly into structures, including, but not limited to, buildings (commercial, office, institutional, and multi-family residential); industrial and utility projects; parking decks; arenas and convention centers; medical facilities; and ports, transportation and infrastructure facilities. Fabricated structural steel is manufactured from carbon and alloy (including stainless) steel products such as angles, columns, beams, girders, plates, flange shapes (including manufactured structural shapes utilizing welded plates as a substitute for rolled wide flange sections), channels, hollow structural section (HSS) shapes, base plates, and plate-work components. Fabrication includes, but is not limited to cutting, drilling, welding, joining, bolting, bending, punching, pressure fitting, molding, grooving, adhesion, beveling, and riveting and may include items such as fasteners, nuts, bolts, rivets, screws, hinges, or joints.

The inclusion, attachment, joining, or assembly of non-steel components with fabricated structural steel does not remove the fabricated structural steel from the scope.

Fabricated structural steel is covered by the scope of the investigation regardless of whether it is painted, varnished, or coated with plastics or other metallic or non-metallic substances and regardless of whether it is assembled or partially assembled, such as into modules, modularized construction units, or sub-assemblies of fabricated structural steel.

Subject merchandise includes fabricated structural steel that has been assembled or further processed in the subject country or a third country, including but not limited to painting, varnishing, trimming, cutting,

[12] *See* Petitioner's Letter, ''Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Request to Extend Final Determination,'' dated July 23, 2019; *see also* Jinhuan's and Modern Heavy's Letter, ''JCG/MHI Joint Request to Extend the Final Determination: Antidumping Duty Investigation of Certain Fabricated Structural Steel from the People's Republic of China (A–570–102),'' dated July 19, 2019.

drilling, welding, joining, bolting, punching, bending, beveling, riveting, galvanizing, coating, and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the fabricated structural steel.

All products that meet the written physical description of the merchandise covered by the investigation are within the scope of the investigation unless specifically excluded or covered by the scope of an existing antidumping duty order.

Specifically excluded from the scope of the investigation are:

1. Fabricated steel concrete reinforcing bar (rebar) if: (i) It is a unitary piece of fabricated rebar, not joined, welded, or otherwise connected with any other steel product or part; or (ii) it is joined, welded, or otherwise connected only to other rebar.

2. Fabricated structural steel for bridges and bridge sections that meets American Association of State and Highway and Transportation Officials (AASHTO) bridge construction requirements or any state or local derivatives of the AASHTO bridge construction requirements.

3. Pre-engineered metal building systems, which are defined as complete metal buildings that integrate steel framing, roofing and walls to form one, pre-engineered building system, that meet Metal Building Manufacturers Association guide specifications. Pre-engineered metal building systems are typically limited in height to no more than 60 feet or two stories.

4. Steel roof and floor decking systems that meet Steel Deck Institute standards.

5. Open web steel bar joists and joist girders that meet Steel Joist Institute specifications.

6. Also excluded from the scope of the investigation is scaffolding, and parts and accessories thereof, that comply with ANSI/ASSE A10.8—2011—Scaffolding Safety Requirements, and/or Occupational Safety and Health Administration regulations at 29 CFR part 1926 subpart L—Scaffolds. The outside diameter of the scaffold tubing covered by this exclusion ranges from 25mm to 150mm.

7. Excluded from the scope of the investigation are access flooring systems panels and accessories, where such panels have a total thickness ranging from 0.75 inches to 1.75 inches and consist of concrete, wood, other non-steel materials, or hollow space permanently attached to a top and bottom layer of galvanized or painted steel sheet or formed coil steel, the whole of which has been formed into a square or rectangle having a measurement of 24 inches on each side +/- 0.1 inch; 24 inches by 30 inches +/- 0.1 inch; or 24 by 36 inches +/- 0.1 inch.

8. Excluded from the investigation are the following types of steel poles, segments of steel poles, and steel components of those poles:

- Steel Electric Transmission Poles, or segments of such poles, that meet (1) the American Society of Civil Engineers (ASCE)—Design of Steel Transmission Pole Structures, ASCE/SEI 48 or (2) the USDA RUS bulletin 1724E–214 Guide specification for standard class Steel Transmission Poles. The exclusion for steel electric transmission poles also encompasses the following components thereof: transmission arms which attach to poles; pole bases; angles that do not exceed 8″ x 8″ x 0.75″; steel vangs, steel brackets, steel flanges, and steel caps; safety climbing cables; ladders; and steel templates.
- Steel Electric Substation Poles, or segments of such poles, that meet the American Society of Civil Engineers (ASCE)—Manuals and Reports on Engineering Practice No. 113. The exclusion for steel electric substation poles also encompasses the following components thereof: Substation dead end poles; substation bus stands; substation mast poles, arms, and cross-arms; steel brackets, steel flanges, and steel caps; pole bases; safety climbing cables; ladders; and steel templates.
- Steel Electric Distribution Poles, or segments of such poles, that meet (1) American Society of Civil Engineers (ASCE)—Design of Steel Transmission Pole Structures, ASCE/SEI 48, (2) USDA RUS bulletin 1724E–204 Guide specification for steel single pole and H-frame structures, or (3) ANSI 05.1 height and class requirements for steel poles. The exclusion for steel electric distribution poles also encompasses the following components thereof: Distribution arms and cross-arms; pole bases; angles that do not exceed 8″ x 8″ x 0.75″; steel vangs, steel brackets, steel flanges, and steel caps; safety climbing cables; ladders; and steel templates.
- Steel Traffic Signal Poles, Steel Roadway Lighting Poles, Steel Parking Lot Lighting Poles, and Steel Sports Lighting Poles, or segments of such poles, that meet (1) the American Association of State Highway and Transportation Officials (AASHTO)—Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, (2) any state or local derivatives of the AASHTO highway sign, luminaries, and traffic signals requirements, or (3) American National Standard Institute (ANSI) C136—American National Standard for Roadway and Area Lighting Equipment standards. The exclusion for steel traffic signal poles, steel roadway lighting poles, steel parking lot lighting poles, and steel sports lighting poles also encompasses the following components thereof: Luminaire arms; hand hole rims; hand hole covers; base plates that connect to either the shaft or the arms; mast arm clamps ; mast arm tie rods; transformer base boxes; formed full base covers that hide anchor bolts; step lugs; internal cable guides; lighting cross arms; lighting service platforms; angles that do not exceed 8″ x 8″ x 0.75″; stainless steel hand hole door hinges and wind restraints; steel brackets, steel flanges, and steel caps; safety climbing cables; ladders; and steel templates.
- Communication Poles, or segments of such poles, that meet (1) Telecommunications Industry Association (TIA) ANSI/TIA–222 Structural Standards for Steel Antenna Towers and Antenna Supporting Structures, or (2) American Association of State Highway and Transportation Officials (AASHTO)—Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals. The exclusion for communication poles also encompasses the following components thereof: Luminaire arms; hand hole rims; hand hole covers; base plate that connects the pole to the foundation or arm to the pole; safety climbing cables; ladders; service ground platforms; step lugs; pole steps; steel brackets, steel flanges, and steel caps; angles that do not exceed 8″ x 8″ x 0.75″, coax, and safety brackets; subcomponent kits for antenna mounts weighing 80 lbs. or less; service platforms; ice bridges; stainless steel hand hole door hinges and wind restraints; and steel templates.
- OEM Round or Polygonal Tapered Steel Poles, segments or shaft components of such poles, that meet the (1) ASCE 48 or AASHTO, (2) ANSI/TIA 222, (3) ANSI 05.1, (4) RUS bulletin 1724E–204, or (5) RUS bulletin 1724E–214. The exclusion for OEM round or polygonal tapered steel poles also encompasses the following components thereof: Subcomponent kits for antenna mounts weighing 80 lbs. or less; mounts and platforms; steel brackets, steel flanges, and steel caps; angles that do not exceed 8″ x 8″ x 0.75″; bridge kits; safety climbing cables; ladders; and steel templates.

The inclusion or attachment of one or more of the above-referenced steel poles in a structure containing fabricated structural steel (FSS) does not remove the FSS from the scope of the investigation. No language included in this exclusion should be read or understood to have applicability to any other aspect of this scope or to have applicability to or to exclude any product, part, or component other than those specifically identified in the exclusion.

9. Also excluded from the scope of the investigation are Shuttering, Formworks, Propping and Shoring and parts and accessories thereof that comply with ANSI/ASSE A10.9—Safety Requirements for Concrete and Masonry Work and ACI–347—Recommended Practice for Concrete Formwork. For Shoring and propping made from tube, the outside diameter of the tubing covered by this exclusion ranges from 48mm to 250mm. For Shuttering and Formworks, the panel sizes covered by this exclusion range from 25mm x 600mm to 3000mm x 3000mm.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings: 7308.90.3000, 7308.90.6000, and 7308.90.9590.

The products subject to the investigation may also enter under the following HTSUS subheadings: 7216.91.0010, 7216.91.0090, 7216.99.0010, 7216.99.0090, 7222.40.6000, 7228.70.6000, 7301.10.0000, 7301.20.1000, 7301.20.5000, 7308.40.0000, 7308.90.9530, and 9406.90.0030.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background

III. Period of Investigation
IV. Postponement of the Final Determination
V. Scope Comments
VI. Scope of the Investigation
VII. Affiliation and Collapsing
VIII. Discussion of the Methodology
IX. Currency Conversion
X. Adjustment Under Section 777(A)(f) of the Act
XI. Adjustments to Cash Deposit Rates for Export Subsidies
XII. Verification
XIII. Recommendation

Appendix III

LIST OF SEPARATE RATE COMPANIES

Exporter	Producer
Non-individually examined exporters receiving separate rates	Producers supplying the non-individually examined exporters receiving separate rates
Beijing Chengdong International Modular Housing Corporation	Beijing Chengdong International Modular Housing Corporation.
Brantingham & Carroll International Ltd. AKA BCI Engineering	Suzhou Baojia New Energy Technology Co., Ltd.
Brantingham & Carroll International Ltd. AKA BCI Engineering	Suzhou Unique Precision Technology Co., Ltd.
Brantingham & Carroll International Ltd. AKA BCI Engineering	Yueqing Yihua New Energy Technology Co., Ltd.
Shanghai Shuangyan Chemical Equipment Manufacturing Co., Ltd	Shanghai Shuangyan Chemical Equipment Manufacturing Co., Ltd.
Shanghai Yanda Engineering Co., Ltd	Shanghai Yanda Engineering Co., Ltd.
WAP Intelligence Storage Equipment (Shanghai) Corp., Ltd	WAP Intelligence Storage Equipment (Shanghai) Corp., Ltd.
Wuxi Hengtong Metal Framing System Co., Ltd	Wuxi Hengtong Metal Framing System Co., Ltd.
Wuxi Huishan Metalwork Technology Co., Ltd	Wuxi Huishan Metalwork Technology Co., Ltd.
Yanda (Haimen) Heavy Equipment Manufacturing Co., Ltd	Yanda (Haimen) Heavy Equipment Manufacturing Co., Ltd.

[FR Doc. 2019–19512 Filed 9–9–19; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV057

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Citizen Science Program's Projects Advisory Committee via webinar.

DATES: The meeting via webinar will be held from 3 p.m. until 5 p.m. on Thursday, October 3, 2019.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julia Byrd (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. There will be an opportunity for public comment at the beginning of the meeting.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julia Byrd, Citizen Science Program Manager, SAFMC; phone: (843) 302–8433 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION: The Citizen Science Projects Advisory Committee serves as advisors to the Council's Citizen Science Program. Committee members include representatives from the Council's fishery Advisory Panels (AP), Habitat & Ecosystem AP, and Information & Education AP. Their responsibilities include identifying citizen science research and data needs across all the Council's fishery management plans; assisting with development of volunteer engagement strategies for recruiting, training, retaining, and communicating with volunteers; and serving as outreach ambassadors for the Program.

During the meeting, the Committee will receive an overview of the Citizen Science Program including background information and an update on the current program. The Committee will also review the Citizen Science Program's research priorities, discuss and provide recommendations as appropriate.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 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: September 5, 2019.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–19493 Filed 9–9–19; 8:45 am]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; American Lobster—Annual Trap Transfer Program

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 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 November 12, 2019.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable 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. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Laura Hansen, Fishery Management Specialist, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930; 978–281–9225, *Laura.Hansen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Type of Review: Regular submission (Extension of a current information collection). The National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) requests an extension to a current collection of information under OMB Control No. 0648–0673.

The American lobster fishery is cooperatively managed by the states and NMFS under the authority of the Atlantic Coastal Fisheries Cooperative Management Act. This collection of information is in response to several addenda to Amendment 3 of the Interstate Fishery Management Plan for American Lobster that work to reduce trap fishing effort through limited entry fishing and trap allocation limit reductions. This program is intended to help control fishing effort while increasing economic flexibility in the American lobster trap fishery.

Currently, Federal lobster permit holders qualified to fish with trap gear in Lobster Conservation Management Areas 2 and 3 are undergoing scheduled annual trap allocation reductions of 5 percent per year until 2021 (Area 2) and 2020 (Area 3). In 2015, in an effort to help mitigate the economic burden of these reductions, NMFS and state agencies implemented the Lobster Trap Transfer Program that allows all qualified Federal lobster permit holders to buy and sell trap allocation from Areas 2, 3, or Outer Cape Cod. Each transaction includes a conservation tax of 10 percent, which deducts a number of traps equal to 10 percent of the total number of traps with each transfer, permanently removing them from the fishery.

NMFS collects annual application forms from lobster permit holders who wish to buy and/or sell Area 2, 3, or Outer Cape Area trap allocation through the Trap Transfer Program. The transfer applications are only accepted during a 2-month period (from August 1 through September 30) each year, and the revised allocations for each participating lobster permit resulting from the transfers become effective at the start of the following Federal lobster fishing year on May 1. Both the seller and buyer of the traps are required to sign the application form, which includes each permit holder's permit and vessel information, the number of traps sold, and the revised number of traps received by the buyer, inclusive of the amount removed according to the transfer tax. Both parties must sign the form as an agreement to the number of traps in the transfer. The parties must date the document and show that the transferring permit holder has sufficient allocation to transfer and the permit holder receiving the traps has sufficient room under any applicable trap cap. This information allows NMFS to process and track transfers of lobster trap allocations through the Trap Transfer Program, and better enables the monitoring and management of the American lobster fishery as a whole.

II. Method of Collection

Applications for the Trap Transfer Program are accepted annually from August 1 through September 30 by mail, fax, or email.

III. Data

OMB Control Number: 0648–0673.

Form Number(s): None.

Type of Review: Regular submission (Extension of a current information collection).

Affected Public: Businesses or other for-profit organizations; Individuals or households; Federal government; and State, Local, or Tribal government.

Estimated Number of Respondents: 102.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 17.

Estimated Total Annual Cost to Public: $573.24 in reporting/recordkeeping 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.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–19529 Filed 9–9–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV056

Fisheries of the Gulf of Mexico; 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 62 Assessment Webinar IV for Gulf of Mexico gray triggerfish.

SUMMARY: The SEDAR 62 stock assessment process for Gulf of Mexico gray triggerfish will consist of an In-person Workshop, and a series of data and assessment webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 62 Assessment Webinar IV will be held October 2, 2019, from 10 a.m. to 12 noon, Eastern Time.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer 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: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@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 multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment 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, HMS 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 NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the Assessment Webinar are as follows:

1. Using datasets and initial assessment analysis recommended from the in-person workshop, panelists will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

2. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

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

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 5, 2019.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–19491 Filed 9–9–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Green Sturgeon 4(d) Rule Take Exceptions and Exemptions

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 November 12, 2019.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the public record. All Personally Identifiable 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. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Melissa Neuman, NMFS West Coast Region Protected Resources Division, 501 West Ocean Boulevard Suite 4200, Long Beach, CA 90802, (562) 980–4115, or *Melissa.Neuman@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension, without change, of a currently approved information collection.

The Southern Distinct Population Segment of North American green sturgeon (Acipenser medirostris; hereafter, ''Southern DPS'') was listed as a threatened species in April 2006. Protective regulations under section 4(d) of the ESA were promulgated for the species on June 2, 2010 (75 FR 30714) (the final ESA 4(d) Rule). To comply with the ESA and the protective regulations, entities must obtain take authorization prior to engaging in activities involving take of Southern DPS fish unless the activity is covered by an exception or exemption. ''Take'' is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Certain activities described in the ''exceptions'' provision of 50 CFR 223.210(b) are not subject to the take prohibitions if they adhere to specific criteria and reporting requirements. Under the ''exemption'' provision of 50 CFR 223.210(c), the take prohibitions do not apply to scientific research, scientific monitoring, and fisheries activities conducted under an approved 4(d) program or plan; similarly, take prohibitions do not apply to tribal resource management activities conducted under a Tribal Plan for which the requisite determinations described in 50 CFR 223.102(c)(3) have been made.

To ensure that activities qualify under exceptions to or exemptions from the take prohibitions, local, state, and federal agencies, non-governmental organizations, academic researchers, and private organizations are asked to voluntarily submit detailed information regarding their activity on a schedule to be determined by National Marine Fisheries Service (NMFS) staff. This information is used by NMFS to (1) track the number of Southern DPS fish taken as a result of each action; (2) understand and evaluate the cumulative effects of each action on the Southern DPS; and (3) determine whether additional protections are needed for the species, or whether additional exceptions may be warranted. NMFS designed the criteria to ensure that plans meeting the criteria would adequately limit impacts on threatened

Southern DPS fish, such that additional protections in the form of a federal take prohibition would not be necessary and advisable.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include email of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0613.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions; State, Local, or Tribal government; Federal government; business or other for-profit organizations.

Estimated Number of Respondents: 58

Estimated Time per Response: Written notification describing research, monitoring or habitat restoration activities, 40 hours; development of fisheries management and evaluation plans or state 4(d) research programs, 40 hours; reports, 5 hours; development of a tribal fishery management plan, 20 hours.

Estimated Total Annual Burden Hours: 1,760.

Estimated Total Annual Cost to Public: $200.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–19530 Filed 9–9–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV058

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold meetings of its Marianas Regional Ecosystem Advisory Committee (REAC) and Marianas Advisory Panel (AP) to discuss fishery issues and develop recommendations for future ecosystem management of the archipelagic and pelagic fisheries and protected species.

DATES: The Commonwealth of the Northern Mariana Islands (CNMI) REAC meeting will be held between 9 a.m. and 3 p.m. on September 25, 2019. The CNMI AP meeting will be held between 5 p.m. and 8 p.m. on September 25, 2019. The Guam REAC meeting will be held between 9 a.m. and 3 p.m. on September 27, 2019. The Guam AP meeting will be held between 5 p.m. and 8 p.m. on September 27, 2019. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The CNMI REAC and AP meetings will be held at the Chamolinian Room of Hyatt Regency Hotel, Royal Palm Avenue, Micro Beach Rd, Garapan, Saipan 96950, Northern Mariana Islands; telephone: (670) 234–1234. The Guam REAC and AP meetings will be held at the Gallery Room of the Hilton Guam Resort and Spa, 202 Hilton Road, Tumon Bay, Guam 96913; telephone: (671) 646–1835.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council; telephone: (808) 522–8220; fax: (808) 522–8226.

SUPPLEMENTARY INFORMATION: Public comment periods will be provided throughout the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Agenda for the CNMI REAC Meeting

Wednesday, September 25, 2019, 9 a.m. to 3 p.m.

1. Welcome and Introductions
2. Review of 2018 REAC Meeting
3. Overview of the 2019 REAC Meeting
4. Information sourcing for local fishery ecosystem impacts of climate change
5. Sourcing for local data sources that can be used to support research
6. Setting local research priorities needed to address impacts of climate change on the local fishery ecosystems
7. Discussion on Coral Reef Grant Projects
8. Social, economic, and ecological characterization of shark depredation
9. Public Comment
10. Other Business
11. Discussion and Recommendations

Agenda for the CNMI AP Meeting

Wednesday, September 25, 2019, 5 p.m. to 8 p.m.

1. Welcome and Introductions
2. Review of the last AP meeting and recommendations
3. 180th Council Meeting Action Items and Issues
   a. Territorial Bottomfish Stock Assessment
   b. Pacific Insular Fisheries Monitoring and Assessment Planning Summit
4. CNMI Reports
   a. Community Report
   b. Education Report
   c. Island Report
   d. Legislative Report
   e. 2018 Mariana Archipelago Fisheries Economics Survey
5. Island Fishery Issues & Activities
   a. Issues
   b. Activities
6. Public Comments
7. Discussion and Recommendations
8. Other Business

Agenda for the Guam REAC Meeting

Friday, September 27, 2019, 9 a.m. to 3 p.m.

1. Welcome and Introductions
2. Overview of the REAC 2019 meeting
3. Information sourcing for local fishery ecosystem impacts of climate change
4. Sourcing for local data sources that can be used to support research
5. Setting local research priorities needed to address impacts of climate change on the local fishery ecosystems (include pelagics)
6. Discussion on Coral Reef Grant Projects
7. Social, economic, and ecological characterization of shark depredation
8. Public Comment
9. Other Business
10. Discussion and Recommendations

Agenda for the Guam AP Meeting

Friday, September 27, 2019, 6 p.m. to 8 p.m.

1. Welcome and Introductions
2. Review of the last AP meeting and recommendations
3. 180th Council Meeting Action Items and Issues
   a. Territorial Bottomfish Stock Assessment
   b. Pacific Insular Fisheries Monitoring and Assessment Planning Summit
4. Guam Reports
   a. Community Report
   b. Education Report
   c. Island Report
   d. Legislative Report
   e. 2018 Mariana Archipelago Fisheries Economics Survey
5. Island Fishery Issues & Activities
   a. Issues
   b. Activities
6. Public Comments
7. Discussion and Recommendations
8. Other Business

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, telephone: (808) 522–8220; fax: (808) 522–8226, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 5, 2019.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–19494 Filed 9–9–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR038

Marine Mammals; File No. 23197

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Wildstar Films, South Parade Mansions, 71 Oakfield Road, Bristol BS8 2BB, U.K. (Responsible Party: Hugh Pearson), has applied in due form for a permit to conduct commercial photography on common dolphins (*Delphinus delphis*), Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), northern right whale dolphins (*Lissodelphis borealis*), and California sea lions (*Zalophus californianus*).

DATES: Written, telefaxed, or email comments must be received on or before October 10, 2019.

ADDRESSES: These documents are available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Sara Young or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to film up to 2,000 common dolphins, 300 Pacific white-sided dolphins, 500 northern right whale dolphins, and 100 California sea lions off the coast of Newport, CA. Underwater video would be taken for a television documentary series on American wildlife for the National Geographic Channel. Filming could occur by vessel using a pole camera, by unmanned aircraft system, or by scuba diving. The permit would expire on December 31, 2020.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 5, 2019.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–19517 Filed 9–9–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU002

Meeting of the Columbia Basin Partnership Task Force of the Marine Fisheries Advisory Committee

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of open public meeting.

SUMMARY: This notice sets forth the proposed schedule and agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee's (MAFAC's) Columbia Basin Partnership Task Force (CBP Task Force). The CBP Task Force will discuss the issues outlined in the **SUPPLEMENTARY INFORMATION** below.

DATES: The meeting will be held on September 25, 2019 from 9 a.m. to 5 p.m. PT and September 26, 2019 from 9 a.m. to 4 p.m. PT.

ADDRESSES: The meeting will be held at the Port of Portland Headquarters, 8th floor, Chinook Room, 7200 NE Airport Way, Portland, OR 97218; 503–415–6000.

FOR FURTHER INFORMATION CONTACT: Katherine Cheney; NFMS West Coast Region; 503–231–6730; email: *Katherine.Cheney@noaa.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given of a meeting of MAFAC's CBP Task Force. The MAFAC was established by the Secretary of Commerce (Secretary) and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The MAFAC charter and meeting information are located online at *https://www.fisheries.noaa.gov/topic/partners#marine-fisheries-advisory-committee-.* The CBP Task Force reports to MAFAC and is being convened to develop recommendations for long-term goals to meet Columbia Basin salmon recovery, conservation needs, and harvest opportunities, in the context of habitat capacity and other factors that affect salmon mortality. More information is available at the CBP Task

Force web page: *http://www.westcoast.fisheries.noaa.gov/columbia_river/index.html.*

Matters To Be Considered

The meeting time and agenda are subject to change. Meeting topics include updates to the biological strategies for achieving goals and exploring analytical tools to assess social, cultural, economic, and ecological considerations that affect salmon and steelhead conservation and recovery.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Katherine Cheney, 503–231–6730, by September 18, 2019.

Dated: September 4, 2019.

Jennifer L. Lukens,

Federal Program Officer, Marine Fisheries Advisory Committee, National Marine Fisheries Service.

[FR Doc. 2019–19472 Filed 9–9–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0112]

Agency Information Collection Activities; Comment Request; Presidential Cybersecurity Education Award

AGENCY: Office of Planning, Evaluation and Policy Development (OPEPD), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is requesting the Office of Management and Budget (OMB) to conduct an emergency review of a new information collection.

DATES: The Department is requesting OMB approval of the emergency information collection by September 25, 2019. Interested persons are invited to submit comments to the emergency information collection by that date. A regular clearance process is also hereby being initiated. Interested persons are invited to submit comments on or before November 12, 2019.

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–2019–ICCD–0112. 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. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov*. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *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 9089, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jean Morrow, 202–453–7233, or via email at *CyberAwards@ed.gov*.

SUPPLEMENTARY INFORMATION: 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. ED is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of ED; (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 ED 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: Presidential Cybersecurity Education Award.

OMB Control Number: 1875–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 120.

Total Estimated Number of Annual Burden Hours: 120.

Abstract: Pursuant to Executive Order 13870 of May 2, 2019, as published in the **Federal Register** at 84 FR 20,523–20,527 (May 9, 2019) (Executive Order 13870), ED, in consultation with the Deputy Assistant to the President for Homeland Security and Counterterrorism and the National Science Foundation, has developed and implemented, consistent with applicable law, an annual Presidential Cybersecurity Education Award to be presented to one elementary and one secondary school educator per year who best instill skills, knowledge, and passion with respect to cybersecurity and cybersecurity-related subjects. ED will solicit nominations for the two individual educators who will be awarded this Presidential Cybersecurity Education Award.

Additional Information: An emergency clearance approval for the use of the system is described below due to the following conditions: The program office anticipates announcing this award on October 1, 2019. In recognition of National Cybersecurity Awareness Month, the announcement of the Award will be on or around October 1, 2019. However, the Department must wait until the Systems of Records Notice (SORN) is published in the **Federal Register** to accept nominations. The Department anticipates that the SORN should be published by December 2019 (or sooner), at which point nominations can be submitted to the Department. The nomination period will likely close January 31, 2020. By announcing in October, this allows nominators more time to put together the information required to submit nominations. The Department will prompt nominators to refer to the website for updated details on when nominations can be submitted to the Department. Between February and April 2020, the Department will conduct an internal review of the nominations, recommend one elementary and one secondary awardee to the Department of Education's Office of the Secretary, and awardees will be recognized during Teacher Appreciation Week in May 2020. This quick timeline will ensure meeting the President of the United States' Executive Order 13870 directive to make awards within one year of signage.

Dated: September 5, 2019.

Stephanie Valentine,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–19523 Filed 9–9–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Renewal

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to renew, for three years, an information collection request with the Office of Management and Budget (OMB).

DATES: Comments regarding this proposed information collection must be received on or before November 12, 2019. If you anticipate difficulty in submitting comments within that period or if you want access to the collection of information, without charge, contact the person listed below as soon as possible.

ADDRESSES: Written comments should be sent to the following: Richard Bonnell, U.S. Department of Energy, Office of Acquisition Management, 1000 Independence Avenue SW, Washington, DC 20585–0121 or by email at *richard.bonnell@hq.doe.gov.* Please put ''2020 DOE Agency Information Collection Renewal-Financial Assistance'' in the subject line when sending an email.

FOR FURTHER INFORMATION CONTACT: Richard Bonnell by email at *richard.bonnell@hq.doe.gov or telephone: (202) 287–1747.* Please put ''2020 DOE Agency Information Collection Renewal-Financial Assistance'' in the subject line when sending an email.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the renewed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains: (1) *OMB No.:* 1910–0400 (Renewal); (2) *Information Collection Request Title:* DOE Financial Assistance Information Clearance; (3) *Type of Review:* Renewal; (4) *Purpose:* This information collection package covers mandatory collections of information necessary to annually plan, solicit, negotiate, award and administer grants and cooperative agreements under the Department's financial assistance programs. The information is used by Departmental management to exercise management oversight with respect to implementation of applicable statutory and regulatory requirements and obligations. The collection of this information is critical to ensure that the Government has sufficient information to judge the degree to which awardees meet the terms of their agreements; that public funds are spent in the manner intended; and that fraud, waste, and abuse are immediately detected and eliminated; (5) *Annual Estimated Number of Respondents:* 10,125; (6) *Annual Estimated Number of Total Responses:* 36,714; (7) *Estimated Number of Burden Hours:* 524,040; and (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0.

Statutory Authorities: Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301–6308.

Signed in Washington, DC, on August 15, 2019.

John R. Bashista,

Director, Office of Acquisition Management.

[FR Doc. 2019–19526 Filed 9–9–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10624–027]

French Paper Company; French Hydro LLC; Notice of Application for Transfer of License, Substitution of Relicense Applicant, and Soliciting Comments, Motions To Intervene, and Protests

On July 30, 2019, French Paper Company (transferor) and French Hydro LLC (transferee) filed a joint application for: (1) Transfer of license for the French Paper Project No. 10624, located on the St. Joseph River in Berrien County, Michigan; and (2) substitution of French Hydro LLC for French Paper Company as the applicant in the pending application for a new license filed by the transferor for Project No. 10624–026.

Applicants Contacts: For Transferor and Transferee: Mr. Alex Rotolo, Secretary & Chief Financial Officer, French Paper Company and French Hydro LLC, 100 French Street, Niles, MI 49120, Phone: 203–241–6743.

FERC Contact: Anumzziatta Purchiaroni, (202) 502–6191, *Anumzziatta.purchiaroni@ferc.gov.*

Deadline for filing comments, interventions, and protests: 30 days from the issuance date of this notice, by the Commission. The Commission strongly encourages electronic filing. Please file interventions, comments, 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–10624–027.

Dated: September 4, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–19482 Filed 9–9–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–504–000]

Equitrans, LP; Notice of Application

Take notice that on August 22, 2019, Equitrans, LP (Equitrans), 2200 Energy Drive, Canonsburg, Pennsylvania 15317, filed an application in Docket No. CP19–504–000 pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, requesting authorization to abandon by sale to Diversified Gas and Oil Corporation and EQM Gathering Opco, LLC approximately 13.9 miles of various diameter gathering pipelines, the Burnsville and Copley Compressor Stations, and appurtenant facilities, all located in Lewis and Braxton Counties, West Virginia, all as more fully

described in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Matthew T. Eggerding, Assistant General Counsel, at Equitrans, LP, 2200 Energy Drive, Canonsburg, Pennsylvania 15317, by telephone at (412) 553–5786, or by emailing *MEggerding@equitransmidstream.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 3 copies of filings made in the proceeding with the Commission and must provide a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, and will be notified of any meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new Natural Gas Act section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to ''show good cause why the time limitation should be waived,'' and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[2]

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC 61,167 at 50 (2018).

[2] 18 CFR 385.214(d)(1).

Comment Date: 5:00 p.m. Eastern Time on September 25, 2019.

Dated: September 4, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–19475 Filed 9–9–19; 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: EC19–135–000.

Applicants: Avangrid Renewables, LLC, Avangrid Arizona Renewables, LLC, Poseidon Wind, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Avangrid Renewables, LLC, et al.

Filed Date: 9/3/19.

Accession Number: 20190903–5213.

Comments Due: 5 p.m. ET 9/24/19.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19–179–000.

Applicants: Thermo Cogeneration Partnership, L.P.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Thermo Cogeneration Partnership, L.P.

Filed Date: 9/4/19.

Accession Number: 20190904–5073.

Comments Due: 5 p.m. ET 9/25/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–2733–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2019–09–03 Energy Storage and Distributed Energy Resources Phase 3 Amendment to be effective 11/13/2019.

Filed Date: 9/3/19.

Accession Number: 20190903–5164.

Comments Due: 5 p.m. ET 9/24/19.

Docket Numbers: ER19–2377–001.

Applicants: Midcontinent Independent System Operator, Inc., Michigan Electric Transmission Company.

Description: Tariff Amendment: 2019–09–04_SA 3330 Assembly Solar LLC–METC Substitute E&P (J796) to be effective 7/2/2019.

Filed Date: 9/4/19.

Accession Number: 20190904–5049.

Comments Due: 5 p.m. ET 9/25/19.

Docket Numbers: ER19–2734–000.
Applicants: Stream Energy Columbia, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 9/4/2019.
Filed Date: 9/3/19.
Accession Number: 20190903–5182.
Comments Due: 5 p.m. ET 9/24/19.

Docket Numbers: ER19–2735–000.
Applicants: Stream Energy Delaware, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 9/4/2019.
Filed Date: 9/3/19.
Accession Number: 20190903–5183.
Comments Due: 5 p.m. ET 9/24/19.

Docket Numbers: ER19–2736–000.
Applicants: Stream Energy Illinois, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 9/4/2019.
Filed Date: 9/3/19.
Accession Number: 20190903–5184.
Comments Due: 5 p.m. ET 9/24/19.

Docket Numbers: ER19–2737–000.
Applicants: Stream Energy New Jersey, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 9/4/2019.
Filed Date: 9/3/19.
Accession Number: 20190903–5186.
Comments Due: 5 p.m. ET 9/24/19.

Docket Numbers: ER19–2738–000.
Applicants: Stream Energy New York, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 9/4/2019.
Filed Date: 9/3/19.
Accession Number: 20190903–5189.
Comments Due: 5 p.m. ET 9/24/19.

Docket Numbers: ER19–2739–000.
Applicants: Stream Ohio Gas & Electric, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 9/4/2019.
Filed Date: 9/3/19.
Accession Number: 20190903–5192.
Comments Due: 5 p.m. ET 9/24/19.

Docket Numbers: ER19–2740–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: PSC–COGRN–Revised ISA–146–0.1.0–Agrmt to be effective 11/4/2019.
Filed Date: 9/4/19.
Accession Number: 20190904–5002.
Comments Due: 5 p.m. ET 9/25/19.

Docket Numbers: ER19–2741–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: MAIT submits 14 ECSAs, Service Agreement Nos. 5335, 5404, 5405, et al to be effective 11/3/2019.
Filed Date: 9/4/19.
Accession Number: 20190904–5010.
Comments Due: 5 p.m. ET 9/25/19.

Docket Numbers: ER19–2742–000.
Applicants: Stream Energy Connecticut, LLC.
Description: Notice of Cancellation of Market-Based Rate Tariff of Stream Energy Connecticut, LLC.
Filed Date: 9/4/19.
Accession Number: 20190904–5028.
Comments Due: 5 p.m. ET 9/25/19.

Docket Numbers: ER19–2743–000.
Applicants: Stream Energy Indiana, LLC.
Description: Notice of Cancellation of Market-Based Rate Tariff of Stream Energy Indiana, LLC.
Filed Date: 9/4/19.
Accession Number: 20190904–5031.
Comments Due: 5 p.m. ET 9/25/19.

Docket Numbers: ER19–2744–000.
Applicants: Stream Energy Massachusetts, LLC.
Description: Notice of Cancellation of Market-Based Rate Tariff of Stream Energy Massachusetts, LLC.
Filed Date: 9/4/19.
Accession Number: 20190904–5037.
Comments Due: 5 p.m. ET 9/25/19.

Docket Numbers: ER19–2745–000.
Applicants: New Creek Wind LLC.
Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 11/4/2019.
Filed Date: 9/4/19.
Accession Number: 20190904–5062.
Comments Due: 5 p.m. ET 9/25/19.

Docket Numbers: ER19–2746–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 5453, Non-queue NQ159 to be effective 12/31/2019.
Filed Date: 9/4/19.
Accession Number: 20190904–5063.
Comments Due: 5 p.m. ET 9/25/19.

Docket Numbers: ER19–2747–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3593 Frontier Windpower II GIA to be effective 8/23/2019.
Filed Date: 9/4/19.
Accession Number: 20190904–5064.
Comments Due: 5 p.m. ET 9/25/19.

Docket Numbers: ER19–2748–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3595 Skeleton Creek Wind GIA to be effective 8/23/2019.
Filed Date: 9/4/19.
Accession Number: 20190904–5067.
Comments Due: 5 p.m. ET 9/25/19.

Docket Numbers: ER19–2749–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 5463; Queue No. AB2–190 to be effective 8/9/2019.
Filed Date: 9/4/19.
Accession Number: 20190904–5081.
Comments Due: 5 p.m. ET 9/25/19.

Docket Numbers: ER19–2750–000.
Applicants: SGE Energy Sourcing, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 9/5/2019.
Filed Date: 9/4/19.
Accession Number: 20190904–5121.
Comments Due: 5 p.m. ET 9/25/19.

Docket Numbers: ER19–2751–000.
Applicants: Stream Energy Maryland, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 9/5/2019.
Filed Date: 9/4/19.
Accession Number: 20190904–5122.
Comments Due: 5 p.m. ET 9/25/19.

Docket Numbers: ER19–2752–000.
Applicants: Stream Energy Pennsylvania, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 9/5/2019.
Filed Date: 9/4/19.
Accession Number: 20190904–5124.
Comments Due: 5 p.m. ET 9/25/19.

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: September 4, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–19477 Filed 9–9–19; 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: RP19–1505–001.
Applicants: Gulf South Pipeline Company, LP.
Description: Tariff Amendment: Amendment to Filing in Docket No. RP19–1505–000 to be effective 9/1/2019.
Filed Date: 9/3/19.
Accession Number: 20190903–5077.
Comments Due: 5 p.m. ET 9/16/19.

Docket Numbers: RP19–1534–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Capacity Release Agreements—9/1/2019 to be effective 9/1/2019.
Filed Date: 9/3/19.
Accession Number: 20190903–5008.
Comments Due: 5 p.m. ET 9/16/19.

Docket Numbers: RP19–1535–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Gulfport 34939, 35446 to Eco-Energy 38193, 38194) to be effective 9/1/2019.
Filed Date: 9/3/19.
Accession Number: 20190903–5074.
Comments Due: 5 p.m. ET 9/16/19.

Docket Numbers: RP19–1536–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Amendment to Neg Rate Agmt (Colorado Bend 46260) to be effective 9/1/2019.
Filed Date: 9/3/19.
Accession Number: 20190903–5075.
Comments Due: 5 p.m. ET 9/16/19.

Docket Numbers: RP19–1537–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Constellation 51462 to Exelon 51517) to be effective 9/1/2019.
Filed Date: 9/3/19.
Accession Number: 20190903–5076.
Comments Due: 5 p.m. ET 9/16/19.

Docket Numbers: RP19–1538–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: Neg Rate 2019–09–03 Encana to be effective 9/1/2019.
Filed Date: 9/3/19.
Accession Number: 20190903–5129.
Comments Due: 5 p.m. ET 9/16/19.

Docket Numbers: RP19–1539–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: New Firm and Interruptible Lateral Service (Rate Schedules FLS and ILS) to be effective 10/4/2019.
Filed Date: 9/3/19.
Accession Number: 20190903–5137.
Comments Due: 5 p.m. ET 9/16/19.

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: September 4, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–19473 Filed 9–9–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–14430–007]

Apple, Inc. ; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Non-capacity amendment of license.
b. *Project No.:* P–14430–007.
c. *Date Filed:* August 28 & 29, 2019, supplemented on September 3, 2019.
d. *Applicant:* Apple, Inc.
e. *Name of Project:* Monroe Drop Hydroelectric Project.
f. *Location:* The project is located at the Monroe Drop on the North Unit Irrigation District Main Canal in Jefferson County, Oregon.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.
h. *Applicant Contact:* Jessica Penrod, 2401 Monarch St., Alameda, CA 95401, (415) 845–1933.
i. *FERC Contact:* Christopher Chaney, (202) 502–6778, *christopher.chaney@ferc.gov.*
j. Deadline for filing comments, motions to intervene, and protests is 15 days from the issuance of this notice by the Commission. 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/doc-sfiling/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–14430–007.
k. *Description of Request:* The applicant proposes to replace the project's SLH100 turbine with a new Restoration Hydro Turbine and replacing the upper section of the rectangular draft tube with a cylindrical section. To accommodate the new draft tube section, the applicant will have to enlarge the current notch in the canal wall. The proposed action would not change the authorized installed capacity or the hydraulic capacity. The applicant does not propose any changes to operations or other aspects of the project.
l. *Locations of the Applications:* 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. The filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene, or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .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, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, MOTION TO INTERVENE, or PROTEST as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. All comments, motions to intervene, or protests should relate to project works which are the subject of the temporary variance request. 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 385.2010.

Dated: September 4, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–19474 Filed 9–9–19; 8:45 am]

BILLING CODE 6717–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Meeting of Both the Advisory Committee of the Export-Import Bank of the United States (EXIM) and the Sub-Saharan Africa Advisory Committee of the Export-Import Bank of the United States (EXIM); Correction

AGENCY: Export-Import Bank of the United States.

ACTION: Notice; correction.

SUMMARY: The Export-Import Bank published a document in the **Federal Register** on June 21, 2019, concerning a meeting of the Advisory and Sub-Saharan Committees. The start time has since been revised.

FOR FURTHER INFORMATION CONTACT: For further information, contact the External Engagement team, 811 Vermont Ave. NW, Washington, DC 20571, at *external@exim.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of August 21, 2019, Document 2019–19792, on page 43598, in the third column, correct the Time and Place to read:

Time and Place: Wednesday, September 11, 2019 from 9:00 a.m. until 1:45 p.m. A break for lunch will be at the expense of the attendee. Security processing will be necessary for reentry into the building. The meeting will be held at EXIM headquarters in the Main Conference Room—11th floor, 811 Vermont Avenue NW, Washington, DC 20571.

Joyce Brotemarkle Stone,

Assistant Corporate Secretary.

[FR Doc. 2019–19528 Filed 9–9–19; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Recordkeeping and Disclosure Requirements Associated with the Bureau of Consumer Financial Protection's (Bureau) Regulation E (Electronic Fund Transfers) (FR E; OMB No. 7100–0200). The revisions are applicable immediately.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

A copy of the PRA OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files. These documents also are available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are placed into OMB's public docket files.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection:

Report title: Recordkeeping and Disclosure Requirements Associated with the Bureau of Consumer Financial Protection's (Bureau) Regulation E (Electronic Fund Transfers).

Agency form number: FR E.

OMB control number: 7100–0200.

Effective Date: Immediately.

Frequency: Event generated.

Respondents: State member banks (SMBs) and their subsidiaries, subsidiaries of bank holding companies, U.S. branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a; 611–631).

Estimated number of respondents: Gift card exclusion policies and

procedures, Gift card policy and procedures, Transmitter error resolution standards and recordkeeping requirements, Acts of agents, Initial disclosures, Change-in-terms, Error resolution, Remittance transfer disclosures, and Time limits and extent of investigations, 970 respondents; Periodic statements, 71 respondents; Pre-acquisition disclosures (short form disclosure)—one time, Pre-acquisition disclosures (long form disclosure)—one time, Periodic statement alternative—one time, and Pre-acquisition disclosures (short form disclosure)—ongoing, 5 respondents; and internet posting and submission of prepaid account agreements—one time and internet posting and submission of prepaid account agreements—ongoing, 6 respondents.

Estimated average hours per response: Gift card exclusion policies and procedures, Gift card policy and procedures, Transmitter error resolution standards and recordkeeping requirements, Acts of agents, Remittance transfer disclosures, and Pre-acquisition disclosures (long form disclosure)—one time, 8 hours; Initial disclosures, 0.03 hours; Change-in-terms, 0.02 hours; Periodic statements, 7 hours; Error resolution, 0.5 hours; Time limits and extent of investigation, 4.5 hours; Pre-acquisition disclosures (short form disclosure)—one time, 40 hours; Periodic statement alternative—one time, 24 hours; internet posting and submission of prepaid account agreements—one time, 1 hour; Pre-acquisition disclosures (short form disclosure)—ongoing, 4 hours; and internet posting and submission of prepaid account agreements—ongoing, 0.08 hours.

Estimated annual burden hours: Gift card exclusion policies and procedures, Gift card policy and procedures, Transmitter error resolution standards and recordkeeping requirements, and Acts of agents, 7,760 hours; Initial disclosures, 7,275 hours; Change-in-terms, 6,596 hours; Periodic statements, 5,964 hours; Error resolution, 14,550 hours; Remittance transfer disclosures, 93,120 hours; Time limits and extent of investigations, 52,380 hours; Pre-acquisition disclosures (short form disclosure)—one time, 1,914 hours, Pre-acquisition disclosures (long form disclosure)—one time, 383 hours; internet posting and submission of prepaid account agreements—one time, 6 hours, Pre-acquisition disclosures (short form disclosure)—ongoing, 191 hours; Periodic statement alternative—one time, 1,148 hours, and internet posting and submission of prepaid account agreements—ongoing, 2 hours.

General description of report: The Electronic Funds Transfer Act (EFTA) requires consumers be provided meaningful disclosures about the basic terms, costs, and rights relating to electronic fund transfer (EFT) services involving a consumer's account. The disclosures required by the EFTA are triggered by specific events. The disclosures inform consumers, for example, about the terms of the EFT service, activity on the account, potential liability for unauthorized transfers, and the process for resolving errors.

Legal authorization and confidentiality: Section 904 of the EFTA (12 U.S.C. 1693b) authorizes the Bureau to issue regulations to carry out the purposes of the EFTA, which establishes the basic rights, liabilities, and responsibilities of consumers who use EFT and remittance transfer services and of financial institutions or other persons that offer these services. The Bureau's Regulation E, 12 CFR part 1005, implements the EFTA. An institution's recordkeeping and disclosure obligations under Regulation E are mandatory. Because the Board does not collect any information pursuant to the Bureau's Regulation E, no issue of confidentiality normally arises. In the event the Board were to obtain information regarding consumer EFT transactions during the course of an examination, such information may be kept confidential under section (b)(8) of the Freedom of Information Act, which protects information contained in or related to an examination of a financial institution (5 U.S.C. 522 (b)(8)).

Current actions: On April 30, 2019, the Board published a notice in the **Federal Register** (84 FR 18286) requesting public comment for 60 days on the extension, with revision, of the Recordkeeping and Disclosure Requirements Associated with the Bureau of Consumer Financial Protection's (Bureau) Regulation E (Electronic Fund Transfers). Beginning April 1, 2019, entities subject to the Bureau's Regulation E were required to comply with the following recordkeeping and disclosure requirements related to prepaid accounts in accordance with the Bureau's new final rule.

Pre-Acquisition Disclosures (Section 1005.18(b))

Before a consumer acquires a prepaid account, a financial institution is required to provide a consumer with a short form disclosure and a long form disclosure. The short form disclosure is required to include: Certain fee information—including any periodic fee, per purchase fee, ATM withdrawal fee, cash reload fee, ATM balance inquiry fee, customer service fee, and inactivity fee (collectively, ''static fees''); the number of fee types in addition to the static fees; two additional fee types that generated the highest revenue from consumers during the previous 24 months; statements regarding linked overdraft credit features, registration, and Federal Deposit Insurance Corporation (FDIC)/National Credit Union Association (NCUA) insurance; a reference to the Bureau's website containing information on prepaid accounts; and information on where the consumer can find the long form disclosure. For payroll card accounts, the short form disclosure is required to include a statement regarding options to receive wages or salary from the employer. For government benefit accounts, the short form disclosure is required to include a statement regarding options to receive government benefits. Furthermore, the Bureau requires a financial institution to disclose, in conjunction with the short form disclosure, its name, the name of the prepaid account program, any purchase price for the prepaid account, and any fee for activating the prepaid account.

The long form disclosure is required to include: A title, including the name of the prepaid account program; information about all fees and the conditions under which they may be imposed; a statement regarding registration and FDIC/NCUA insurance; a statement regarding linked overdraft credit features; a statement containing the financial institution's contact information; a reference to the Bureau's website containing information on prepaid accounts; and a reference to the Bureau's website and telephone number to submit complaints.

Generally, these disclosures are required to be provided before a consumer acquires a prepaid account, though there are certain exceptions. For prepaid accounts sold at retail locations, however, a financial institution may provide the long form disclosure after acquisition if the short form disclosure contains information enabling the consumer to access the long form disclosure by telephone or on a website and other requirements are met. A similar accommodation is made for prepaid accounts acquired orally by telephone.

The pre-acquisition disclosures are required to follow specific formatting rules, and, for the short form disclosures, be substantially similar to model forms. If the financial institution uses a foreign language in connection

with a consumer's acquisition of a prepaid account, a financial institution is generally required to provide the pre-acquisition disclosures in that foreign language.

Periodic Statement Alternative (Section 1005.18(c))

Financial institutions are required to provide periodic statements for prepaid accounts either by providing a periodic statement that complies with section 1005.9(b) or, as an alternative, by making transaction information available to the consumer by telephone, electronically, and in writing upon the consumer's request pursuant to section 1005.18(c).

Initial Disclosures (Sections 1005.18(d)(1)(i) and 1005.18(f)(1))

Financial institutions are required to include in the initial disclosure required by section 1005.7 all the information required to be disclosed in the pre-acquisition long form disclosure. If a financial institution chooses to provide the alternative disclosures instead of a regular periodic statement, it must modify some of the disclosures included in the initial disclosures.

The Bureau determined and the Board agrees that financial institutions already engage in these activities as usual and customary activities, as defined under 5 CFR 1320.3(b)(2). Therefore, under 5 CFR 1320.3(b)(2), there is no additional burden for these provisions.

Error Resolution Notice and Procedures for Resolving Errors (Sections 1005.18(d)(1)(ii), 1005.18(d)(2), and 1005.18(e))

Prepaid accounts are required to comply with the limited liability error resolution requirements applicable to other accounts subject to Regulation E. For prepaid accounts where the financial institution provides alternative disclosures to regular periodic statements, the timing requirements for the error resolution procedures are modified. For prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is generally not required to comply with the liability limits and error resolution requirements in sections 1005.6 and 1005.11 for any prepaid account for which it has not successfully completed its consumer identification and verification process.

A notice concerning error resolution, provided with the initial disclosures and substantially similar to the Bureau's model form for prepaid accounts, is required to be provided in place of the notice required by section 1005.7(b)(10). Alternatively, for prepaid account programs for which the financial institution does not have a consumer identification and verification process, the financial institution is required to describe its error resolution process and limitations on consumers' liability for unauthorized transfers or, if none, state that there are no such protections.

An annual error resolution notice substantially similar to the model form for prepaid accounts is required to be provided in place of the notice required by section 1005.8(b). Alternatively, a financial institution may include on or with each electronic and written account transaction history, a notice substantially similar to the abbreviated notice for periodic statements contained in the model forms, modified as necessary to reflect the error resolution procedures the financial institution is required to follow.

The Bureau determined and the Board agrees that financial institutions already engage in these activities as usual and customary activities, as defined under 5 CFR 1320.3(b)(2). Therefore, under 5 CFR 1320.3(b)(2), there is no additional burden for these provisions.

Change-In-Terms Notice (Section 1005.18(f)(2))

The change-in-terms notice provisions in section 1005.8(a) apply to any change in a term or condition that is required to be disclosed under 1005.7 or 1005.18(f)(1) for a prepaid account.

The Bureau determined and the Board agrees that financial institutions already engage in these activities as usual and customary activities, as defined under 5 CFR 1320.3(b)(2). Therefore, under 5 CFR 1320.3(b)(2), there is no additional burden for these provisions.

Disclosures on Device or Entry Point (Section 1005.18(f)(3))

Financial institutions are required to disclose on the prepaid account access device the name of the financial institution and the website and telephone number a consumer can use to contact the financial institution about the prepaid account. If a financial institution does not provide a physical access device in connection with a prepaid account, the disclosure is required to appear on the website, mobile application, or other entry point a consumer must visit to access the prepaid account electronically.

The Bureau determined and the Board agrees that financial institutions already engage in these activities as usual and customary activities, as defined under 5 CFR 1320.3(b)(2). Therefore, under 5 CFR 1320.3(b)(2), there is no additional burden for these provisions.

Internet Posting and Submission of Prepaid Account Agreements (Section 1005.19)

Prepaid account issuers are generally required to submit to the Bureau new and amended prepaid account agreements and notification of withdrawn agreements no later than 30 days after the issuer offers, amends, or ceases to offer the agreement. The rule provides a *de minimis* exception and a limited product testing exception to this requirement. If an issuer is required to submit a prepaid account agreement to the Bureau and the prepaid account agreement is offered to the general public, the issuer is also required to post the account agreement in a prominent and readily accessible location on its website. If a prepaid account agreement is not posted on the issuer's website, the issuer must provide a consumer with a copy of the consumer's prepaid account agreement no later than five business days after the issuer receives the consumer's request for the agreement. The consumer must be able to request the agreement by phone.

The comment period for this notice expired on July 1, 2019. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, September 5, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–19520 Filed 9–9–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Consumer Satisfaction Questionnaire, the Federal Reserve Consumer Help—Consumer Survey, the Consumer Online Complaint Form, and the Appraisal Complaint Form (FR 1379a, b, c, and d; OMB No. 7100–0135).

DATES: Comments must be submitted on or before November 12, 2019.

ADDRESSES: You may submit comments, identified by *FR 1379a, b, c, d,* by any of the following methods:

- *Agency Website: https://www.federalreserve.gov.* Follow the

instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*

• *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available on the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Consumer Satisfaction Questionnaire, the Federal Reserve Consumer Help—Consumer Survey, the Consumer Online Complaint Form, and the Appraisal Complaint Form.

Agency form number: FR 1379a, FR 1379b, FR 1379c, and FR 1379d.

OMB control number: 7100–0135.

Frequency: Event generated.

Respondents: Consumers, appraisers, and financial institutions.

Estimated number of respondents: FR 1379a, 551; FR 1379b, 1,455; FR 1379c, 6,719; FR 1379d, 7.

Estimated average hours per response: FR 1379a, 5 minutes; FR 1379b, 5 minutes; FR 1379c, 10 minutes; FR 1379, 30 minutes.

Estimated annual burden hours: FR 1379a, 46 hours; FR 1379b, 121 hours; FR 1379c, 1,120 hours; FR 1379d, 4 hours.

General description of report: The FR 1379a is sent to consumers who have filed complaints with the Federal Reserve against state member banks or other financial institutions supervised by the Federal Reserve. The information is used to assess the satisfaction of the consumers with the Federal Reserve's handling of, and written response to, their complaints at the conclusion of an investigation. The FR 1379b is a survey sent to consumers who contact the Federal Reserve Consumer Help [desk] (FRCH) [1] to file a complaint or inquiry. The information is used to determine whether consumers are satisfied with the way the FRCH handled their complaint. The FR 1379c collection addresses the burden associated with consumers electronically submitting a complaint against a financial institution to the FRCH. The FR 1379d collects information about complaints regarding a regulated institution's non-compliance with the appraisal independence standards and the Uniform Standards of Professional Appraisal Practice, including complaints from appraisers, individuals, financial institutions, and other entities.

Legal authorization and confidentiality: The FR 1379 family of forms is authorized pursuant to section 8 of the Federal Deposit Insurance Act (Section 8) [2] and section 11(a) of the Federal Reserve Act (Section 11(a)).[3] Section 8 provides the Board broad authority to enforce compliance with laws against entities within its jurisdiction, including state member banks. Section 11(a) broadly empowers the Board to examine ''the affairs of each Federal reserve bank and of each member bank.'' [4] The Board uses the information obtained from the FR 1379 to help fulfill these obligations. The forms comprising the FR 1379 family of forms are voluntary. Individual respondents may request that information submitted to the Board through the FR 1379 family of forms be kept confidential on a case-by-case basis. The Consumer Satisfaction Questionnaire (FR 1379a) does not collect any personal information from the respondent and is not likely to be

[1] See *www.federalreserveconsumerhelp.gov/.*

[2] 12 U.S.C. 1818.

[3] 12 U.S.C. 248(a).

[4] The FR 1379d is additionally authorized pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which requires the Board to prescribe standards for appraisals used by its regulated entities. *See,* 12 U.S.C. 3331–3355.

considered confidential. Three of the forms (the FRCH—Consumer Survey (FR 1379b), Consumer Online Complaint Form (FR 1379c), and Appraisal Complaint Form (FR 1379d)) collect personal information, such as the respondent's name, contact information, and information regarding the subject of the complaint. This personal information may be kept confidential under exemption 6 of the FOIA to the extent disclosure of such information would constitute an unwarranted invasion of personal privacy.[5] In addition, information concerning the subject of a complaint may be kept confidential under exemption 4 of the FOIA to the extent it involves trade secrets and confidential commercial and financial information.[6] With respect to the Consumer Online Complaint Form (FR 1379c) and Appraisal Complaint Form (FR 1379d), determinations regarding disclosure of the information to third parties of any confidential portions of these forms would be made in accordance with the Privacy Act.[7] A hyperlink directing the applicant to the relevant Privacy Act statement will be provided in these forms on the Board's website.

Board of Governors of the Federal Reserve System, September 4, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–19446 Filed 9–9–19; 8:45 am]

BILLING CODE 6210–01–P

[5] 5 U.S.C. 552(b)(6).

[6] 5 U.S.C. 552(b)(4).

[7] 5 U.S.C. 552a(b).

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Banking Organization Systemic Risk Report (FR Y–15; OMB No. 7100–0352).

DATES: Comments must be submitted on or before November 12, 2019.

ADDRESSES: You may submit comments, identified by FR Y–15, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public website at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions; including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection:

Report title: Banking Organization Systemic Risk Report.

Agency form number: FR Y–15.

OMB control number: 7100–0352.

Frequency: Quarterly.

Respondents: The FR Y–15 panel is comprised of top-tier bank holding companies (BHCs) and covered savings and loan holding companies (SLHCs) with $50 billion or more in total consolidated assets, intermediate holding companies (IHCs) with $50 billion or more in total consolidated assets, and any BHC designated as a global systemically important bank holding company (GSIB) [1] based on its method 1 score calculated as of December 31 of the previous calendar

[1] *See* 12 CFR 217.402.

year that does not otherwise meet the consolidated assets threshold for BHCs.[2]

Estimated number of respondents: 37.

Estimated average hours per response: 403 hours.

Estimated annual burden hours: 59,644 hours.

General description of report: Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[3] directs the Board to establish enhanced prudential standards, including risk-based capital requirements, for certain large financial institutions. These standards must be more stringent than the standards applicable to other financial institutions that do not present similar risks to U.S. financial stability. Additionally, these standards must increase in stringency based on several factors, including the size and risk characteristics of a company subject to the rule, and the Board must take into account the differences among bank holding companies and nonbank financial companies.

Pursuant to the requirement to establish enhanced risk-based capital standards under section 165 of the Dodd-Frank Act, the Board published a final rule establishing a GSIB surcharge on the largest, most interconnected U.S. BHCs in August 2015.[4] The GSIB surcharge is calculated using an indicator-based approach that focuses on those aspects of a BHC's operations that are likely to generate negative externalities in the case of its failure or distress. The rule's methodologies assess six components of a BHC's systemic footprint: Size, interconnectedness, substitutability, complexity, cross-jurisdictional activity, and reliance on short-term wholesale funding. The indicators comprising these six components are reported on the FR Y–15. More generally, the FR Y–15 report is used to monitor the systemic risk profile of the institutions that are subject to enhanced prudential standards under section 165.

Additionally, section 165 the Dodd-Frank Act requires that the Board consider the extent to which a proposal would result in greater or more concentrated risks to the stability of the United States banking or financial system as part of its review of certain banking applications.[5] The data reported on the FR Y–15 are used by the Board to analyze the systemic risk implications of such applications.

Proposed revisions: Under the proposal, the FR Y–15 would be revised by (1) adding trading volume items to the memoranda section of Schedule C (substitutability indicators) to capture the trading of securities issued by public sector entities, other fixed income securities, listed equities, and other securities; (2) adding a separate line item for equity securities with readily determinable fair values not held for trading on Schedule D (complexity indicators); (3) adding foreign derivative claims, total cross-jurisdictional claims, foreign derivative liabilities, other foreign liabilities, and total cross-jurisdictional liabilities to the memoranda section of Schedule E (cross-jurisdictional activity indicators); (4) adding a requirement that respondents keep a record of the data submitted; and (5) making other minor clarifications to the form and instructions. The proposed changes would be effective for reports reflecting the December 31, 2019, report date. The proposed revisions would not affect the calculation of the GSIB surcharge.

The Board proposes to add new memoranda items for trading volume to the substitutability category (Schedule C) of the FR Y–15. The substitutability schedule focuses on financial system infrastructure. Market liquidity is likely disrupted during a financial crisis, which could make it challenging for banks to find a substitute market participant, for example, in a timely manner. Disruptions to market liquidity can lead to a dislocation of asset prices, putting pressure on market participants' balance sheets and potentially resulting in adverse feedback loops such as preventing market participants from raising capital. The proposed trading volume memoranda items are necessary to capture bank activities in the secondary market, identifying potential sources of disruption to market liquidity. The addition of the trading volume items provides a more holistic view of market activity given that the underwriting items on Schedule C already capture activity in the primary market.

In January 2016, the Financial Accounting Standards Board (FASB) issued ASU 2016–01. FASB described how one of the main provisions of the ASU differs from previous GAAP as follows: ''the amendments in this update supersede the guidance to classify equity securities with readily determinable fair values into different categories (that is, trading or available-for-sale) and require equity securities (including other ownership interests, such as partnerships, unincorporated joint ventures, and limited liability companies) to be measured at fair value with changes in the fair value recognized through net income.'' In order to make the FR Y–15 report consistent with ASU 2016–01, the proposal would revise the reporting forms and instructions by adding a new data item (6.) to Schedule D to separate and reclassify equity securities with readily determinable fair values from the available for sale category. This proposed change is consistent with the change that has already been made to the FR Y–9C report forms and instructions.

The current GSIB assessment methodology uses the Bank for International Settlements (BIS) locational statistics to estimate cross-jurisdictional liabilities. This is achieved by adding the liabilities for branches and subsidiaries and then subtracting a bank's intragroup operations. In the BIS statistics, derivative claims/receivables are reported at the consolidated level, while derivative liabilities are captured at the individual jurisdiction level based on local accounting rules. To avoid inconsistencies in the treatment of derivatives assets and liabilities, positions related to derivatives are excluded from the current indicators (*i.e.,* cross-jurisdictional claims and liabilities). The proposal would add new memoranda items to Schedule E to capture foreign derivative liabilities and other foreign liabilities on an immediate risk basis. The sum of these two items would be captured separately as total cross-jurisdictional liabilities. The proposal would also add memoranda items to capture foreign derivative claims on an ultimate risk basis and total cross-jurisdictional claims. These changes would harmonize data for claims and liabilities across jurisdictions.

In addition to the information collections in the above schedules, the instructions for the FR Y–15 require respondents to retain a signed copy of the data submitted. The FR Y–15 currently does not account for this recordkeeping requirement, so the Board is proposing to revise the FR Y–15 to account for this collection of information.

Legal authorization and confidentiality: The Board has the authority to require BHCs, SLHCs, and IHCs, to file the FR Y–15 pursuant to,

[2] According to the Board's statement issued in July 2018, the Board will take no action to require BHCs and covered SLHCs with less than $100 billion in total consolidated assets to file the FR Y–15, pursuant to the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (EGRRCPA). *See https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180706b1.pdf.*

[3] Public Law 111–203 (2010); 12 U.S.C. 5365.

[4] 80 FR 49082 (August 14, 2015).

[5] Public Law 111–203,604(d),(f); 12 U.S.C. 1842(c)(7) and 1828(c)(5).

respectively, section 5 of the Bank Holding Company Act (''BHC Act'') (12 U.S.C. 1844), and section 10(b) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)), in conjunction with section 8 of the International Banking Act (12 U.S.C. 3106). The FR Y–15 reports are mandatory. The data collected on the Y–15 is made public unless a specific request for confidentiality is submitted by the reporting entity, either on the FR Y–15 or on the form from which the data item is obtained. Such information may be accorded confidential treatment under exemption 4 of the Freedom of Information Act (''FOIA''), which protects from disclosure trade secrets and commercial or financial information (5 U.S.C. 552(b)(4)). A number of the items in the FR Y–15 are retrieved from the FR Y–9C and other items may be retrieved from the FFIEC–101. Confidential treatment may also extend to any automatically-calculated items on the FR Y–15 that have been derived from confidential data items and that, if released, would reveal the underlying confidential data. To the extent confidential data collected under the FR Y–15 will be used for supervisory purposes, it may be exempt from disclosure under exemption 8 of the FOIA (5 U.S.C. 552(b)(8)).

Board of Governors of the Federal Reserve System, September 5, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–19522 Filed 9–9–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Payments Research Survey (FR 3067; OMB No. 7100–0355).

DATES: Comments must be submitted on or before November 12, 2019.

ADDRESSES: You may submit comments, identified by *FR 3067,* by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Payments Research Survey.

Agency form number: FR 3067.

OMB control number: 7100–0355.

Frequency: As needed.

Respondents: Private sector, individuals or households, and state and local governments.

Estimated number of respondents: Private sector: 4,300; individuals or households: 5,500; state and local governments: 200.

Estimated average hours per response: Private sector: 1.5; individuals or households: 1.5; state and local governments: 1.5.

Estimated annual burden hours: Private sector: 12,900; individuals or households: 16,500; state and local governments: 600; total: 30,000.

General description of report: The Board uses this collection to obtain information, as needed, on specific and

time sensitive issues related to payments research. Respondents may comprise depository institutions, financial and nonfinancial businesses, for profit and nonprofit enterprises, federal, state, and local governments, individual consumers, or households. The Board may conduct various surveys under this collection, as needed. The frequency and content of the questions depend on changing economic, regulatory, supervisory, or legislative developments.

Legal authorization and confidentiality: The legal framework for the collection of checks and other items by Reserve Banks and for funds transfers through Fedwire is provided by section 13 of the Federal Reserve Act (FRA),[1] section 16 of the FRA,[2] the Expedited Funds Availability Act,[3] and the Check Clearing for the 21st Century Act.[4] Within the Federal Reserve System, the Reserve Banks are generally the entities engaged in the payments system. The Board has broad authority to supervise the actions of Reserve Banks, provided by section 11 of the FRA.[5] To successfully maintain the operation of the payments system, the Board must collect payments related data and information related to the performance of Reserve Banks involved in the payments system. The Federal Reserve System has a long history of conducting surveys, including surveys of supervised institutions and of outside parties. Accordingly, FR 3067 is authorized by sections 11, 13, and 16 of the FRA, as well as the Expedited Funds Availability Act and the Check Clearing for the 21st Century Act. Depending on the survey respondent, the information collection may also be authorized under a specific statute. These statutes include:

- Section 809 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,[6]
- Section 7 of the Bank Service Company Act,[7] and
- Section 920 of the Electronic Fund Transfer Act.[8]

Survey submissions are voluntary.

While unlikely, individual respondents may request that information submitted to the Board through a survey under FR 3067 be kept confidential. If a respondent requests confidential treatment, the Board will determine whether the information is entitled to confidential treatment on a case-by-case basis. Information collected through these surveys may be kept confidential under exemption 4 for the Freedom of Information Act, which protects privileged or confidential commercial or financial information,[9] or under FOIA exemption 6, which covers personal information, the disclosure of which would constitute an unwarranted invasion of privacy.[10]

Board of Governors of the Federal Reserve System, September 4, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–19490 Filed 9–9–19; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 342.

[2] 12 U.S.C. 360.

[3] 12 U.S.C. 4001–4010.

[4] 12 U.S.C. 5001–5018.

[5] 12 U.S.C. 248.

[6] 12 U.S.C. 5468.

[7] 12 U.S.C. 1867.

[8] 15 U.S.C. 1693o–2.

[9] 5 U.S.C. 552(b)(4).

[10] 5 U.S.C. 552(b)(6).

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Transfer Agent Registration and Amendment Form (Form TA–1; OMB No. 7100–0099).

DATES: Comments must be submitted on or before November 12, 2019.

ADDRESSES: You may submit comments, identified by FR TA–1, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION:

On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions,

including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Transfer Agent Registration and Amendment Form.

Agency form number: Form TA–1.

OMB control number: 7100–0099.

Frequency: On occasion.

Respondents: State member banks (SMBs) and their subsidiaries, bank holding companies (BHCs), savings and loan holding companies (SLHCs), and certain nondeposit trust companies and other subsidiaries of BHCs that act as transfer agents.

Estimated number of respondents: Registrations, 1; amendments, 2; de-registrations, 1.

Estimated average time per response: Registrations, 1.25 hours; amendments, 10 minutes (0.16 hours); de-registrations 30 minutes (0.5 hours).

Estimated annual burden hours: Registrations, 1.25 hours; amendments, 0.33 hours; de-registrations, 0.5 hours.

General description of report: The Securities Exchange Act of 1934 requires any person acting as a transfer agent [1] to register as such with the appropriate regulatory agency (ARA). The Board is the ARA for SMBs and their subsidiaries, BHCs, SLHCs, and certain other subsidiaries of BHCs.[2] Transfer agents for which the Board is the ARA must register with the Board using Form TA–1.

Legal authorization and confidentiality: Section 17A(c) of the Securities Exchange Act of 1934 [3] (Exchange Act) requires all transfer agents for securities registered under section 12 of the Act to register ''by filing with the appropriate regulatory agency . . . an application for registration in such form and containing such information and documents . . . as such appropriate regulatory agency may prescribe as necessary or appropriate in furtherance of the purposes of this section.'' [4] Under section 3(a)(34)(B)(ii) of the Exchange Act,[5] the Board is the appropriate regulatory agency with respect to any transfer agent that is a state member bank or a subsidiary thereof, a BHC or a covered subsidiary thereof, or a SLHC (together, ''Board-Registered Transfer Agents''). In addition, the FR TA–1 is authorized pursuant to sections 2, 17(a)(3), and 23(a) of the Exchange Act,[6] which, among other things, authorize the Board to promulgate regulations and establish recordkeeping and reporting requirements with respect to Board-Registered Transfer Agents. Additionally, the Board also has broad authority to require reports from BHCs, SLHCs, and SMBs.[7]

The FR TA–1 is mandatory. The information collected in the FR TA–1 is available to the public upon request and is not considered confidential.

Consultation outside the agency: The Securities Exchange Commission, the Board, the FDIC, and the OCC jointly developed the reporting form and instructions, and the Board has consulted with the FDIC and OCC and determined that no revisions to the form are necessary at this time.

Board of Governors of the Federal Reserve System, September 4, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–19447 Filed 9–9–19; 8:45 am]

BILLING CODE 6210–01–P

[1] Transfer agents are institutions that provide securities transfer, registration, monitoring, and other specified services on behalf of securities issuers. *See* 15 U.S.C. 78c(25) (defining ''transfer agent'').

[2] Specifically, the Board is the ARA for any subsidiary of a bank holding company that is a bank within the meaning of the Securities Exchange Act of 1934 and that is not required to register with the Office of the Comptroller of the Currency (OCC) or Federal Deposit Insurance Corporation (FDIC).

[3] 15 U.S.C. 78q–1(c).

[4] *See* 15 U.S.C. 78q–1(c)(1).

[5] 15 U.S.C. 78c(a)(34)(B)(ii).

[6] 15 U.S.C. 78b, 78q(a)(3), and 78w(a).

[7] 12 U.S.C. 1844(c), 12 U.S.C. 1467a(b) and (g), and 12 U.S.C. 248(a) and 324.

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Federal Reserve Bank Stock Applications and the Federal Reserve Membership Application (FR 2030, FR 2030a, FR 2056, FR 2086, FR 2086a, FR 2087, FR 2083, FR 2083A, FR 2083B, and FR 2083C; OMB Nos. 7100–0042 and 7100–0046). The revisions are applicable immediately.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

A copy of the PRA OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files. These documents also are available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are placed into OMB's public docket files.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collections

Report title: Federal Reserve Bank Stock Applications.

Agency form numbers: FR 2030, FR 2303a, FR 2056, FR 2086, FR 2086a, FR 2087.

OMB control number: 7100–0042.

Effective Date: Immediately.

Frequency: On occasion.

Respondents: New national banks, non-member state banks converting into national banks, member banks, and member banks converting into or merging into member or nonmember banks.

Estimated number of respondents: FR 2030, 4; FR 2030a, 7; FR 2056, 1,068; FR 2086, 10; FR 2086a, 86; FR 2087, 1.

Estimated average hours per response:

Estimated annual burden hours: FR 2030, 2; FR 2030a, 3.5; FR 2056, 534; FR 2086, 5; FR 2086a, 43; FR 2087, 0.5.

General description of report: Any national bank wanting to purchase stock in the Federal Reserve System, any member bank wanting to increase or decrease its Federal Reserve Bank stock holdings, or any bank wanting to cancel its stock holdings must file an application with the appropriate Federal Reserve Bank. The application forms for the initial subscription of Federal Reserve Bank stock filed by organizing national banks and nonmember state banks converting to national banks (FR 2030 and 2030a, respectively) and the application forms for the cancellation of Federal Reserve Bank stock filed by liquidating member banks, member banks merging or consolidating with nonmember banks, and insolvent member banks (FR 2086, FR 2086a, and FR 2087, respectively) require one or more of the following: A resolution by the applying bank's board of directors authorizing the transaction, an indication of the capital and surplus of the bank as of the date of application, a certification (by official signatures) of the resolution, and/or an indication of the number of shares and dollar amount of the Federal Reserve Bank stock to be purchased or cancelled.

The application form for an interim adjustment in a member bank's holdings of Federal Reserve Bank stock (FR 2056) requires an indication of the capital and surplus of the bank as of the date of application and an indication of the number of shares held and the number of shares to be acquired or canceled.

A completed application form must be submitted for each required adjustment. Any member bank must use the FR 2056 to correct a discrepancy between the amount of Federal Reserve Bank stock required to be held and the amount actually held by the member bank. The latter is determined by the Reserve Bank through its monitoring of the bank's capital accounts reported quarterly on the Consolidated Reports of Condition and Income (Call Report) (FFIEC 031, FFIEC 041, and FFIEC 051; OMB No. 7100–0036). The Federal Reserve Bank Stock Applications are distributed by the Federal Reserve Banks and the information collected enables them to account for required subscription, adjustment, or cancellation payments to and from the System and for dividends paid by the System on any outstanding stock.

Report title: Federal Reserve Membership Application.

Agency form numbers: FR 2083/A/B/C.

OMB control number: 7100–0046.

Effective Date: Immediately.

Frequency: On occasion.

Respondents: Banks seeking to become state member banks, existing banks or savings institutions seeking to convert to state member bank status, national banks wanting to purchase stock in the Federal Reserve System, and member banks wanting to increase, decrease, or cancel their Federal Reserve Bank stock holdings.

Estimated number of respondents: 16.

Estimated average hours per response: 4.

Estimated annual burden hours: 64.

General description of report: The four individual application forms in the FR 2083 series (membership application and relevant attachments) are all one-time submissions that are used by organizing (new) or existing state-chartered banks to apply for membership in the Federal Reserve System. The FR 2083 contains a cover sheet, with general information and instructions detailing the information to be submitted according to the type of applicant bank. The FR 2083A is the application form for the purchase of Federal Reserve Bank stock by state banks (except mutual savings banks) and by national banks converting into state member banks. The FR 2083B is the application form for the purchase of Federal Reserve Bank stock by mutual savings banks. The FR 2083C is the Certificate of Organizers or Directors certifying that the information being submitted is true and complete, and the proposed capital is not impaired.

Legal authorization and confidentiality: The Federal Reserve Membership Application is authorized by section 9 of the Federal Reserve Act (FRA) (12 U.S.C. 321, 322, 323, 329, and 333). The Federal Reserve Bank Stock Applications are authorized pursuant to sections 9 (12 U.S.C. 321) and 11(a) of the FRA (12 U.S.C. 248(a)). Additionally, the FR 2030 and FR 2030a are specifically authorized by section 2 of the FRA (12 U.S.C. 222 and 282); the FR 2056, FR 2086, and FR 2086a are authorized by section 5 of the FRA (12 U.S.C. 287); and the FR 2087 is authorized by section 6 of the FRA (12 U.S.C. 288).

Current actions: On June 6, 2019, the Board published a notice in the **Federal Register** (84 FR 26415) requesting public comment for 60 days on the extension, with revision, of the Federal Reserve Membership Application and the Federal Reserve Bank Stock Applications. The revisions to these collections include: (1) Require the bank to include their American Bankers Association (ABA) number on page one (FR 2030, FR 2030A, FR 2056, FR 2083A, and FR 2083B); (2) include the Chief Financial Officer (CFO) as an authorized signer (FR 2030, FR 2030A, FR 2056, FR 2083A, FR 2083B, FR 2086, and FR 2086A); (3) remove the SEAL and/or notarization requirement to allow for electronic retention of documentation (FR 2030, FR 2030A, FR 2056, FR 2083A, FR 2083B, and FR 2087); (4) include a note requiring that the signer of the form be included on the bank's Official Authorization List that is on file with the Federal Reserve (FR 2030, 2030A, FR 2056, 2083A, FR 2083B, and FR 2086A); (5) collect an additional data point ''Less: Retained earnings and accumulated other comprehensive income if such combined amount is negative'' on page one (FR 2030, FR 2030a, similar to the FR 2056); (6) on page one of FR 2056: (a) Place a box around the area where member banks enter their Common stock, Paid-in surplus and NRE figures (if applicable) and place a bolded ''Member banks'' identifier at top left, (b) place member bank and mutual savings bank calculations separated from each other in order to alleviate each type of institution from using both areas, and (c) insert the statement to, ''round up only'' to footnote 3. The comment period for this notice expired on August 5, 2019. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, September 5, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–19519 Filed 9–9–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Savings Association Holding Company Report (FR LL-(b)11;[1] OMB No. 7100–0334).

DATES: Comments must be submitted on or before November 12, 2019.

ADDRESSES: You may submit comments, identified by FR LL-(b)11, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available on the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Savings Association Holding Company Report.

Agency form number: FR LL-(b)11.

OMB control number: 7100–0334.

Frequency: Quarterly,[2] annually, and event-generated.

Respondents: Certain savings and loan holding companies (SLHCs).

Estimated number of respondents: Quarterly: 6; annually: 6; event-generated: 1.

Estimated average hours per response: Quarterly: 2; annually: 2; event-generated: 2.

Estimated annual burden hours: Quarterly: 36; annually: 12; event-generated: 2.

General description of report: Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act transferred to the Board the supervisory functions of the former Office of Thrift Supervision related to SLHCs and their non-depository subsidiaries. Pursuant to section 10(b) the Home Owners' Loan Act (HOLA), the Board may require SLHCs to file reports concerning their operations. Following the transfer to the Board of authority to supervise SLHCs, the Board determined to exempt certain SLHCs (known as ''exempt SLHCs'') from regulatory reporting using the Board's existing regulatory reports, including the Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128) and the Parent Company Only Financial Statements for Small Holding Companies (FR Y–9SP; OMB No. 7100–0128). Exempt SLHCs must file the FR LL-(b)11 quarterly report in order for the Board to obtain the information that is necessary to supervise such SLHCs, monitor their financial condition, and assess their regulatory compliance. An SLHC is exempt from filing the FR Y–9C or FR Y–9SP if it: (1) Meets the requirements of section 10(c)(9)(C) of HOLA (*i.e.,* a ''grandfathered'' unitary SLHC) and has primarily commercial assets, with thrift assets making up less than 5 percent of the SLHC's consolidated assets;[3] or (2) primarily

[1] The internal Agency Tracking Number previously assigned by the Board to this information collection was ''FR H-(b)11.'' The Board is changing the internal Agency Tracking Number to ''FR LL-(b)11'' for the purpose of consistency.

[2] The FR LL-(b)11 is filed quarterly except for the fourth quarter when the respondent is required to file its annual report.

[3] Specifically, a grandfathered unitary SLHC is exempt if (1) as calculated annually as of June 30th,

Continued

holds insurance-related assets and does not otherwise submit financial reports with the U.S. Securities and Exchange Commission pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.

The FR LL-(b)11 collects the following six categories of information:

(1) Information about SEC filings;

(2) Reports provided by Nationally Recognized Statistical Rating Organizations and Securities Analysts;

(3) Supplemental information for the Quarterly Savings and Loan Holding Company Report (FR 2320; OMB No. 7100–0345);

(4) Information about other materially important events;

(5) Financial statements; and

(6) Other exhibits required by the Board.

Legal authorization and confidentiality: The FR LL–10(b)11 is authorized pursuant to section 10 of the Home Owners' Loan Act, which requires SLHCs to file ''such reports as may be required by the Board.''[4] The FR LL-(b)11 is mandatory.

Information provided through the FR LL- (b)11 that corresponds to a ''yes'' answer to questions 24, 25, and 26 of the FR 2320 is generally considered to be confidential under exemption 4 of the Freedom of Information Act (FOIA), which protects privileged or confidential commercial or financial information.[5] If it should be determined subsequently that any information collected on these three items must be released, respondents will be notified. For other information submitted to the Board through the FR LL-(b)11, individual respondents may request that it be kept confidential. If a respondent requests confidential treatment, the Board will determine whether the information is entitled to confidential treatment on a case-by-case basis. Information may be kept confidential under exemption 4 of the FOIA, which exempts from disclosure ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential,'' or exemption 8 of the FOIA, which exempts from disclosure information ''related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.''[6]

Board of Governors of the Federal Reserve System, September 4, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–19445 Filed 9–9–19; 8:45 am]

BILLING CODE 6210–01–P

using the four previous quarters (which includes the quarter-ended June 30th reporting period), its savings association subsidiaries' consolidated assets make up less than 5 percent of the total consolidated assets of the grandfathered SLHC on an enterprise-wide basis for any of these four quarters; and (2) as calculated annually as of June 30th, using the assets reported as of June 30th, where more than 50 percent of the assets of the grandfathered unitary SLHC are derived from activities that are not otherwise permissible under HOLA on an enterprise-wide basis.

[4] 12 U.S.C. 1467a(b)(2)(A).

[5] 5 U.S.C. 552(b)(4).

[6] 5 U.S.C. 552(b)(4) and (8).

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Notice of Branch Closure (FR 4031; OMB No. 7100–0264).

DATES: Comments must be submitted on or before November 12, 2019.

ADDRESSES: You may submit comments, identified by *FR 4031,* by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available on the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Notice of Branch Closure.

Agency form number: FR 4031.

OMB control number: 7100–0264.

Frequency: On occasion.

Respondents: State member banks (SMBs).

Estimated number of respondents: Reporting: regulatory notice, 91; Disclosure: customer mailing, 91 and posted notice, 91; Recordkeeping: adoption of policy, 1.

Estimated average hours per response: Reporting: regulatory notice, 2 hours; Disclosure: customer mailing, 0.75 hour and posted notice, 0.25 hour; Recordkeeping: adoption of policy, 8 hours.

Estimated annual burden hours: Reporting: regulatory notice, 182 hours; Disclosure: customer mailing, 68 hours and posted notice, 23 hours; and Recordkeeping: adoption of policy, 8 hours.

General description of report: The reporting, recordkeeping, and disclosure requirements regarding the closing of any branch of an insured depository institution are contained in section 42 of the Federal Deposit Insurance Act (FDI Act), as supplemented by an interagency policy statement on branch closings. There is no reporting form associated with the reporting portion of this information collection; SMBs notify their appropriate Reserve Bank by letter prior to closing a branch.

Legal authorization and confidentiality: The FR 4031 is authorized pursuant to Section 42(a)(1) of the FDI Act and section 11 of the Federal Reserve Act, which authorizes the Board to require SMBs to submit information as the Board deems necessary.[1] The reporting requirements associated with FR 4031 are mandatory. Generally, individual respondent data submitted pursuant to the FR 4031 is not considered to be confidential; however, a state member bank may request confidential treatment pursuant to exemption 4 of the Freedom of Information Act, which protects trade secrets and privileged or confidential commercial or financial information.[2]

Board of Governors of the Federal Reserve System, September 4, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–19489 Filed 9–9–19; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 1831r–1(a)(1); 12 U.S.C. 248(a).

[2] 5 U.S.C. 552(b)(4).

FEDERAL RETIREMENT THRIFT INVESTMENT

Board Member Meeting

77 K Street NE, 10th Floor, Washington, DC 20002.

September 16, 2019, 8:30 a.m., In-Person.

Open Session

1. Approval of the August 27, 2019 Board Meeting Minutes
2. Investment Manager Annual Service Review
3. Monthly Reports
   (a) Participant Activity Report
   (b) Investment Policy
   (c) Legislative Report
4. Quarterly Report
   (d) Vendor Risk Management Update
5. FY20 Budget Review and Approval
6. Mid-Year Financial Audit
7. Withdrawal Project Update

Closed Session

Information covered under 5 U.S.C. 552b (c)(4), (c)(9)(B), (c)(10).

Contact Person for More Information: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: September 5, 2019.

Megan Grumbine,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2019–19549 Filed 9–9–19; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0026; Docket No. 2019–0003; Sequence No. 12]

Submission for OMB Review; Changes, Change Order Accounting, and Notification of Changes

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and renewal of a previously approved information collection requirement regarding changes, change order accounting, and notification of changes.

DATES: Submit comments on or before October 10, 2019.

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 or at *Oira_submission@omb.eop.gov*. Additionally submit a copy to GSA by any 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: Lois Mandell/IC 9000–0026, Changes, Change Order Accounting, and Notification of Changes.

Instructions: All items submitted must cite Information Collection 9000–0026, Changes, Change Order Accounting, and Notification of Changes. 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: Ms. Camara Francis, Procurement Analyst, at telephone 202–550–0935, or email *camara.francis@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0026, Changes, Change Order Accounting, and Notification of Changes

B. Needs and Uses

The information collection title is changed to ''Changes, Change Order Accounting, and Notification of Changes.'' This clearance covers the information that contractors must submit to comply with the following Federal Acquisition Regulation (FAR) part 43 requirements as stated in the listed clauses:

a. 52.243–4, Changes. For acquisitions exceeding the simplified acquisition threshold for dismantling, demolition, or removal of improvements; and construction, under a fixed-price contract, the contractor must assert its right to an adjustment under this clause within 30 days after receipt of a written change order or the furnishing of a written notice, by submitting to the contracting officer a written statement describing the general nature and amount of proposal, unless this period is extended by the Government. The written notice covers any other written or oral order (which includes direction, instruction, interpretation, or determination) from the contracting officer that causes a change. The contractor gives the contracting officer written notice stating (1) the date, circumstances, and source of the order and (2) that the contractor regards the order as a change order. The statement of proposal for adjustment may be included in the written notice.

b. 52.243–6, Change Order Accounting. The contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The contractor shall maintain these accounts until the parties agree to an equitable adjustment or the matter is conclusively disposed of under the Disputes clause. This requirement is necessary in order to be able to account properly for costs associated with changes in supply and research and development contracts that are technically complex and incur numerous changes, or construction contracts if deemed appropriate by the contracting officer.

c. 52.243–7, Notification of Changes. The clause is available for use primarily in negotiated research and development or supply contracts for the acquisition of major weapon systems or principal subsystems. If the contract amount is expected to be less than $1,000,000, the clause shall not be used, unless the contracting officer anticipates that situations will arise that may result in a contractor alleging that the Government has effected changes other than those identified as such in writing and signed by the contracting officer. The contractor shall notify the Administrative Contracting Officer in writing if the contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the contractor regards as a change to the contract terms and conditions. This excludes changes identified as such in writing and signed by the contracting officer. On the basis of the most accurate information available to the contractor, the notice shall state—

(1) The date, nature, and circumstances of the conduct regarded as a change;

(2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;

(3) The identification of any documents and the substance of any oral communication involved in such conduct;

(4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;

(5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including—

(i) What line items have been or may be affected by the alleged change;

(ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;

(iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;

(iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and

(6) The Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.

C. Annual Burden

Respondents: 4,261.
Total Annual Responses: 17,215.
Total Burden Hours: 17,215.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 84 FR 29205, on June 21, 2019. No comments were received.

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. 9000–0026, Changes, Change Order Accounting, and Notification of Changes, in all correspondence.

Dated: September 5, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–19514 Filed 9–9–19; 8:45 a.m.]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–263]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance

the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by October 10, 2019.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Site Investigation for Suppliers of Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS); *Use:* The primary function of the site investigation form is to provide a standardized, uniform tool to gather information from a DMEPOS supplier that tells us whether it meets certain qualifications to be a DMEPOS supplier (as found in 42 CFR 424.57(c)) and where it practices or renders its services. This site investigation form also aides the Medicare contractor (the National Supplier Clearinghouse Medicare Administrative Contractor (NSC MAC)) in verifying compliance with the required supplier standards found in 42 CFR 424.57(c). *Form Number:* CMS–R–263 (OMB control number: 0938–0749); *Frequency:* Yearly; *Affected Public:* Private Sector—Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 8,255; *Total Annual Responses:* 8,255; *Total Annual Hours:* 8,255. (For policy questions regarding this collection contact Kimberly McPhillips at 410–786–5374.)

Dated: September 4, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–19471 Filed 9–9–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Survey of Youth Transitioning From Foster Care (New Collection)

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families; HHS

ACTION: Request for Public Comment.

SUMMARY: The Administration for Children and Families (ACF) within the U.S. Department of Health and Human Services (HHS) is proposing to collect data on human trafficking and other victimization experiences among youth recently or currently involved in the child welfare system. The goal of the one-time survey is to better understand trafficking experiences, to identify modifiable risk and protective factors associated with trafficking victimization, and to inform child welfare policy, programs, and practice.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *OPREinfocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street, SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ACF is proposing data collection as part of the study, ''Survey of Youth Transitioning from Foster Care''. This Notice provides the opportunity to comment on a survey of youth with current or recent involvement in foster care.

Primary data collected includes a one-time survey with up to 780 youth aged 18 or 19 who were in foster care during their 17th year. The survey will be conducted in-person, with both field interviewer-administered items and Audio-Computer Assisted Self-Interview (ACASI) items that the youth will complete privately for sensitive topics. Survey questions will be focused on the youths' demographic data, trafficking and other victimization histories, internal and external assets, and risk and protective factors. Involvement with child welfare and juvenile justice systems, and utilization of other services will also be addressed in the data collection.

Respondents: Youth aged 18 or 19 who were in foster care during their 17th year.

Annual Burden Estimates

Data collection is expected to take place over two years.

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Survey of Youth Transitioning from Foster Care	780	390	1	1.2	468

Estimated Total Annual Burden Hours: 468.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Section 476(a)(1–2) (42 U.S.C. 676) of the Social Security Act Part E-Federal Payments for Foster Care and Adoption Assistance.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–19440 Filed 9–9–19; 8:45 am]

BILLING CODE 4184–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–E–0280]

Determination of Regulatory Review Period for Purposes of Patent Extension; AEGEA VAPOR SYSTEM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for AEGEA VAPOR SYSTEM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by November 12, 2019. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 9, 2020. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before November 12, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 12, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–E–0280 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; AEGEA VAPOR SYSTEM.'' Received comments, those filed in a timely manner (see ADDRESSES), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80

FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device AEGEA VAPOR SYSTEM. AEGEA VAPOR SYSTEM is indicated for ablation of the endometrial lining of the uterus in premenopausal women with menorrhagia due to benign causes in whom childbearing is complete. Subsequent to this approval, the USPTO received a patent term restoration application for AEGEA VAPOR SYSTEM (U.S. Patent No. 8,574,226) from Tsunami MedTech, LLC, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 4, 2018, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of AEGEA VAPOR SYSTEM represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for AEGEA VAPOR SYSTEM is 1,381 days. Of this time, 1,148 days occurred during the testing phase of the regulatory review period, while 233 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption for this device, under section 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(g)), became effective:* September 4, 2013. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) for human tests to begin, as required under section 520(g) of the FD&C Act, became effective September 4, 2013.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* October 25, 2016. The applicant claims December 17, 2015, as the date the premarket approval application (PMA) for AEGEA VAPOR SYSTEM (PMA P160047) was initially submitted. However, FDA records indicate that PMA P160047 was submitted as a complete application on October 25, 2016.

3. *The date the application was approved:* June 14, 2017. FDA has verified the applicant's claim that PMA P160047 was approved on June 14, 2017.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 931 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 4, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–19496 Filed 9–9–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3968]

International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; APINACA; AB–FUBINACA; 5F–AMB; 5F–MDMB–PICA; 4–F–MDMB–BINACA; 4–CMC; N-ethylhexedrone; alpha-PHP; DOC; Crotonyl Fentanyl; Valeryl Fentanyl; Flualprazolam; Etizolam; and 8 Additional Preparations Listed in Schedule III of the 1961 Single Convention on Narcotic Drugs; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is requesting interested persons to submit comments concerning abuse potential, actual

abuse, medical usefulness, trafficking, and impact of scheduling changes on availability for medical use of 21 drug substances. These comments will be considered in preparing a response from the United States to the World Health Organization (WHO) regarding the abuse liability and diversion of these drugs. WHO will use this information to consider whether to recommend that certain international restrictions be placed on these drugs. This notice requesting comments is required by the Controlled Substances Act (the CSA).

DATES: Submit either electronic or written comments by October 4, 2019.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before (October 4, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 4, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–3968 for ''International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; APINACA (AKB–48); AB–FUBINACA; 5F–AMB (5F–AMB–PINACA, 5F–MMB–PINACA); 5F–MDMB–PICA (5F–MDMB–2201); 4–F–MDMB–BINACA (4F–ADB); 4–CMC (4-chloromethcathinone; clefedrone); N-ethylhexedrone (NEH, hexen, ethylhex); *alpha*-PHP (PV–7, α-pyrrolidinohexanophenone); DOC (2,5-dimethoxy-4-chloroamfetamine); Crotonyl Fentanyl; Valeryl Fentanyl; Flualprazolam; Etizolam; Preparations listed in Schedule III of the 1961 Single Convention on Narcotic Drugs as follows: Acetyldihydrocodeine, Codeine; Dihydrocodeine; Ethylmorphine; Nicocodine; Nicodicodine; Norcodeine; Pholcodine: Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: James R. Hunter, Center for Drug Evaluation and Research, Controlled Substance Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5150, Silver Spring, MD 20993–0002, 301–796–3156, email: *james.hunter@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The United States is a party to the 1971 Convention on Psychotropic Substances (Psychotropic Convention). Article 2 of the Psychotropic Convention provides that if a party to the convention or WHO has information about a substance, which in its opinion may require international control or change in such control, it shall so notify the Secretary-General of the United Nations (the U.N. Secretary-General) and provide the U.N. Secretary-General with information in support of its opinion.

Paragraph (d)(2)(A) of the CSA (21 U.S.C. 811) (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970) provides that when WHO notifies the United States under Article 2 of the Psychotropic Convention that it has information that may justify adding a drug or other substances to one of the schedules of the Psychotropic Convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State must transmit the notice to the Secretary of Health and Human Services (Secretary of HHS). The Secretary of HHS must then publish the notice in the **Federal Register** and provide opportunity for interested persons to submit comments that will be considered by HHS in its

preparation of the scientific and medical evaluations of the drug or substance.

II. WHO Notification

The Secretary of HHS received the following notice from WHO (non-relevant text removed):

Ref.: C.L.30.2019

The World Health Organization (WHO) presents its compliments to Member States and Associate Members and in reference to C.L.14.2019 has the pleasure of informing that the 42nd Expert Committee on Drug Dependence (ECDD) will meet in Geneva from 21 to 25 October 2019. The Expert Committee on Drug Dependence meetings are of a closed nature, however a public information session on 21 October will be open to Member States.

Further information, including a full agenda of the meeting, will be available on the ECDD website: *https://www.who.int/medicines/access/controlled-substances/ecdd/ecdd/en/.*

The 42nd ECDD will convene to review psychoactive substances (attached) regarding their potential to cause dependence, abuse and harm to health, and their potential therapeutic applications. WHO will make recommendations to the UN Secretary-General on the need for and level of international control of these substances.

Member States are invited to collaborate in this process through designated national focal points, as in the past and in line with the publication ''*Guidance on the WHO review of psychoactive substances for international control*'' (EB126/2010/REC1, Annex 6, Para 21).[1]

For this purpose, a questionnaire was designed to gather country information on the legitimate use, harmful use, status of national control and potential impact of international control for each substance under evaluation.

National focal points designated by Member States following C.L.14.2019 will be approached to complete the questionnaire on substances under review at the 42nd ECDD meeting. Focal points will be given further instructions and direct access to online questionnaires. The questionnaires will be analysed by the Secretariat and prepared as a report that will be shared with the Committee for review.

Focal points are also encouraged to provide any additional relevant information (unpublished or published) on substances to be reviewed at the 42nd ECDD to: *ecddsecretariat@who.int* by 20 September 2019.

The World Health Organization takes this opportunity to renew to Member States and Associate Members the assurance of its highest consideration.

GENEVA, 29 July 2019

[1] *http://apps.who.int/gb/ebwha/pdf_files/EB126-REC1/B126_REC1-en.pdf#page=95.*

42nd Expert Committee on Drug Dependence (ECDD) 21 to 25 October 2019, WHO headquarters, Geneva, Switzerland
Substances Under Review

CRITICAL REVIEW

Synthetic cannabinoids	1. APINACA (AKB–48). 2. AB–FUBINACA. 3. 5F–AMB (5F–AMB–PINACA, 5F–MMB–PINACA). 4. 5F–MDMB–PICA (5F–MDMB–2201). 5. 4-F-MDMB-BINACA (4F-ADB).
Synthetic stimulants	6. 4–CMC (4-chloromethcathinone; clefedrone). 7. N-ethylhexedrone (NEH, Hexen, Ethyl-Hex). 8. Alpha–PHP (PV-*7*, α-pyrrolidinohexanophenone). 9. DOC (2,5-Dimethoxy-4-chloroamfetamine).
Fentanyl Analogues	10. Crotonyl fentanyl. 11. Valeryl fentanyl.
Benzodiazepines	12. Flualprazolam. 13. Etizolam.

PRE-REVIEW

Preparations listed in Schedule III of the 1961 Single Convention on Narcotic Drugs.	Preparations of: ○ Acetyldihydrocodeine. ○ Codeine. ○ Dihydrocodeine. ○ Ethylmorphine. ○ Nicocodine. ○ Nicodicodine. ○ Norcodeine. ○ Pholcodine. when compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5 percent in undivided preparation.

FDA has verified the website addresses contained in the WHO notice, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time. Access to view the WHO questionnaire can be found at *https://www.who.int/medicines/access/controlled-substances/ecdd_41_meeting/en/.*

III. Substances Under WHO Review

APINACA (AKB–48) (chemical name: *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide) is a synthetic cannabinoid with a high affinity for the CB1 receptor. This substance functionally (biologically) mimics the effects of delta-9-tetrahydrocannabinol (THC), a Schedule I substance, and the main psychoactive constituent in the cannabis (marijuana) plant. Synthetic cannabinoids have been marketed under the guise of ''herbal incense,'' and promoted by drug traffickers as legal alternatives to marijuana. Chronic abuse of synthetic cannabinoids has been linked to adverse health effects including signs of addiction and withdrawal, as well as numerous reports of emergency room admissions resulting from their abuse. There are no commercial or approved medical uses for APINACA. On May 16, 2013, APINACA was temporarily controlled as a Schedule I substance under the CSA. On May 11, 2016, APINACA was permanently placed in Schedule I under the CSA.

AB–FUBINACA (chemical name: *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide) is a synthetic cannabinoid

that is a potent full agonist at CB1 receptors. This substance functionally (biologically) mimics the effects of the structurally unrelated THC, a Schedule I substance, and the main psychoactive chemical constituent in marijuana. Synthetic cannabinoids have been marketed under the guise of ''herbal incense,'' and promoted by drug traffickers as legal alternatives to marijuana. AB–FUBINACA use has been associated with serious adverse events including death in the United States. There are no commercial or approved medical uses for AB–FUBINACA. On February 10, 2014, AB–FUBINACA was temporarily controlled as a Schedule I substance under the CSA. On September 6, 2016, AB–FUBINACA was permanently placed as a Schedule I controlled substance under the CSA.

5F–AMB (5F–AMB–PINACA, 5F–MMB–PINACA) (chemical name: Methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate) is a synthetic cannabinoid that is a potent full agonist at CB1 receptors. This substance functionally (biologically) mimics the effects of THC, a Schedule I substance, and the main psychoactive constituent in marijuana. Synthetic cannabinoids have been marketed under the guise of ''herbal incense,'' and promoted by drug traffickers as legal alternatives to marijuana. The use of synthetic cannabinoids, including, 5F–AMB has been associated with nausea and vomiting, shortness of breath or depressed breathing, hypertension, tachycardia, chest pain, muscle twitching, acute renal failure, anxiety, agitation, psychosis, suicidal ideation, and/or cognitive impairment. There are no commercial or approved medical uses for 5F–AMB. On April 10, 2017, 5F–AMB was temporarily controlled as a Schedule I substance under the CSA. This temporary rule was extended effective April 10, 2019. On April 8, 2019, a Drug Enforcement Administration Notice of Proposed Rulemaking proposed permanently placing 5F–AMB into Schedule I of the CSA.

5F–MDMB–PICA (5F–MDMB–2201) (chemical name: Methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate) is a synthetic cannabinoid that has been sold online and used to mimic the biological effects of THC, the main psychoactive constituent in marijuana. Research and clinical reports have demonstrated that synthetic cannabinoids are applied onto plant material so that the material may be smoked as users attempt to obtain a euphoric and psychoactive ''high.'' Synthetic cannabinoids have been marketed under the guise of ''herbal incense,'' and promoted by drug traffickers as legal alternatives to marijuana. 5F–MDMB–PICA has been associated with law enforcement seizures and overdoses requiring emergency medical intervention. On April 16, 2019, 5F–MDMB–PICA was temporarily controlled as a Schedule I substance under the CSA.

4F–MDMB–BINACA (4F–ADB) (chemical name: Methyl 2-(1-(4-fluorobutyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate) is a synthetic cannabinoid that is a potent full agonist at CB1 receptors. This substance functionally (biologically) mimics the effects of THC, a Schedule I substance, and the main psychoactive constituent in marijuana. 4F–MDMB–BINACA has been encountered in numerous synthetic cannabinoid products that are smoked for their psychoactive effects. Multiple law enforcement encounters of 4F–MDMB–BINACA have been reported involving overdose deaths, illicit use, and seizures of drug evidence between December 2018 and February 2019. There are no commercial or approved medical uses for 4F–MDMB–BINACA. 4F–MDMB–BINACA is a positional isomer of 5F–AMB (chemical name: Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate), as defined by 21 CFR 1300.01, and has been a Schedule I controlled substance under the CSA since April 10, 2017.

4–CMC (4-chloromethcathinone; clefedrone, clephedrone) (chemical name: 1-(4-chlorophenyl)-2-(methylamino)propan-1-one) is a synthetic cathinone. 4–CMC produces central nervous system stimulant effects and is abused for its psychoactive properties. 4–CMC abuse has been associated with adverse health effects. 4–CMC has no currently accepted medical use in treatment in the United States. 4–CMC is not controlled under the CSA, but it is considered a Schedule I controlled substance by a number of states in the United States.

N-Ethylhexedrone (chemical name: 2-(ethylamino)-1-phenylhexan-1-one; NEH, hexen, Ethyl-Hex) and *alpha*-PHP (chemical name: 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one; PV–7, α-pyrrolidinohexanophenone) are synthetic cathinones. *N*-Ethylhexedrone and *alpha*-PHP produce central nervous system stimulant effects and are abused for their psychoactive properties. *N*-Ethylhexedrone and *alpha*-PHP have been associated with adverse health effects leading to emergency department admissions, and deaths. *N*-Ethylhexedrone and *alpha*-PHP have no currently accepted medical use in treatment in the United States. On July 18, 2019, *N*-Ethylhexedrone and *alpha*-PHP were temporarily controlled as a Schedule I substance under the CSA.

DOC (chemical names: 2,5-Dimethoxy-4-chloroamfetamine; 2,5-dimethoxy-4-chloroamphetamine; 1-(4-chloro-2,5-dimethoxyphenyl)propan-2-amine) is a hallucinogenic substance with psychedelic effects. Law enforcement has encountered DOC in tablet, capsule, powder, liquid, and blotter paper forms. Its use has been associated with at least one death. DOC has no currently accepted medical use in treatment in the United States. DOC is not controlled under the CSA but is a Schedule I controlled substance in the state of Florida.

Crotonyl fentanyl (chemical name: *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylbut-2-enamide) and valeryl fentanyl (chemical name: *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylpentanamide) are synthetic opioids that have a pharmacological profile similar to other Schedule I and II controlled opioid substances such as cyclopropyl fentanyl, fentanyl, and other related mu-opioid receptor agonist substances. They are clandestinely produced and associated with adverse events typically associated with opioid use such as respiratory depression, anxiety, constipation, tiredness, hallucinations, and withdrawal. Crotonyl fentanyl and valeryl fentanyl have been encountered by law enforcement and/or reported in the scientific literature by public health officials as being illicitly distributed and abused. Crotonyl fentanyl and valeryl fentanyl have no commercial or currently accepted medical uses in the United States. On February 1, 2018, valeryl fentanyl was temporarily placed into Schedule I of the CSA. The chemical structure of crotonyl fentanyl defines it as a fentanyl-related substance, as defined in 21 CFR 1308.11(h)(30); therefore, crotonyl fentanyl was temporarily controlled as a Schedule I controlled substance under the CSA as of February 6, 2018.

Flualprazolam and etizolam belong to a class of substances known as benzodiazepines. Benzodiazepines produce central nervous system depression and are commonly used to treat insomnia, anxiety, and seizure disorders. Etizolam is currently prescribed in some countries; however, neither drug substance is approved for medical use in the United States. Currently, flualprazolam and etizolam are not controlled under the CSA, but are controlled in a number of States.

Acetyldihydrocodeine is an opiate derivative of low to moderate potency used as a cough suppressant and analgesic in various other countries. Acetyldihydrocodeine is not approved for medical use in the United States and is controlled under Schedule I of the CSA.

Codeine is an opioid drug closely related to morphine. Codeine can cause opioid tolerance, dependence, addiction, poisoning, and respiratory depression in high doses. It is an active ingredient in several approved narcotic analgesic and antitussive medicines in the United States. Codeine is approved for marketing in the United States and available as a single-ingredient product, or in combination with one or more nonnarcotic ingredients in recognized therapeutic amounts. Codeine is controlled in Schedule II of the CSA. Some codeine combination products are controlled in Schedule III and some in Schedule V, depending on the concentration or amount of codeine present in the approved product.

Dihydrocodeine is a semisynthetic narcotic related to codeine. Dihydrocodeine is an active ingredient in prescription-only oral tablet combination products approved for marketing in the United States for the treatment of moderate to moderately severe pain. Dihydrocodeine is controlled in Schedule II of the CSA. Some dihydrocodeine-containing combination products are controlled in Schedule III and some in Schedule V, depending on the concentration or amount of dihydrocodeine present in the approved product.

Ethylmorphine is a derivative of morphine with analgesic and antitussive effects. It is not approved for medical use in the United States but is approved for use in various other countries around the world. Ethylmorphine is controlled in Schedule II of the CSA. Some ethylmorphine containing combination products are controlled in Schedule III and some in Schedule V, depending on the concentration or amount of ethylmorphine present in the approved product.

Nicocodine (nicocodeine) and nicodicodine (nicodicodeine) are esters of codeine and dihydrocodeine, respectively. They are opioids with analgesic and cough suppressant effects. They are not approved for medical use in the United States. Nicocodeine is controlled in Schedule I of the CSA. As an ester of dihydrocodeine, nicodicodeine is controlled in Schedule II of the CSA.

Pholcodine is an opiate with cough suppressant effects but little to no analgesic effects. It is an active ingredient in cough lozenges in some countries but is not an ingredient in any products approved for medical use in the United States. Pholcodine is controlled in Schedule I of the CSA.

IV. Opportunity To Submit Domestic Information

As required by paragraph (d)(2)(A) of the CSA, FDA, on behalf of HHS, invites interested persons to submit comments regarding the 21 drug substances. Any comments received will be considered by HHS when it prepares a scientific and medical evaluation for drug substances that is responsive to the WHO Questionnaire for these drug substances. HHS will forward such evaluation of these drug substances to WHO, for WHO's consideration in deciding whether to recommend international control/decontrol of any of these drug substances. Such control could limit, among other things, the manufacture and distribution (import/export) of these drug substances and could impose certain recordkeeping requirements on them.

Although FDA is, through this notice, requesting comments from interested persons, which will be considered by HHS when it prepares an evaluation of these drug substances, HHS will not now make any recommendations to WHO regarding whether any of these drugs should be subjected to international controls. Instead, HHS will defer such consideration until WHO has made official recommendations to the Commission on Narcotic Drugs, which are expected to be made in late 2019. Any HHS position regarding international control of these drug substances will be preceded by another **Federal Register** notice soliciting public comments, as required by paragraph (d)(2)(B) of the CSA.

Dated: September 4, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–19492 Filed 9–9–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Nominations for Membership on the Secretary's Advisory Committee on Human Research Protections

AGENCY: Office of the Assistant Secretary for Health, Office for Human Research Protections, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Office for Human Research Protections (OHRP), a program office in the Office of the Assistant Secretary for Health, Department of Health and Human Services (HHS), is seeking nominations of qualified candidates to be considered for appointment as members of the Secretary's Advisory Committee on Human Research Protections (SACHRP). SACHRP provides advice and recommendations to the Secretary, HHS (Secretary), through the Assistant Secretary for Health, on matters pertaining to the continuance and improvement of functions within the authority of HHS directed toward protections for human subjects in research. SACHRP was established by the Secretary on October 1, 2002. OHRP is seeking nominations of qualified candidates to fill three positions on the Committee membership that will be vacated during the 2020 and 2021 calendar years.

DATES: Nominations for membership on the Committee must be received no later than 45 days from the date of this publication.

ADDRESSES: Nominations may be emailed to *SACHRP@hhs.gov.* Nominations may also be mailed or delivered Julia Gorey, Executive Director, SACHRP, Office for Human Research Protections, Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Nominations will not be accepted by facsimile.

FOR FURTHER INFORMATION CONTACT: Julia Gorey, Executive Director, SACHRP, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852, telephone: 240–453–8141. A copy of the Committee charter and list of the current members can be obtained by contacting Ms. Gorey, accessing the SACHRP website at *www.hhs.gov/ohrp/sachrp,* or requesting via email at *sachrp@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Committee provides advice on matters pertaining to the continuance and improvement of functions within the authority of HHS directed toward protections for human subjects in research. Specifically, the Committee provides advice relating to the responsible conduct of research involving human subjects with particular emphasis on special populations such as neonates and children, prisoners, the decisionally impaired, pregnant women, embryos and fetuses, individuals and populations in international studies, investigator conflicts of interest and populations in which there are

individually identifiable samples, data or information.

In addition, the Committee is responsible for reviewing selected ongoing work and planned activities of the OHRP and other offices/agencies within HHS responsible for human subjects protection. These evaluations may include, but are not limited to, a review of assurance systems, the application of minimal research risk standards, the granting of waivers, education programs sponsored by OHRP, and the ongoing monitoring and oversight of institutional review boards and the institutions that sponsor research.

Nominations: The OHRP is requesting nominations to fill three positions for voting members of SACHRP. Nominations of potential candidates for consideration are being sought from a wide array of fields, including, but not limited to: Public health and medicine, behavioral and social sciences, health administration, and biomedical ethics. To qualify for consideration of appointment to the Committee, an individual must possess demonstrated experience and expertise in any of the several disciplines and fields pertinent to human subjects protection and/or clinical research.

The individuals selected for appointment to the Committee can be invited to serve a term of up to four years. Committee members receive a stipend and reimbursement for per diem and any travel expenses incurred for attending Committee meetings and/or conducting other business in the interest of the Committee. Interested applicants may self-nominate.

Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.,* specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee; (2) the nominator's name, address, daytime telephone number, and the home and/or work address, telephone number, and email address of the individual being nominated; and (3) a current copy of the nominee's curriculum vitae. Federal employees should not be nominated for consideration of appointment to this Committee.

The Department makes every effort to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that individuals from a broad representation of geographic areas, women and men, ethnic and minority groups, and the disabled are given consideration for membership on HHS Federal advisory committees. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Individuals who are selected to be considered for appointment will be required to provide detailed information regarding their financial holdings, consultancies, and research grants or contracts. Disclosure of this information is necessary in order to determine if the selected candidate is involved in any activity that may pose a potential conflict with the official duties to be performed as a member of SACHRP.

Authority: 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended. The Committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: August 23, 2019.

Julia Gorey,

Executive Director, Secretary's Advisory Committee on Human Research Protections, Office for Human Research Protections.

[FR Doc. 2019–19527 Filed 9–9–19; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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.

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 Cancer Institute Special Emphasis Panel; SEP–4: Small Grants Program for Cancer Research (Omnibus R03).

Date: October 16, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert Stephen Coyne, Ph.D., Scientific Review Officer, National Cancer Institute, NIH, Division of Extramural Activities, Special Review Branch, 9609 Medical Center Drive, Room 7W236, Rockville, MD 20850, 240–276–5120, *coyners@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–1: Small Grants Program for Cancer Research (Omnibus R03).

Date: October 30, 2019.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, 7W242, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Zhiqiang Zou, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W242, Bethesda, MD 20892, 240–276–6372, *zouzhiq@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Research Projects in Cancer Systems Biology.

Date: October 31, 2019.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W238, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Byeong-Chel Lee, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W238, Rockville, MD 20850, 240–276–7755, *byeong-chel.lee@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; PQ: Cancer with Underlying HIV Infection.

Date: November 13, 2019.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, 7W242, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Zhiqiang Zou, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W242, Bethesda, MD 20892, 240–276–6372, *zouzhiq@mail.nih.gov.*

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee A—Cancer Centers.

Date: November 21, 2019.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Shamala K. Srinivas, Ph.D., Scientific Review Officer, Office of Referral, Review and Program Coordination, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W530, Bethesda, MD 20892–9750, 240–276–6442, *ss537t@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Center Support Grant (P30).

Date: November 21, 2019.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852 (Telephone Conference Call).

Contact Person: Shari Williams Campbell, DPM, MSHS Scientific Review Officer, Resources & Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W612, Bethesda, MD 20892–9750, 240–276–7381, *shari.campbell@nih.gov.*

(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: September 4, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–19478 Filed 9–9–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 Alcohol Abuse and Alcoholism Special Emphasis Panel; AA–1 Study Section Conflict Review.

Date: September 20, 2019.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700 B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Philippe Marmillot, Ph.D., National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700 B Rockledge Drive, Room 2118, Bethesda, MD 20892, 301–443–2861, *marmillotp@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: September 4, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–19483 Filed 9–9–19; 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; Ocular Surface, Cornea, Anterior Segment Glaucoma and Refractive Error.

Date: October 3, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW, Washington, DC 20036.

Contact Person: Julius Cinque, MSC, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, *cinquej@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Physiology of Obesity and Diabetes Study Section.

Date: October 3–4, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Georgetown, 1221 22nd Street NW, Washington, DC 20037.

Contact Person: Raul Rojas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6185, Bethesda, MD 20892, (301) 451–6319, *rojasr@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Review: Cancer Behavioral Research in New Media and with Integration of Existing Data.

Date: October 9, 2019.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications .

Place: National Institutes of Health, 6701 Rock Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John H. Newman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, (301) 435–0628, *newmanjh@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Molecular and Cellular Endocrinology Study Section.

Date: October 10–11, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW, Washington, DC 20036.

Contact Person: Liliana Norma Berti-Mattera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4215, Bethesda, MD 20892, *liliana.berti-mattera@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: September 4, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–19481 Filed 9–9–19; 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; Metabolic Reprogramming to Improve Immunotherapy.
Date: October 7, 2019.
Time: 9:00 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Svetlana Kotliarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, Bethesda, MD 20892, 301–594–7945, *kotliars@mail.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genomics, Computational Biology and Technology Study Section.
Date: October 9–10, 2019.
Time: 8:30 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Baishali Maskeri, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–2864, *maskerib@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Cellular and Molecular Biology of Complex Brain Disorders.
Date: October 10–11, 2019.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave. NW, Washington, DC 20037.
Contact Person: Afia Sultana, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 4189, Bethesda, MD 20892, (301) 827–7083, *sultanaa@mail.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Biomedical Computing and Health Informatics Study Section.
Date: October 10–11, 2019.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Xin Yuan, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, Bethesda, MD 20892, 301–827–7245, *yuanx4@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Imaging Probes and Contrast Agents Study Section.
Date: October 10–11, 2019.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, VA 22311.
Contact Person: Donald Scott Wright, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435–8363, *wrightds@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drug Discovery and Mechanisms of Antimicrobial Resistance.
Date: October 11, 2019.
Time: 8:00 a.m. to 9:00 a.m.
Agenda: To review and evaluate grant applications.
Place: Cambria Hotel, 1 Helen Heneghan Way, Rockville, MD 20850.
Contact Person: Susan Daum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 3202, Bethesda, MD 20892, 301–827–7233, *susan.boyle-vavra@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR NS 18–08: Brain Initiative Biology and Biophysics of Neural Stimulation.
Date: October 11, 2019.
Time: 5:00 p.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Washington, DC Downtown, 1199 Vermont Avenue NW, Washington, DC 20005.
Contact Person: Robert C Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Mechanisms of Cancer Therapeutics—2 Study Section.
Date: October 14–15, 2019.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Torrance Marriott Redondo Beach Hotel, 3635 Fashion Way, Torrance, CA 90503.
Contact Person: Careen K Tang-Toth, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–3504, *tothct@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: September 4, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–19479 Filed 9–9–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6109–N–03]

Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees; U.S. Virgin Islands Allocation

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice allocates $774,188,000 of Community Development Block Grant mitigation (CDBG–MIT) funds to the U.S. Virgin Islands pursuant to the requirements of the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018.

DATES: *Applicability Date:* September 16, 2019.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Acting Director, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7282, 451 7th Street SW, Room 10166, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Ms. Kome at 202–401–2044. (Except for the''800'' number, these telephone numbers are not toll-free.) Email inquiries may be sent to *disaster_recovery@hud.gov.*

SUPPLEMENTARY INFORMATION:

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I. CDBG–MIT Allocations

I.A. Background

The Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018, Public Law 115–123, approved February 9, 2018) (the ''Appropriations Act''), made available $28 billion in Community Development Block Grant disaster recovery (CDBG–DR) funds, and directed HUD to allocate not less than $12 billion for mitigation activities proportional to the amounts that CDBG–DR grantees received for qualifying disasters in 2015, 2016, and 2017. A **Federal Register** Notice published by the Department on August 30, 2019 (84 FR 45838), allocated $6.875 billion of CDBG–MIT funds to 14 state and local governments and described the grant requirements and procedures, including waivers and alternative requirements applicable to CDBG–MIT funds (''the CDBG–MIT Notice'').

The CDBG–MIT Notice recognizes that CDBG–MIT funds are to be used for distinctly different purposes than Community Development Block Grant disaster recovery (CDBG–DR) funds and that the level of funding and nature of programs and projects that are likely to be funded require all CDBG–MIT grantees and their subrecipients to strengthen their program management capacity, financial management, and internal controls. Under the CDBG–MIT Notice, each grantee is required to strengthen its internal audit function, specify the criteria for subrecipient selection, increase subrecipient monitoring, and establish a process for promptly identifying and addressing conflicts under the grantee's conflict of interest policy. The CDBG–MIT Notice also states the Department's intent to establish special grant conditions for individual CDBG–MIT grants based upon the risks posed by the grantee, including risks related to the grantee's capacity to carry out the specific programs and projects proposed in its action plan. These conditions are designed to provide additional assurances that mitigation activities address grantee-specific risks, such as the potential for waste, fraud, and abuse, or the potential that failure to effectively operate and maintain infrastructure will interfere with anticipated risk mitigation value of CDBG–MIT activities.

The CDBG–MIT Notice also acknowledges on-going capacity considerations associated with the U.S. Virgin Islands' implementation of CDBG–DR funds allocated by HUD in response to 2017 disasters. Accordingly, to further reduce the specific potential risks associated with these challenges, this notice builds upon the requirements of the CDBG–MIT Notice and establishes additional grant conditions to reduce risk and support the successful implementation of this CDBG–MIT allocation by the U.S. Virgin Islands. These measures are designed to augment and support HUD's continual technical assistance and monitoring efforts, undertaken in partnership with the grantee.

This notice allocates an additional $774,188,000 in CDBG–MIT funds to the U.S. Virgin Islands for mitigation activities consistent with the Appropriations Act and the CDBG–MIT Notice. The grantee receiving an allocation of funds under this notice is subject to the requirements of the CDBG–MIT Notice, including waivers and alternative requirements, and any additional requirements imposed by this or future **Federal Register** notices.

TABLE 1—ALLOCATION FOR MITIGATION ACTIVITIES

Disaster No.	Grantee	CDBG–MIT allocation	Minimum amount to be expended in the HUD-identified ''most impacted and distressed'' areas listed herein	HUD-identified ''most impacted and distressed'' areas
4335, 4340	U.S. Virgin Islands	$774,188,000	$774,188,000	All components of the U.S. Virgin Islands.

In accordance with the Appropriations Act, the CDBG–MIT funds allocation is based on the grantee's proportional share of total CDBG–DR funds allocated for all eligible disasters in 2015, 2016, and 2017.

I.B. Use of Funds

The Appropriations Act requires that prior to the obligation of CDBG–MIT funds by the Secretary, a grantee shall submit a plan to HUD for approval detailing the proposed use of all funds. The plan must include the criteria for eligibility, and how the use of these funds will address risks identified through a mitigation needs assessment of the most impacted and distressed areas. The definition of mitigation activities and the requirements for the submission of an action plan are identified in section II of the CDBG–MIT Notice.

I.C. Grant Process

The U.S. Virgin Islands must submit the financial certification documentation required by section V.A.1.a of the CDBG–MIT Notice and the implementation plan and capacity assessment required by section V.A.1.b. of the CDBG–MIT Notice. All deadlines for the submissions necessary for the Secretary's certification of financial controls, procurement processes and adequate procedures, and the implementation plan and capacity assessment referenced in the CDBG–MIT Notice, are determined by the applicability date of this notice.

The grantee must submit an action plan per the requirements of section V.A.2 of the CDBG–MIT Notice no later than April 6, 2020, unless the grantee requests, and HUD approves, an extension of the submission deadline as provided for in the CDBG–MIT Notice.

To begin expending CDBG–MIT funds, the grantee must follow the grant process outlined in the CDBG–MIT Notice in section IV, with all timelines for grantee submissions to commence on the applicability date of this notice.

II. Applicable Rules, Statutes, Waivers, Alternative Requirements, and Grant Conditions

CDBG–MIT grants are subject to requirements of the CDBG–MIT Notice, which include requirements of the Appropriations Act and waivers and alternative requirements. The waivers and alternative requirements provide additional flexibility in program design and implementation to eligible

mitigation activities to lessen the impact of future disasters, while also ensuring that statutory requirements are met. The U.S. Virgin Islands may request additional waivers and alternative requirements from the Department as needed to address specific needs related to its mitigation activities. Waivers and alternative requirements are effective five days after they are published in the **Federal Register**. This section of the notice establishes additional rules, waivers and alternative requirements, and grant conditions specific to the allocation of CDBG–MIT funds for the U.S. Virgin Islands.

II.A. Waiver and Alternative Requirement for the U.S. Virgin Islands To Administer CDBG–MIT Funds Pursuant to the Requirements of the State CDBG Program

The Appropriations Act authorizes the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. HUD also has regulatory waiver authority under 24 CFR 5.110, 91.600, and 570.5.

For each waiver and alternative requirement, the Secretary has determined that good cause exists, and the waiver or alternative requirement is not inconsistent with the overall purpose of title I of the Housing and Community Development Act of 1974.The provisions of 24 CFR part 570 subpart F are waived to authorize the U.S. Virgin Islands to administer its CDBG–MIT allocation in accordance with the regulatory and statutory provisions governing the State CDBG program, as modified by rules, statutes, waivers and alternative requirements made applicable by **Federal Register** notices. This includes the requirement that the aggregate total for administrative and technical assistance expenditures by the U.S. Virgin Islands must not exceed 5 percent of any CDBG–MIT grant made pursuant to the Appropriations Act, plus 5 percent of program income generated by the grant.

II.B. Limitation on Use of CDBG–MIT Funds for Electrical Power System Enhancements

In addition to the appropriation of CDBG–MIT funds, the Appropriations Act requires HUD to allocate $2 billion of CDBG disaster recovery (CDBG–DR funds) to provide enhanced or improved electrical power systems in response to Hurricane Maria. HUD announced the allocation of these funds to the U.S. Virgin Islands and the Commonwealth of Puerto Rico and provided that the electrical power system allocation shall be governed by a subsequent notice. To enhance the use of the $2 billion allocated to enhance or improve electrical power systems, the grantee may wish to use CDBG–MIT funds to lessen the risks of disaster-related damage to electric power systems. However, successful efforts to restore, enhance, and improve electrical power systems, and guard this infrastructure against future disasters, will require coordination across multiple sources of Federal financial assistance provided for this purpose.

Therefore, the grantee is prohibited from using CDBG–MIT funds for mitigation activities to reduce the risk of disaster related damage to electric power systems until after HUD publishes the **Federal Register** notice governing the use of the $2 billion for enhanced or improved electrical power systems. This limitation includes a prohibition on the use of CDBG–MIT funds for mitigation activities carried out to meet the matching requirement, share, or contribution for any Federally-funded project that is providing funds for electrical power systems until HUD publishes the **Federal Register** notice governing the use of CDBG–DR funds to provide enhanced or improved electrical power systems. After publication of HUD's electrical power systems notice, use of CDBG–MIT funds to mitigate risks to electric power systems, including the provision of non-Federal cost share for any Federally-funded activity related to electrical power systems, shall be limited to activities that meet the requirements for CDBG–MIT funds and that are not inconsistent with the requirements of HUD's electrical power systems notice and any additional requirements on the use of CDBG–MIT funds published in that notice.

II.C. Grant Conditions

The *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (2 CFR part 200) direct HUD to assess risks posed by the grantee and authorize HUD to impose special grant conditions that correspond to the assessed degree of risk. As described in the CDBG–MIT Notice, HUD will establish special grant conditions for individual CDBG–MIT grants based upon assessed risks, including risks related to the grantee's capacity to carry out the specific programs and projects proposed in its action plan. These conditions are designed to provide additional assurances that mitigation activities address grantee-specific risks, such as the potential for waste, fraud, and abuse, or the potential that failure to effectively operate and maintain infrastructure will interfere with anticipated risk mitigation value of CDBG–MIT activities. At any time, if HUD determines that an identified risk has been mitigated and the grantee has met the required grant terms and conditions, HUD can modify or remove those terms and conditions. To address identified risks, the Department will establish grant conditions for the U.S. Virgin Islands which shall include, but not be limited to, the following requirements:

II.C.1. *Special Condition Related to Covered Projects.* As described in the CDBG–MIT Notice, for grantees that are considered by HUD to have ''unmitigated high risks,'' that impact their ability to implement large scale projects, HUD may impose special grant conditions, including but not limited to a lower dollar threshold for the large-scale infrastructure projects that meet the definition of a Covered Project. Covered Projects are subject to the additional action plan requirements described in section V.A.2.h. of the CDBG–MIT notice. As the U.S. Virgin Islands has been determined by HUD to have unmitigated high risks with regard to its capacity, a Covered Project for the U.S. Virgin Islands will alternatively be defined as an infrastructure project having a total project cost of $50 million or more, with at least $25 million of CDBG funds (regardless of source (*e.g.,* CDBG–DR, CDBG–MIT, or CDBG)).

II.C.2. *Additional implementation plan capacity assessment requirements.* In addition to the submission requirements established for the implementation plan and capacity assessment provided in section V.A.1.b. of the CDBG–MIT Notice, the U.S. Virgin Islands shall submit evidence that it has secured or is in the process of securing staff and contractors necessary to effectively implement CDBG–MIT funded programs and projects. Staff and contractors must be identified by the grantee in a Staff Analysis Worksheet that the grantee must include as part of its implementation and capacity assessment submission. In the CDBG–MIT grant agreement, HUD will establish a special condition related to staffing requirements for specific positions critical to the grantee's implementation of CDBG–MIT funded programs and projects, as identified by HUD during its review of the Staff Analysis Worksheet submission. The

grant terms shall require the grantee to advertise and fill such positions within 90 days of HUD's execution of the CDBG–MIT grant agreement. To ensure that the capacity risk is reduced and the staffing requirement is met, a portion of CDBG–MIT funds shall remain in a restricted balance in the Disaster Recovery and Grants Reporting (DRGR) system until HUD receives evidence that the identified positions have been advertised and filled. The amount of the restricted balance will be imposed in a special condition after HUD reviews the Staff Analysis Worksheet submission, based on HUD's determination of the amount that will allow initial grant operations to launch while ensuring that the capacity risk will be addressed before major implementing activities are underway.

II.C.3. *Citizen engagement.* In response to the limited experience of the grantee in engaging the community in an assessment of mitigation needs following a major disaster, within 90 days of execution of the CDBG–MIT grant agreement, the grantee shall have in place public affairs staff with community engagement expertise; and, within 120 days of execution of the grant agreement, shall update its citizen participation plan to include specific outreach actions designed to mitigate risks arising from public pressure and a lack of broad community input in the identification of mitigation needs.

II.C.4. *Submission of internal audit reports and posting of reports.* Section V.A.1.a. (6)(iii) of the CDBG–MIT Notice provides that HUD may establish a grant condition to require grantees to submit copies of the reports of its internal auditor directly to HUD. Accordingly, the U.S. Virgin Islands shall submit to HUD and the HUD's Office of the Inspector General (OIG) a copy of all reports issued by its internal auditor, and if the internal auditor does not issue formal reports then the grantee will instead submit a regular summary of findings and assessments made by the auditor. Additionally, while all CDBG–MIT grantees are required to post certain information on the grantee's website pursuant to section V.A.3.d of the CDBG–MIT Notice, the U.S. Virgin Islands shall also post final audit reports issued by HUD's OIG on the grantee's website, along with any other relevant reports that HUD requests that the grantee posts on its website.

II.C.5. *Additional requirements for policies and procedures.* The U.S. Virgin Islands shall develop and maintain policies and procedures and shall describe for each program (or project, as applicable): The eligible activities; the required records management practices; procurement requirements; subrecipient oversight; providing technical assistance; monitoring practices; policies for assigning direct costs to the program or project; and timely expenditure of funds. The policies and procedures shall include a plan for training all subrecipients on all federal and state CDBG–MIT requirements (*e.g.* program-related civil rights requirements training). The grantee shall submit the policies and procedures to HUD within 30 days of HUD's execution of the grant agreement or before the grantee awards funds to subrecipients, whichever is later.

II.C.6. *Additional requirements for financial management.*

II.C.6.a. *Enhanced DRGR voucher review.* In order for HUD to monitor the grantee's financial management capacity, the U.S. Virgin Islands shall provide, via upload in DRGR, support documentation for each voucher drawdown request made in DRGR for its CDBG–MIT grant. The U.S. Virgin Islands shall continue to upload support documentation for its voucher drawdown requests in DRGR until completion of HUD's first two on-site monitoring reviews and the grantee's resolution of any significant findings that result from those reviews.

II.C.6.b. *Drawdown milestones.* At the time the grantee submits a draw request in DRGR that achieves 10, 25, and 50 percent of grant disbursement, the Grantee must update its DRGR administration module to include: (i) A list of all grant-related internal audit issues (*i.e.* findings or concerns) and recommendations along with the resolution or planned resolution of these issues; (ii) a summary of each open single audit recommendation for the grantee or subrecipient, along with the resolution or planned resolution of the audit recommendation; (iii) a summary of each open recommendation by the HUD's Office of the Inspector General (OIG) recommendation related to this grant, together with its resolution or planned resolution; and (iv) a summary of each HUD monitoring recommendation related to this grant together with the resolution or planned resolution of the recommendation. At each of the above draw request milestones, the grantee shall also review its management and capacity plan and inform HUD of all updates, including an explanation for each missed milestone, if any.

HUD will review the information submitted at each milestone to determine whether the grantee demonstrates sufficient capacity to make timely and effective corrective actions on identified deficiencies and compliance issues. If HUD determines that the grantee does not demonstrate such sufficient capacity, HUD may take additional corrective actions, such as restricting access to grant funds pending resolution of identified issues. If the grantee fails to comply with the conditions required at each milestone, HUD will block access to CDBG–MIT funds pending on-site review and HUD's acceptance of the grantee's management controls.

III. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this notice are as follows: 14.218 and 14.228.

IV. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for inspection at HUD's Funding Opportunities web page at: *https://www.hud.gov/program_offices/spm/gmomgmt/grantsinfo/fundingopps.* The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Dated: September 4, 2019.

Benjamin Carson, Sr.,

Secretary.

[FR Doc. 2019–19506 Filed 9–9–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14400000.BJ0000 19X]

Notice of Filing of Plats of Survey, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the U.S. Army Corps of Engineers and the BLM, are necessary for the management of these lands.

DATES: Unless there are protests of this action, the plats described in this notice will be filed on October 10, 2019.

ADDRESSES: You may submit written protests to the BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7210.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856; *rbloom@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plat, in 3 sheets, incorporating the field notes of the dependent resurvey and survey in Township 22 South, Range 49 West, Sixth Principal Meridian, Colorado, was accepted on June 20, 2019.

The plat, in 4 sheets, incorporating the field notes of the dependent resurvey and survey in Township 23 South, Range 49 West, Sixth Principal Meridian, Colorado, was accepted on July 17, 2019.

The plat and field notes of the dependent resurvey and survey in Township 1 North, Range 90 West, Sixth Principal Meridian, Colorado, were accepted on July 25, 2019.

The plat and field notes of the dependent resurvey and subdivision of section 15 in Township 1 South, Range 94 West, Sixth Principal Meridian, Colorado, were accepted on August 9, 2019.

A person or party who wishes to protest any of the above surveys must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap. 3.

Randy A. Bloom,

Chief Cadastral Surveyor.

[FR Doc. 2019–19532 Filed 9–9–19; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[19X.LLES964000.L14400000.FR0000; FLES–58597]

Public Land Order No. 7882; Extension of Public Land Order No. 5683, Pelican Island National Wildlife Refuge; Florida

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This Public Land Order (PLO) extends the duration of the withdrawal established by PLO No. 5683 for an additional 40-year term, which would otherwise expire on September 11, 2019. This extension is necessary to preserve unique features and facilitate management between the existing refuge and adjacent privately-held lands. PLO No. 5683 withdrew 37.50 acres of public land from settlement, sale, location, or entry under the general land laws, including the mining laws, but not from leasing under the mineral leasing laws for 40 years. PLO No. 5683 reserved the lands under the jurisdiction of the Department of the Interior as part of the Pelican Island National Wildlife Refuge, administered by the United States Fish and Wildlife Service (USFWS).

DATES: This PLO takes effect on September 11, 2019.

FOR FURTHER INFORMATION CONTACT: Victoria Craft, Realty Specialist, Bureau of Land Management Southeastern States District Office, 273 Market Street, Flowood, MS 39232 or by emailed at: *vcraft@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lands withdrawn under PLO No. 5683 continue to be used for the purpose for which the original withdrawal was established. Unless extended, PLO No. 5683 will expire on September 11, 2019.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, PLO No 5683, (44 FR 53084, (1979)), which withdrew public lands from settlement, sale, location, or entry under the general land laws, including the United States mining laws, but not from leasing under the mineral leasing laws, and reserved those lands as part of the Pelican Island National Wildlife Refuge, is hereby extended for an additional 40-year period to continue to provide an upland buffer zone.

2. The withdrawal extended by this Order will expire on September 11, 2059, unless as a result of review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines the withdrawal shall be further extended.

Dated: August 30, 2019.

Joseph R. Balash,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2019–19515 Filed 9–9–19; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 06–19]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

TIME AND DATE: Thursday, September 19, 2019, at 10:00 a.m.

PLACE: All meetings are held at the Foreign Claims Settlement Commission, 441 G St. NW, Room 6234, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: 10:00 a.m.—Issuance of Proposed Decisions in claims against Iraq.

10:30 a.m.—Issuance of Proposed Decisions under the Guam World War II Loyalty Recognition Act, Title XVII, Public Law 114–328.

CONTACT PERSON FOR MORE INFORMATION: Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 441 G St. NW, Room 6234, Washington, DC 20579. Telephone: (202) 616–6975.

Brian Simkin,

Chief Counsel.

[FR Doc. 2019–19635 Filed 9–6–19; 4:15 pm]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 006–2019]

Privacy Act of 1974; System of Records

AGENCY: Federal Bureau of Investigation, United States Department of Justice.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, and Office of Management and Budget (OMB) Circular No. A–108, notice is hereby given that the United States Department of Justice (Department or DOJ), Federal Bureau of Investigation (FBI), proposes to modify a system of records entitled National Crime Information Center (NCIC), JUSTICE/FBI–001, which was last published in the **Federal Register** on September 28, 1999 (64 FR 52343). The NCIC serves as a central information repository to assist criminal justice professionals in apprehending fugitives, locating missing persons, recovering stolen property, and identifying known or suspected terrorists. Law enforcement officers also use the information within NCIC to help protect the general public and themselves when carrying out their official duties. This system of records notice is being updated to better inform the public about the types of information within the NCIC and the uses of this information to further criminal justice purposes.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this system of records begins on publication, subject to a 30-day period to comment on the routine use modifications described below. Please submit any comments by October 10, 2019.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments: By mail to the Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, 145 N St. NE, Suite 8w–300, Washington, DC 20530; by facsimile at 202–307–0693; or by email at *privacy.compliance@usdoj.gov.* To ensure proper handling, please reference the above CPCLO Order No. on your correspondence.

FOR FURTHER INFORMATION CONTACT: Katherine M. Bond, Assistant General Counsel, Privacy and Civil Liberties Unit, Office of the General Counsel, FBI, 935 Pennsylvania Avenue NW, Washington, DC 20535–0001; telephone (202) 324–3000.

SUPPLEMENTARY INFORMATION: The FBI has revised this system of records notice to update information about this system. Established in 1967, the NCIC is a national criminal justice information system linking criminal (and authorized non-criminal) justice agencies located in the 50 states, the District of Columbia, U.S. territories and possessions, as well as selected foreign countries to facilitate the cooperative sharing of criminal justice information. *See* 28 CFR Sections 20.3(b) & (g) for definitions of ''administration of criminal justice'' and ''criminal justice agency.'' The NCIC provides a system to receive and maintain information contributed by participating agencies relating to criminal justice and national security missions. Information maintained in the NCIC is readily accessible for authorized purposes by authorized users via text-based queries (*i.e.,* using names and other descriptive data). The purposes of maintaining records in the NCIC include combatting acts of terrorism; apprehending fugitives; solving crimes; locating missing persons; locating and returning stolen property; protecting individuals during declared emergency situations; protecting victims of domestic violence; monitoring registered sex offenders; conducting firearms, licensee, and explosive background checks; and enhancing the safety of law enforcement officers.

This Notice modifies the previous publication of the NCIC System of Records Notice to (1) include new categories of records and individuals, (2) update routine uses, and (3) remove references to the Interstate Identification Index (III). Since the September 28, 1999, publication of notice of this System of Records, 64 FR 52343, criminal justice agencies have requested that additional information be included in the NCIC to meet their needs. This additional information includes such new categories of individuals and categories of records as the National Sex Offender Registry, the Supervised Release File, the Identity Theft File, the Protective Interest File, the NICS Denied Transaction File, the Immigration Violator File, and the Violent Person File. Adding this information to the NCIC advances FBI's mission and criminal justice investigation, as well as increasing officer safety by providing pertinent information to law enforcement officers regarding the individuals they encounter while on duty.

This System of Records Notice also updates the routine uses for the information contained within the NCIC to educate the public on how the records will be shared with criminal justice agencies, authorized non-criminal justice agencies, and private organizations to further the purposes of combatting acts of terrorism; apprehending fugitives; solving crimes; locating missing persons; locating and returning stolen property; protecting individuals during declared emergency situations; protecting victims of domestic violence; monitoring registered sex offenders; conducting firearms, licensee, and explosive background checks; and enhancing the safety of law enforcement officers. For consolidation and transparency purposes, the routine uses applicable to the NCIC under the FBI's Blanket Routine Uses (FBI–BRU, 66 FR 33558 (June 22, 2001), as amended by 70 FR 7513, 517 (Feb. 14, 2005) and 82 FR 24147 (May 25, 2017)) are also being included in the routine use portion of this notice.

Finally, this modified System of Record Notice removes references to the Interstate Identification Index (III) and criminal history record information. Although the NCIC is used to retrieve criminal history record information from III through a federated search capability, III is not part of NCIC, and criminal history record information is no longer maintained within the NCIC, but is now maintained in the FBI's Next Generation Identification (NGI) System, JUSTICE/FBI–009, 81 FR 27284 (May 5, 2016). A person who wishes to access his or her criminal history records should follow the procedures set forth in 28 CFR 16.30 *et seq.*

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on this revised system of records notice.

Dated: August 28, 2019.

Peter A. Winn

Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.

SYSTEM NAME AND NUMBER:

National Crime Information Center (NCIC), JUSTICE/FBI–001.

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Records may be maintained at all locations at which the FBI operates or at which FBI operations are supported, including: J. Edgar Hoover Building, 935 Pennsylvania Avenue NW, Washington, DC 20535–0001; FBI Academy and FBI Laboratory, Quantico, VA 22135; FBI Criminal Justice Information Services (CJIS) Division, 1000 Custer Hollow Road, Clarksburg, WV 26306; FBI Records Management Division, 170 Marcel Drive, Winchester, VA 22602–4843; and FBI field offices, legal attaches, information technology centers, and other components listed on the FBI's internet website, *https://www.fbi.gov.* Some or all system information may also be duplicated at other locations where the FBI has granted direct access for support of FBI missions, for purposes of system backup, emergency preparedness, and/or continuity of operations.

SYSTEM MANAGER(S):

Director, Federal Bureau of Investigation, 935 Pennsylvania Avenue NW, Washington, DC 20535–0001; (202) 324–3000.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authorities for maintaining the system include 28 U.S.C. Chapter 33; and 28 CFR 0.85 and 28 CFR part 20. Additional authorities include 34 U.S.C. Chapter 10211; the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Public Law 107–56, 115 Stat 272; the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458, 118 Stat 3638; the Implementing Regulations of the 9/11 Commission Act of 2007, Public Law 110–53, 121 Stat 266; Executive Order 13311, *Homeland Security Information Sharing* (July 29, 2003); Executive Order 13356, *Strengthening the Sharing of Terrorism Information To Protect Americans* (August 27, 2004); and Executive Order 13388, *Further Strengthening the Sharing of Terrorism Information To Protect Americans* (October 25, 2005).

PURPOSE(S) OF THE SYSTEM:

Established in 1967, the NCIC is a national criminal justice information system linking criminal (and authorized non-criminal) justice agencies located in the 50 states, the District of Columbia, U.S. territories and possessions, as well as selected foreign countries, to facilitate the cooperative sharing of criminal justice information. The NCIC provides a system to receive and maintain information contributed by participating agencies relating to criminal justice and national security missions. Information maintained in the NCIC is readily accessible for authorized purposes by authorized users via text-based queries (*i.e.,* using names and other descriptive data). The purposes of maintaining records in the NCIC include combatting acts of terrorism; apprehending fugitives; solving crimes; locating missing persons; locating and returning stolen property; protecting individuals during declared emergency situations; protecting victims of domestic violence; monitoring registered sex offenders; conducting firearms, licensee, and explosive background checks through the National Instant Criminal Background Check System (NICS); and enhancing the safety of law enforcement officers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by the system are:

A. Wanted persons:

1. Individuals for whom federal warrants are outstanding.

2. Individuals who allegedly have committed or have been linked with an offense which is classified as a felony, misdemeanor, or other criminal offense under the existing penal statutes of the jurisdiction originating the entry and for whom a warrant has been issued with respect to the offense that was the basis of the entry; and probation and parole violators meeting these criteria.

3. Individuals for whom a ''Temporary Felony Want'' has been entered. Temporary felony want records allow a law enforcement agency to take prompt action to apprehend a person suspected of committing a felony when circumstances prevent the agency from immediately obtaining a warrant. Procedural safeguards for these Temporary Felony Wants include that they may only be entered in NCIC for the apprehension of a person who has committed, or the officer has reasonable grounds to believe has committed, a felony; the person may seek refuge by fleeing across jurisdictional boundaries; and (as noted) circumstances preclude the immediate procurement of an arrest warrant. A Temporary Felony Want shall be specifically identified as such and automatically expires 48 hours after entry.

4. Juveniles who (a) have been adjudicated delinquent and who have escaped or absconded from custody, even though no arrest warrants were issued; or (b) who have been charged with the commission of a delinquent act that would be a crime if committed by an adult, and who may have fled from the state where the act was committed.

5. Individuals who allegedly have committed or have been linked with an offense committed in a foreign country that would be a felony if committed in the United States, and for whom a warrant of arrest is outstanding, and (a) for which act an extradition treaty exists between the United States and that country, (b) are wanted by foreign authorities for a violent crime, or (c) are otherwise known or reasonably believed by foreign authorities to be violent, armed, or dangerous.

6. Individuals who allegedly have committed or have been linked with an offense committed in Canada and for whom a Canada-Wide Warrant has been issued which meets the requirements of the Canada-United States Extradition Treaty.

B. Sex offender registrants: Individuals who are required to register in a jurisdiction's sex offender registry.

C. Violent felons: Individuals with three or more convictions for a violent felony or serious drug offense as defined by 18 U.S.C. 924(e), and who were entered into the NCIC Violent Felon file between 1992 and 1998.

D. Individuals on probation, parole, supervised release, pretrial supervision, or released on their own recognizance; and supervising officials for these individuals.

E. Immigration violators: Criminal aliens who have been previously deported; aliens with outstanding administrative warrants of removal from the United States; aliens who have failed to comply with national security registration requirements; and other immigration violators.

F. Missing persons: Individuals of any age who are missing and for whom there is a reasonable concern for the well-being of the person and/or others, such as: A missing person who suffers from a documented physical/mental disability; a person missing under circumstances indicating that the disappearance was not voluntary or that the person's health or physical safety may be in danger; a missing child under the age of 21 reported to law enforcement; a person missing after a catastrophe; and, persons reasonably

believed to have information regarding missing persons.

G. Persons of protective interest: Individuals designated by local, state, tribal, territorial, and federal law enforcement agencies with a protective mission as presenting credible threats to authorized protectees of those agencies.

H. Members of criminal gangs: Individuals about whom law enforcement agencies have developed sufficient information to establish membership or other similar relationship in a particular criminal gang by either self-admission or pursuant to documented criteria approved by the FBI. For the purpose of this file, a gang is defined as a group of three or more persons with a common interest, bond, or activity characterized by criminal or delinquent conduct.

I. Known or suspected terrorists: Individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to domestic or international terrorism.

J. Military Detainees: Individuals who were officially detained during military operations who pose an actual or possible threat to national security, but not persons detained as Enemy Prisoners of War.

K. National Security Threat Actors: Individuals, organizations, groups, or networks assessed to be a threat to the safety, security, or national interests of the United States including cyber threat actors, foreign intelligence threat actors, military threat actors, transnational criminal actors, and weapons proliferators as defined in National Security Presidential Memorandum 7, issued on October 5, 2017, or any subsequent authority.

L. Unidentified persons: Any unidentified deceased person or body parts, or any living person whose identity has not been ascertained (*e.g.,* infant, amnesia victim, catastrophe victim).

M. Persons related to protection orders: Individuals against whom a protection order has been issued and the protected persons.

N. Owners of stolen property related to NCIC entries.

O. Victims of identity theft.

P. Individuals who have been disqualified from possessing, transferring, or receiving firearms or explosives, or have been denied a weapons permit under applicable state or federal law pursuant to the National Instant Criminal Background Check System (NICS).

Q. Violent persons: Individuals who have been convicted of violent crimes, or have made credible threats, against law enforcement and individuals who have been convicted of certain other violent crimes.

R. Individuals associated with active FBI investigations such as suspects, subjects of interest, witnesses, or victims.

S. FBI employees, U.S. government employees, and employees of local, state, tribal, or territorial law enforcement agencies.

T. Individuals who are, or within the last five years were, under FBI investigation for terrorism.

U. Individuals named in documents supporting NCIC entries (*e.g.* warrants, protection orders, terms and conditions of probation/supervised released, missing person reports).

V. Subjects of Continuous Evaluation: Individuals required by statute, executive authority, or other legal authority to undergo continuous revetting to maintain employment or security clearance with a federal agency.

W. Individuals who have provided their information to federal agencies for the purposes of immigration benefits or other government benefits which require ongoing suitability determinations (*e.g.* Trusted Traveler programs).

X. Individuals who have been queried through the NCIC. This includes all individuals queried through the NCIC for purposes listed in the ''Routine Uses'' section of this notice.

CATEGORIES OF RECORDS IN THE SYSTEM:

The NCIC may contain records about individuals described by the categories listed above. Records may include all manner of identifying information, such as name, Social Security number, date of birth, place of birth, physical description, photograph, descriptive information about fingerprints and other biometrics which may be available (the biometrics themselves and not maintained within the NCIC), passport and/or driver's license information, personal and business addresses and telephone numbers, and other personal identifiers. Records in the system may include details pertinent to particular file types, such as law enforcement information, visa/immigration information, and terrorism information; information relevant to the protection of health, safety, or property; physical or medical characteristics or other personal information deemed necessary to identify an individual, protect law enforcement officers, and identify and protect law enforcement subjects; and information relevant to responding to, mitigating, and recovering from disasters, emergencies, and catastrophes, as well as assisting in other humanitarian efforts. Records may also include uploaded documents supporting NCIC entries (*e.g.* warrants, protection orders, terms and conditions of probation/supervised release, missing person reports). Specific files in the NCIC include:

A. Vehicle File:

1. Stolen vehicles, including aircraft and trailers.

2. Vehicles wanted in conjunction with crimes.

3. Vehicles subject to seizure based on federal court orders.

B. License Plate File (Stolen).

C. Boat File (Stolen).

D. Vehicle/Boat Part File: Serially-numbered components of vehicles and boats reported to have been stolen.

E. Gun File:

1. Stolen guns.

2. Recovered guns, when ownership has not been established.

3. Lost guns.

4. Guns believed to have been used during the commission of crimes.

F. Article File (Stolen or Lost).

G. Securities File: Serially numbered stolen, embezzled, used for ransom, or counterfeited securities.

H. Wanted Person File: Described in ''Categories of Individuals Covered by the System: A (1–4).''

I. Foreign Fugitive File: Described in ''Categories of Individuals Covered by the System: A. (5, 6).''

J. National Sex Offender Registry: Described in ''Categories of Individuals Covered by the System: B.''

K. The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) Violent Felon File: Described in ''Categories of Individuals Covered by the System: C.'' (The ATF no longer enters data into this file, and these records have now been retired and are only accessible by the FBI.)

L. Supervised Release File: Described in ''Categories of Individuals Covered by the System: D.''

M. Immigration Violator File: Described in ''Categories of Individuals Covered by the System: E.''

N. Missing Person File: Described in ''Categories of Individuals Covered by the System: F.''

O. Protective Interest File: Described in ''Categories of individuals Covered by the System: G.''

P. Gang File: Described in ''Categories of Individuals Covered by the System: H.''

Q. Known or Suspected Terrorist File: Described in ''Categories of Individuals Covered by the System: I, J, and K.''

R. Unidentified Person File: Described in ''Categories of Individuals Covered by the System: L.''

S. Protection Order File: Described in ''Categories of Individuals Covered by the System: M.''

T. Identity Theft File: Described in ''Categories of Individuals Covered by the System: O.''

U. NICS Denied Transaction File: Described in ''Categories of Individuals Covered by the System: P.''

V. Image File: Identifying images (*e.g.,* mug shots; scars, marks, tattoos; property photos; signatures) and documents to help identify persons and property related to entries in other NCIC files.

W. Violent Person File: Described in ''Categories of Individuals Covered by the System: Q.''

X. System Tables and Charts: Although not part of particular files described herein, these tables and charts may contain data elements from the above files (*e.g.,* license plate numbers, vehicle identification numbers); include individuals described in ''Categories of Individuals Covered by the System'' R, S, T, V, and W; and are used for system administration, investigative, and other authorized purposes.

Y. Inactive Records: Records that are still generally available to all NCIC authorized users for historical reference after the records have expired or been cleared from the active NCIC files.

Z. Retired Records: Records that have expired, been cleared, or been canceled from the active NCIC environment. These records are only directly accessible by FBI personnel and CJIS Systems Agencies.

AA. Transaction Log: All transactions that enter, update, query, or access the records described above; rejected transactions; and system administrative messages. The Transaction Log now maintains the transaction history for the life of the system; however, the transaction history prior to 1990 was maintained for 10 years. Transaction logs may contain information regarding all ''Categories of Individuals.'' Search criteria from queries initiated by the National Instant Criminal Background Check System (NICS), JUSTICE/FBI–018, are not logged.

RECORD SOURCE CATEGORIES:

Local, state, tribal, territorial, federal, foreign, and international governmental agencies and authorized non-governmental entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records or information contained therein may be disclosed as routine uses pursuant to 5 U.S.C. 552a(b)(3) of the Privacy Act as described below. As routine uses specific to this system, the DOJ may disclose relevant system records or information to the extent such disclosures are compatible with a purpose for which the information was collected. Routine uses are not meant to be mutually exclusive and may sometimes overlap.

A. To local, state, tribal, territorial, or federal law enforcement or criminal justice agencies (to include police, prosecution, penal, probation, or parole agencies, and the judiciary) or other authorized federal agencies where such disclosure:

1. May assist the recipient in the performance of its law enforcement, criminal justice, or national security functions, to include the screening of employees, contractors, or applicants for employment by criminal justice agencies;

2. May assist the FBI in performing a law enforcement or national security function;

3. May promote, assist, or otherwise serve the mutual efforts of the law enforcement, criminal justice, and national security communities, such as site security screening of visitors to criminal justice facilities and military installations; or

4. May serve a compatible civil law enforcement purpose.

B. To authorized foreign governments or international agencies where such disclosure:

1. May assist the recipient in the performance of its law enforcement, criminal justice, or national functions;

2. May assist the FBI in performing a law enforcement or national security function;

3. May promote, assist, or otherwise serve the mutual efforts of the international community; or

4. May serve a compatible civil law enforcement purpose.

C. To appropriate officials and employees of a federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant.

D. To state and federal agencies when necessary to assist in detecting and preventing fraudulent receipt of government benefits (*e.g.,* Department of Housing and Urban Development, Department of Veterans Affairs, or Social Security Administration).

E. To the Department of State for the purpose of determining the eligibility of visa and passport applicants.

F. To the Department of Homeland Security and its components for use in background investigations of individuals with access to secure areas of airports, aircraft, ports, and vessels; commercial drivers of hazardous materials; applicants for aircraft training; those responsible for screening airport passengers and property; those with security functions related to baggage and cargo; and other statutorily authorized populations.

G. To authorized local, state, tribal, territorial, and federal agencies for the purposes of emergency child placement or emergency disaster response.

H. To authorized non-governmental entities or subunits thereof that perform the administration of criminal justice for criminal justice purposes as defined in 28 CFR 20.3(b).

I. To authorized local, state, tribal, territorial, federal, foreign, or international agencies for humanitarian purposes (*e.g.,* vetting volunteers during natural disasters).

J. To authorized agencies as required by federal statutes, treaties, executive orders and other presidential and executive directives, federal regulations, federal rules, or Attorney General Guidance.

K. To authorized federal agencies for alien registration, immigration, naturalization, international travel, or similar matters related to national security.

L. To designated points of contact at criminal justice agencies for background checks under the National Instant Criminal Background Check System (NICS).

M. To local, state, tribal, territorial, or federal criminal justice officials for the conduct of firearms or explosives-related background checks when required to issue firearms or explosives-related licenses or permits according to a state statute or local ordinance, when checking firearms transferred to pawn shops, or when returning firearms to authorized recipients.

N. To authorized non-criminal justice governmental agencies performing criminal justice dispatching functions or data processing/information services for local, state, tribal, territorial, federal, or foreign criminal justice agencies.

O. To private contractors pursuant to specific agreements with local, state, tribal, territorial, federal, or foreign criminal justice or authorized non-criminal justice agencies for the purpose of providing services for the administration of criminal justice as defined in 28 CFR 20.3(b).

P. To the National Center for Missing and Exploited Children (NCMEC) when

acting within its statutory duty to support law enforcement agencies.

Q. To local, state, tribal, territorial, and federal government social service agencies with child protection responsibilities for purposes of investigating or responding to reports of child abuse, neglect, or exploitation.

R. To railroad or private college/university police departments or subunits thereof which perform, and allocate a substantial portion of their annual budget to, the administration of criminal justice and whose appropriately trained employees hold police powers under state law for the administration of criminal justice as defined in 28 CFR 20.3(b).

S. To civil or criminal courts for use in domestic violence or stalking cases.

T. To social networking websites to prevent sex offenders from using these websites to entice children. This routine use applies only to disclosing records in the National Sex Offender Registry.

U. To governmental and authorized non-governmental recipients of fingerprint-based background check results from the Next Generation Identification (NGI) System, when information in NCIC records may be relevant to authorized checks of the NGI System (*e.g.* criminal and non-criminal justice background checks).

V. To the National Insurance Crime Bureau (NICB), a nongovernmental nonprofit agency, for use toward its mission of acting as a national clearinghouse for information on stolen vehicles and offering free assistance to law enforcement agencies concerning automobile thefts, identification, and recovery of stolen vehicles.

W. To authorized private organizations determined to be involved in the administration of criminal justice where the records are necessary and relevant to carry out the administration of a criminal justice function. This routine use is limited to disclosure of the NCIC property files.

X. To local, state, tribal, territorial, and federal criminal justice agency officials for the purpose of screening visitors to critical infrastructure facilities.

Y. To local, state, tribal, territorial, federal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

Z. To such agencies, entities, and persons as the FBI deems appropriate and relevant to ensure the continuity of government functions in the event of any actual or potential disruption of normal government operations. This use encompasses all situations in which government operations may be disrupted, including: Military, terrorist, cyber, or other attacks, natural or manmade disasters, and other national or local emergencies; inclement weather and other acts of nature; infrastructure/utility outages; failures, renovations, or maintenance of buildings or building systems; problems arising from planning, testing or other development efforts; and other operational interruptions. This also includes all related prevention activities, pre-event planning, preparation, backup/redundancy, training and exercises, and post-event operations, mitigation, and recovery.

AA. To such agencies, entities, and persons as the DOJ or FBI may consider necessary or appropriate incident to development and testing of FBI information systems and system functionality and integrity, including prototype testing, operational testing, interoperability testing, and vulnerability testing.

BB. To such agencies, entities, and persons as the FBI may consider necessary or appropriate for research or statistical purposes.

CC. To any agency, entity, or person in either the public or private sector, domestic, foreign, or multinational, if deemed by the FBI to be reasonable and helpful to elicit information or cooperation from the recipient for use by the FBI in the performance of an authorized function.

DD. If any system record, on its face or in conjunction with other information, indicates a violation or potential violation of law (whether civil or criminal), regulation, rule, order, or contract, the pertinent record may be disclosed to the appropriate entity (whether local, state, tribal, territorial, federal, foreign, or international), that is charged with the responsibility of investigating, prosecuting, and/or enforcing such law, regulation, rule, order, or contract.

EE. To contractors, grantees, experts, consultants, students, or others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function.

FF. To the news media or members of the general public in furtherance of a legitimate law enforcement or public safety function as determined by the FBI, *e.g.,* to assist in locating fugitives; to provide notifications of arrests; to provide alerts, assessments, or similar information on potential threats to life, health, or property; or to keep the public appropriately informed of other law enforcement or FBI matters or other matters of legitimate public interest where disclosure could not reasonably be expected to constitute an unwarranted invasion of personal privacy. (The availability of information in pending criminal or civil cases will be governed by the provisions of 28 CFR 50.2.)

GG. To a court or adjudicative body, in matters in which any of the following entities is or could be a party to the litigation, is likely to be affected by the litigation, or has an official interest in the litigation, and disclosure of system records has been determined by the FBI to be arguably relevant to the litigation: (a) The FBI or any FBI employee in his or her official capacity, (b) any FBI employee in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (c) the United States. Similar disclosures may be made in analogous situations related to assistance provided to the Federal Government by non-FBI employees.

HH. To an actual or potential party or his or her attorney for the purpose of negotiating or discussing such matters as settlement of the case or matter, and for formal or informal discovery proceedings, in matters in which the FBI has an official interest and in which the FBI determines records in the system to be arguably relevant.

II. To such recipients and under such circumstances and procedures as are mandated by Federal statute, Executive Order, or treaty.

JJ. To a requesting Member of Congress or a person on his or her staff acting on the Member's behalf when the request is made on behalf of and at the request of the individual who is the subject of the record.

KK. To the National Archives and Records Administration (NARA) for records management inspections and such other purposes conducted under the authority of 44 U.S.C. 2904 and 2906.

LL. To any agency, organization, or individual for the purposes of performing authorized audit or oversight operations of the FBI and meeting related reporting requirements.

MM. The DOJ may disclose relevant and necessary information to a former employee of the Department for purposes of: Responding to an official inquiry by a local, state, or federal government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation

assistance from the former employee regarding a matter within that person's former area of responsibility. (Such disclosures will be effected under procedures established in title 28, Code of Federal Regulations, sections 16.300–301 and DOJ Order 2710.8C, including any future revisions.)

NN. To the White House (the President, Vice President, their staffs, and other entities of the Executive Office of the President (EOP)), and, during Presidential transitions, the President-Elect and Vice-President Elect and their designees for appointment, employment, security, and access purposes compatible with the purposes for which the records were collected by the FBI, *e.g.,* disclosure of information to assist the White House in making a determination whether an individual should be: (1) Granted, denied, or permitted to continue in employment on the White House Staff; (2) given a Presidential appointment or Presidential recognition; (3) provided access, or continued access, to classified or sensitive information; or (4) permitted access, or continued access, to personnel or facilities of the White House/EOP complex. System records may be disclosed also to the White House and, during Presidential transitions, to the President Elect and Vice-President Elect and their designees, for Executive Branch coordination of activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President, President Elect, Vice-President or Vice-President Elect.

OO. To complainants and/or victims to the extent deemed appropriate by the FBI to provide such persons with information and explanations concerning the progress and/or results of the investigations or cases arising from the matters of which they complained and/or of which they were victims.

PP. To designated officers and employees of state, local (including the District of Columbia), or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision.

QQ. To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOJ (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

RR. To another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Computerized records are stored electronically on hard disk, removable storage devices or other digital media. Some information may be retained in hard copy format and stored in individual file folders and file cabinets with controlled access, and/or other appropriate GSA-approved security containers.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is retrieved by name or other identifying information. NCIC data may be directly accessed and retrieved by authorized NCIC users by means of remote on-line electronic queries submitted to the NCIC via authorized telecommunications channels. NCIC users are primarily located within the United States, but they also include United States users overseas, as well as foreign users in authorized foreign/international entities. NCIC data may also be retrieved by automated referral of queries made to other authorized interoperable systems, when the users of the other systems would also be authorized access to the NCIC. NCIC data may also be accessed and retrieved locally by authorized DOJ personnel. Information accessed locally may be used for authorized DOJ purposes, and/or may be forwarded to other authorized NCIC users for whom direct access is not available. Authorized FBI personnel and CJIS Systems Agencies (agencies which assume responsibility for and enforce system security with regard to all other agencies in a specific state or territory) have enhanced search capabilities and can retrieve all records within the NCIC.

POLICIES AND PROCEDURES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are maintained and disposed of in accordance with appropriate authority of the National Archives and Records Administration. Generally, records are kept for 110 years or until no longer needed for reference purposes. The NCIC transaction log will be maintained until the system is discontinued.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

A. NCIC records are controlled in accordance with OMB Circular A–130 and National Institute of Standards and Technology 800–37 and 800–53 requirements. Associated FBI information technology (IT) systems are certified and accredited pursuant to the Federal Information Security Modernization Act. The system's technical security design supports and secures IT functionality in accordance with federal guidelines and commercial best practices.

B. The FBI is responsible for managing the communications between the NCIC and constituent user systems. Encryption is used to secure all communications between the NCIC and other FBI systems that are not co-located with the system. Network boundary protections including firewalls, intrusion detection systems, and proxy devices are also deployed between FBI systems and the constituent systems. Any constituent system that is accessing the NCIC via a ''public network'' segment must meet the approved form of data encryption and authentication. All constituent IT systems with connectivity to the system must employ virus protection software.

C. All FBI employees and contractors who will develop, manage, use, or operate an FBI system receive a computer security awareness briefing prior to being granted any type of FBI system access and are provided with security awareness and privacy training at least annually. All FBI employees receive a complete background investigation prior to being hired and other authorized system support personnel, such as contractors, receive comparable vetting. All FBI employees and system support personnel are cautioned not to divulge confidential information or any information contained in FBI files. Failure to abide by these provisions violates FBI

directives and DOJ regulations and may violate certain civil and criminal statutes.

D. NCIC users are required to comply with the CJIS Security Policy, which establishes standards to ensure the confidentiality, integrity, and availability of system data throughout the user community. The CJIS Security Policy requires state and national fingerprint-based record checks upon initial employment or assignment for all personnel who have authorized access to the system and those who have direct responsibility to configure and maintain computer systems and networks with direct access to the system. User computer sites and related infrastructures must have adequate physical security at all times to protect against any unauthorized access to or routine viewing of computer devices, access devices, and printed and stored data. Automated logs must be maintained on all systems transactions and security audits for operational systems must be conducted at least once every three years.

E. A CJIS Systems Agency (CSA) is a duly authorized local, state, tribal, territorial, federal, or foreign criminal justice agency on the CJIS network infrastructure providing state-wide (or equivalent) service to its users. The CSA is responsible for establishing and administering an IT security program throughout the CSA's user community. The CSA is responsible to set, maintain, and enforce the following: Standards for the selection, supervision, and separation of personnel who have CJIS systems access; policy governing the operation of hardware, software, and other components used to process, store, or transmit NCIC information to ensure the priority, integrity, and availability of service; security controls governing the operation of computers, circuits, and telecommunications terminals used to process, store, or transmit FBI data; and standards that provide for audits, the discipline of CJIS Security Policy violators, and the monitoring of networks accessing CJIS systems to detect security incidents. Each CSA must provide a signed written agreement to the FBI CJIS Division before participating in CJIS records information programs. This agreement includes the standards and sanctions governing utilization of CJIS systems.

F. Each agency is assigned an originating agency identifier (ORI) to access the NCIC. The system creates and maintains transaction logs, which are monitored and reviewed to detect any possible misuse of system data. The FBI CJIS Audit Unit conducts a triennial compliance audit of each CSA and a sample of agencies served by the CSA to ensure compliance with the FBI CJIS Security Policy and other CJIS policies. The FBI CJIS Audit Unit may also conduct ad hoc audits based on reports of violations. In addition, each CSA is responsible for conducting its own compliance audits of the criminal and non-criminal justice agencies within the CSA's user community.

RECORD ACCESS PROCEDURES:

The Attorney General has exempted this system of records from the notification, access, amendment, and contest procedures of the Privacy Act. These exemptions apply only to the extent that the information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j) or (k). Where compliance would not appear to interfere with or adversely affect the purposes of the system, or the overall law enforcement/intelligence process, the applicable exemption (in whole or in part) may be waived by the FBI in its sole discretion.

All requests for access should follow the guidance provided on the FBI's website at *https://www.fbi.gov/services/records-management/foipa.* A request for access to a record from this system of records must be submitted in writing and comply with 28 CFR part 16. Individuals may mail, fax, or electronically submit a request, clearly marked ''Privacy Act Access Request,'' to the FBI, ATTN: FOI/PA Request, Record/Information Dissemination Section, 170 Marcel Drive, Winchester, VA 22602–4843; facsimile: 540–868–4995/6/7; electronically: *https://www.fbi.gov/services/records-management/foipa/requesting-fbi-records.* The request should include a general description of the records sought, and must include the requester's full name, current address, and date and place of birth. The request must be signed and dated and either notarized or submitted under penalty of perjury. While no specific form is required, requesters may obtain a form (Form DOJ–361) for use in certification of identity, which can be located at the above link. In the initial request, the requester may also include any other identifying data that the requester may wish to furnish to assist the FBI in making a reasonable search. The request should include a return address for use by the FBI in responding; requesters are also encouraged to include a telephone number to facilitate FBI contacts related to processing the request. A determination of whether a record may be accessed will be made after a request is received.

CONTESTING RECORD PROCEDURES:

The Attorney General has exempted this system of records from the notification, access, amendment, and contest procedures of the Privacy Act. These exemptions apply only to the extent that the information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) or (k). Where compliance would not appear to interfere with or adversely affect the purposes of the system, or the overall law enforcement/intelligence process, the applicable exemption (in whole or in part) may be waived by the DOJ in its sole discretion.

Individuals desiring to contest or amend information maintained in the system should direct their requests according to the RECORD ACCESS PROCEDURES paragraph above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. The envelope and letter should be clearly marked ''Privacy Act Amendment Request'' and comply with 28 CFR 16.46 (Request for Amendment or Correction of Records). Some information may be exempt from contesting record procedures as described in the EXEMPTIONS PROMULGATED FOR THE SYSTEM paragraph, below. An individual who is the subject of a record in this system may amend those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

NOTIFICATION PROCEDURES:

Same as RECORD ACCESS PROCEDURES paragraph, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8); (f), and (g) of the Privacy Act, 5 U.S.C. 552a. These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and/or (k). Revisions to the previously enacted rules in 28 CFR 16.96 (g–i) are being proposed in accordance with the requirements listed in 5 U.S.C. 553(b), (c), and (e) and published in the **Federal Register**. In addition, the DOJ will continue to assert all exemptions claimed under 5 U.S.C. 552a(j) and/or (k), or other applicable lawful authority, by an originating agency from which the DOJ obtains records, where one or more reasons underlying an original exemption remain valid. A determination of whether a record will be exempted will be made at the time

a request for notice, access, and/or correction is received.

HISTORY:

National Crime Information Center (NCIC), JUSTICE/FBI–001, 64 FR 52343 (Sept. 28, 1999), as amended by 66 FR 8425 (Jan. 31, 2001), and 82 FR 24147 (May 25, 2017).

[FR Doc. 2019–19449 Filed 9–9–19; 8:45 am]

BILLING CODE 4410–CW–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Required Elements of an Unemployment Insurance (UI) Reemployment Services and Eligibility Assessment (RESEA) Grant State Plan Office of the Secretary

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) proposal titled, ''Required Elements of an Unemployment Insurance (UI) Reemployment Services and Eligibility Assessment (RESEA) Grant State Plan,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before October 10, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201906-1205-004* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks PRA authority for the Required Elements of an Unemployment Insurance (UI) Reemployment Services and Eligibility Assessment (RESEA) Grant State Plan information collection. The Department of Labor, ETA is submitting this Information Collection Request (ICR) to implement and collect an annual Reemployment Services and Eligibility Assessment (RESEA) state plan as described in Section 306(e) of the Social Security Act (SSA). On February 9, 2018, the President signed the Bipartisan Budget Act of 2018, Public Law 115–123 (BBA), which included amendments to the SSA that create a permanent authorization for the RESEA program. The recently enacted Section 306 of the SSA introduced several new program requirements including the requirement that states must submit an annual state plan to be considered eligible for funding. Section 306(e), SSA provides the authorization and specific requirements of the state plane. *See* 42 U.S.C. 306(e).

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB, under the PRA, approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on April 5, 2019 (84 FR 13720).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201906–1205–004. The OMB is particularly interested in comments that:

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

Agency: DOL–ETA.

Title of Collection: Required Elements of an Unemployment Insurance (UI) Reemployment Services and Eligibility Assessment (RESEA) Grant State Plan.

OMB ICR Reference Number: 201906–1205–004.

Affected Public: State Workforce Agencies.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 53.

Total Estimated Annual Time Burden: 2,120 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: August 28, 2019.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2019–19498 Filed 9–9–19; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 19–051]

Planetary Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA)

announces a meeting of the Planetary Science Advisory Committee. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Monday, September 23, 2019, 8:30 a.m. to 5:00 p.m., and Tuesday, September 24, 2019, 8:30 a.m. to 5:00 p.m., Local Time.

ADDRESSES: NASA Headquarters, Room 3D42, 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Karshelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, fax (202) 358–2779, or *khenderson@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The meeting will be available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 1–800–779–9966, passcode 5255996, on both days, to participate in this meeting by telephone. A toll number also is available, 1–517–645–6359, passcode 5255996, on both days. The WebEx link is *https://nasaenterprise.webex.com/;* the meeting number on September 23 is 904 816 731 and the password is PAC@Sept23 (case sensitive), and the meeting number on September 24 is 903 388 535 and the password is PAC@Sept24 (case sensitive).

The agenda for the meeting includes the following topics:

—Planetary Science Division Update
—Planetary Science Division Research and Analysis Program Update

Attendees will be requested to sign a register and to comply with NASA Headquarters security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, U.S. citizens and Permanent Residents (green card holders) are requested to provide full name and citizenship status no less than 3 working days in advance. Information should be sent to Ms. Karshelia Henderson, via email at *khenderson@nasa.gov* or by fax at (202) 358–2779. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Nanette Smith,

NASA Federal Register Liaison Officer.

[FR Doc. 2019–19467 Filed 9–9–19; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0047]

Information Collection: NRC Form 237, "Request for Access Authorization"

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''NRC Form 237, Request for Access Authorization.''

DATES: Submit comments by October 10, 2019. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit comments directly to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150–0050). Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW Washington, DC 20503; email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0047 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 *https://www.regulations.gov* and search for Docket ID NRC–2019–0047. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2019–0047 on this website.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML19205A095. The supporting statement is available in ADAMS under Accession No. ML19205A096.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently

submitted a request for renewal of an existing collection of information to OMB for review entitled NRC Form 237, ''Request for Access Authorization.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on May 16, 2019 (84 FR 22172).

1. *The title of the information collection:* NRC Form 237, ''Request for Access Authorization.''
2. *OMB approval number:* 3150–0050.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 237.
5. *How often the collection is required or requested:* On occasion.
6. *Who will be required or asked to respond:* NRC contractors, subcontractors, licensee employees, employees of other government agencies, and other individuals who are not NRC employees.
7. *The estimated number of annual responses:* 250.
8. *The estimated number of annual respondents:* 250.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 50.
10. *Abstract:* NRC Form 237 is completed by NRC contractors, subcontractors, licensee employees, employees of other government agencies, and other individuals who are not NRC employees who require an NRC access authorization.

Dated at Rockville, Maryland, this 5th day of September, 2019.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2019–19488 Filed 9–9–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0174]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from August 13, 2019 to August 26, 2019. The last biweekly notice was published on August 29, 2019.

DATES: Comments must be filed by October 10, 2019. A request for a hearing must be filed by November 12, 2019.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0174. Address questions about NRC 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.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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: Lynn Ronewicz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1927, email: *Lynn.Ronewicz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0174, facility name, unit number(s), plant docket number, application date, and subject 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 *https://www.regulations.gov* and search for Docket ID NRC–2019–0174.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://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.

B. Submitting Comments

Please include Docket ID NRC–2019–0174 facility name, unit number(s), plant docket number, application date, and subject 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 *https://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. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the

Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in section 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 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 *https://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 which 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 60 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.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

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 60 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.

B. 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 *https://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 procedures described below.

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 *https://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 *https://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 *https://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 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 which 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 above, 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.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Carolinas, LLC, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Duke Energy Progress, LLC, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Duke Energy Progress, LLC, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Duke Energy Progress, LLC, Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake County, North Carolina

Date of amendment request: July 8, 2019. A publicly-available version is in ADAMS under Accession No. ML19189A033.

Description of amendment request: The amendments would revise the technical specifications for each facility to relocate the staff qualification requirements to the Duke Energy Corporation quality assurance program description.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change is administrative in nature, does not make any physical changes to the plants, and does not alter accident analysis assumptions, add any initiators or affect the function of plant systems, or the manner in which systems are operated, maintained, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems and components relied upon to mitigate the consequences of postulated accidents. The unit/facility staff qualification requirements remain the same and are being relocated from the Technical Specifications (TS) to the Duke Energy Quality Assurance Program Description (QAPD).

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve changes to unit/facility staff selection, qualification and training programs. The proposed change is administrative in nature and does not impact physical plant systems. The qualification standards are being relocated from the TS to the Duke Energy QAPD. As a result, the ability of the plant to respond to and mitigate accidents is unchanged by the proposed change. The proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change is administrative in nature. The proposed change does not affect plant design, hardware, system operation, or procedures for accident mitigation system. The proposed change does not impact any plant safety margins that are established in existing limiting conditions for operation, limiting safety systems settings and specified safety limits. There is no change in the established safety margins of these systems. The proposed change does not impact the performance or proficiency requirements for licensed operators or unit/facility staff, since the qualification standards are not changing and are only being relocated from the TS to the Duke Energy QAPD. As a result, the ability of the plant to respond to and mitigate accidents is unchanged by the proposed change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kathryn B. Nolan, Deputy General Counsel, Duke Energy Corporation, 550 South Tryon Street, Mail Code DEC45A, Charlotte, NC 28202.

NRC Branch Chief: Undine Shoop.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit 2 (ANO–2), Pope County, Arkansas

Date of amendment request: December 19, 2018, as supplemented by letters dated April 30, 2019, and June 18, 2019. Publicly-available versions are in ADAMS under Accession Nos. ML18353B049, ML19120A084, and ML19169A222, respectively.

Description of amendment request: The amendment would revise the ANO–2 Technical Specifications (TSs) by establishing Actions and Allowable Outage Times applicable to conditions where the ANO–2 containment building sump is inoperable. In addition, the amendment would add an Action Note to TS 3.6.2.3, ''Containment Cooling System,'' which supports the proposed new containment sump specification. The proposed changes are intended to support the licensee's resolution of Generic Safety Issue (GSI)-191, ''Assessment of Debris Accumulation on PWR [Pressurized-Water Reactor] Sump Performance.''

The license amendment request was originally noticed in the **Federal Register** on March 12, 2019 (84 FR 8909). This notice is being reissued in its entirety to include the revised scope, description of the amendment request, and proposed no significant hazards consideration determination based on the supplemental letter dated June 18, 2019.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change adds a new specification to the TS for the containment sump and adds an Action Note to Containment Cooling System (CCS) TS 3.6.2.3. An existing SR [Surveillance Requirement] on the containment sump is moved to the new specification. The new specification retains the existing requirements on the containment sump and the actions to be taken when the containment sump is inoperable with the exception of adding new actions to be taken when the containment sump is inoperable due to containment accident generated and transported debris exceeding the analyzed limits. The new action provides time to evaluate and correct the condition instead of requiring an immediate plant shutdown.

The addition of an Action Note to TS 3.6.2.3 continues to require inoperable Containment Cooling groups to be restored to an operable status with the time frames established in the current specification while avoiding an unnecessary shutdown when one or more Containment Cooling groups are inoperable coincident with the containment sump being inoperable solely due to containment accident generated and transported debris exceeding the analyzed limits.

The containment sump and the CCS are not initiators of any accident previously evaluated. The containment sump is a passive component and the proposed change does not increase the likelihood of the malfunction. No physical change to the containment sump or CCS or change to any operation or testing requirements is involved with this amendment request. As a result, the probability of an accident is unaffected by the proposed change.

The containment sump is used to mitigate accidents previously evaluated by providing a borated water source for the Emergency Core Cooling System (ECCS) and Containment Spray System (CSS). The CCS ensures that 1) the containment air temperature will be maintained within limits during normal operation, and 2) adequate heat removal capacity is available when operated in conjunction with the CSS during post-Loss of Coolant Accident (LOCA) conditions. The design and capability of the containment sump and CCS assumed in the accident analysis are not changed. The proposed action requires implementation of mitigating actions while the containment sump is inoperable and more frequent monitoring of reactor coolant leakage to detect any increased potential for an accident that would require the containment sump. In addition, the new TS 3.6.2.3 Action Note does not change the current time allowances for restoration of inoperable Containment Cooling groups to an operable status. The consequences of an accident during the proposed action are no different than the current consequences of an accident if the containment sump is inoperable.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change adds a new specification to the TS for the containment sump and adds an Action Note to CCS TS 3.6.2.3. An existing SR on the containment sump is moved to the new specification. The new containment sump specification retains the existing requirements on the containment sump and the actions to be taken when the containment sump is inoperable with the exception of adding new actions to be taken when the containment sump is inoperable due to containment accident generated and transported debris exceeding the analyzed limits. The new action provides time to evaluate and correct the condition instead of requiring an immediate plant shutdown.

The addition of an Action Note to TS 3.6.2.3 continues to require inoperable Containment Cooling groups to be restored to an operable status with the time frames established in the current specification while avoiding an unnecessary shutdown when one or more Containment Cooling groups are inoperable coincident with the containment sump being inoperable solely due to containment accident generated and transported debris exceeding the analyzed limits.

The proposed change does not alter the design or design function of the containment sump, the CCS, or the plant. No new systems are installed or removed as part of the proposed change. The containment sump is a passive component and cannot initiate a malfunction or accident. Likewise, the CCS is an accident mitigation system and cannot cause an accident condition. No new credible accident is created that is not encompassed by the existing accident analyses that assume the function of the containment sump or CCS.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change adds a new specification to the TS for the containment sump and adds an Action Note to CCS TS 3.6.2.3. An existing SR on the containment sump is moved to the new specification. The new specification retains the existing requirements on the containment sump and the actions to be taken when the containment sump is inoperable with the exception of adding new actions to be taken when the containment sump is inoperable due to containment accident generated and transported debris exceeding the analyzed limits. The new action provides time to evaluate and correct the condition instead of requiring an immediate plant shutdown.

The addition of an Action Note to TS 3.6.2.3 continues to require inoperable Containment Cooling groups to be restored to an operable status with the time frames established in the current specification while avoiding an unnecessary shutdown when one or more Containment Cooling groups are inoperable coincident with the containment sump being inoperable solely due to containment accident generated and transported debris exceeding the analyzed limits.

The proposed change does not affect the controlling values of parameters used to avoid exceeding regulatory or licensing limits. No Safety Limits are affected by the proposed change. The proposed change does not affect any assumptions in the accident analyses that demonstrate compliance with regulatory and licensing requirements.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anna Vinson Jones, Senior Counsel, Entergy Services, Inc., 101 Constitution Avenue NW, Suite 200 East, Washington, DC 20001.

NRC Branch Chief: Robert J. Pascarelli.

Exelon Generation Company, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit 1, Oswego County, New York

Date of amendment request: June 17, 2019. A publicly-available version is in ADAMS under Accession No. ML19169A105.

Description of amendment request: The amendment would make several editorial changes (*e.g.,* pagination, redundancy, number sequencing, alignment, justification, etc.) to the Nine Mile Point Nuclear Station, Unit 1, Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes are administrative in nature. These changes do not affect possible initiating events for accidents previously evaluated nor do they alter the configuration or operation of the plant.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes are administrative in nature. These changes do not alter the design or configuration of the plant. The proposed changes do not involve a physical alteration of the plant and no new or different kind of equipment will be installed. The proposed changes do not alter the types of lnservice Testing performed. The frequency of lnservice Testing is unchanged.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes are administrative in nature. Since there are no changes to the operation or physical design of the plant, the Updated Final Safety Analysis Report design

basis, accident assumptions, or Technical Specification bases are not affected.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jason Zorn, Associate General Counsel, Exelon Generation Company, LLC, Suite 400, 101 Constitution Ave NW, Washington, DC 20001.

NRC Branch Chief: James G. Danna.

Exelon Generation Company, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: May 31, 2019. A publicly-available version is in ADAMS under Accession No. ML19151A537.

Description of amendment request: The amendment would increase the main steam isolation valve (MSIV) leakage rate and change the leakage rate surveillance requirement in Section 3.6.1.3, ''Primary Containment Isolation Valves (PCIVs),'' of the Nine Mile Point Nuclear Station, Unit 2, Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The increase in the total MSIV leakage rate limit has been evaluated in a revision to the analysis of the LOCA [loss-of-coolant accident] radiological consequences. Based on the results of the analysis, it has been demonstrated that, with the requested change, the dose consequences of this limiting Design Basis Accident (DBA) are within the regulatory guidance provided by the NRC for use with the AST [alternative source term]. This guidance is presented in 10 CFR 50.67, Regulatory Guide 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' Regulatory Issue Summary (RIS) 2006–04, and Standard Review Plan (SRP) Section 15.0.1.

The proposed changes to the MSIV leakage limit and the consolidation of the bypass drywell leakage do not involve physical change to any plant structure, system, or component. As a result, no new failure modes of the MSIVs have been introduced.

The proposed changes do not affect the normal design or operation of the facility before the accident; rather, it affects leakage limit assumptions that constitute inputs to the evaluation of the accident consequences. The radiological consequences of the analyzed LOCA have been evaluated using the plant licensing basis for this accident. The results conclude that the control room and offsite doses remain within applicable regulatory limits. The effect of the proposed changes on Environmental Qualification (EQ) and vital area access doses have also been evaluated. The proposed increase in MSIV leak rate does not require any new components to be evaluated for inclusion in the EQ program and all components currently in the program remain qualified for their environments. The dose rates and doses to personnel performing vital area tasks post-LOCA remain within acceptance criteria with the proposed change.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The change in the MSIV leakage rate limits and the consolidation of the drywell bypass leakage do not affect the design, functional performance or normal operation of the facility. Similarly, these changes do not affect the design or operation of any component in the facility such that new equipment failure modes are created. As such, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This proposed license amendment involves changes in the MSIV leakage rate limits and consolidation of the drywell bypass leakage. The revised leakage rate limits are used in the LOCA radiological analysis in conjunction with the revised inputs/methodologies described in Section 3.0 [of the licensee's amendment request] above. The delay in the drywell bypass leakage is not credited in the revised LOCA analysis. The analysis has been performed using conservative methodologies. Safety margins and analytical conservatisms have been evaluated and have been found acceptable. The analyzed LOCA event has been carefully selected and margin has been retained to ensure that the analysis adequately bounds the postulated event scenario. The dose consequences of this limiting event are within the acceptance criteria presented in 10 CFR 50.67, Regulatory Guide 1.183, and NRC SRP Section 15.0.1. The margin of safety is provided by meeting the applicable regulatory limits. The effect of the revision to the Technical Specification requirements has been analyzed and doses resulting from the pertinent design basis accident have been found to remain within the regulatory limits. The change continues to ensure that the doses at the exclusion area and low population zone boundaries, as well as the control room, are within the corresponding regulatory limits.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jason Zorn, Associate General Counsel, Exelon Generation Company, LLC, 101 Constitution Ave, NW, Suite 400, Washington, DC 20001.

NRC Branch Chief: James G. Danna.

Exelon Generation Company, LLC, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: July 23, 2019. A publicly-available version is in ADAMS under Accession No. ML19204A349.

Description of amendment request: The amendment would revise the R. E. Ginna Nuclear Power Plant Technical Specification Surveillance Requirement 3.7.1.1 to increase the allowable as-found main steam safety valve lift setpoint tolerance from +1 percent/-3 percent to +1.4 percent/-4 percent.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with NRC staff edits in square brackets:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises Technical Specification (TS) Surveillance Requirement (SR) 3.7.1.1 to increase the allowable as-found Main Steam Safety Valve (MSSV) lift setpoint tolerance from + 1%/-3% to + 1.4%/-4%. As summarized in Section 3.0 [of the licensee's amendment request], increasing the applicable MSSV tolerance has been evaluated for the Small Break Loss Of Coolant Accident (SBLOCA) analysis of record but this change does not affect the limiting SBLOCA results. However, this change does not alter the manner in which the valves are operated. Consistent with current TS requirements, the proposed change continues to require that the MSSVs be adjusted to within ±1% of their nominal lift setpoints following testing. Since the proposed change does not alter the manner in which the valves are operated, there is no significant impact on reactor operation.

The proposed change does not involve a physical change to the valves, nor does it change the safety function of the valves. The

proposed TS revision involves no significant changes to the operation of any systems or components in normal or accident operating conditions and no changes to existing structures, systems, or components. The proposed amendments do not change any other behavior or operation of any MSSV, and therefore, has no significant impact on reactor operation. They also have no significant impact on response to any perturbation of reactor operation including transients and accidents previously analyzed in the Updated Final Safety Analysis Report (UFSAR).

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises TS SR 3.7.1.1 to increase the allowable as-found MSSV lift setpoint tolerance from + 1%/-3% to + 1.4%/-4%. The proposed change to the setpoint tolerance does not adversely affect the operation of any safety-related components or equipment. The proposed amendments do not involve physical changes to the applicable MSSVs, nor do they change the safety function of the MSSVs. The proposed amendments do not require any physical change or alteration of any existing plant equipment. No new or different equipment is being installed, and installed equipment is not being operated in a new or different manner. There is no alteration to the parameters within which the plant is normally operated. This change does not alter the manner in which equipment operation is initiated, nor will the functional demands on credited equipment be changed. No alterations in the procedures that ensure the plant remains within analyzed limits are being proposed, and no changes are being made to the procedures relied upon to respond to an off-normal event as described in the UFSAR. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established through the design of the plant structures, systems, and components, the parameters within which the plant is operated, and the establishment of the setpoints for the actuation of equipment relied upon to respond to an event. The proposed change does not modify the safety limits or setpoints at which protective actions are initiated, and does not change the requirements governing operation or availability of safety equipment assumed to operate to preserve the margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

Exelon Generation Company, LLC, Docket Nos. 50–289 and 50–320, Three Mile Island Nuclear Station, Units 1 and 2, Dauphin County, Pennsylvania

Date of amendment request: July 1, 2019. A publicly-available version is in ADAMS under Accession No. ML19182A182.

Description of amendment request: The amendment would revise the site emergency plan (SEP) and Emergency Action Level (EAL) scheme for the permanently defueled condition.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the site emergency plan (SEP) and EAL scheme do not impact the function of plant structures, systems, or components (SSCs). The proposed changes do not affect accident initiators or precursors, nor does it alter design assumptions. The proposed changes do not prevent the ability of the on-shift staff and emergency response organization (ERO) to perform their intended functions to mitigate the consequences of any accident or event that will be credible in the permanently defueled condition.

The probability of occurrence of previously evaluated accidents is not increased, since most previously analyzed accidents can no longer occur and the probability of the few remaining credible accidents are unaffected by the proposed amendment.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes reduce the scope of the SEP and EAL scheme commensurate with the hazards associated with a permanently shutdown and defueled facility. The proposed changes do not involve installation of new equipment or modification of existing equipment, so that no new equipment failure modes are introduced. In addition, the proposed changes do not result in a change to the way that the equipment or facility is operated so that no new or different kinds of accident initiators are created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed changes are associated with the SEP and EAL scheme and do not impact operation of the plant or its response to transients or accidents. The change does not affect the Technical Specifications. The proposed changes do not involve a change in the method of plant operation, and no accident analyses will be affected by the proposed changes. Safety analysis acceptance criteria are not affected by the proposed changes. The Post Defueled Emergency Plan (PDEP) will continue to provide the necessary response staff with the appropriate guidance to protect the health and safety of the public.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 23, 2019. A publicly-available version is in ADAMS under Accession No. ML19171A268.

Description of amendment request: The proposed amendment would delete the Technical Specification (TS) requirements related to hydrogen/oxygen monitors. The proposed changes support implementation of the revision to 10 CFR 50.44, ''Combustible gas control for nuclear power reactors,'' which became effective on October 16,

2003. The proposed changes are consistent with Revision 1 of NRC-approved Industry/Technical Specifications Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–447, ''Elimination of Hydrogen Recombiners and Change to Hydrogen and Oxygen Monitors.'' The notice of availability of this TS improvement was announced in the **Federal Register** on September 25, 2003 (68 FR 55416), as part of the consolidated line item improvement process. Post-accident hydrogen recombiners are not installed at Cooper Nuclear Station; therefore, that portion of the TSTF is not requested in this proposed amendment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee affirmed the applicability of the model no significant hazards consideration determination, which is presented below:

Criterion 1: The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen and oxygen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG [Regulatory Guide] 1.97 Category 1, is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen and oxygen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents. Also, as part of the rulemaking to revise 10 CFR 50.44, the Commission found that Category 2, as defined in RG 1.97, is an appropriate categorization for the oxygen monitors, because the monitors are required to verify the status of the inert containment.

The regulatory requirements for the hydrogen and oxygen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, classification of the oxygen monitors as Category 2 and removal of the hydrogen and oxygen monitors from TS will not prevent an accident management strategy through the use of the SAMGs [Severe Accident Management Guidelines], the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements for TS, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from Any Previously Evaluated.

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen and oxygen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen and oxygen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3: The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the Three Mile Island MI [Three Mile Island Nuclear Station], Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Category 2 oxygen monitors are adequate to verify the status of an inerted containment.

Therefore, this change does not involve a significant reduction in the margin of safety. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related oxygen monitors. Removal of hydrogen and oxygen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff has reviewed the above analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Branch Chief: Robert J. Pascarelli.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 23, 2019. A publicly-available version is in ADAMS under Accession No. ML19171A266.

Description of amendment request: The proposed amendment would revise the Cooper Nuclear Station Technical Specifications (TSs) by adopting Technical Specifications Task Force (TSTF) Traveler 564 (TSTF–564), ''Safety Limit MCPR [Minimum Critical Power Ratio].'' The proposed amendment would revise the TS safety limit on MCPR to reduce the need for cycle-specific changes to the value, while still meeting the regulatory requirement for a safety limit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or

consequences of an accident previously evaluated?

Response: No.

The proposed amendment revises the TS SLMCPR [safety limit minimum critical power ratio] and the list of core operating limits to be included in the COLR [core operating limits report]. The SLMCPR is not an initiator of any accident previously evaluated. The revised safety limit values continue to ensure for all accidents previously evaluated that the fuel cladding will be protected from failure due to transition boiling. The proposed change does not affect plant operation or any procedural or administrative controls on plant operation that affect the functions of preventing or mitigating any accidents previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment revises the TS SLMCPR and the list of core operating limits to be included in the COLR. The proposed change will not affect the design function or operation of any structures, systems or components. No new equipment will be installed. As a result, the proposed change will not create any credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment revises the TS SLMCPR and the list of core operating limits to be included in the COLR. This will result in a change to a safety limit, but will not result in a significant reduction in the margin of safety provided by the safety limit. As discussed in the application, changing the SLMCPR methodology to one based on a 95 percent probability at a 95 percent confidence level that no fuel rods experience transition boiling during an anticipated transient, instead of the current limit based on ensuring that 99.9 percent of the fuel rods are not susceptible to boiling transition, does not have significant effect on the plant response to any analyzed accident. The SLMCPR and the TS Limiting Condition for Operation on MCPR continue to provide the same level of assurance as the current limits and do not reduce a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Branch Chief: Robert J. Pascarelli.

NextEra Energy, Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Unit Nos. 1 and 2 (Point Beach), Town of Two Creeks, Manitowoc County, Wisconsin

NextEra Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1 (Seabrook), Rockingham County, New Hampshire

Florida Power & Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Nuclear Generating Unit Nos. 3 and 4 (Turkey Point), Miami-Dade County, Florida

Date of amendment request: March 18, 2019. A publicly-available version is in ADAMS under Accession No. ML19079A240.

Description of amendment request: The amendments would revise the Technical Specifications (TS) to adopt TSTF–563, ''Revise Instrument Testing Definitions to Incorporate the Surveillance Frequency Control Program.'' TSTF–563 revises the TS definitions of Channel Calibration, Channel Operational Test (COT), and Trip Actuating Device Operational Test (TADOT) in the Point Beach TSs; and Channel Calibration, Analog COT, Digital COT, and TADOT in the Seabrook and Turkey Point TSs. The Seabrook and Turkey Point definitions of Analog COT, Digital COT, and TADOT are revised to explicitly permit performance by means of any series of sequential, overlapping, or total channel steps. The Channel Calibration, COT, Analog COT, Digital COT, and TADOT definitions are revised to allow the required frequency for testing the components or devices in each step to be determined in accordance with the TS Surveillance Frequency Control Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the TS definitions of Channel Calibration, COT, Analog COT, Digital COT, and TADOT in the Point Beach, Seabrook, and Turkey Point TS to allow the frequency for testing the components or devices in each step to be determined in accordance with the TS Surveillance Frequency Control Program. The proposed change also explicitly permits the Seabrook and Turkey Point Analog COT, Digital COT, and TADOT to be performed by any series of sequential, overlapping, or total channel steps. All components in the channel continue to be tested. The frequency at which a channel test is performed is not an initiator of any accident previously evaluated, so the probability of an accident is not affected by the proposed change. The channels surveilled in accordance with the affected definitions continue to be required to be operable and the acceptance criteria of the surveillances are unchanged. As a result, any mitigating functions assumed in the accident analysis will continue to be performed.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the TS definitions of Channel Calibration, COT, Analog COT, Digital COT, and TADOT in the Point Beach, Seabrook, and Turkey Point TS to allow the frequency for testing the components or devices in each step to be determined in accordance with the TS Surveillance Frequency Control Program. The proposed change also explicitly permits the Seabrook and Turkey Point Analog COT, Digital COT, and TADOT to be performed by any series of sequential, overlapping, or total channel steps. The design function or operation of the components involved are not affected and there is no physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed). No credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases are introduced. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety· analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the TS definitions of Channel Calibration, COT, Analog COT, Digital COT, and TADOT in the Point Beach, Seabrook, and Turkey Point TS to allow the frequency for testing the components or devices in each step to be determined in accordance with the TS Surveillance Frequency Control Program. The proposed change also explicitly permits the Seabrook and Turkey Point Analog COT, Digital COT, and TADOT to be performed by any series of sequential, overlapping, or total channel steps. The Surveillance Frequency

Control Program assures sufficient safety margins are maintained and that design, operation, surveillance methods, and acceptance criteria specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plants licensing basis. The proposed change does not adversely affect existing plant safety margins, or the reliability of the equipment assumed to operate in the safety analysis. As such, there are no changes being made to safety analysis assumptions, safety limits, or limiting safety system settings that would adversely affect plant safety as a result of the proposed change. Margins of safety are unaffected by method of determining surveillance test intervals under an NRC-approved licensee-controlled program.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Debbie Hendell, Managing Attorney—Nuclear, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: James G. Danna.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

PSEG Nuclear LLC and Exelon Generation Company, LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: July 29, 2019. A publicly-available version is in ADAMS under Accession No. ML19210C880.

Description of amendment request: The amendments would revise the operating licenses to delete certain license conditions that impose specific requirements on the decommissioning trust agreement on the basis that upon approval of the amendments, the provisions of 10 CFR 50.75(h) that specify the regulatory requirements for decommissioning trust funds would apply to PSEG Nuclear LLC. The amendments would also remove legacy financial requirements associated with the license transfer from PSE&G to PSEG Nuclear LLC relative to maintaining available funding for an extended shutdown.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed amendments involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The requested changes delete License Conditions which pertain to the decommissioning trust funds for Salem Generating Station (SGS) and Hope Creek Generating Station (HCGS) and to funding an extended plant shutdown.

These requests involve changes that are administrative in nature. No actual plant equipment or accident analyses will be affected by the proposed changes.

Therefore, the proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed amendments create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This request involves administrative changes to the Renewed Facility Operating Licenses (FOLs) of SGS Units 1 and 2 and HCGS relating to the terms and conditions of the decommissioning trust agreements and to funding an extended plant shutdown. The proposed changes will be consistent with the NRC's regulations at 10 CFR 50.75(h).

No actual plant equipment or accident analyses will be affected by the proposed changes and no failure modes not bounded by previously evaluated accidents will be created.

Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed amendments involve a significant reduction in a margin of safety?

Response: No.

This request involves administrative changes to the SGS Units 1 and 2 and HCGS FOLs that will be consistent with the NRC's regulations set forth in 10 CFR 50.75(h). The request also involves removal of extended shutdown funding requirements for both stations that are historical in nature and are no longer warranted.

The changes being proposed are administrative in nature. Margins of safety are associated with confidence in the ability of the fission product barriers to limit the level of potential dose to the public. No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety systems settings, nor will they relax the bases for any limiting conditions of operation.

Therefore, the proposed amendments do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven Fleischer, PSEG Services Corporation, 80 Park Plaza, T–5, Newark, NJ 07102.

NRC Branch Chief: James G. Danna.

Southern Nuclear Operating Company, Inc.; Georgia Power Company; Oglethorpe Power Corporation; Municipal Electric Authority of Georgia; and City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Appling County, Georgia

Date of amendment request: July 23, 2019. A publicly-available version is in ADAMS under Accession No. ML19204A240.

Description of amendment request: The amendments would revise the Edwin I. Hatch Nuclear Plant (Hatch), Units 1 and 2, Technical Specifications (TSs). The amendments would adopt TSTF–566, ''Revise Actions for Inoperable [Residual Heat Removal] RHR Shutdown Cooling Subsystems,'' which is an approved change to the Improved Standard Technical Specifications, into the Hatch, Units 1 2, TSs. The amendments would revise TS 3.4.7 and TS 3.4.8 Conditions, Required Actions, and Completion Times when an RHR shutdown cooling subsystem is inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the actions to be taken when an RHR shutdown cooling subsystem is inoperable. The RHR System in the shutdown cooling mode performs the important safety function of removing decay heat from the reactor coolant system during shutdown. The RHR System in the shutdown cooling mode is not an initiator of any accident previously evaluated or assumed to mitigate any accident previously evaluated. The design and function of the RHR System are not affected by the proposed change.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the actions to be taken when an RHR shutdown cooling subsystem is inoperable. The proposed

change does not affect the design function or operation of the RHR shutdown cooling subsystems. No new equipment is being installed as a result of the proposed change. The proposed change only affects the actions taken when an RHR shutdown cooling subsystem is inoperable, so no new failure mechanisms are created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the actions to be taken when an RHR shutdown cooling subsystem is inoperable. The proposed change does not change any specific values or controlling parameters that define margin in the design or licensing basis. No safety limits are affected by the proposed change. The RHR System in the shutdown cooling mode removes decay heat from the reactor coolant system during shutdown. The proposed change does not affect any design or safety limits associated with the RHR System.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P. O. Box 1295, Birmingham, AL 35201–1295.

NRC Branch Chief: Michael T. Markley.

IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Progress, LLC, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2 (Robinson), Darlington County, South Carolina.

Date of amendment request: April 16, 2018, as supplemented by letters dated September 25, 2018; November 13, 2018; and July 16, 2019.

Brief description of amendment: The amendment revised the Robinson Technical Specifications (TSs) by relocating specific surveillance frequencies to a licensee-controlled program with the implementation of Nuclear Energy Institute (NEI) 04–10, ''Risk-Informed Technical Specification Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies.'' Additionally, the change added a new program, the Surveillance Frequency Control Program, to TS Section 5.0, ''Administrative Controls.''

Date of issuance: August 15, 2019.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment No.: 265. A publicly-available version is in ADAMS under Accession No. ML19158A307; documents related to the amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–23: The amendment revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** October 23, 2018 (83 FR 53512). The supplemental letters dated November 13, 2018, and July 16, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 15, 2019.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of amendment requests: November 1, 2018, and March 8, 2019, as supplemented by letter dated May 28, 2019.

Brief description of amendment: The amendment canceled 6 modifications and clarified 10 modifications as described in Table S–2, ''Plant Modifications Committed,'' which is referenced in the fire protection program transition license condition 2.C.(3)(c)2. The amendment also extended the full compliance date for the fire protection program transition license condition.

Date of issuance: August 20, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 269. A publicly-available version is in ADAMS under Accession No. ML19198A080; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–20: The amendment revised the Renewed Facility Operating License.

Date of initial notice in ***Federal Register:*** February 5, 2019 (84 FR 1804), and May 7, 2019 (84 FR 19969). The supplemental letter dated May 28, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determinations as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 20, 2019.

No significant hazards consideration comments received: No.

Exelon FitzPatrick, LLC and Exelon Generation Company, LLC, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: March 7, 2019.

Brief description of amendment: The amendment revised the James A. FitzPatrick Nuclear Power Plant Technical Specification requirements regarding ventilation system testing in accordance with Technical Specifications Task Force (TSTF) Traveler, TSTF–522, Revision 0, ''Revise Ventilation System Surveillance Requirements to Operate for 10 hours per Month.'' Specifically, Surveillance Requirement 3.6.4.3.1 of Technical Specification 3.6.4.3, ''Standby Gas Treatment (SGT) System,'' was revised to require operating the ventilation system for at least 15 continuous minutes with the heaters operating at a frequency controlled in accordance with the Surveillance Frequency Control Program.

Date of issuance: August 19, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 326. A publicly-available version is in ADAMS under Accession No. ML19189A084; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–59: The amendment revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** April 23, 2019 (84 FR 16893).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 19, 2019.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Calvert County, Maryland

Date of amendment request: August 30, 2018, as supplemented by letter dated January 11, 2019.

Brief description of amendments: The amendments approved the relocation and consolidation of the Emergency Operations Facility (EOF) and Joint Information Center (JIC) for the Calvert Cliffs Nuclear Power Plant with the existing Exelon Generation Company, LLC joint EOF and JIC located at 175 North Caln Road, Coatesville, Pennsylvania. This facility in Coatesville, Pennsylvania, also serves as the EOF/JIC for Limerick Generating Station, Units 1 and 2, Peach Bottom Atomic Power Station, Units 2 and 3, and Three Mile Island Nuclear Station, Unit 1.

Date of issuance: August 26, 2019.

Effective date: As of the date of issuance and shall be implemented no later than April 30, 2020.

Amendment Nos.: 330 (Unit 1) and 308 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML19165A247; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: The amendments revised the Renewed Facility Operating Licenses.

Date of initial notice in ***Federal Register:*** December 18, 2018 (83 FR 64896). The supplemental letter dated January 11, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 26, 2019.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: November 28, 2018.

Brief description of amendment: The amendment revised certain aspects of the Perry Nuclear Power Plant Emergency Plan emergency response organization staffing.

Date of issuance: August 14, 2019.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment No.: 186. A publicly-available version is in ADAMS under Accession No. ML19163A023; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–58: The amendment revised the Facility Operating License.

Date of initial notice in ***Federal Register:*** January 2, 2019 (84 FR 23).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 14, 2019.

No significant hazards consideration comments received: No.

Florida Power & Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Nuclear Generating Unit Nos. 3 and 4, Miami-Dade County, Florida

Date of amendment request: May 3, 2018, as supplemented by letter August 14, 2019.

Brief description of amendments: The amendments revised the Technical Specifications by changing the Safety Limit 2.1.1.b peak fuel centerline temperature to reflect the fuel centerline melt temperature specified in Topical Report WCAP–17642–P–A, Revision 1, ''Westinghouse Performance Analysis and Design Model (PAD5).'' A non-proprietary version of WCAP–17642–P–A, Revision 1, can be found in ADAMS under Accession No. ML17338A396.

Date of issuance: August 15, 2019.

Effective date: As of the date of issuance and shall be implemented for the Unit 3 Cycle 32 and Unit 4 Cycle 32 reload campaigns currently scheduled for the fall of 2021 and the fall of 2020, respectively.

Amendment Nos.: 288 (Unit 3) and 282 (Unit 4). A publicly-available version is in ADAMS under Accession No. ML19031C891; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–31 and DPR–41: The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.:

Date of initial notice in ***Federal Register*** July 3, 2018 (83 FR 31185) (corrected July 10, 2018 (83 FR 31981)). The supplemental letter dated August 14, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 15, 2019.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant (Diablo Canyon), Units 1 and 2, San Luis Obispo County, California

Date of amendment request: September 12, 2018, as supplemented by letters dated May 2, 2019, and July 3, 2019.

Brief description of amendments: The amendments revised the Emergency

Plan for Diablo Canyon, Units 1 and 2, to revise the Emergency Response Organization staffing composition and extend staff augmentation times for the Emergency Response Organization functions.

Date of issuance: August 21, 2019.

Effective date: As of the date of issuance and shall be implemented within 180 days from the date of issuance.

Amendment Nos.: Unit 1 (233) and Unit 2 (235). A publicly-available version is in ADAMS under Accession No. ML19196A309; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Emergency Plan.

*Date of initial notice in **Federal Register:*** December 4, 2018 (83 FR 62621). The supplemental letters dated May 2, 2019, and July 3, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 21, 2019.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: July 27, 2018, as supplemented by letters dated May 3, 2019; May 17, 2019; and June 27, 2019.

Brief description of amendments: The amendments modified the Technical Specifications to permit the use of Risk-Informed Completion Times (RICTs) in accordance with Topical Report Nuclear Energy Institute (NEI) 06–09, ''Risk-Informed Technical Specifications Initiative 4b, Risk-Managed Technical Specifications (RMTS) Guidelines,'' Revision 0–A.

Date of issuance: August 23, 2019.

Effective date: As of the date of issuance and shall be implemented within 180 days of issuance.

Amendment Nos.: 225 (Unit 1) and 222 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML19175A243; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–2 and NPF–8: The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register:*** September 25, 2018 (83 FR 48466). By supplemental letters dated May 3, 2019, and May 17, 2019, the licensee provided additional information that expanded the scope of the amendment request as originally noticed in the **Federal Register.** Accordingly, the NRC staff published a second proposed no significant hazards consideration determination in the **Federal Register** on June 4, 2019 (84 FR 25840), which superseded the original determination in its entirely. The supplemental letter dated June 27, 2019, provided additional information that clarified the application, did not expand the scope of the application as noticed, and did not change the NRC staff's second proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 23, 2019.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 27, 2018, as supplemented by letters dated December 6, 2018; May 16, 2019; and June 25, 2019.

Brief description of amendments: The amendments revised certain minimum voltage and frequency acceptance criteria for steady-state standby diesel generator surveillance requirement testing. Specifically, the amendments revised several subsections of Technical Specification ¾.8.1, ''AC [Alternating Current] Sources, Operating,'' to correct non-conservative acceptance criteria.

Date of issuance: August 20, 2019.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: (216) Unit 1 and 202 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML19213A147; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register:*** July 31, 2018 (83 FR 36978). The supplemental letters dated December 6, 2018; May 16, 2019; and June 25, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 20, 2019.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant (Browns Ferry), Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: July 3, 2019.

Brief description of amendment: The amendments revised the Renewed Facility Operating Licenses (RFOLs) by changing license conditions for Browns Ferry, Units 1, 2, and 3, associated with the fire protection program controlled by 10 CFR 50.48(c), ''National Fire Protection Association Standard NFPA 805.'' The amendments extended the implementation due dates for Modifications 102 and 106 listed in Item 2 under ''Transition License Conditions'' in each unit's RFOL to the end of Browns Ferry Unit 1's Fall 2020 outage, and April 30, 2020, respectively. Accordingly, these amendments revised RFOLs paragraphs 2.C.(13) of Unit 1, 2.C.(14) of Unit 2, and 2.C.(7) of Unit 3 for Browns Ferry, Units 1, 2, and 3, respectively.

Date of issuance: August 13, 2019.

Effective date: As of the date of issuance and shall be implemented immediately.

Amendment Nos.: 308 (Unit 1), 331 (Unit 2), and 291 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML19198A001; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: The amendments revised the Renewed Facility Operating Licenses.

*Date of initial notice in **Federal Register:*** July 11, 2019 (84 FR 33094).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 13, 2019.

No significant hazards consideration comments received: One comment was

received on August 12, 2019. The public comment and the NRC staff response are provided in the Safety Evaluation dated August 13, 2019.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Unit 1, Coffey County, Kansas

Date of amendment request: January 23, 2019, as supplemented by letters dated March 11, 2019, and August 8, 2019.

Brief description of amendment: The amendment revised Technical Specification (TS) requirements in Section 1.3, ''Completion Times,'' and Section 3.0, ''Limiting Condition for Operation (LCO) Applicability,'' and ''Surveillance Requirement (SR) Applicability,'' to clarify and expand the use and application of the Wolf Creek Generating Station, Unit 1, TS usage rules. The TS changes are consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–529, Revision 4, ''Clarify Use and Application Rules.''

Date of issuance: August 19, 2019.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 222. A publicly-available version is in ADAMS under Accession No. ML19182A345; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–42. The amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in ***Federal Register:*** April 9, 2019 (84 FR 14154). The supplemental letter dated August 8, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 19, 2019.

No significant hazards consideration comments received: No.

V. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual notice of consideration of issuance of amendment, proposed no significant hazards consideration determination, and opportunity for a hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License or Combined License, as applicable, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

A. Opportunity To Request a Hearing and Petition for Leave to Intervene

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 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 *https://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 which 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 60 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.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

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 60 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.

B. 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 *https://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 procedures described below.

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 *https://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 *https://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 *https://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 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 which 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 above, 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.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: August 15, 2019, as supplemented by letters dated August 16, 2019; August 19, 2019; and August 20, 2019.

Description of amendment: The amendment added a one-time extension to the Completion Time of Technical Specification Action 3.8.7.A from 8 hours to 16 hours.

Date of issuance: August 26, 2019.

Effective date: As of the date of issuance and shall be implemented from the issuance date until 0800 Pacific Standard Time on September 14, 2019.

Amendment No.: 254. A publicly-available version is in ADAMS under Accession No. ML19234A016; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–21: The amendment revised the Renewed Facility Operating License and Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. Public notice of the proposed amendment was published in the *Tri-City Herald* located in Kennewick, Washington, from August 18, 2019, through August 20, 2019. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, State consultation, and final NSHC determination are contained in a Safety Evaluation dated August 26, 2019.

Attorney for licensee: William A. Horin, Esq., Winston & Strawn, 1700 K Street NW, Washington, DC 20006–3817.

NRC Branch Chief: Robert J. Pascarelli.

Dated at Rockville, Maryland, this 3rd day of September 2019.

For the Nuclear Regulatory Commission.

Jamie M. Heisserer,

Acting Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–19331 Filed 9–9–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–608; NRC–2019–0173]

SHINE Medical Technologies LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: Operating license application; receipt and availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff acknowledges receipt of an application submitted by SHINE Medical Technologies, LLC (SHINE), dated July 17, 2019, filed

pursuant to the Atomic Energy Act of 1954, as amended, and the NRC's regulations, for an operating license for the SHINE Medical Isotope Production Facility.

DATES: This action takes effect on September 10, 2019.

ADDRESSES: Please refer to Docket ID NRC–2019–0173 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 *https://www.regulations.gov/* and search for Docket ID NRC–2019–0173. Address questions about NRC 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 *https://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: Steven T. Lynch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1524; email: *Steven.Lynch@nrc.gov.*

SUPPLEMENTARY INFORMATION: By letter dated July 17, 2019 (ADAMS Accession No. ML19211C044), SHINE filed with the NRC, pursuant to Section 103 of the Atomic Energy Act and part 50, ''Domestic Licensing of Production and Utilization Facilities,'' of title 10 of the *Code of Federal Regulations* (10 CFR), an application for an operating license for the SHINE Medical Isotope Production Facility to be located in Janesville, Wisconsin (ADAMS Package Accession No. ML19211C143).

SHINE has proposed to construct and operate a facility in Janesville, Wisconsin for the production of molybdenum-99 (Mo-99) through the irradiation and processing of a uranyl sulfate solution. As described in the operating license application, the proposed facility would comprise an irradiation facility and radioisotope production facility. The irradiation facility would consist of eight subcritical operating assemblies (or irradiation units), which would each be licensed as a utilization facility, as defined in 10 CFR 50.2, ''Definitions,'' and supporting structures, systems, and components (SSCs) for the irradiation of low enriched uranium. The radioisotope production facility would consist of hot cell structures, licensed collectively as a production facility, as defined in 10 CFR 50.2, and associated SSCs for the processing of irradiated material and extraction and purification of Mo-99. The irradiation facility and radioisotope production facility are collectively referred to as the SHINE Medical Isotope Production Facility. Issuance of the operating license would authorize the applicant to operate the SHINE Medical Isotope Production Facility for a 30-year period.

By letters dated March 26 and May 31, 2013 (ADAMS Accession Nos. ML13088A192 and ML13172A361, respectively), SHINE (at the time known as SHINE Medical Technologies, Inc.) submitted a two-part construction permit application, as updated in 2015, for its eight utilization facilities and one production facility (ADAMS Package Accession No. ML15258A431). The NRC issued Construction Permit No. CPMIF–001 to SHINE on February 29, 2016 (ADAMS Package Accession No. ML16041A473).

The acceptability of the tendered application for docketing and other matters, including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Dated at Rockville, Maryland, this 5th day of September, 2019.

For the Nuclear Regulatory Commission.

Steven T. Lynch,

Project Manager, Research and Test Reactors Licensing Branch, Division of Licensing Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–19534 Filed 9–9–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. IA–19–007; NRC–2019–0169]

Order Prohibiting Involvement in NRC-Licensed Activities

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order prohibiting involvement in NRC-licensed activities to Mr. Justin Roberts. Mr. Justin Roberts was an Assembler employed by Enrichment Technology United States at the Louisiana Energy Services (LES)(d/b/a URENCO USA UUSA or licensee) uranium enrichment facility. Mr. Justin Roberts engaged in deliberate misconduct that caused LES to be in violation of NRC's regulations.

DATES: The Order prohibiting involvement in NRC-licensed activities was issued on September 5, 2019.

ADDRESSES: Please refer to Docket ID NRC–2019–0169 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 *https://www.regulations.gov* and search for Docket ID NRC–2019–0169. Address questions about NRC 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 Document collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, 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.*

• *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: Thomas Marenchin, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001; telephone: 301–287–9518, email: *Thomas.Marenchin@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 5th day of September, 2019.

For the Nuclear Regulatory Commission.

George A. Wilson,

Director, Office of Enforcement.

Attachment—Order

United States of America Nuclear Regulatory Commission

In the Matter of Justin Roberts

IA–19–007

Order Prohibiting Involvement in NRC-Licensed Activities

I

At the time of the incident described below, Mr. Justin Roberts was an Assembler employed by Enrichment Technology United States (ETUS) at the Louisiana Energy Services (LES)(d/b/a URENCO USA UUSA or licensee) uranium enrichment facility in Eunice, NM. LES holds License No. SNM–2010, as amended on February 7, 2019, by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 70 of Title 10 of the *Code of Federal Regulations* (10 CFR). The license authorizes uranium enrichment operations in accordance with the conditions specified in the license.

II

An investigation was initiated by the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region II (RII), on September 23, 2016, to determine whether licensee employees deliberately failed to maintain control of a classified component at the LES uranium enrichment facility in Eunice, NM. The OI investigation was completed on October 24, 2018.

On September 20, 2016, the LES Security Manager contacted the Federal Bureau of Investigation (FBI) regarding the loss of control of a component jointly classified by the NRC and the Department of Energy (DOE) as ''Confidential—Restricted Data.''

On the morning of September 20, 2016, LES was made aware of the potential loss of control of the component when one of its employees (ETUS Employee #1) reported to LES security management that, while at his residence, he had discovered a classified component in his personal lunchbox on that same morning.

ETUS Employee #1 stated that he did not know how the component ended up in his possession and stated that he did not put it in his lunchbox. Upon discovering the component, ETUS Employee #1 maintained control of it until he arrived at work, at which time he returned it to security personnel.

Numerous interviews were conducted with LES employees to determine the sequence of events leading to the discovery of the classified component. Interviews indicate that ETUS Employee #1 left work at approximately 4:00 p.m. on Monday, September 19, 2016. ETUS Employee #1 placed his lunchbox in the kitchen of his house upon arriving home, where it remained until the following morning.

The component, as well as a sheet of paper that was used to obscure view of the component in the lunchbox, was evaluated for latent fingerprints. ETUS Employee #1 discovered the sheet of paper in the lunchbox at the same time he discovered the component. He placed the sheet of paper in a plastic bag and turned it over to LES security personnel the following day. The evaluation determined that the only fingerprints found on the sheet of paper belonged to another ETUS employee (referred to as ETUS Employee #2, and subsequently identified as Mr. Roberts).

In addition to the fingerprint evidence, OI determined that only eight people had access to the area where the component was stored. A review of badge records indicates that on the day in question, Mr. Roberts entered into the airlock to access the clean room an unusual number of times between 2:15 p.m. and 3:00 p.m. According to an LES supervisor, there was no logical reason why Mr. Roberts should badge in and out of the clean room that many times in that time frame.

OI investigators found Mr. Roberts not to be credible in his testimony. In particular, OI became aware that Mr. Roberts was not truthful regarding his work for his previous employer and his employment status.

There is also sufficient information in the record to demonstrate that Mr. Roberts knew that removing the component from the facility was a violation of NRC requirements. First, Mr. Roberts signed a Security Acknowledgement stating that he agreed to properly control classified information while employed at LES. Second, Mr. Roberts signed a Classified Information Nondisclosure Agreement stating that he would not reveal Classified Information or Restricted Data to unauthorized persons and that he was aware of the requirements of the Atomic Energy Act and its prescribed penalties. Finally, Mr. Roberts training records indicated that he received initial security training in 2013, and refresher training in 2013, 2014, and 2015.

Based on the physical evidence obtained that demonstrates that Mr. Roberts had handled the paper found in ETUS Employee #1's lunchbox, along with Mr. Roberts access to the component and demonstrable lack of credibility, it appears that Mr. Roberts removed the component from the clean room and placed it in ETUS Employee #1's lunchbox.

These actions caused LES, an NRC licensee, to be in violation of multiple requirements of Title 10 of the Code of Federal Regulations (10 CFR) Part 95, Facility Security Clearance and Safeguarding of National Security Information and Restricted Data.

III

Based on the above, the NRC has concluded that Mr. Justin Roberts engaged in deliberate misconduct in violation of 10 CFR 70.10(a)(1) that caused LES to be in violation of 10 CFR 95.25, 10 CFR 95.27, and 10 CFR 95.35. The NRC must be able to rely on the licensee and its employees to comply with NRC requirements. Mr. Roberts' actions raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, the NRC lacks the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements, and that the health and safety of the public will be protected if Mr. Roberts were permitted at this time to be involved in NRC-licensed activities. Therefore, the public's health, safety, and interest require that Mr. Roberts be prohibited from any involvement in NRC-licensed activities for a period of one year from the date of this Order. Finally, Mr. Roberts is required to notify the NRC of his first employment in NRC-licensed activities for a period of one year following the one-year prohibition period for having any involvement in NRC licensed activities.

IV

Accordingly, pursuant to sections 81, 161b, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR 70.10, *it is hereby ordered that:*

1. Mr. Justin Roberts is prohibited for one year from the date of this Order from engaging in, supervising, directing, or in any other way conducting NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in the NRC's jurisdiction pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. Justin Roberts is currently engaged in NRC-licensed activities with any licensee, he must immediately cease

those activities, and inform the NRC of the name, address and telephone number of the licensee, and provide a copy of this Order to the licensee.

3. For a period of one year after the one-year period of prohibition for conducting NRC-licensed activities has expired, Mr. Justin Roberts shall, within 20 days of acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the notification, Mr. Roberts shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, or designee, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Roberts of good cause.

V

In accordance with 10 CFR 2.202, Mr. Roberts must submit a written answer to this Order under oath or affirmation within 30 days of its publication in the **Federal Register**. Mr. Roberts failure to respond to this Order could result in additional enforcement action in accordance with the Commission's Enforcement Policy. Any person adversely affected by this Order may submit a written answer to this Order within 30 days of its publication in the **Federal Register**. In addition, Mr. Roberts and any other person adversely affected by this Order may request a hearing on this Order within 30 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter ''petition''), and documents filed by interested governmental entities participating 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 by 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 procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) calendar 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 government holidays.

Participants who believe that they have 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 which 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 above, 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.

If a person (other than Justin Roberts) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final thirty (30) calendar days from the date of issuance of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission.

George A. Wilson,

Director, Office of Enforcement.

Dated this 5th day of September, 2019.

[FR Doc. 2019–19556 Filed 9–9–19; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information on the Bioeconomy

AGENCY: Office of Science and Technology Policy (OSTP).

ACTION: Notice of request for information (RFI) for Bioeconomy.

SUMMARY: The Office of Science Technology and Policy (OSTP) requests input from all interested parties on the U.S. Bioeconomy. The Bioeconomy represents the infrastructure, innovation, products, technology, and data derived from biologically-related processes and science that drive economic growth, promote health, and increase public benefit. Through this Request for Information (RFI), OSTP seeks input from the public, including those with capital investments, performing innovative research, or developing enabling platforms and applications in the field of biological sciences, to include healthcare, medicine, pharmaceuticals, biotechnology, manufacturing, energy production, and agriculture. This RFI will inform notable gaps, vulnerabilities, and areas to promote and protect in the U.S. Bioeconomy that may benefit from Federal government attention. The information can include suggestions on those areas of greatest priority within the Bioeconomy, as well as past or future Federal government efforts to build, promote, and sustain the U.S. Bioeconomy. The public input provided in response to this RFI will inform the Executive Office of the President as well as private sector, academia, non-governmental entities, and other stakeholders with interest in and expertise relating to the promotion of a Bioeconomy ecosystem encompassing shared values and core American principles.

DATES: Interested persons are invited to submit comments on or before 11:59 p.m. (ET) on October 22, 2019.

ADDRESSES: Comments submitted in response to this notice may be submitted online to: *MBX.OSTP.WHBioeconomy@ostp.eop.gov.* Email submissions should be machine-readable [pdf, word] and not be copy-protected. Submissions should include ''RFI Response: Bioeconomy'' in the subject line of the message.

Instructions: Response to this RFI is voluntary. Each individual or institution is requested to submit only one response. Submission must not exceed 10 pages in 12 point or larger font, with a page number provided on each page. Responses should include the name of the person(s) or organization(s) filing the comment. Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials. Comments containing profanity, vulgarity, threats, or other inappropriate language or content will not be considered.

Comments submitted in response to this notice are subject to FOIA. Responses to this RFI may also be posted, without change, on a Federal website. Therefore, we request that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI.

In accordance with FAR 15–202(3), responses to this notice are not offers and cannot be accepted by the Government to form a binding contract. Additionally, the U.S. Government will not pay for response preparation or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: Paige Waterman at: *MBX.OSTP.WHBioeconomy@ostp.eop.gov.*

SUPPLEMENTARY INFORMATION: A prosperous bioeconomy provides a host of opportunities for the current and future growth of all sectors of the U.S. economy. Today, the Bioeconomy ecosystem in the United States is a rapidly changing technological and economic environment. Data rights, analysis, use, storage and security are all critical components of biotechnology, healthcare, medicine, public health, data science, energy, environment, and agriculture. Ongoing research and innovation in these areas provide the foundation for solving the problems of today and the potentially unforeseen issues of tomorrow. To that end, stimulating the research enterprise, developing and sustaining workforce talent, and supporting the infrastructure for the manufacturing of products remain critical components to any Bioeconomy objective.

To inform the Federal government's decision-making and establish the Nation's guiding values and principles in the promotion and protection of the U.S. Bioeconomy, OSTP seeks public input on how U.S. Government action regarding the Bioeconomy can support

scientific discovery, the development of technological advances, and increase the impact of a vibrant bioeconomy on the Nation's vitality and our citizens' lives. To that end, responders are specifically requested to answer one or more of the following questions in their submissions. Consortia responses are also encouraged.

1. What specific actions could the U.S. Government take to reinforce a values-based ecosystem that will guide the transformation and expansion of the U.S. Bioeconomy, in both the short- and long-term? Please consider:

a. Policy or regulatory opportunities and gaps throughout the continuum of basic science translation, product development and commercialization;

b. Scientific areas where research funding could be strategically targeted to stimulate discovery;

c. Novel public-private partnership mechanisms;

d. International opportunities;

e. Challenges to taking identified actions or implementing change.

2. In what ways can the U.S. Government partner with the private sector, industry, professional organizations, and academia to ensure the training and continued development of a skilled workforce to support the growth of the Bioeconomy? Please consider:

a. Potential needs and solutions at the skilled technical, undergraduate, professional master's program or graduate level;

b. Specific needs within basic science, translational research, product development, and commercialization;

c. Approaches for the development of non-traditional, multi-disciplinary educational backgrounds that address the convergent nature of emerging technologies and integrate core values including safety and security;

d. Effective geographic distribution of workforce and talent development across the United States;

e. The development of a public and private ecosystem that will attract and retain domestic and foreign talent within the United States at all skill levels.

3. In what ways can the U.S. Government partner with the private sector, industry, professional organizations, and academia to establish a more robust and efficient Bioeconomy infrastructure? Please consider:

a. Current infrastructure—from databases to world-class technology and manufacturing capabilities;

b. Geographic distribution of manufacturing capabilities compared to future manufacturing needs;

c. Leveraging existing public-private partnerships and identifying trusted information sharing mechanisms to accelerate innovation and facilitate fruitful, equitable domestic and international collaborations;

d. Institutional models for achieving translation of basic science discoveries to application and/or entry into the marketplace.

4. Across the spectrum, from basic discovery to practical application, what data policies, information-sharing mechanisms, and safeguards will be necessary for a prosperous U.S. Bioeconomy? Please consider:

a. Scientific, regulatory, manufacturing standards and/or benchmarks and/or best practices around data that should be developed to best accelerate Bioeconomy growth;

b. Possible safeguards for technology, data, and emergent products, such as patent/intellectual property protection, data quality and provenance validation, and privacy and security assurances.

Sean Bonyun,

Chief of Staff, Office of Science and Technology Policy.

[FR Doc. 2019–19470 Filed 9–9–19; 8:45 am]

BILLING CODE 3270–F9–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33616; File No. 812–14988]

Diamond Hill Funds and Diamond Hill Capital Management, Inc.

September 4, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order pursuant to: (a) Section 6(c) of the Investment Company Act of 1940 (''Act'') granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements and transactions. Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: Diamond Hill Funds, established as a business trust under the laws of Ohio and registered under the Act as an open-end management investment company with multiple series, and Diamond Hill Capital Management, Inc. (the ''Adviser''), an Ohio corporation registered as an investment adviser under the Investment Advisers Act of 1940.

FILING DATES: The application was filed on December 19, 2018, and amended on May 17, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 30, 2019 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: Diamond Hill Funds and Diamond Hill Capital Management, Inc., 325 John H. McConnell Blvd., Suite 200, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT: Kieran G. Brown, Senior Counsel, at 202–551–6773, or David J. Marcinkus, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would permit the applicants to participate in an interfund lending facility where each Fund could lend money directly to and borrow money directly from other Funds to cover unanticipated cash shortfalls, such as unanticipated redemptions or trade fails.[1] The Funds will not borrow under

[1] Applicants request that the order apply to the applicants and to any other registered open-end management investment company or series thereof (each, a ''Fund'' and collectively, the ''Funds'') for which the Adviser or any successor-in-interest thereto or an investment adviser controlling,

the facility for leverage purposes and the loans' duration will be no more than 7 days.[2]

2. Applicants anticipate that the proposed facility would provide a borrowing Fund with a source of liquidity at a rate lower than the bank borrowing rate at times when the cash position of the Fund is insufficient to meet temporary cash requirements. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or certain other short term money market instruments. Thus, applicants assert that the facility would benefit both borrowing and lending Funds.

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Among others, the Adviser, through a designated committee, would administer the facility as a disinterested fiduciary as part of its duties under the investment advisory and administrative agreements with the Funds and would receive no additional fee as compensation for its services in connection with the administration of the facility. The facility would be subject to oversight and certain approvals by the Funds' Board, including, among others, approval of the interest rate formula and of the method for allocating loans across Funds, as well as review of the process in place to evaluate the liquidity implications for the Funds. A Fund's aggregate outstanding interfund loans will not exceed 15% of its net assets, and the Fund's loans to any one Fund will not exceed 5% of the lending Fund's net assets.[3]

4. Applicants assert that the facility does not raise the concerns underlying section 12(d)(1) of the Act given that the Funds are part of the same group of investment companies and there will be no duplicative costs or fees to the Funds.[4] Applicants also assert that the proposed transactions do not raise the concerns underlying sections 17(a)(1), 17(a)(3), 17(d) and 21(b) of the Act as the Funds would not engage in lending transactions that unfairly benefit insiders or are detrimental to the Funds. Applicants state that the facility will offer both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and each Fund would have an equal opportunity to borrow and lend on equal terms based on an interest rate formula that is objective and verifiable. With respect to the relief from section 17(a)(2) of the Act, applicants note that any collateral pledged to secure an interfund loan would be subject to the same conditions imposed by any other lender to a Fund that imposes conditions on the quality of or access to collateral for a borrowing (if the lender is another Fund) or the same or better conditions (in any other circumstance).[5]

5. Applicants also believe that the limited relief from section 18(f)(1) of the Act that is necessary to implement the facility (because the lending Funds are not banks) is appropriate in light of the conditions and safeguards described in the application and because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of a Fund, including combined interfund loans and bank borrowings, have at least 300% asset coverage.

6. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Rule 17d–1(b) under the Act provides that in passing upon an application filed under the rule, the Commission will consider whether the participation of the registered investment company in a joint enterprise, joint arrangement or profit sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of the other participants.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19468 Filed 9–9–19; 8:45 am]

BILLING CODE 8011–01–P

controlled by, or under common control with the Adviser or any successor-in-interest thereto serves as investment adviser (each such investment adviser, an ''Adviser''). For purposes of the requested order, ''successor-in-interest'' is limited to any entity that results from a reorganization into another jurisdiction or a change in the type of a business organization. No money market funds will participate in the proposed credit facility as either borrowers or lenders.

[2] Any Fund, however, will be able to call a loan on one business day's notice.

[3] Under certain circumstances, a borrowing Fund will be required to pledge collateral to secure the loan.

[4] Applicants state that the obligation to repay an interfund loan could be deemed to constitute a security for the purposes of sections 17(a)(1) and 12(d)(1) of the Act.

[5] Applicants state that any pledge of securities to secure an interfund loan could constitute a purchase of securities for purposes of section 17(a)(2) of the Act.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86867; File No. SR–NYSEAMER–2019–34]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Rule Change To Amend Its NYSE American Equities Price List and the NYSE American Options Fee Schedule Related to Co-Location Services

September 4, 2019.

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 August 23, 2019, NYSE American LLC (''NYSE American'' 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

The Exchange proposes to amend its NYSE American Equities Price List (''Price List'') and the NYSE American Options Fee Schedule (''Fee Schedule'') related to co-location services to provide access to NMS feeds. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 Exchange proposes to amend the Price List and Fee Schedule related to co-location [4] services offered by the Exchange to provide Users [5] with an alternate, dedicated network connection to access the NMS feeds for which the Securities Industry Automation Corporation (''SIAC'') is engaged as the securities information processor (''SIP'').[6]

As described below, today Users can connect to Regulation NMS equities and options feeds [7] disseminated by the SIP using either of the co-location local area networks. Users do not pay an additional charge to connect to the NMS feeds: It comes with their connection to the local area network.

The Exchange has recently been authorized to build a new network in the Mahwah data center (the ''NMS network'') that will only connect to the NMS feeds. The new network will connect to the NMS feeds faster than either of the existing local area networks. The Exchange believes that under most circumstances, none of the Users that currently connect to the NMS feeds will have to pay any additional fees to connect to the NMS network. As described in detail below, there are limited circumstances when a User may incur a unique fee to connect to the NMS network. However, the Exchange does not expect to earn net revenue from any such fees for connecting to the NMS network.

As explained in more detail below, the Exchange proposes to amend the General Notes to provide that:

a. Users will have the option to use the NMS network or either of the existing local area networks to connect to the NMS feeds.

b. For each connection a User and its Affiliates have to the local area networks, the User and its Affiliates, together, will get a free connection to the NMS network, subject to a maximum limit of eight, so long as the User meets the requirements set forth below.

c. If a User wants to separately purchase an NMS network connection, it would pay the same fee as the same-sized 10 Gigabit (''Gb'') or 40 Gb internet protocol (''IP'') network circuit.

Subject to approval of this proposed rule change, the Exchange proposes to implement the rule change on the first day of the month after the NMS network is available. The Exchange will announce the implementation date through a customer notice.

Background

The Exchange's affiliate, SIAC, is engaged as the SIP for three separate Regulation NMS plans (collectively, the ''NMS Plans'').[8] SIAC operates as the SIP for the NMS Plans in the same data center where the Exchange and its Affiliate SROs operate. In that data center, Users can access SIAC as the SIP over the same network connections through which they access other services. Specifically, a User can access the SIAC SIP environment via either the IP network or the Liquidity Center Network (''LCN''), which are the local area networks in the data center.[9]

The Exchange offers Users connectivity to the SIAC SIP environment at no additional charge when a User purchases access to the LCN or IP network.[10] On the Price List and Fee Schedule, the SIAC feeds are referred to as the ''NMS feeds.'' As described in General Note 4 of the Price List and Fee Schedule, when a User purchases access to the LCN or IP network, it receives connectivity to certain market data products (the ''Included Data Products'') that it selects, subject to technical provisioning requirements and authorization from the provider of the data feed. The NMS feeds are included in the list of the Included Data Products that come with connections to the LCN or IP network. The remaining Included Data Products are proprietary feeds of the Exchange, its Affiliate SROs, and the Exchange's affiliate NYSE Chicago, Inc. (''NYSE Chicago'' and together with the Exchange and Affiliate SROs, the ''NYSE Exchanges'').

A User that purchases access to the LCN or IP network also receives the ability to access the trading and execution systems of the NYSE Exchanges (the ''Exchange Systems'') and the trading and execution systems of OTC Global, an alternative trading system (''ATS''), subject, in each case, to authorization by the relevant entity.[11]

Accordingly, without paying an additional connectivity fee, a User that purchases access to either the LCN or IP network can use such network to:

1. Access the trading and execution services of five registered exchanges (five equities markets, two options

[4] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca''), and NYSE National, Inc. (''NYSE National'' and together, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67).

[6] *See* Securities Exchange Act Release No. 79728 (January 4, 2017), 82 FR 3035 (January 10, 2017) (SR–NYSEMKT–2016–126).

[7] The NMS feeds include the Consolidated Tape System and Consolidated Quote System data streams, as well as Options Price Reporting Authority (''OPRA'') feeds. *See id.*

[8] SIAC has been engaged as the SIP to, among other things, receive, process, validate and disseminate: (1) Last-sale price information in Tape A and Tape B-listed securities pursuant to the CTA Plan (''CTA Plan''), which is available here: *https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CTA%20Plan%20-%20Composite%20as%20of%20August%2027,%202018.pdf;* (2) quotation information in Tape A and B-listed securities pursuant to the CQ Plan (''CQ Plan''), which is available here: *https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CQ_Plan_Composite_as_of_July_9_2018.pdf;* and (3) quotation and last-sale price information in all exchange options trading pursuant to the OPRA Plan (''OPRA Plan''), which is available here: *https://uploads-ssl.webflow.com/5ba40927ac854d8c97bc92d7/5bf419a6b7c4f5085340f9af_opra_plan.pdf.*

[9] *See* 82 FR 3035, note 6, *supra.*

[10] As set forth on the Price List and Fee Schedule, the Exchange offers a range of LCN and IP network connectivity options at different rates depending on the bandwidth and latency profile of the applicable network.

[11] *See* 82 FR 3035, note 6, *supra,* and Securities Exchange Release No. 85960 (May 29, 2019), 84 FR 25848 (June 4, 2019) (SR–NYSEAmer–2019–21). Information regarding the Included Data Products is currently set forth in the second paragraph of General Note 4. The Exchange proposes to split General Note 4 so that the discussion regarding Included Data Products will form General Note 5.

markets, and a fixed income market) and an ATS;

2. Connect to the market data of five registered exchanges (five equities exchanges, two options markets, and a fixed income market); and

3. Connect to the NMS feeds.

A User may connect to the NMS feeds through the IP network or LCN. Until recently the operating committee for the CTA and CQ Plans (''CTA/CQ Plans'') mandated use of the IP network to access the NMS feeds.[12] As a result, all LCN connections to the NMS feeds go through the IP network before reaching the NMS feeds,[13] and so using the LCN to connect to an NMS feed is slower than using the IP network.[14]

Alternate, Dedicated Network Connection for NMS Feeds

As the SIP for the NMS Plans, SIAC continually assesses the services it provides and has been working with the operating committees of the NMS Plans and the industry-based advisory committee to the CTA/CQ Plans to identify potential performance enhancements. Among other initiatives, this group identified that, because the IP network was not designed as a low-latency network, the requirement to use the IP network to access the NMS feeds introduces a layer of latency.

To reduce network latency, the Exchange sought and received approval from the operating committees for the CTA/CQ Plans to build an alternate to the LCN and IP network to connect to the NMS feeds.[15] As approved by the CTA/CQ Plans, the Exchange is building a low-latency network in the data center that will provide Users with dedicated access to the NMS feeds (the ''NMS network'').[16]

The Exchange currently anticipates that the low-latency network will have a one-way reduction in latency to access the NMS feeds from the IP network and LCN of over 140 microseconds.

Connections to the NMS network will be available in 10 Gb and 40 Gb circuits. Because the NMS network will be an alternate network to access the NMS feeds, once it is available, Users would have the choice between continuing to use the LCN or IP network to connect to NMS feeds or switching to the NMS network.

Proposed Amendments to the Price List and Fee Schedule

The proposed fee structure for the NMS network has been designed so that, in most cases, a User would not have any new or different charges if it opts to connect to the NMS network compared to what it would be charged if it chooses to continue to use its LCN or IP network circuit to connect to the NMS feeds. At the same time, the proposed fees are designed to promote the efficient use of the NMS network so that Users do not subscribe to more NMS network connections than are necessary.

Options To Connect to the NMS Feeds

As noted above, Users that purchase access to the LCN or IP Network currently can use such networks to connect to the NMS feeds. The Exchange proposes to add text to the General Notes stating that a User authorized to receive connectivity to one or more NMS feeds may request to connect to the NMS feeds via the NMS network.

No Fee NMS Network Connections

The Exchange proposes to amend the Price List and Fee Schedule to state that if a User purchases access to the LCN or IP network and requests a connection to the NMS network, that User and its Affiliates, taken together, would not be charged for up to eight corresponding NMS network connections (each, a ''No Fee NMS Network Connection'') if such User, together with its Affiliates, purchases access to an LCN or IP network and:

1. Designates no more than four No Fee NMS Network Connections as corresponding to the LCN connections of the User, together with its Affiliates, on a one-to-one basis;

2. designates no more than four No Fee NMS Network Connections as corresponding to the IP network connections of the User, together with its Affiliates, on a one-to-one basis;

3. does not use the LCN or IP network connections that correspond to No Fee NMS Network Connections to access the NMS feeds; and

4. each of the No Fee NMS Network Connections is of equal size or smaller than the associated LCN or IP network connection purchased by it or its Affiliates.[17]

For example, if a User that has no Affiliates currently purchases three 40 Gb LCN circuits and two 10 Gb IP network circuits, and is authorized to access the NMS feeds through all five of these circuits, under the proposal, such User would not be charged any additional fees for up to three 40 Gb NMS network circuits and two 10 Gb NMS network circuits. If such User chooses to use all five corresponding NMS network connections, it would no longer be provided access to the NMS feeds over the three 40 Gb LCN circuits and the two 10 Gb IP network circuits.

Because the Exchange proposes that the number of No Fee NMS Network Connections would be applicable to both a User and its Affiliates, the Exchange proposes to amend the Price List and Fee Schedule to specify how a User must certify whether any other Users or Hosted Customers are Affiliates of the certificating User. As proposed, the certificating User would be required to inform the Exchange immediately of any event that causes another User or Hosted Customer to become an Affiliate. The Exchange would review available information regarding the entities and may request additional information to verify the Affiliate status of a User or Hosted Customer. The Exchange would provide No Fee NMS Network Connections to the certificating User unless it determines that the certification is not accurate.

In addition, a User that has one or more NMS network connections may become affiliated with one or more other Users or Hosted Customers such that the User and its Affiliates would together exceed the limit of No Fee NMS Network Connections. In such case, for each NMS network connection that exceeds the limit of No Fee NMS Network Connections, the Exchange would charge the User for each NMS network connection at the same rate as it charges for an IP network connection of the same size. Such change would be effective as of the date that the User

[12] The Operating Committee of the CTA/CQ Plans mandated the use of the IP network to access the NMS feeds because the IP network was built as a secure network designed for resiliency and redundancy.

[13] By contrast, the LCN does not connect to the IP network for access to the Exchange Systems or connectivity to the other Included Data Products.

[14] A User that uses the LCN to connect to an NMS feed does not need to separately purchase an IP network connection.

[15] The alternate network to access the NMS feeds will not be available outside of the data center.

[16] Because SIAC, as the SIP for the NMS Plans, is also responsible for collecting data from the participants of the CTA/CQ Plans and members of the OPRA Plan, Users that are participants of the applicable NMS Plans could use this alternate network connection for purposes of both transmitting and receiving data. Users that are not participants of the NMS Plans could use this alternate network connection for purposes of receiving data. This alternate network would not be available to connect to the other Included Data Products or to access the Exchange Systems or Global OTC.

[17] An ''Affiliate'' of a User would be any other User or Hosted Customer that has 50% or greater common ownership or control of the first User. A ''Hosted Customer'' means a customer of a Hosting User that is hosted in a Hosting User's co-location space, and a ''Hosting User'' means a User of co-location services that hosts a Hosted Customer in the User's co-location space. Such definitions are set forth in the Price List and Fee Schedule under ''Definitions.'' *See* Securities Exchange Act Release No. 77071 (February 5, 2016), 81 FR 7382 (February 11, 2016) (SR–NYSEMKT–2015–89).

became affiliated with the other Users or Hosted Customers, as applicable.

This proposed rule text relating to how a User and its Affiliates would be charged in connection with the No Fee NMS Network Connections is based on text in General Note 2 relating to how a User must certify Affiliates in connection with the Partial Cabinet Solution bundle.[18]

Purchasing NMS Network Connections

In addition to the No Fee NMS Network Connections, the Exchange proposes that a User may purchase an NMS network connection. Accordingly, the Exchange proposes to add text to the Price List and Fee Schedule stating that a User may purchase an NMS network connection at the same fee as the same-sized 10 Gb or 40 Gb IP network circuits.[19]

Circumstances when a User would have to separately purchase an NMS network connection could include if such User:

1. Has not purchased access to the LCN or IP network and would like to connect to the NMS network;

2. has purchased access to the LCN or IP network and would like NMS network connections in excess of the number of No Fee NMS Network Connections that correspond to its LCN or IP network connections;[20] or

3. would like to use its LCN or IP network connections to continue to access the NMS feeds.

Expected Application of the Proposed Change

Currently, 48 Users connect to NMS feeds through connections to the LCN and IP networks (the ''Current Users''). The Exchange expects the number of Users connecting to the NMS feeds in the future to remain relatively constant with the number of Current Users, although it could increase or decrease with time. The fee will apply in the same manner to all Users, irrespective of what type or size of market participant they are.

The Range of Potential Fees

Depending on how a User chooses to connect, a User would pay for a connection to the NMS network between $0 and $18,000 per connection per month. More specifically, a User that utilizes a No Fee NMS Network Connection to connect to the NMS network would pay no initial fee or MRC. A User that does not utilize a No Fee NMS Network Connection would pay the same fee as the same-sized 10 Gb or 40 Gb IP network circuit. For the 10 Gb option, that would be a $10,000 initial charge and a $11,000 MRC per connection. For the 40 Gb option, that would be a $10,000 initial charge and a $18,000 MRC per connection.

As noted above, the Exchange believes that none of the Current Users will have to pay to connect to the NMS network, and so the $11,000 and $18,000 MRCs are largely theoretical. Based on a review of the Current Users' LCN and IP network connections, with two exceptions, the number of No Fee NMS Network Connections will be more than sufficient for such Users to maintain their current connections to the NMS network at no additional cost. Accordingly, the majority of Current Users would be able to opt to connect to the NMS network without any additional charges.

The exceptions are two Current Users that use more than four connections to the IP network and/or four connections to the LCN to connect to the NMS feeds. If these Users obtain an equal number of connections to the NMS network, the number of their connections to the NMS network would exceed their number of No Fee NMS Network Connections. As a result, they would have to pay for the excess NMS network connections. However, based on conversations with these two Users, the Exchange understands that they intend to optimize their connections by only using their No Fee NMS Network Connections to connect to the NMS feeds and would not need to purchase any additional NMS network connections. Accordingly, since they do not anticipate requiring NMS network connections in excess of the No Fee NMS Network Connections, the Exchange believes that they will not incur any additional cost. For this reason, the Exchange believes that providing up to eight free connections to the NMS network, each corresponding to a purchased connection of equal or larger size to the LCN or IP network, would meet the needs of the Current Users.

Based on the Exchange's review of Users' current numbers of connections to the LCN and IP network, the Exchange believes that the majority of Users that want access to the NMS feeds in the future would be able to meet their bandwidth needs for the NMS network with the proposed No Fee NMS Network Connections, and so are unlikely to incur any cost above their costs for accessing the LCN or IP network.

The Exchange's proposal to require a User to purchase access to the NMS network if it does not also purchase access to the LCN or IP network, or if it has connections to the LCN and IP network but wants a number of NMS network connections in excess of its No Fee NMS Network Connections, would not impose any new or different charges for such User. For example:

- Currently, if a User needs to connect to only the NMS feeds (and does not need that network connection to access the Exchange Systems or to connect to the other Included Market Data), such User must purchase access to either the LCN or IP network at the published rates on the Price List and Fee Schedule.
- As proposed, once the NMS network becomes available, such User would still need to purchase a network connection to connect to the NMS feeds, but will have a greater choice because it could opt to connect via the low-latency, dedicated NMS network instead of using the IP network. Access to the NMS network would be charged at the same rate as published rates for access to the IP network.

As another example:

- Currently, if a User needs (a) two connections to the LCN to meet its bandwidth needs to access the Exchange Systems and connect to Included Market Data, including the NMS feeds, and (b) an additional connection to the LCN or IP network to meet additional bandwidth needs to connect to NMS feeds, it would purchase a total of three network connections: Two LCN connections (to provide access to the Exchange Systems and connect to the Included Market Data) and one IP network connection (to provide connectivity only to the NMS feeds).
- As proposed, once the NMS network is available, such User could still purchase two connections to the LCN for its non-NMS feed needs, and could opt to use two No Fee NMS Network Connections of the same or smaller bandwidth that correlate to such LCN connections. To meet its additional bandwidth needs to connect to the NMS feeds, such User could now opt to purchase a connection to either the NMS network or the IP network at the same price. In either case, the User would be purchasing a total of three network connections (but receiving five connections) and would be charged at

[18] *See id.*

[19] As set forth on the Price List and Fee Schedule, IP network access is: (1) $10,000 per connection initial charge and a $11,000 monthly recurring charge (''MRC'') per connection for a 10 Gb Circuit; and (2) $10,000 per connection initial charge and a $18,000 MRC for a 40 Gb Circuit.

[20] For example, if a User had four connections to the LCN and three connections to the IP network, those connections would correspond to seven No Fee NMS Network Connections. If the User wanted ten NMS network connections, it would receive seven at no fee and would pay for three.

the same rates as are currently charged under the Price List and Fee Schedule.

In both of the above examples, a User that opts to purchase access to the NMS network instead of to the IP network to connect to the NMS feeds would receive a lower-latency connection than the IP network connection, for the same charge. The Exchange therefore believes that in the above-described circumstances, the proposed fees would be cost-neutral as compared to the current Price List and Fee Schedule, with the additional benefit that the User would have the option to select a lower-latency, dedicated network connection.

The Limitation on the Number of No Fee NMS Network Connections

As described above, the Exchange believes that the majority of Users would be able to meet their bandwidth needs for the NMS network with the proposed No Fee NMS Network Connections. The Exchange further believes that without the proposed limit on number of No Fee NMS Network Connections, Users may opt to connect to NMS network connections on a one-for-one basis for each LCN or IP network connection that they have purchased, even if such LCN or IP network connections are not currently used to access the NMS feeds. In such case, the Exchange does not believe that more than eight NMS network connections would be necessary or in furtherance of the User's needs to connect to the NMS feeds. To discourage Users from requesting more NMS network connections than they need, the Exchange proposes to charge for any NMS network connections in excess of the proposed limit of No Fee NMS Network Connections.

Similarly, the Exchange believes that if a User chooses to connect to the NMS feeds via both an LCN or IP network connection and an associated NMS network connection, that User would be receiving two separate network connections to access the NMS feeds. This would double its bandwidth available to access the NMS feeds and the Exchange believes that such User should be charged accordingly. The Exchange further believes it would promote efficient use of resources to charge for the NMS network connection in these circumstances because there would be operational costs for the Exchange to support access to both the NMS network and the LCN or IP networks at the same time. Stated otherwise, the Exchange is concerned that if the NMS network connections are free without any limits, Users may seek so many connections that it would increase both capital and operational expenses for the Exchange.

Defraying the Cost of Building the NMS Network

In addition to promoting the efficient use of NMS network connections, charging for NMS network connections under the limited circumstances described above may also defray the costs associated with implementing the NMS network. As described above, SIAC is the SIP for the NMS plans and is reimbursed for specified direct costs by the participants to the NMS Plans.[21] Even though the NMS network would connect only to the NMS feeds, the Exchange has agreed not to seek reimbursement of the costs to build the NMS network from the participants of the respective NMS Plans.

The one-time capital expenditure for the implementation of the NMS network will be approximately $3.8 million, which includes procurement of new low-latency network switches, network devices, and analytics tools and the one-time operational expenditures to build this new network. The estimate is based on the hardware that would be necessary to support the Current Users' present configurations if they replaced their LCN or IP network connections to the NMS feeds with NMS network connections, with some room for additional growth. If Users were to request NMS network connections in excess of the estimated number of connections, the Exchange would have to procure additional hardware, which would be an additional cost. In addition to these one-time implementation costs, the Exchange estimates that the ongoing cost to maintain and operate the dedicated NMS network will be approximately $215,000 annually.

The Exchange cannot predict with certainty what User behavior will be once the NMS network is available. As discussed above, based on current usage of the LCN and IP network, the Exchange anticipates that all Current Users will be able to connect to the NMS feeds without any new or different charges. The Exchange expects that some Users may even reduce the total number of circuits that they purchase because they will be able to obtain up to eight connections to the NMS network at no charge. Those No Fee NMS Network Connections will free up bandwidth over their LCN or IP network connections, allowing them to reduce the total number of LCN or IP network connections that they purchase.

Although the Exchange believes that none of the Current Users will have to pay additional fees to connect to the NMS network, the Exchange cannot fully anticipate User behavior once the NMS network is available. Some Current Users, or new Users, may elect to purchase NMS network connections in excess of the proposed limit on the number of No Fee NMS Network Connections, for which they would pay a charge. Given that, the Exchange has done an analysis of what would occur if Users request five unique new NMS network connections that are not No Fee NMS Network Connections. Assuming that such Users purchase 40 Gb NMS network circuits, these five new connections would result in $1,130,000 in revenue: $50,000 in initial charges and $1,080,000 in MRC. This revenue would likely be offset either in part or in whole by Users, including Current Users, reducing the total number of LCN or IP network circuits that they purchase. The Exchange could even experience a net decline in revenue as a result of the proposed commercial terms for the NMS network.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;[22] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[23]

[21] SIAC is reimbursed either directly (under the CTA/CQ Plans, participants reimburse SIAC directly) or indirectly (under the OPRA Plan, OPRA LLC reimburses SIAC).

[22] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[23] *See* 78 FR 50471, *supra* note 5, at 50471. NYSE, NYSE Arca and NYSE National have submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2019–46, SR–NYSEArca–2019–61 and SR–NYSENAT–2019–19.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[25] in particular, because 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 regulating, clearing, settling, processing information with respect to, and 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[26] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Would Remove Impediments to and Perfect the Mechanism of a Free and Open Market and a National Market System.

The Exchange believes that the proposed change to establish access to the NMS network as a service available in co-location would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering access to the dedicated, low-latency NMS network, the Exchange will be providing Users with an additional option to connect to the NMS feeds. Until recently, SIAC was required to provide connectivity to the NMS feeds via only the IP network. As recently approved by the operating committees for the CTA/CQ Plans, SIAC is now authorized to offer connectivity to the NMS feeds in the data center via an alternate, dedicated, low-latency NMS network. The proposed NMS network has been designed consistent with this directive and will provide greater choice to Users that are seeking a low-latency network to connect to the NMS feeds.

The Proposed Rule Change is Reasonable

As an initial matter, as required by Rule 603(b) of Regulation NMS, SIAC disseminates quotation and transaction information as the single plan processor for all Tape A and Tape B-listed securities and is also the single plan processor for all options exchanges. As the single plan processor, the pricing decisions relating to the dedicated NMS network are not constrained by competitive market forces.

Instead, as described above, the Exchange is funding the capital and operational expenses to build and operate the NMS network. Those implementation costs are applicable only to the NMS network, which will be used for the sole purpose of providing access to the NMS feeds. Simply put, none of the implementation costs are applicable to any other Exchange services. The Exchange has based its procurement needs—which correlate to the Exchange's estimated costs to build the NMS network—based on the Current Users' usage of the LCN or IP networks to connect to the NMS feeds, with some room for additional growth.

The Exchange believes that the proposed charges would be reasonable because such charges would defray the estimated costs the Exchange will incur to build and operate the NMS network. As described above, the proposed NMS network will be a dedicated, low-latency network that will provide access only to the NMS feeds. Because LCN and IP network fees on the Price List and Fee Schedule relate to charges for services either other than or in addition to connectivity to the NMS feeds, the Exchange currently does not assess any fees that are specific to connectivity to the NMS feeds. The proposed charges for access to the NMS network are designed to defray the specific costs that the Exchange will incur to build and maintain the infrastructure for the NMS network. As described above, the Exchange's capital expenditure costs for the build are estimated to be $3.8 million, which includes procurement of new low-latency network switches, network devices, and analytics tools and the one-time operational expenditures to build this new network. The estimate is based on the hardware that would be necessary to support the Current Users' present configurations if they replaced their LCN or IP network connections to the NMS feeds with NMS network connections, with some room for additional growth. If Users were to request NMS network connections in excess of the estimated number of connections, the Exchange would have to procure additional hardware, which would be an additional cost. In addition to this initial estimated approximately $3.8 million outlay, the Exchange anticipates that the ongoing costs to maintain and operate the NMS network will be approximately $215,000 annually.

The Exchange further believes that these proposed fees would be reasonable because unnecessary connections would impose a burden on the infrastructure that would be shared by all Users.

As stated above, the Exchange believes that the Current Users will use No Fee NMS Network Connections for the NMS network, and as a consequence, none of the Current Users will have to pay to connect to the NMS network. However, the Exchange cannot fully anticipate User behavior once the NMS network is available. Some Current Users, or new Users, may elect to purchase NMS network connections in excess of the proposed limit on number of No Fee NMS Network Connections, for which they would pay a charge. Given that, the Exchange has done an analysis of what would occur if Users request five unique NMS network connections that are not No Fee NMS Network Connections. Assuming that such connections were the larger size of 40 Gb, these five new connections would result in $1,130,000 in revenue: $50,000 in initial charges and $1,080,000 in MRC. But new revenue does not necessarily translate into net revenue gain.

First, the Exchange anticipates that once the NMS network is available, Users may lower the number of LCN or IP network connections that they purchase, offsetting any unique new charges and possibly leading to a net decline in revenues. Second, even if the Exchange assumes new revenue of $1,130,000 per year, such revenue would not fully offset the cost of building and maintaining the NMS network. Rather, the proposed charges, to the extent they would correlate to new revenue, would merely defray the costs that the Exchange will incur to build and support additional capacity for the NMS network. Assuming revenue equal to the MRCs, *i.e.,* $1,080,000 per year, it would take four years before such revenue would fully offset the initial fixed costs to build the NMS network. The Exchange generally refreshes network hardware after three or four years, as such hardware has a limited life. Accordingly, the Exchange expects that it will incur substantial new costs to refresh the NMS network after three or four years. As a result, even after the initial fixed costs are

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78f(b)(4).

offset, the MRC revenue will not necessarily cover the variable, ongoing costs to maintain and refresh the NMS network. If the revenue were to be a net gain, the Exchange does not believe such revenues would cover all the fixed costs that the Exchange would incur to refresh the network hardware or add additional infrastructure to meet Users' needs. Any revenue would assist with defraying the sizable investment needed to create the NMS network, but in the end the Exchange does not expect additional net revenues.

The Proposed Rule Change is an Equitable Allocation of Fees

The Exchange believes that the proposed fee change is equitably allocated for multiple reasons.

The No Fee NMS Network Connection is an Equitable Allocation of Fees

As described above, the proposed fee structure for the NMS network has been designed so that the majority of Users would not have any new or different charges if they opt to connect to the NMS network. Rather, Users will have a choice whether to use an IP network, LCN or NMS network connection to connect to the NMS feeds. The cost to purchase a NMS network connection would be the same as an IP network connection of the same size. A User that voluntarily chooses to exercise the choice to connect with the NMS network would receive the benefit of a low-latency connection without any additional charges.

More specifically, the Exchange proposes that if a User purchases access to the LCN or IP network and requests a connection to the NMS network, it, together with its Affiliates, will not be charged for up to eight corresponding No Fee NMS Network Connections. Such User, together with its Affiliates, will be entitled to a No Fee NMS Network Connection for each of the first four LCN or IP network connections that it purchases, so long as they meet the requirements sets forth above. A User that utilizes its No Fee NMS Network Connections to connect to the NMS network would have no or different charges.

The Exchange believes that the proposed limit on the number of No Fee NMS Network Connections would be equitably allocated because it is based on the number of LCN or IP network connections that Users currently purchase to connect to the NMS feeds. As noted above, based on a review of the Current Users' LCN and IP network connections and conversations with two of the Current Users, the Exchange believes that none of the Current Users will have to pay more to connect to the NMS network, and Users that want access to the NMS feeds in the future are unlikely to have to pay for their NMS network connections.

The Application of the Proposed Rule Change to Affiliates is an Equitable Allocation of Fees.

The Exchange likewise believes it would be equitable to apply the proposed limit on the number of No Fee NMS Network Connections to Users taken together with their Affiliates because all Users seeking to connect to NMS feeds using NMS network connections would be subject to the same parameters. The proposal avoids disparate treatment of Users that have divided their various business activities between separate corporate entities, as compared to Users that operate those business activities within a single corporate entity. It would discourage any User from taking deliberate advantage of the proposed connections to the NMS network by setting up separate corporate entities to act as Users, thereby obtaining more connections than allowed by the proposed limit on No Fee NMS Network Connections. The Exchange believes that using the existing definitions of Affiliate, Hosted Customer, and Hosting User is an equitable allocation of fees because it would promote consistency and clarity for Users.

The Proposed Charge for NMS Networks is an Equitable Allocation of Fees

The Exchange believes that charging the same rate for accessing the NMS network as is currently charged for accessing a same-sized IP network connection for Users who do not also purchase an LCN or IP network connection or who have connections to the LCN and IP network but want a number of NMS network connections in excess of its No Fee NMS Network Connections, would be equitably allocated because a User that currently seeks to connect to the NMS feeds must pay, at a minimum, the charges for access to the IP network. With the addition of the NMS network, Users will have a choice to either continue using an IP network connection or instead connect via the NMS network to connect to the NMS feeds. Users that choose to connect via the NMS network will receive the benefit of a low-latency network as compared to access to the IP network at the same price as the access to the IP network.

To the extent a User may be subject to charges in addition to what they would be paying under the current Price List and Fee Schedule, *e.g.,* if a User needed more access to the NMS network than their allocated number of No Fee NMS Network Connections or if they wanted to continue to use the LCN or IP network to connect to the NMS feeds, the Exchange believes that the proposed charges would be equitably allocated because such charges would encourage efficient use of the NMS network and discourage Users to subscribe to more NMS network connections.

Current Users do not necessarily use all of their connections to the IP network and LCN to connect to the NMS feeds. If the Exchange were to provide them with an equal number of No Fee NMS Network Connections without any limitations on the number, the Current Users would have no incentive to make efficient decisions regarding the number of NMS network connections they had, and the Exchange would need to incur additional costs to support the infrastructure necessary to support those additional NMS network connections. In addition, Users would bear the burden of any unnecessary connections because of the strain on the infrastructure shared by all Users that access the NMS network. The Exchange believes that by charging for any connections to the NMS network in excess of the allocated number of No Fee NMS Network Connections, it will motivate Users to make rational decisions based on how many NMS network connections they need, rather than because they are simply available. These fees are therefore reasonable and not unfairly discriminatory because they will reduce the burden on all Users accessing the NMS network.

Finally, the Exchange believes that access to the proposed NMS network and related commercial terms would be equitably allocated because, in addition to access to the NMS network being completely voluntary, it would be available to all Users on an equal basis (*i.e.,* the same access would be available to all Users). All Users that voluntarily selected to receive access to the NMS network would be charged the same amount for the same service.

The Proposed Rule Change is Not Unfairly Discriminatory

The Exchange believes that the proposed fee change is not unfairly discriminatory for multiple reasons.

The No Fee NMS Network Connection is Not Unfairly Discriminatory

As described above, the proposed fee structure for the NMS network has been designed so that the majority of Users would not have any new or different charges if they opt to connect to the NMS network. Rather, all Users will

have a choice whether to use an IP network, LCN or NMS network connection to connect to the NMS feeds. The proposed fee therefore does not propose to impose any meaningful differences to different types of Users. Rather, the cost to purchase a NMS network connection would be the same as an IP network connection of the same size, which would be available to all Users on the same terms. Any User that voluntarily chooses to exercise the choice to connect with the NMS network would receive the benefit of a low-latency connection without any additional charges.

More specifically, the Exchange proposes that if a User purchases access to the LCN or IP network and requests a connection to the NMS network, it, together with its Affiliates, will not be charged for up to eight corresponding No Fee NMS Network Connections. Such User, together with its Affiliates, will be entitled to a No Fee Connection for each of the first four LCN or IP network connections that it purchases, so long as they meet the requirements sets forth above. A User that utilizes its No Fee NMS Network Connections to connect to the NMS network would have no new or different charges.

The Exchange believes that the proposed limit on the number of No Fee NMS Network Connections would not be unfairly discriminatory because it is based on the number of LCN or IP network connections that Users currently purchase to connect to the NMS feeds. As noted above, based on a review of the Current Users' LCN and IP network connections and conversations with two of the Current Users, the Exchange believes that none of the Current Users will have to pay more to connect to the NMS network, and Users that want access to the NMS feeds in the future are unlikely to have to pay for their NMS network connections.

The Application of the Proposed Rule Change to Affiliates is Not Unfairly Discriminatory

The Exchange likewise believes it would not be unfairly discriminatory to apply the proposed limit on the number of No Fee NMS Network Connections to Users taken together with their Affiliates because all Users seeking to connect to NMS feeds using NMS network connections would be subject to the same parameters. The proposal avoids disparate treatment of Users that have divided their various business activities between separate corporate entities, as compared to Users that operate those business activities within a single corporate entity. It would discourage any User from taking deliberate advantage of the proposed connections to the NMS network by setting up separate corporate entities to act as Users, thereby obtaining more connections than allowed by the proposed limit on No Fee NMS Network Connections. The Exchange believes that using the existing definitions of Affiliate, Hosted Customer, and Hosting User would not be unfairly discriminatory because it would promote consistency and clarity for Users.

The Proposed Charge for NMS Networks is Not Unfairly Discriminatory

The Exchange believes that charging the same rate for accessing the NMS network as is currently charged for accessing a same-sized IP network connection for Users who do not also purchase an LCN or IP network connection or who have connections to the LCN and IP network but want a number of NMS network connections in excess of its No Fee NMS Network Connections, would not be unfairly discriminatory because a User that currently seeks to connect to the NMS feeds must pay, at a minimum, the charges for access to the IP network. With the addition of the NMS network, all Users will have a choice to either continue using an IP network connection or instead connect via the NMS network to connect to the NMS feeds. Users that choose to connect via the NMS network will receive the benefit of a low-latency network as compared to access to the IP network at the same price as the access to the IP network.

To the extent a User may be subject to charges in addition to what they would be paying under the current Price List and Fee Schedule, *e.g.,* if a User needed more access to the NMS network than their allocated number of No Fee NMS Network Connections or if they wanted to continue to use the LCN or IP network to connect to the NMS feeds, the Exchange believes that the proposed charges would not be unfairly discriminatory because such charges would encourage efficient use of the NMS network and discourage Users to subscribe to more NMS network connections.

Current Users do not necessarily use all of their connections to the IP network and LCN to connect to the NMS feeds. If the Exchange were to provide them with an equal number of No Fee NMS Network Connections without any limitations on the number, the Current Users would have no incentive to make efficient decisions regarding the number of NMS network connections they had, and the Exchange would need to incur additional costs to support the infrastructure necessary to support those additional NMS network connections. In addition, Users would bear the burden of any unnecessary connections because of the strain on the infrastructure shared by all Users that access the NMS network. The Exchange believes that by charging for any connections to the NMS network in excess of the allocated number of No Fee NMS Network Connections, it will motivate Users to make rational decisions based on how many NMS network connections they need, rather than because they are simply available. These fees are therefore not unfairly discriminatory because they will reduce the burden on all Users accessing the NMS network.

Finally, the Exchange believes that access to the proposed NMS network and related commercial terms would not be unfairly discriminatory because, in addition to access to the NMS network being completely voluntary, it would be available to all Users on an equal basis (*i.e.,* the same access would be available to all Users). All Users that voluntarily selected to receive access to the NMS network would be charged the same amount for the same service.

For the reasons above, the proposed changes would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with 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 purposes of the Act. The Exchange believes that the proposed rule change would not impose any burden on competition because it is not designed to address any competitive issues. As described above, SIAC is the single plan processor for Tape A and B equities securities and all options securities and does not currently compete with any other providers for these processor services. The proposed fee structure for the NMS network would be applied equally among all Users and it is their choice of whether and at what level to subscribe to such services, including whether to connect to the proposed NMS network. Accordingly, the Exchange does not believe that the proposed fee structure

would place any Users at a relative disadvantage compared to other Users.

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 within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such 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–2019–34 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–2019–34. 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–2019–34, and should be submitted on or before October 1, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19462 Filed 9–9–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86866; File No. SR–NYSE–2019–47]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 103B

September 4, 2019.

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 August 22, 2019, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 103B, which governs the allocation of securities to Designated Market Makers (''DMMs''). 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 Exchange proposes to amend Rule 103B, which governs the allocation of securities to qualified DMM units, to make certain provisions applicable to Exchange Traded Products (''ETPs'') listing on the Exchange. Specifically, as described in more detail below, the Exchange proposes to:

- Amend Rule 103B(VI)(F)(1), which governs the allocation of closed-end management investment companies (''Funds''), to make it applicable also to the allocation of ETPs, and to lengthen to two years (from nine months) the time within which additional Funds or ETPs may be allocated under this provision without recommencing the Rule 103B(III) allocation process; and
- amend Rule 103B(VIII), which allows a listing company that transfers securities from NYSE Arca, Inc. (''NYSE Arca'') to the Exchange to waive the Rule 103B(III) allocation process and select as its registered DMM unit the same unit that was previously assigned as its NYSE Arca Lead Market Maker (''LMM'') unit, to make it applicable also to issuers of ETPs transferring from NYSE Arca to the Exchange.

Background

Currently, the Exchange trades ETPs on its Pillar trading platform on an

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[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

unlisted trading privileges (''UTP'') basis, subject to Pillar Platform Rules 1P–13P.[4] In the next phase of Pillar, the Exchange is transitioning the trading of Exchange-listed securities to the Pillar trading platform, which means that DMMs will be trading on Pillar in their assigned securities.[5] Once transitioned to Pillar, such securities will also be subject to the Pillar Platform Rules 1P–13P.

Rules 5P (Securities Traded) and 8P (Trading of Certain Exchange Traded Products) provide that certain ETPs[6] may be listed on the Exchange provided that they (1) meet the applicable requirements set forth in those rules, and (2) do not have any component NMS Stock[7] that is listed on the Exchange or is based on, or represents an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange. ETPs listed under Rules 5P and 8P would be ''Tape A'' listings and would be traded pursuant to the rules applicable to NYSE-listed securities.

The Exchange does not currently list any ETPs and anticipates that it would not do so until all Exchange-listed securities transition to Pillar. Once an ETP is listed on the Exchange, it will be assigned to a DMM pursuant to Rule 103B.

Current Rule 103B

Rule 103B(III) sets out the procedures under which DMM units are assigned to securities listed on the Exchange: An issuer may either select a DMM unit after interviewing all DMM units eligible to participate in the allocation process (Rule 103B(III)(A)), or delegate the authority for selecting its DMM unit to the Exchange (Rule 103B(III)(B)).

In addition, Rule 103B(VI)(F)(1) currently sets out an abbreviated DMM allocation process that issuers of closed-end management investment companies (''Funds'') may use when they list additional Funds on the Exchange within nine months of participating in the Rule 103B(III) allocation process. For those subsequent listings within the designated nine-month period, the issuer may choose the same DMM unit that it or the Exchange selected for the first Fund, or it may select a different DMM unit from the group it interviewed in the allocation process for the first Fund.

Current Rule 103B(VI)(F) recognizes that when an issuer of Funds lists an initial Fund on the Exchange, that issuer has an opportunity to meet with all of the DMM units in connection with selecting a DMM for that first Fund. Because that issuer has already interviewed the DMM units, the Rule provides that the issuer does not need to repeat that process if it chooses to list additional Funds on the Exchange in the following months. This Rule therefore reduces duplicative administrative burdens for both issuers and DMM units in connection with listing Funds from the same issuer.

In addition, Rule 103B(VIII) currently provides that if a listing company transferring from NYSE Arca to the Exchange was assigned an NYSE Arca LMM unit that is also a registered DMM unit on the Exchange, then the listing company may waive the Rule 103B(III) allocation process and select as its registered DMM unit the same unit that was previously assigned as its NYSE Arca LMM unit.

As described below, the Exchange proposes to expand the scope of both of these provisions to make them applicable to ETPs trading on the Exchange.

Proposed Rule Change

The Exchange believes that it is appropriate to extend the current allocation policy for Funds to ETPs because both share a common structure in that a single issuer may be responsible for multiple ETPs that are each separate listings. Therefore, an issuer of ETPs that meets with DMM units in connection with one listing of an ETP on the Exchange would have already met with all DMM units that it could potentially select for its subsequent ETP listings. Extending the current allocation policy for Funds to ETPs would therefore serve the same purpose of reducing duplicative administrative burdens for both issuers of ETPs and DMM units.

The Exchange proposes the following changes to Rule 103B to expand the applicability of Rules 103B(VI)(F) and 103B(VIII) to ETPs, as follows.

Rule 103B(VI)(F)—Allocation of Closed-End Management Investment Companies (''Funds'') or Exchange Traded Products (''ETPs'') From the Same Issuer

Rule 103B(VI)(F) is currently titled ''Allocation of Group of Closed-End Management Investment Companies (''Funds'')'' and describes the process by which the issuer of a Fund may select the DMM unit for additional Funds that it issues within nine months of the first Fund, without recommencing the allocation process in Rule 103B(III).

The Exchange proposes to add ''or Exchange Traded Products (''ETPs'')'' to the current title to make clear that the provision would apply to issuers of ETPs as well as to issuers of Funds. The Exchange also proposes to delete ''Group of'' from the title and add the phrase ''from the Same Issuer,'' to clarify that the rule applies whenever the same issuer issues more than one Fund or ETP, which is how the term ''Group'' is currently used in the Rule.

To incorporate ETPs into the existing Rule, the Exchange proposes to restructure Rule 103B(VI)(F)(1) by adding the subtitle ''Two-Year Allocation Policy'' and dividing section (1) into subsections (a) through (d), as described below.

As noted in the proposed title of this subparagraph, the Exchange proposes to lengthen to two years, from the current nine months, the time period within which an issuer of Funds or ETPs can choose a DMM unit from among those it previously interviewed, without recommencing the Section III allocation process and re-interviewing DMM units. The Exchange believes it is appropriate to lengthen this time period because the population of DMM units on the Exchange is relatively stable, and neither the population of DMM units nor their qualifications are likely to change materially within a two-year period. This change will reduce the administrative burden on the issuers of Funds or ETPs and on DMM units that would result from the requirement that an issuer re-interview all DMM units at least every nine months if such issuer lists an additional Fund or ETP.

Proposed Rule 103B(VI)(F)(1)(a) would include text from the current first sentence of current Rule 103B(VI)(F)(1), with the following changes. The proposed revised text would add both references to ETPs and a cross-reference to Section VIII of Rule 103B. The proposed new text would provide that the first time an issuer seeks to list a Fund or ETP on the Exchange, the issuer would be subject to the allocation process pursuant to Section III of Rule

[4] ''UTP Security'' is defined as a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading privileges. *See* Rule 1.1.

[5] The Exchange began transitioning Exchange-listed securities to Pillar on August 5, 2019. *See https://www.nyse.com/Pillar.* On July 30, 2019, the Exchange published a Trader Update setting out a complete symbol migration schedule, available at *https://www.nyse.com/trader-update/history#.*

[6] Rule 1.1P(k) defines ''Exchange Traded Product'' as a security that meets the definition of ''derivative securities product'' in Rule 19b–4(e) under the Act.

[7] NMS Stock is defined in Rule 600 of Regulation NMS, 17 CFR 242.600(b)(47).

103B, unless the listed security is eligible for an allocation under Section VIII of Rule 103B. With this change, the Exchange proposes to delete the phrase ''Funds listing on the Exchange pursuant to this policy'' and replace it with ''The first time an issuer seeks to list a Fund or ETP on the Exchange, the issuer,'' to clarify that issuers of ETPs, not just issuers of Funds, are subject to the allocation process described in Rule 103B(III).

The proposed change to cross reference Section VIII of Rule 103B would provide specificity that Section VIII provides an exception to the general requirement that an issuer of an ETP on the Exchange is subject to the Section III allocation process if such issuer is transferring an ETP from NYSE Arca to the Exchange. (The Exchange's proposed amendments to Section VIII are discussed further below.)

Proposed Rule 103B(VI)(F)(1)(b) would include text from the current second and third sentences of current Rule 103B(VI)(F)(1), with the following changes. To make this rule text applicable to ETPs, the Exchange proposes to add the phrase ''or ETP'' after each instance of the word ''Fund,'' and ''or ETPs'' after each instance of the word ''Funds,'' or replace references to the term ''fund'' with the term ''issuer'' to clarify that the provision applies not just to Funds but also to ETPs. The Exchange also proposes the substantive amendment described above, of replacing the reference to ''nine months'' with a reference to ''two years.'' The Exchange further proposes to amend the current second sentence of Rule 103B(VI)(F)(1) (which would be the first sentence of proposed Rule 103B(VI)(F)(1)(b)) to delete the text indicating that the nine-month time period runs from the date of the issuer's ''initial listing'' on the Exchange, and to add language clarifying that the period runs from the date of ''an allocation pursuant to Section III of this Rule.'' The Exchange proposes this difference to be clear that the Two-Year Allocation Policy would be applicable only if an issuer's initial listing was pursuant to Section III of Rule 103B. If an initial listing for an issuer of an ETP was pursuant to Section VIII of Rule 103B, as described below, the Two-Year Allocation Policy would not be applicable because such issuer would not have had an opportunity to review other DMM units.

Proposed Rule 103B(VI)(F)(1)(c) would be new rule text that is intended to provide clarity of what an issuer needs to do if it lists additional Funds or ETPs after the end of the two-year period. As proposed, after the two-year anniversary of the date on which the issuer's last allocation pursuant to Section III was made, if the issuer seeks to list additional Funds or ETPs on the Exchange, it would be subject to the allocation process pursuant to either Section III or VIII of this Rule. The new sentence makes clear that if more than two years has passed since an issuer of Funds or ETPs undertook the Section III allocation process, the issuer can no longer rely on the second sentence of Rule 103B(VI)(F)(1) to choose a DMM unit from among those it previously interviewed. This limitation ensures that issuers of Funds or ETPs do not make their DMM unit selections based on stale information, but must re-interview DMM units at least once every two years (unless the issuer has an ETP that is transferring from NYSE Arca and is eligible for the Section VIII allocation process).

Proposed Rule 103B(VI)(F)(1)(d) would include text from the current fourth sentence of current Rule 103B(VI)(F)(1), with the following proposed changes. The Exchange proposes to amend this sentence to add ''or ETP'' after the word ''Fund,'' to clarify that this provision applies to ETPs as well as Funds. The Exchange also proposes to replace the reference to the designated ''nine month period'' to ''two year period,'' to conform to the proposed amendment discussed above. The Exchange also proposes to add language to the end of the fourth sentence of Rule 103B(VI)(F)(1) to make clear that the period during which the DMM unit will not be included for consideration for subsequent listings is the ''Penalty Period as described in Section II(J)'' of Rule 103B, not the entire remainder of the two year period.

The Exchange proposes a non-substantive change to amend Rule 103B(VI)(F)(1) by capitalizing the word ''Fund'' wherever it appears. The Exchange also proposes to make a non-substantive change to the way it cites to Rule 103B(III) throughout Rule 103B(VI)(F)(1), by deleting references to ''NYSE Rule 103B, Section III'' and replacing them with ''Section III of this Rule'' wherever they appear.

The Exchange also proposes to make a grammatical correction to the fourth sentence of Rule 103B(VI)(F)(1) by changing ''from participating'' to ''to participate.''

Rule 103B(VIII)—Provisions for Allocation of Listed Securities Transferring From NYSE Arca to the NYSE

Rule 103B(VIII) is currently titled ''Provisions for Allocation of Listing Companies Transferring from NYSE Arca, Inc. (''NYSE Arca'') to the NYSE.'' The Exchange proposes to amend this Section of the Rule to specify that ETP listings that transfer from NYSE Arca to the Exchange would also be eligible for this provision. The Exchange believes that issuers of ETPs should be able to benefit from the efficiencies of current Rule 103B(VIII) if an ETPs is transferred from NYSE Arca and the assigned LMM is also a DMM unit on the Exchange. To effect this change, the Exchange proposes to amend the title by replacing the phrase ''Listing Companies'' with ''Listed Securities'' because the latter term is broad enough to encompass not only equity listings, but also ETPs.

The Exchange proposes to amend the first sentence of Rule 103B(VIII)(A) to remove the term ''listing company'' in two places, replacing the first with ''listed security'' and the second with ''issuer.'' The new terms are broad enough to encompass not only equity listings, but also ETPs. The Exchange also proposes a non-substantive amendment to change the word ''which'' in the first sentence to ''that'' and to remove the comma preceding the word ''which.''

The Exchange also proposes to amend the second sentence of Rule 103B(VIII)(A) and Rule 103B(VIII)(B) to replace the term ''listing company'' with the word ''issuer'' each time it occurs. Again, the term ''issuer'' is broad enough to encompass not only issuers of equity listings, but also ETPs.

Finally, the Exchange proposes to make a non-substantive change to the way it cites to Rule 103B(III) throughout Rule 103B(VIII), by deleting references to ''NYSE Rule 103B, Section III'' and replacing them with ''Section III of this Rule'' wherever they appear.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, because 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and because it is not designed to permit unfair

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing a method for allocating ETPs to DMM units once ETPs begin listing on the Exchange. As noted above, after the Exchange transitions Exchange-listed securities to Pillar, it will begin listing ETPs on the Exchange pursuant to Rules 5P and 8P. Because DMMs would be assigned to any ETPs listed on the Exchange, the Exchange proposes to amend Rule 103B to specify how ETPs would be allocated to DMMs. The Exchange believes that it is appropriate to model the DMM allocation process for ETPs on the process already in place for Funds in Rule 103B(VI)(f)(1) because, like Fund issuers, issuers of ETPs may seek to issue multiple ETPs in succession. Such ETP issuers would face significant administrative burdens if they were required to undertake the entire Section III allocation process, complete with interviews of all DMM units, each time they sought to list another ETP. DMM units would also face significant administrative burdens from participating in such interviews before the listing of each new ETP.

The Exchange also believes that the proposal to lengthen to two years, from nine months, the time period after which Fund and ETP issuers must participate in the Rule 103B(III) allocation process would remove impediments to and perfect the mechanism of a free and open market and a national market system by eliminating the administrative burden of re-interviewing DMM units too frequently. The Exchange believes it is appropriate to lengthen this time period because the population of DMM units on the Exchange is relatively stable, and neither the population of DMM units nor their qualifications are likely to change materially within a two-year period. This change will reduce the administrative burden on the issuers of Funds or ETPs and on DMM units that would result from the requirement that issuers re-interview all DMM units at least every nine months. After two years, issuers of Funds or ETPs would be required to participate in the Rule 103B(III) allocation process (unless the issuer transfers an ETP from NYSE Arca and is eligible for the Section VIII allocation process), so that their DMM unit selections are not based on stale information.

Similarly, the Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to permit issuers of ETPs previously listed on NYSE Arca to choose to maintain their current LMM units as their DMM units when such ETPs are transferred from NYSE Arca to the Exchange. This option already exists for issuers of operating company listings transferring from NYSE Arca to the Exchange, and enhances the efficiency of transferring listings between exchanges by allowing issuers and DMM units to maintain their preexisting relationships with respect to the transferred securities. The issuers of ETPs would benefit from the same efficiencies when transferring their listings from NYSE Arca to the Exchange.

Finally, the Exchange's proposal to make various technical, non-substantive changes to the text of the rules—by adding subheadings, adding subsection numbering, correcting capitalization and grammar, standardizing the format for citations to the Exchange's rules, and adding clarifying text—adds clarity and transparency to the Exchange's Rules and reduces potential investor confusion, which would remove impediments to and perfect the mechanism of a free and open market and a national market system.

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 because it merely provides a process for the allocation of DMM units to ETPs listing on the Exchange. Nor does the Exchange believe that the proposed changes would impose an undue burden on intramarket competition between the DMM units, because all eligible DMM units will participate in the original Rule 103B(III) allocation process for an issuer's first ETP or Fund that lists on the Exchange, such that the issuer may choose from among those DMM units with respect to all ETPs or Funds listed on the Exchange in the following two years. Additionally, all DMM units will participate in any subsequent Rule 103B(III) process for allocation of an issuer's ETPs or Funds that are listed more than two years later.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such 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) [12] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2019–47 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–NYSE–2019–47. 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

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(2)(B).

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 20549–1090 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–NYSE–2019–47 and should be submitted on or before October 1, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19463 Filed 9–9–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86870; File No. SR–NYSEArca–2019–63]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Make Permanent Rule 7.44–E

September 4, 2019.

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 4, 2019 NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') 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 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 make permanent Rule 7.44–E, which sets forth the Exchange's pilot Retail Liquidity Program. The proposed 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make permanent Rule 7.44–E, which sets forth the Exchange's pilot Retail Liquidity Program (the ''Program''). In support of the proposal to make the pilot Program permanent, the Exchange believes it is appropriate to provide background on the Program and an analysis of the economic benefits for retail investors and the marketplace flowing from operation of the Program.

Background

In December 2013, the Commission approved the Program on a pilot basis.[4] The purpose of the pilot was to analyze data and assess the impact of the Program on the marketplace. The pilot period was originally scheduled to end on April 14, 2015. The Exchange filed to extend the operation of the pilot on several occasions in order to prepare this rule filing. The pilot is currently set to expire on September 30, 2019.[5]

The Exchange established the Program to attract retail order flow to the Exchange, and allow such order flow to receive potential price improvement.[6] The Program is currently limited to trades occurring at prices equal to or greater than $1.00 a share.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR–NYSEArca–2013–107) (''RLP Approval Order''). In addition to approving the Program on a pilot basis, the Commission granted the Exchange's request for exemptive relief from Rule 612 of Regulation NMS, 17 CFR 242.612 (''Sub-Penny Rule''), which among other things prohibits a national securities exchange from accepting or ranking orders priced greater than $1.00 per share in an increment smaller than $0.01. *See id.*

In 2013, the Program's rules were set forth in NYSE Arca Equities Rule 7.44. In connection with the Exchange's implantation of Pillar, an integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by NYSE Arca and its affiliates, New York Stock Exchange LLC and NYSE American LLC, NYSE Arca Equities Rule 7.44 was replaced by NYSE Arca Equities Rule 7.44P. *See* Securities Exchange Act Release No. 76267 (October 26, 2015), 80 FR 66951 (October 30, 2015) (SR–NYSEArca–2015–56) (order approving equity trading rules relating to the implementation of Pillar, including, among others, NYSE Arca Equities Rule 7.44P); Securities Exchange Act Release No. 79078 (October 11, 2016), 81 FR 71559 (October 17, 2016) (SR–NYSEArca–2015–135) (deleting obsolete rules following migration to Pillar, including NYSE Arca Equities 7.44, and removing ''P'' modifier in NYSE Arca Equities Rule 7.44P). At the time, NYSE Arca Equities was a wholly owned subsidiary of the Exchange. In 2017, NYSE Arca Equities was merged with and into the Exchange and the NYSE Arca Equities rules were integrated into the NYSE Arca rules in order to create a single rulebook. The Program's rules were accordingly relocated to NYSE Arca Rule 7.44–E. *See* Securities Exchange Act Release No. 81419 (August 17, 2017), 82 FR 40044 (August 23, 2017) (SR–NYSEArca–2017–40) (Approval Order).

[5] *See* Securities Exchange Act Release No. 86198 (June 26, 2019), 84 FR 31648 (July 2, 2019) (SR–NYSEArca–2019–45) (extending pilot to September 30, 2019). *See also* Securities Exchange Act Release No. 84773 (December 10, 2018), 83 FR 64419 (December 14, 2018) (SR–NYSEArca–2018–89) (extending pilot to June 30, 2019); Securities Exchange Act Release No. 83538 (June 28, 2018), 83 FR 31210 (July 3, 2018) (SR–NYSEArca–2018–46) (extending pilot to December 31, 2018); Securities Exchange Act Release No. 82289 (December 11, 2017), 82 FR 59677 (December 15, 2017) (SR–NYSEArca–2017–137) (extending pilot to June 30, 2018); Securities Exchange Act Release No. 80851 (June 2, 2017), 82 FR 26722 (June 8, 2017) (SR–NYSEArca–2017–63) (extending pilot to December 31, 2017); Securities Exchange Act Release No. 79495 (December 7, 2016), 81 FR 90033 (December 13, 2016) (SR–NYSEArca–2016–157) (extending pilot to June 30, 2017); Securities Exchange Act Release No. 78601 (August 17, 2016), 81 FR 57632 (August 23, 2016) (SR–NYSEArca–2016–113) (extending pilot to December 31, 2016) *as corrected by* Securities Exchange Act Release No. 78601 (August 17, 2016), 81 FR 63243 (September 14, 2016) (SR–NYSEArca–2016–113); Securities Exchange Act Release No. 77424 (March 23, 2016), 81 FR 17523 (March 29, 2016) (SR–NYSEArca–2016–47) (extending pilot to August 31, 2016); Securities Exchange Act Release No. 75994 (September 28, 2015), 80 FR 59834 (October 2, 2015) (SR–NYSEArca–2015–84) (extending pilot to March 31, 2016); and Securities Exchange Act Release No. 74572 (March 24, 2015), 80 FR 16705 (March 30, 2015) (SR–NYSEArca–2015–22) (extending pilot to September 30, 2015).

[6] RLP Approval Order, 78 FR at 79525.

The Program includes NYSE Arca-listed securities and securities traded pursuant to unlisted trading privileges (''UTP''), but excluding NYSE-listed (Tape A) securities.

As described in greater detail below, under Rule 7.44–E, a new class of market participant called Retail Liquidity Providers (''RLPs'')[7] and non-RLP Equity Trading Permit (''ETP'') Holders[8] are able to provide potential price improvement to retail investor orders in the form of a non-displayed order that is priced better than the best protected bid or offer (''PBBO''), called a Retail Price Improvement Order (''RPI''). When there is an RPI in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier (''RLI''), that such interest exists. Retail Member Organizations (''RMOs'') can submit a Retail Order to the Exchange, which interacts, to the extent possible, with available contra-side RPI and then may interact with other liquidity on the Exchange or elsewhere, depending on the Retail Order's instructions. The segmentation in the Program allows retail order flow to receive potential price improvement as a result of their order flow being deemed more desirable by liquidity providers.[9]

In approving the pilot, the Commission concluded that the Program was reasonably designed to benefit retail investors by providing price improvement opportunities to retail order flow. Further, while the Commission noted that the Program would treat retail order flow differently from order flow submitted by other market participants, such segmentation would not be inconsistent with Section 6(b)(5) of the Act,[10] which requires that the rules of an exchange are not designed to permit unfair discrimination. As the Commission recognized, retail order segmentation was designed to create additional competition for retail order flow, leading to additional retail order flow to the exchange environment and ensuring that retail investors benefit from the better price that liquidity providers are willing to give their orders.[11]

As discussed below, the Exchange believes that the Program data supports these conclusions and that it is therefore appropriate to make the pilot Program permanent.[12] The Exchange notes that the Commission recently approved on a permanent basis the substantially similar retail liquidity programs operated on a pilot basis by New York Stock Exchange LLC (''NYSE'') and Nasdaq BX, Inc. (''Nasdaq BX'').[13] The Commission also recently approved a third exchange's retail liquidity program that had not been previously approved on a pilot basis.[14]

Description of Pilot Rule 7.44–E That Would Become Permanent

Definitions

Rule 7.44–E(a) contains the following definitions:

- First, the term ''Retail Liquidity Provider'' (''RLP'') is defined as a ETP Holder that is approved by the Exchange under the Rule to act as such and to submit Retail Price Improvement Orders in accordance with the Rule.[15]
- Second, the term ''Retail Member Organization'' (''RMO'') is defined as an ETP Holder that has been approved by the Exchange to submit Retail Orders.[16]
- Third, the term ''Retail Order'' means an agency order or a riskless principal order meeting the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. A Retail Order may be an odd lot, round lot, or mixed lot.[17]
- Finally, the term ''Retail Price Improvement Order'' means non-displayed interest in NYSE Arca-listed securities and UTP Securities, excluding NYSE-listed (Tape A) securities, that would trade at prices better than the best protected bid (''PBB'') or best protected offer (''PBO'') by at least $0.001 and that is identified as a Retail Price Improvement Order in a manner prescribed by the Exchange.[18] The price of an RPI would be determined by an ETP Holder's entry of RPI buy or sell interest into Exchange systems. RPIs would remain undisplayed. An RPI that was not priced within the PBBO would be rejected upon entry. A previously entered RPI that became priced at or inferior to the PBBO would not be eligible to interact with incoming Retail Orders, and such an RPI would cancel if a Retail Order executed against all displayed interest ranked ahead of the RPI and then attempted to execute against the RPI. If not cancelled, an RPI that was no longer priced at or inferior to the PBBO would again be eligible to interact with incoming Retail Orders. An RPI must be designated as either a PL or MPL Order, and an order so

[7] The Program also allows for RLPs to register with the Exchange. However, any firm can enter RPI orders into the system. Currently, no ETP Holders are registered as an RLP.

[8] NYSE Arca refers to its members as ETP Holders. *See* RLP Approval Order, 78 FR at 79525, n.9.

[9] RLP Approval Order, 78 FR at 79528.

[10] 15 U.S.C. 78f(b)(5).

[11] RLP Approval Order, 78 FR at 79528.

[12] *See* note 4, *supra*. Rule 7.44–E has been amended several additional times. *See* Securities Exchange Act Release No. 71780 (March 24, 2014), 79 FR 17623 (March 28, 2014) (SR–NYSEArca–2014–21) (amending rule to provide that odd-lot interest priced between the PBBO will trade together with other undisplayed interest according to price-time priority); Securities Exchange Act Release No. 73329 (October 9, 2014), 79 FR 62227 (October 16, 2014) (SR–NYSEArca–2014–115) (amending rule to provide that RPI that are not priced better than the PBB or PBBO will not be rejected upon entry); Securities Exchange Act Release No. 73529 (November 5, 2014), 79 FR 67210 (November 12, 2014) (SR–NYSEArca–2014–128) (amending rule to delete reference to proprietary data feed in Rule 7.44E(j)); Securities Exchange Act Release No. 76549 (December 3, 2015), 80 FR 76595 (December 9, 2015) (SR–NYSEArca–2015–115) (''Release No. 76549'') (amending rule to distinguish between orders routed on behalf of other broker-dealers and orders routed on behalf of introduced retail accounts that are carried on a fully disclosed basis); Securities Exchange Act Release No. 77236 (February 25, 2016), 81 FR 10943 (March 2, 2016) (SR–NYSEArca–2016–30) (amending rule to clarify that Retail Orders may not be designated with a minimum trade size).

[13] *See* Securities Exchange Act Release No. 85160 (February 15, 2019), 84 FR 5754 (February 22, 2019) (SR–NYSE–2018–28) (''Release No. 85160'') (approving the New York Stock Exchange's Retail Liquidity Program on a permanent basis and granting a limited exemption to the Sub-Penny Rule); Securities Exchange Act Release No. 86194 (June 25, 2019), 84 FR 31385 (July 1, 2019) (SR–NYSEArca–2019–11) (approving Nasdaq BX's Retail Price Improvement Program on a permanent basis and granting a limited exemption to the Sub-Penny Rule).

[14] *See* Securities Exchange Act Release No. 86619 (August 9, 2019), 84 FR 41769 (August 15, 2019) (SR–IEX–2019–05).

[15] *See* Rule 7.44–E(a)(1).

[16] *Id.* at (a)(2).

[17] *Id.* at (a)(3).

[18] *Id.* at (a)(4). An RPI remains non-displayed in its entirety, is ranked Priority 3—Non-Display Orders. *See id.*at (a)(4)(A). Exchange systems will monitor whether RPI buy or sell interest is eligible to trade with incoming Retail Orders. An RPI to buy (sell) with a limit price at or below (above) the PBB (PBO) or at or above (below) the PBO (PBB) will not be eligible to trade with incoming Retail Orders to sell (buy), and such an RPI will cancel if a Retail Order to sell (buy) trades with all displayed liquidity at the PBB (PBO) and then attempts to trade with the RPI. If not cancelled, an RPI to buy (sell) with a limit price that is no longer at or below (above) the PBB (PBO) or at or above (below) the PBO (PBB) will again be eligible to trade with incoming Retail Orders. *See id.* at (a)(4)(B). For securities to which it is assigned, an RLP may only enter an RPI in its RLP capacity. An RLP is permitted, but not required, to submit RPIs for securities to which it is not assigned, and will be treated as a non-RLP ETP Holder for those particular securities. Additionally, ETP Holders other than RLPs are permitted, but not required, to submit RPIs. *See id.* at (a)(4)(C). Finally, an RPI may be an odd lot, round lot, or mixed lot. An RPI must be designated as either a Limit Non-Displayed Order or MPL Order, and an order so designated will interact with incoming Retail Orders only and will not interact with either a Type 2—Retail Order Day or Type 2—Retail Order Market that is resting on the NYSE Arca Book. *See id.* at (a)(4)(D).

designated would interact with only Retail Orders.

RLPs and other liquidity providers[19] and RMOs could enter odd lots, round lots or mixed lots as RPIs and as Retail Orders, respectively. As discussed below, RPIs would be ranked and allocated according to price and time of entry into Exchange systems and therefore without regard to whether the size entered was an odd lot, round lot or mixed lot. Similarly, Retail Orders would interact with RPIs according to the priority and allocation rules of the Program and without regard to whether they were odd lots, round lots or mixed lots. Finally, Retail Orders could be designated as Type 1 or Type 2 without regard to the size of the lot. RPIs would interact with Retail Orders as follows; a more detailed priority and order allocation discussion is below. An RPI would interact with Retail Orders at the level at which the RPI was priced as long as the minimum required price improvement was produced. Accordingly, if RPI sell interest was entered with a $10.098 offer while the PBO was $10.11, the RPI could interact with the Retail Order at $10.098, producing $0.012 of price improvement.

RMO Qualifications and Application Process

Under Rule 7.44–E(b), any ETP Holder[20] can qualify as an RMO if it conducts a retail business or routes[21] retail orders on behalf of another broker-dealer. For purposes of Rule 7.44–E(b), conducting a retail business includes carrying retail customer accounts on a fully disclosed basis. To become an RMO, an ETP Holder must submit: (1) An application form; (2) supporting documentation sufficient to demonstrate the retail nature and characteristics of the applicant's order flow;[22] and (3) an attestation, in a form prescribed by the Exchange, that any order submitted by the member organization as a Retail Order would meet the qualifications for such orders under Rule 7.44–E.[23]

An RMO must have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the ETP Holder to (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of Rule 7.44–E, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If the RMO represents Retail Orders from another broker-dealer customer, the RMO's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The RMO must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this rule, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.[24]

Following submission of the required materials, the Exchange provides written notice of its decision to the member organization.[25] A disapproved applicant can appeal the disapproval by the Exchange as provided in Rule 7.44–E(i), and/or reapply for RMO status 90 days after the disapproval notice is issued by the Exchange. An RMO can also voluntarily withdraw from such status at any time by giving written notice to the Exchange.[26]

RLP Qualifications

To qualify as an RLP under Rule 7.44–E(c), an ETP Holder must: (1) Already be registered as a MM or LMM; (2) demonstrate an ability to meet the requirements of an RLP; (3) have the ability to accommodate Exchange-supplied designations that identify to the Exchange RLP trading activity in assigned RLP securities; and (4) have adequate trading infrastructure and technology to support electronic trading.[27]

RLP Application

Under Rule 7.44–E(d), to become an RLP, an ETP Holder must submit an RLP application form with all supporting documentation to the Exchange. The Exchange would determine whether an applicant was qualified to become an RLP as set forth above.[28] After an applicant submitted an RLP application to the Exchange with supporting documentation, the Exchange would notify the applicant ETP Holder of its decision. The Exchange could approve one or more ETP Holders to act as an RLP for a particular security. The Exchange could also approve a particular ETP Holder to act as an RLP for one or more securities. Approved RLPs would be assigned securities according to requests made to, and approved by, the Exchange.[29]

If an applicant was approved by the Exchange to act as an RLP, the applicant would be required to establish connectivity with relevant Exchange systems before the applicant would be permitted to trade as an RLP on the Exchange.[30] If the Exchange disapproves the application, the Exchange would provide a written notice to the ETP Holder. The disapproved applicant could appeal the disapproval by the Exchange as provided in Rule 7.44–E(i) and/or reapply for RLP status 90 days after the disapproval notice was issued by the Exchange.[31]

Voluntary Withdrawal of RLP Status

An RLP would be permitted to withdraw its status as an RLP by giving notice to the Exchange under Rule 7.44–E(e). The withdrawal would become effective when those securities assigned to the withdrawing RLP were reassigned to another RLP. After the Exchange received the notice of withdrawal from the withdrawing RLP, the Exchange would reassign such securities as soon as practicable, but no later than 30 days after the date the notice was received by the Exchange. If the reassignment of securities took longer than the 30-day period, the withdrawing RLP would have no further obligations and would not be held responsible for any matters

[19] A Market Maker (''MM'') or Lead Market Maker (''LMM'') would be permitted to enter RPIs for securities in which they were not registered as an MM or LMM; however, the MM or LMM would not be eligible for execution fees that are lower than non-RLP rates for such securities.

[20] An RLP may also act as an RMO for securities to which it is not assigned, subject to the qualification and approval process established by the proposed rule.

[21] *See* Release No. 76549, 80 FR at 76595.

[22] The supporting documentation may include sample marketing literature, website screenshots, other publicly disclosed materials describing the member organization's retail order flow, and any other documentation and information requested by the Exchange in order to confirm that the applicant's order flow would meet the requirements of the Retail Order definition. *See* Rule 7.44–E(b)(2)(B).

[23] *See id.* at (b)(2)(A)–(C).

[24] *Id.* at (b)(6).

[25] *Id.* at (b)(3).

[26] *Id.* at (b)(5).

[27] *Id.* at (c)(1)—(4). Because an RLP would only be permitted to trade electronically, an ETP Holder's technology must be fully automated to accommodate the Exchange's trading and reporting systems that are relevant to operating as an RLP. If an ETP Holder was unable to support the relevant electronic trading and reporting systems of the Exchange for RLP trading activity, it would not qualify as an RLP. An RLP may not use the Exchange supplied designations for non-RLP trading activity at the Exchange. Additionally, an ETP Holder will not receive credit for its RLP trading activity for which it does not use its designation.

[28] *Id.* at (d)(1).

[29] *Id.* at (d)(2).

[30] *Id.* at (d)(3).

[31] *Id.* at (d)(4).

concerning its previously assigned RLP securities.[32]

RLP Requirements

Under Rule 7.44–E(f), an RLP would only be permitted to enter RPIs electronically and directly into Exchange systems and facilities designated for this purpose and could only submit RPIs in their role as an RLP for the securities to which it is assigned as RLP. An RLP entering Retail Price Improvement Orders in securities to which it is not assigned is not required to satisfy these requirements.[33] In order to be eligible for execution fees that are lower than non-RLP rates, an RLP would be required to maintain (1) an RPI that was better than the PBB at least five percent of the trading day for each assigned security; and (2) an RPI that was better than the PBO at least five percent of the trading day for each assigned security.[34]

An RLP's five-percent requirements would be calculated by determining the average percentage of time the RLP maintained an RPI in each of its RLP securities during the regular trading day, on a daily and monthly basis.[35] The Exchange would determine whether an RLP met this requirement by calculating the following:

- The ''Daily Bid Percentage,'' calculated by determining the percentage of time an RLP maintains a Retail Price Improvement Order with respect to the PBB during each trading day for a calendar month;
- The ''Daily Offer Percentage,'' calculated by determining the percentage of time an RLP maintains a Retail Price Improvement Order with respect to the PBO during each trading day for a calendar month;
- The ''Monthly Average Bid Percentage,'' calculated for each RLP security by summing the security's ''Daily Bid Percentages'' for each trading day in a calendar month then dividing the resulting sum by the total number of trading days in such calendar month; and
- The ''Monthly Average Offer Percentage,'' calculated for each RLP security by summing the security's ''Daily Offer Percentage'' for each trading day in a calendar month and then dividing the resulting sum by the total number of trading days in such calendar month.

Finally, only RPIs would be used when calculating whether an RLP is in compliance with its five-percent requirements.[36]

The five-percent requirement is not applicable in the first two calendar months a member organization operates as an RLP and takes effect on the first day of the third consecutive calendar month the member organization operates as an RLP.[37]

Failure of RLP To Meet Requirements

Rule 7.44–E(g) addresses the consequences of an RLP's failure to meet its requirements. If, after the first two months an RLP acted as an RLP, an RLP fails to meet any of the requirements set forth in Rule 7.44–E(f) for an assigned RLP security for three consecutive months, the Exchange could, in its discretion, take one or more of the following actions:

- Revoke the assignment of any or all of the affected securities from the RLP;
- revoke the assignment of unaffected securities from the RLP; or
- disqualify the member organization from its status as an RLP.[38]

The Exchange will determine if and when an ETP Holder is disqualified from its status as an RLP. One calendar month prior to any such determination, the Exchange notifies an RLP of such impending disqualification in writing. When disqualification determinations are made, the Exchange provides a written disqualification notice to the member organization.[39] A disqualified RLP could appeal the disqualification as provided in proposed Rule 7.44–E(i) and/or reapply for RLP status 90 days after the disqualification notice is issued by the Exchange.[40]

Failure of RMO To Abide by Retail Order Requirements

Rule 7.44–E(h) addresses an RMO's failure to abide by Retail Order requirements. If an RMO designates orders submitted to the Exchange as Retail Orders and the Exchange determines, in its sole discretion, that those orders fail to meet any of the requirements of Retail Orders, the Exchange may disqualify a member organization from its status as an RMO.[41] When disqualification determinations are made, the Exchange will provide a written disqualification notice to the ETP Holder.[42] A disqualified RMO could appeal the disqualification as provided in proposed Rule 7.44–E(i) and/or reapply for RMO status 90 days after the disqualification notice is issued by the Exchange.[43]

Appeal of Disapproval or Disqualification

Rule 7.44–E(i) describes the appeal rights of ETP Holders. An ETP Holder that disputes the Exchange's decision to disapprove it under Rule 7.44–E(b) or (d) or disqualify it under Rule 7.44–E(g) or (h) may request, within five business days after notice of the decision is issued by the Exchange, that a Retail Liquidity Program Panel (''RLP Panel'') review the decision to determine if it was correct.[44] The RLP Panel would consist of the Chief Regulatory Officer (''CRO''), or a designee of the CRO, and qualified Exchange employees.[45] The RLP Panel will review the facts and render a decision within the time frame prescribed by the Exchange.[46] The RLP Panel may overturn or modify an action taken by the Exchange under the Rule. A determination by the RLP Panel would constitute final action by the Exchange on the matter at issue.[47]

Retail Liquidity Identifier

Under Rule 7.44–E(j), the Exchange disseminates an identifier through the Consolidated Quotation System or the UTP Quote Data Feed, as applicable, when RPI interest priced at least $0.001 better than the PBB or PBO for a particular security is available in Exchange systems (''Retail Liquidity Identifier''). The Retail Liquidity Identifier shall reflect the symbol for the particular security and the side (buy or sell) of the RPI interest, but shall not include the price or size of the RPI interest.[48]

Retail Order Designations

Under Rule 7.44–E(k), a Retail Order may not be designated with a ''No Midpoint Execution'' Modifier or with a minimum trade size. Under subsection (k), an RMO can designate how a Retail Order would interact with available contra-side interest as follows:

- A Type 1—Retail Order to buy (sell) is a Limit IOC Order that will trade only

[32] *See id.* at (e).

[33] *Id.* at (f)(1).

[34] An ETP Holder acting as an RLP for a security entering RPIs into Exchange systems and facilities for securities to which it was not assigned would not be eligible for execution fees that are lower than non-RLP rates for securities to which it was not assigned.

[35] *Id.* at (f)(2).

[36] *Id.* at (f)(2)(A)–(E).

[37] *Id.* at (f)(3).

[38] *Id.* at (g)(1)(A)–(C).

[39] *Id.* at (2).

[40] *Id.* at (3).

[41] *Id.* at (h)(1).

[42] *Id.* at (2).

[43] *Id.* at (3).

[44] *Id.* at (i)(1). In the event a member organization is disqualified from its status as an RLP pursuant to proposed Rule 107C(g), the Exchange would not reassign the appellant's securities to a different RLP until the RLP Panel has informed the appellant of its ruling. *Id.* at (i)(1)(A).

[45] *Id.* at (i)(2).

[46] *Id.* at (3).

[47] *Id.* at (4).

[48] *Id.* at (j).

with available Retail Price Improvement Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the PBO (PBB) on the NYSE Arca Book and will not route. The quantity of a Type 1—Retail Order to buy (sell) that does not trade with eligible orders to sell (buy) will be immediately and automatically cancelled. A Type-1 designated Retail Order will be rejected on arrival if the PBBO is locked or crossed.[49]

- A Type 2—Retail Order may be a Limit Order designated IOC or Day or a Market Order, and will function as follows:
  - A Type 2—Retail Order IOC to buy (sell) is a Limit IOC Order that will trade first with available Retail Price Improvement Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the PBO (PBB) on the NYSE Arca Book. Any remaining quantity of the Retail Order will trade with orders to sell (buy) on the NYSE Arca Book at prices equal to or above (below) the PBO (PBB) and will be traded as a Limit IOC Order and will not route.[50]
  - A Type 2—Retail Order Day to buy (sell) is a Limit Order that will trade first with available Retail Price Improvement Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the PBO (PBB) on the NYSE Arca Book. Any remaining quantity of the Retail Order, if marketable, will trade with orders to sell (buy) on the NYSE Arca Book or route, and if non-marketable, will be ranked in the NYSE Arca Book as a Limit Order.[51]
  - A Type 2—Retail Order Market to buy (sell) is a Market Order that will trade first with available Retail Price Improvement Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the NBO (NBB). Any remaining quantity of the Retail Order will function as a Market Order.[52]

Priority and Order Allocation

Under Rule 7.44–E(l), RPI in the same security will be ranked together with all other interest ranked as Priority 3—Non-Display Orders. Odd-lot orders ranked as Priority 2—Display Orders will have priority over orders ranked Priority 3—Non-Display Orders at each price. Any remaining unexecuted RPI interest will remain available to trade with other incoming Retail Orders. Any remaining unfilled quantity of the Retail Order will cancel, execute, or post to the NYSE Arca Book in accordance with Rule 7.44–E(k).

Examples of priority and order allocation are as follows:

PBBO for security ABC is $10.00–$10.05.

RLP 1 enters a Retail Price Improvement Order to buy ABC at $10.01 for 500.

RLP 2 then enters a Retail Price Improvement Order to buy ABC at $10.02 for 50.

RLP 3 then enters a Retail Price Improvement Order to buy ABC at $10.03 for 500.

An incoming Type 1—Retail Order to sell ABC for 1,000 would trade first with RLP 3's bid for 500 at $10.03, because it is the best-priced bid, then with RLP 2's bid for 500 at $10.02, because it is the next best-priced bid. RLP 1 would not be filled because the entire size of the Retail Order to sell 1,000 would be depleted. The Retail Order trades with RPI Orders in price/time priority.

However, assume the same facts above, except that RLP 2's Retail Price Improvement Order to buy ABC at $10.02 was for 100. The incoming Retail Order to sell 1,000 would trade first with RLP 3's bid for 500 at $10.03, because it is the best-priced bid, then with RLP 2's bid for 100 at $10.02, because it is the next best-priced bid. RLP 1 would then receive an execution for 400 of its bid for 500 at $10.01, at which point the entire size of the Retail Order to sell 1,000 would be depleted.

Assume the same facts as above, except that RLP 3's order was not an RPI Order to buy ABC at $10.03, but rather, a non-displayed order to buy ABC at $10.03. The result will be similar to the result immediately above, in that the incoming Retail Order to sell 1,000 trades first with RLP 3's non-displayed bid for 500 at $10.03, because it is the best-priced bid, then with RLP 2's bid for 100 at $10.02, because it is the next best-priced bid. RLP 1 then receives an execution for 400 of its bid for 500 at $10.01, at which point the entire size of the Retail Order to sell 1,000 is depleted.

As a final example, assume the original facts, except that LMT 1 enters a displayed odd lot limit order to buy ABC at $10.02 for 60. The incoming Retail Order to sell for 1,000 trades first with RLP 3's bid for 500 at $10.03, because it is the best-priced bid, then with LMT 1's bid for 60 at $10.02 because it is the next best-priced bid and is ranked Priority 2—Display Orders and has priority over same-priced RPIs. The incoming Retail Order would then trade 440 shares with RLP 2's bid for 500 at $10.02 because it is the next priority category at that price, at which point the entire size of the Retail Order to sell 1,000 is depleted. The balance of RLP 2's bid would remain on the NYSE Arca Book and be eligible to trade with the next incoming Retail Order to sell.

To demonstrate how the different types of Retail Orders would trade with available Exchange interest, assume the following facts:

PBBO for security DEF is $19.99–$20.01 (100 × 100).

LMT 1 enters a Limit Order to buy DEF at $20.00 for 100.

RLP 1 then enters a Retail Price Improvement Order to buy DEF at $20.003 for 100.

MPL 1 then enters a Midpoint Passive Liquidity Order to buy DEF at $21.00 for 100.

An incoming Type 2—Retail Order IOC to sell DEF for 300 at $20.00 would trade first with MPL 1's bid for 100 at $20.005, because it is the best-priced bid, then with RLP 1's bid for 100 at $20.003, because it is the next best-priced bid, and then with LMT 1's bid for 100 at $20.00 because it is the next best-priced bid, at which point the entire size of the Retail Order to sell 300 is depleted.

Assume the same facts as above except the incoming order is a Type 2—Retail Order Day to sell DEF for 500 at $20.00. The Retail Order would trade first with MPL 1's bid for 100 at $20.005, because it is the best-priced bid, then with RLP 1's bid for 100 at $20.003, because it is the next best-priced bid, and then with LMT 1's bid for 100 at $20.00 because it is the next best-priced bid. The remaining balance of the Retail Order is displayed on the NYSE Arca Book at $20.00 as a Limit Order, resulting in a PBBO of $19.99–$20.00 (100 × 200).

Assume the same facts as above except the incoming order is a Type 1—Retail Order to sell DEF for 300. The Retail Order would trade first with MPL 1's bid for 100 at $20.005, because it is the best-priced bid, and then with RLP 1's bid for 100 at $20.003. The remaining balance of the Retail Order would be cancelled and not trade with LMT 1 because Type 1-designated Retail Orders do not trade with interest on the NYSE Arca Book other than non-displayed orders and odd-lot orders priced better than the PBBO on the opposite side of the Retail Order.

Finally, to demonstrate the priority of displayed interest over Retail Price Improvement Orders, assume the following facts:

PBBO for security GHI is $30.00–$30.05.

[49] *Id.* at (k)(1).

[50] *Id.* at (k)(2)(A).

[51] *Id.* at (k)(2)(B).

[52] *Id.* at (k)(2)(C).

RLP 1 enters a Retail Price Improvement Order to buy GHI at $30.02 for 100.

LMT 1 then enters a Limit Order to buy GHI at $30.02 for 100.

New PBBO of $30.02–$30.05.

RLP 2 then enters a Retail Price Improvement Order at $30.03 for 100.

An incoming Type 2—Retail Order IOC to sell GHI for 300 at $30.01 would trade first with RLP 2's bid for 100 at $30.03, because it is the best-priced bid, then with LMT 1 for 100 at $30.02 because it is the next best-priced bid. The Retail Order would then attempt to trade with RLP 1, but because RLP 1 was priced at the PBBO and no longer price improving, RLP 1 will cancel. At that point, the remaining balance of the Retail Order will cancel because there are no remaining orders within its limit price.

Assume the same facts as above except the incoming Retail Order is for 200. The Retail Order would trade with RLP 2's bid for 100 at $30.03, because it is the best-priced bid, then with LMT 1 for 100 at $30.02 because it is the next best-priced bid. RLP 1 does not cancel because the incoming Retail Order was depleted before attempting to trade with RLP 1. RLP 1 would be eligible to trade with another incoming Retail Order because it would be priced better than the PBBO.[53]

[53] *Id.* at (l).

Rationale for Making Pilot Permanent

In approving the Program on a pilot basis, the Commission required the Exchange to ''monitor the scope and operation of the Program and study the data produced during that time with respect to such issues, and will propose any modifications to the Program that may be necessary or appropriate.'' [54] As part of its assessment of the Program's potential impact, the Exchange posted core weekly and daily summary data on the Exchanges' website for public investors to review,[55] and provided additional data to the Commission regarding potential investor benefits, including the level of price improvement provided by the Program. This data included statistics about participation, frequency and level of price improvement.

In the RLP Approval Order, the Commission observed that the Program could promote competition for retail order flow among execution venues, and that this could benefit retail investors by creating additional price improvement opportunities for marketable retail order flow, most of which is currently executed in the Over-the-Counter (''OTC'') markets without ever reaching a public exchange.[56] The Exchange sought, and believes it has achieved, the Program's goal of attracting retail order flow to the Exchange, and allowing such order flow to receive potential price improvement. As the Exchange's analysis of the Program data below demonstrates, the Program provided tangible price improvement to retail investors through a competitive pricing process. The data also demonstrates that the Program had an overall negligible impact on broader market structure.[57]

NYSE Arca launched the Program during April 2014. Between June and November 2014, the Program received orders totaling 4.3 billion shares, providing retail investors with price improvement of $1.6 million. As Table 1 below shows, during 2017, an average of 3.5 million shares were executed in the Program each day. During 2018, this number rose to 8.9 million shares per day but has since dropped to 3.6 million shares per day for the period May–July 2019. Price improvement has been highly dependent on the mix of securities and volume sent into the Program. During the 2017–2018 period, price improvement was as low as $0.0015 and as high as $0.0055 per share. There are several high-priced securities with spreads greater than $0.01, which often received price improvement of a penny or more. Overall, fill rates have largely been in the low-to-mid 20% range, although there have been periods of fill rates north of 30% from September–November 2017, when there was a smaller share of very large orders.

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[54] RLP Approval Order, 78 FR at 79529.

[55] *See https://www.nyse.com/markets/liquidity-programs#nyse-nyse-mkt-rlp.*

[56] RLP Approval Order, 78 FR at 79528.

[57] *See* id. at 79529.

Table 1: Summary Execution and Market Quality Statistics

Date	Avg. Daily Orders	Avg. Shares Exec.	Fill Rate	Price Impr. $	Price Impr. BP
Jan-17	4,948	2,150,346.9	26.7%	$0.0024	1.52
Feb-17	4,673	2,066,753.6	19.6%	$0.0022	1.57
Mar-17	4,594	2,047,663.4	20.2%	$0.0022	1.83
Apr-17	4,274	1,770,560.5	20.8%	$0.0025	1.88
May-17	3,660	1,408,774.3	23.4%	$0.0035	2.83
Jun-17	3,565	1,355,331.4	23.0%	$0.0051	3.72
Jul-17	3,251	1,140,149.9	25.6%	$0.0053	3.72
Aug-17	3,588	1,195,305.6	23.3%	$0.0055	3.86
Sep-17	12,505	4,080,037.1	31.4%	$0.0037	3.53
Oct-17	31,483	9,701,364.8	38.3%	$0.0031	3.84
Nov-17	28,422	9,012,109.1	36.7%	$0.0028	3.00
Dec-17	30,116	6,424,724.3	27.9%	$0.0023	2.73
Jan-18	45,868	9,141,527.4	26.6%	$0.0016	1.59
Feb-18	53,970	11,137,027.6	25.8%	$0.0017	1.45
Mar-18	49,545	9,988,889.2	27.1%	$0.0016	1.53
Apr-18	42,509	8,311,330.0	29.2%	$0.0016	1.34
May-18	42,554	9,397,909.1	30.4%	$0.0015	1.61
Jun-18	50,235	9,022,306.1	26.9%	$0.0015	1.49
Jul-18	45,273	7,981,698.5	27.2%	$0.0015	1.43
Aug-18	44,531	8,510,678.8	27.1%	$0.0015	1.32
Sep-18	42,257	8,863,455.3	24.9%	$0.0016	1.40
Oct-18	45,321	8,398,662.1	22.9%	$0.0016	1.34
Nov-18	39,089	7,082,087.6	23.5%	$0.0015	1.21
Dec-18	45,208	9,306,425.4	22.7%	$0.0015	0.96

Table 2 shows the frequency of order sizes entered by RMOs. The largest plurality of order types were round lot or smaller, ranging between 35% in early 2017 to more than 50% of all RMO orders entered during the summer of 2018. Very large orders (greater than 15,000 shares) accounted for less than 1% of all orders since September 2017. However, as shown in Table 3, these typically accounted for 20–25% of shares placed into the Program, and ranged above 50% of all orders in early 2017. The composition of shares executed (Table 4) was more evenly distributed and fill rates (Table 5) were much lower for the largest order sizes.

Table 2: Composition of Retail Taking Orders by Order Size									
Date	<= 100	101-300	301-500	501-1000	1001-2000	2001-4000	4001-7500	7500-15000	> 15000
Jan-17	35.57%	19.58%	9.67%	10.93%	7.94%	6.82%	4.96%	2.69%	1.84%
Feb-17	35.80%	18.91%	9.62%	10.75%	7.96%	6.52%	4.78%	3.04%	2.62%
Mar-17	36.62%	18.81%	8.98%	10.71%	7.80%	6.82%	4.88%	3.10%	2.27%
Apr-17	38.60%	18.86%	9.03%	10.19%	7.56%	6.46%	4.47%	2.83%	1.99%
May-17	40.30%	18.31%	8.87%	10.24%	7.48%	6.20%	4.12%	2.52%	1.97%
Jun-17	40.46%	18.00%	8.54%	9.91%	7.34%	6.57%	4.39%	3.01%	1.79%
Jul-17	43.01%	17.72%	8.54%	9.55%	7.31%	6.38%	3.88%	2.21%	1.39%
Aug-17	41.25%	17.51%	8.67%	10.16%	7.64%	6.84%	4.09%	2.35%	1.49%
Sep-17	43.67%	20.57%	8.88%	10.10%	6.50%	4.75%	2.82%	1.77%	0.94%
Oct-17	51.30%	18.58%	7.69%	8.54%	5.57%	3.86%	2.39%	1.41%	0.66%
Nov-17	52.69%	17.07%	7.54%	8.36%	5.70%	3.92%	2.49%	1.44%	0.79%
Dec-17	48.34%	18.95%	9.78%	9.23%	6.06%	4.18%	1.91%	1.01%	0.54%
Jan-18	48.69%	19.03%	9.56%	9.12%	6.05%	4.07%	1.87%	1.03%	0.58%
Feb-18	47.13%	19.62%	9.94%	9.48%	6.14%	3.98%	1.93%	1.12%	0.66%
Mar-18	46.90%	19.68%	10.08%	9.79%	6.32%	3.90%	1.76%	1.01%	0.56%
Apr-18	49.50%	19.54%	9.59%	9.63%	5.75%	3.11%	1.47%	0.90%	0.50%
May-18	48.01%	19.37%	9.82%	10.04%	6.22%	3.37%	1.61%	0.98%	0.57%
Jun-18	49.61%	19.42%	9.62%	9.58%	5.87%	3.13%	1.42%	0.85%	0.50%
Jul-18	50.10%	19.18%	9.41%	9.55%	5.91%	3.14%	1.41%	0.82%	0.48%
Aug-18	51.45%	18.14%	8.87%	9.05%	5.97%	3.41%	1.61%	0.95%	0.56%
Sep-18	47.75%	17.80%	9.15%	10.02%	7.01%	4.28%	2.08%	1.21%	0.69%
Oct-18	46.08%	19.06%	9.83%	10.23%	7.15%	4.04%	1.90%	1.04%	0.66%
Nov-18	44.43%	20.00%	10.58%	10.38%	7.29%	4.04%	1.72%	0.95%	0.61%
Dec-18	43.38%	20.42%	10.30%	10.65%	7.23%	4.11%	1.98%	1.12%	0.81%

Table 3: Composition of Retail Taking Shares Placed by Order Size									
Date	<= 100	101-300	301-500	501-1000	1001-2000	2001-4000	4001-7500	7500-15000	> 15000
Jan-17	1.09%	2.46%	2.55%	5.28%	7.39%	12.17%	16.38%	17.17%	35.50%
Feb-17	0.79%	1.73%	1.83%	3.76%	5.37%	8.42%	11.49%	13.98%	52.62%
Mar-17	0.82%	1.75%	1.75%	3.81%	5.38%	9.01%	12.11%	14.43%	50.95%
Apr-17	0.93%	1.94%	1.95%	4.02%	5.75%	9.47%	12.23%	14.53%	49.18%
May-17	1.16%	2.31%	2.32%	4.89%	6.87%	11.02%	13.60%	15.89%	41.93%
Jun-17	1.15%	2.28%	2.23%	4.70%	6.73%	11.63%	14.52%	18.99%	37.77%
Jul-17	1.48%	2.68%	2.69%	5.47%	8.08%	13.59%	15.42%	16.69%	33.90%
Aug-17	1.43%	2.54%	2.61%	5.55%	8.02%	13.95%	15.61%	16.69%	33.61%
Sep-17	2.04%	4.00%	3.62%	7.56%	9.49%	13.24%	14.71%	17.30%	28.04%
Oct-17	2.70%	4.65%	4.06%	8.27%	10.53%	13.97%	15.70%	17.65%	22.46%
Nov-17	2.54%	4.03%	3.72%	7.59%	10.08%	13.14%	15.23%	16.75%	26.92%
Dec-17	2.98%	4.97%	5.57%	9.52%	11.84%	15.35%	13.17%	13.61%	22.99%
Jan-18	3.07%	5.06%	5.50%	9.51%	11.99%	15.35%	13.31%	14.16%	22.05%
Feb-18	2.91%	4.91%	5.32%	9.22%	11.43%	14.08%	12.87%	14.63%	24.61%
Mar-18	3.20%	5.30%	5.72%	10.20%	12.64%	14.92%	12.71%	14.05%	21.25%
Apr-18	3.80%	5.75%	5.71%	10.85%	12.70%	13.34%	11.92%	13.84%	22.09%
May-18	3.43%	5.28%	5.40%	10.49%	12.75%	13.28%	12.08%	14.04%	23.25%
Jun-18	3.81%	5.74%	5.73%	10.83%	13.08%	13.42%	11.47%	13.20%	22.71%
Jul-18	3.90%	5.83%	5.76%	11.10%	13.50%	13.81%	11.74%	13.17%	21.19%
Aug-18	3.53%	5.07%	5.03%	9.71%	12.51%	13.94%	12.23%	13.88%	24.11%
Sep-18	2.87%	4.19%	4.34%	9.08%	12.48%	14.68%	13.35%	14.78%	24.24%
Oct-18	3.11%	4.67%	4.81%	9.53%	13.15%	14.38%	12.71%	13.17%	24.46%
Nov-18	3.25%	5.10%	5.39%	10.09%	13.96%	15.05%	12.03%	12.60%	22.53%
Dec-18	2.73%	4.46%	4.52%	8.77%	11.69%	13.00%	11.89%	12.72%	30.23%

Table 5 highlights that while the Exchange indicates when there is price improving liquidity available on CQS, UTP and proprietary feeds, not all customers necessarily read that flag. Beginning in December 2017, the Exchange believes that one customer began sending orders without checking the flag, resulting in poor fill rates, even for orders less than or equal to 100 shares. This is clearly evidenced by the sharp drop in fill rates for orders of one round lot or less.

Table 4: Composition of Retail Taking Shares Executed by Order Size									
Date	<= 100	101-300	301-500	501-1000	1001-2000	2001-4000	4001-7500	7500-15000	> 15000
Jan-17	4.01%	8.52%	8.01%	14.72%	15.07%	15.95%	14.77%	8.89%	10.06%
Feb-17	3.95%	8.16%	7.84%	14.42%	15.30%	15.74%	13.21%	9.86%	11.52%
Mar-17	4.00%	7.97%	7.28%	14.17%	14.81%	16.15%	14.23%	10.99%	10.40%
Apr-17	4.42%	8.67%	7.92%	14.39%	15.45%	16.39%	13.59%	10.92%	8.25%
May-17	4.86%	9.10%	8.14%	14.96%	15.25%	15.49%	12.72%	9.84%	9.64%
Jun-17	4.88%	8.96%	7.66%	13.62%	14.31%	15.56%	13.34%	12.69%	8.97%
Jul-17	5.70%	9.47%	8.21%	14.29%	14.57%	15.88%	13.33%	9.91%	8.65%
Aug-17	6.02%	9.78%	8.69%	15.23%	15.43%	16.66%	12.28%	8.22%	7.69%
Sep-17	6.23%	11.46%	9.23%	16.70%	15.26%	14.15%	10.23%	9.87%	6.88%
Oct-17	6.78%	11.09%	8.69%	15.45%	14.89%	13.31%	13.54%	10.59%	5.66%
Nov-17	6.62%	9.84%	8.11%	14.43%	14.59%	13.45%	13.98%	10.47%	8.52%
Dec-17	7.39%	10.23%	8.16%	14.09%	14.41%	14.79%	11.75%	10.56%	8.62%
Jan-18	7.33%	10.09%	8.29%	14.29%	14.66%	14.66%	11.46%	10.33%	8.89%
Feb-18	6.06%	9.48%	8.80%	15.88%	16.01%	14.88%	11.30%	9.61%	8.00%
Mar-18	5.93%	9.03%	8.60%	16.06%	16.52%	15.61%	11.73%	9.19%	7.33%
Apr-18	6.47%	9.19%	8.52%	16.52%	16.67%	14.96%	12.17%	9.40%	6.11%
May-18	5.86%	8.37%	8.02%	16.22%	16.64%	14.99%	12.20%	9.78%	7.92%
Jun-18	6.68%	9.35%	8.58%	17.21%	16.91%	15.03%	11.09%	8.20%	6.96%
Jul-18	6.68%	9.23%	8.46%	16.96%	16.69%	15.11%	11.77%	8.25%	6.85%
Aug-18	6.90%	8.84%	8.23%	16.60%	16.85%	16.16%	11.83%	8.34%	6.25%
Sep-18	5.80%	7.81%	7.53%	16.39%	17.41%	16.57%	12.69%	8.99%	6.81%
Oct-18	6.05%	8.55%	7.90%	15.97%	18.24%	17.16%	11.48%	7.86%	6.80%
Nov-18	6.03%	8.74%	8.19%	15.85%	17.76%	18.04%	11.22%	7.84%	6.33%
Dec-18	5.70%	8.78%	8.08%	15.35%	16.89%	16.72%	11.22%	8.57%	8.68%

Table 6 details the development of order sizes received in the Program over time. Program orders taking liquidity sent to the Exchange averaged around 1,000 shares for the Program's recent history, with median order size mostly around 400 shares. Liquidity providing orders tend to be smaller, and mostly average well below 1,000 shares, with the median below 200 shares most months. Since any firm can enter a liquidity providing order, there may be multiple providers offering liquidity inside the quote, allowing for high fill rates.

Table 5: Fill Rates by Retail Take Order Size

Date	<= 100	101-300	301-500	501-1000	1001-2000	2001-4000	4001-7500	7500-15000	> 15000
Jan-17	98.45%	92.36%	83.80%	74.41%	54.47%	34.99%	24.07%	13.83%	7.57%
Feb-17	98.58%	92.59%	83.94%	75.32%	55.99%	36.72%	22.58%	13.85%	4.30%
Mar-17	98.42%	92.29%	84.10%	75.18%	55.72%	36.25%	23.76%	15.40%	4.13%
Apr-17	98.48%	92.97%	84.25%	74.49%	55.89%	35.96%	23.10%	15.63%	3.49%
May-17	98.37%	92.20%	82.09%	71.78%	51.99%	32.94%	21.92%	14.51%	5.39%
Jun-17	97.95%	90.43%	79.20%	66.75%	48.97%	30.82%	21.17%	15.40%	5.47%
Jul-17	98.43%	90.70%	78.40%	67.01%	46.21%	29.96%	22.18%	15.22%	6.54%
Aug-17	98.22%	89.85%	77.73%	63.86%	44.84%	27.81%	18.33%	11.47%	5.33%
Sep-17	95.86%	90.01%	79.95%	69.31%	50.46%	33.53%	21.84%	17.90%	7.70%
Oct-17	96.18%	91.31%	82.10%	71.63%	54.18%	36.50%	33.04%	23.00%	9.66%
Nov-17	95.68%	89.61%	80.07%	69.86%	53.12%	37.58%	33.70%	22.96%	11.62%
Dec-17	69.27%	57.54%	40.88%	41.32%	33.95%	26.90%	24.90%	21.66%	10.47%
Jan-18	63.42%	53.07%	40.04%	39.95%	32.52%	25.40%	22.89%	19.41%	10.72%
Feb-18	53.62%	49.73%	42.62%	44.36%	36.09%	27.23%	22.63%	16.92%	8.38%
Mar-18	50.29%	46.24%	40.83%	42.76%	35.49%	28.39%	25.05%	17.75%	9.37%
Apr-18	49.80%	46.74%	43.61%	44.47%	38.35%	32.78%	29.84%	19.85%	8.08%
May-18	51.89%	48.14%	45.21%	47.03%	39.69%	34.32%	30.70%	21.19%	10.37%
Jun-18	47.18%	43.88%	40.34%	42.80%	34.83%	30.15%	26.04%	16.72%	8.25%
Jul-18	46.53%	43.06%	39.98%	41.52%	33.62%	29.76%	27.27%	17.04%	8.78%
Aug-18	52.83%	47.20%	44.32%	46.29%	36.47%	31.39%	26.17%	16.27%	7.02%
Sep-18	50.43%	46.44%	43.18%	44.96%	34.76%	28.11%	23.68%	15.16%	6.99%
Oct-18	44.62%	41.89%	37.59%	38.37%	31.77%	27.35%	20.68%	13.67%	6.37%
Nov-18	43.53%	40.21%	35.66%	36.87%	29.87%	28.15%	21.88%	14.61%	6.60%
Dec-18	47.49%	44.75%	40.64%	39.80%	32.83%	29.25%	21.46%	15.32%	6.53%

Table 6: Order Size Details				
	Provide Orders		Take Orders	
Date	Average	Median	Average	Median
Jan-17	666	300	1,628	250
Feb-17	669	300	2,252	266
Mar-17	685	300	2,204	240
Apr-17	657	300	1,993	200
May-17	649	400	1,642	200
Jun-17	645	300	1,650	200
Jul-17	628	300	1,368	200
Aug-17	613	300	1,430	200
Sep-17	641	300	1,040	162
Oct-17	784	400	804	100
Nov-17	1,083	400	863	100
Dec-17	1,258	300	764	122
Jan-18	1,325	400	749	120
Feb-18	1,069	400	801	133
Mar-18	1,257	400	743	133
Apr-18	1,237	400	669	102
May-18	1,402	400	726	133
Jun-18	1,252	400	667	106
Jul-18	1,267	400	648	100
Aug-18	1,220	400	706	100
Sep-18	1,209	400	842	133
Oct-18	1,040	400	809	150
Nov-18	1,075	400	772	166
Dec-18	1,000	500	906	166

Table 7: Market Share Frequency of Retail Orders				
	Daily Results		Two Year Aggregate	
Distribution	Count	Percentage	Count	Percentage
> 50%	273	0.0109%	0	0.0000%
25-50%	1,269	0.0505%	0	0.0000%
10-25%	7,231	0.2879%	0	0.0000%
5-10%	18,222	0.7255%	0	0.0000%
1-5%	137,490	5.4744%	220	3.6975%
0.75%-1%	38,384	1.5283%	190	3.1933%
0.50%-0.75%	57,841	2.3030%	462	7.7647%
0.25%-0.50%	101,872	4.0562%	1,116	18.7563%
0.10%-0.25%	128,039	5.0981%	1,345	22.6050%
0.05%-0.10%	80,623	3.2101%	893	15.0084%
0.01%-0.05%	115,705	4.6070%	1,079	18.1345%
<0.01%	1,824,574	72.6481%	645	10.8403%

Table 7 shows that during the two most recent years, no security maintained more than 5% of total volume in the program, and nearly two-thirds of all securities that had executions in the program averaged less than 0.25% share of consolidated trading. The Exchange notes that these statistics largely overstate the total size of the Program, since many securities rarely or never receive an order in the Program.

Although the Program provides the opportunity to achieve significant price improvement, the Program has not generated significant activity, relative to the overall market. The Program competes with wholesalers and similar programs offered by, among others, Cboe BYX Exchange, Inc. (''Cboe BYX''), and Nasdaq BX, the latter of which has been approved on a permanent basis.[58]

Difference in Differences Analysis

The Exchange also analyzed market quality and market share impact by using the difference in differences statistical technique. Difference in differences (''DID'') requires studying the differential effect of data measured between a treatment group and a control group. The two groups are measured during two or more different time periods, usually a period before ''treatment'' and at least one time period after ''treatment'', that is, a time period after which the treatment group is impacted but the control group is not. The assumption is that the control group and the treatment group are otherwise impacted equally by extraneous factors, *i.e.,* that the other impacts are parallel. For example, when measuring average quoted spreads, if spreads increase by ten basis points in the control group, and 12 basis points in the test group, the assumption would be that the two basis point differential was caused by the treatment.

Because all Tape B and Tape C securities (all securities not listed on the NYSE) are eligible to participate in the Program, a natural control group does not exist for the securities participating in the Program. Hence, there is a possibility that the lack of activity in the Program could have been the result of factors that DID cannot measure. Nonetheless, to produce a control group, the Exchange identified the 50 most active ticker securities in the Program as measured by share of consolidated volume following launch of the Program. The Exchange then determined a matched sample, without replacement, using consolidated volume, volume weighted average price, and consolidated quoted spread in basis points. The matched sample compared the 50 most active ticker securities in the Program with all securities that had very low Program volume. The matching criteria minimized the sum of the squares of the percent difference between the top 50 active ticker securities and potential matches. The best 25 matches were then selected.

The Exchange executed two DID analyses:

1. Six months prior to launch of the Program (November 2013–April 2014) compared to six months following launch, excluding the first month of the Program (June 2014–November 2014) for securities with a consolidated average daily volume (''CADV'') of at least 500,000 during the pre-treatment and treatment periods. Note that the program launched during April 2014, but there were only six retail taking orders entered during that month.

2. Six months prior to launch of the Program (November 2013–April 2014) compared to all of 2017 and 2018 for securities with a CADV of at least 500,000 during the pre-treatment and treatment periods.

Because there was no natural control group, the Exchange employed flexible matching criteria. In addition to the CADV restrictions, the Exchange utilized a control versus treatment CADV ratio of 3:1, a volume weighted average price (''VWAP'') of 2:1, and a spread of 2:1. The Exchange also required potential control group stocks to have a share of Program trading less than 1/10th of the lowest of the top 50 securities for the first trading period. The Exchange excluded securities that were in the test groups of the Tick Size Pilot Program[59] from consideration in matching securities for the DID analysis of the 2017–2018 period. Preferred stocks, warrants and rights were excluded from the DID analysis for both periods. Finally, because the Program is only valid for stocks trading at or above $1.00, any security with a low price during the pre-treatment or the treatment period below $1.00 was also excluded. Securities could not be listed on the NYSE during the pre-treatment period or during the treatment period.

The Exchange selected the top 25 securities by minimum differences as described above.

DID Results for Period Around Program Launch

As noted above, the Program launched in April 2014. Only six orders RMO orders were entered during the month. The Exchange selected November 2013–April 2014 to represent the pre-launch period. To allow for Program adoption, the Exchange excluded May 2014 and chose June 2014–November 2014 to represent the post-launch period. Tables 8A and 8B show key attributes for the securities selected for the first matched sample.

[58] *See* note 13, *supra. See also* Securities Exchange Act Release No. 86742 (August 23, 2019), 84 FR 45575 (August 29, 2019) (SR–CboeBYX–2019–014) (filing to make permanent Cboe BYX Rule 11.24, which sets forth that exchange's pilot Retail Price Improvement Program).

[59] The Tick Size Pilot Program is a National Market System (''NMS'') plan designed to allow the Commission, market participants and the public to assess the impact of wider minimum quoting and trading increments—or tick sizes—on the liquidity and trading of the common stocks of certain small capitalization companies.

Table 8A: NYSE Arca Retail Program Matched Sample: Nov. 2013 - Apr. 2014 vs. June 2014 - Nov. 2014							
Treatment Symbol	Pre-period CADV	Pre-Period VWAP	Pre-period Spread	Control Symbol	Pre-period CADV	Pre-Period VWAP	Pre-period Spread
AGQ	1,004,732	$30.35	7.33	BPOP	916,093	$28.40	7.61
AMLP	3,007,338	$17.60	6.00	NWSA	3,357,486	$17.26	6.05
BKLN	2,614,350	$24.83	4.00	ZION	2,352,944	$30.03	3.99
CWB	572,853	$47.70	9.93	PRXL	629,762	$47.08	10.76
DEM	795,490	$48.96	6.18	EDZ	973,181	$44.80	6.43
DGAZ	12,319,303	$4.08	24.65	FTR	11,062,445	$5.00	20.30
FAS	4,451,848	$86.49	3.28	SNDK	3,947,492	$73.36	3.25
FAZ	5,541,906	$21.99	4.63	AGNC	5,745,540	$21.09	4.87
PFF	1,568,157	$38.08	3.02	MCHP	1,989,891	$44.81	3.22
PGX	812,806	$13.84	7.63	CEF	971,072	$13.96	7.76
QID	4,541,066	$46.15	4.02	NTAP	4,558,899	$39.63	2.96
SCZ	586,080	$51.07	6.92	MCHI	591,010	$46.08	6.72
SDS	10,691,086	$30.24	3.18	FOXA	12,377,657	$32.83	3.00
SLV	7,440,219	$19.47	5.01	FITB	7,800,571	$21.24	4.82
SPXL	1,782,496	$61.03	2.94	PCAR	1,777,451	$61.20	3.29
SPXS	2,170,222	$33.73	3.28	URBN	2,158,361	$36.88	3.89
SPXU	4,455,952	$39.97	3.98	MYL	4,942,669	$47.49	3.45
SQQQ	3,675,009	$44.98	4.28	STX	3,408,889	$52.77	3.98
SRTY	900,263	$29.47	6.88	GNTX	902,148	$30.97	7.19
TAN	616,372	$41.66	19.15	NXST	677,686	$42.86	17.83
TBT	3,386,397	$72.92	2.24	DTV	3,943,830	$71.61	2.51
TWM	2,032,802	$33.47	5.28	APOL	2,290,751	$29.99	5.48
TZA	15,400,733	$17.34	5.79	AMAT	12,540,915	$18.30	5.57
UGAZ	1,841,313	$23.73	16.05	ACAD	1,866,033	$23.89	15.37
UPRO	2,185,985	$92.31	2.90	INTU	1,844,913	$75.18	2.85

Table 8B: NYSE Arca Retail Program Matched Sample: Nov. 2013 - Apr. 2014 vs. June 2014 - Nov. 2014 Comparive Statistics							
Treatment Symbol	Pre-period TRF	Post-period TRF	RTO Share of CADV	Control Symbol	Pre-period TRF	Post-period TRF	RTO Share of CADV
AGQ	38.8%	39.9%	1.25%	BPOP	31.0%	38.9%	0.02%
AMLP	56.4%	52.9%	0.98%	NWSA	31.0%	32.0%	0.00%
BKLN	56.7%	54.5%	1.00%	ZION	31.8%	31.0%	0.00%
CWB	50.1%	56.4%	1.01%	PRXL	35.7%	29.8%	0.01%
DEM	54.6%	53.0%	1.16%	EDZ	16.2%	8.3%	0.08%
DGAZ	56.0%	54.6%	1.18%	FTR	48.0%	39.7%	0.02%
FAS	19.7%	21.3%	1.15%	SNDK	34.1%	32.8%	0.03%
FAZ	26.3%	28.7%	1.92%	AGNC	39.9%	40.1%	0.03%
PFF	59.5%	60.9%	1.64%	MCHP	39.9%	36.1%	0.02%
PGX	65.8%	69.3%	2.94%	CEF	45.6%	46.4%	0.08%
QID	28.6%	32.1%	2.91%	NTAP	30.6%	28.6%	0.02%
SCZ	58.2%	66.2%	1.21%	MCHI	39.2%	41.7%	0.03%
SDS	38.7%	42.4%	3.82%	FOXA	33.3%	35.7%	0.00%
SLV	35.3%	31.3%	0.91%	FITB	30.1%	32.2%	0.00%
SPXL	31.0%	33.9%	1.39%	PCAR	26.3%	27.8%	0.02%
SPXS	28.8%	33.4%	1.78%	URBN	34.0%	32.0%	0.01%
SPXU	34.2%	26.4%	1.28%	MYL	32.7%	34.9%	0.01%
SQQQ	25.8%	31.4%	1.16%	STX	30.0%	29.7%	0.01%
SRTY	23.5%	19.8%	0.88%	GNTX	31.8%	33.0%	0.04%
TAN	45.2%	46.3%	1.99%	NXST	38.0%	31.7%	0.01%
TBT	24.5%	27.3%	1.43%	DTV	29.3%	36.8%	0.01%
TWM	33.6%	22.5%	3.18%	APOL	31.1%	27.5%	0.01%
TZA	45.5%	41.1%	3.52%	AMAT	32.6%	31.1%	0.01%
UGAZ	47.6%	50.0%	1.40%	ACAD	33.9%	33.4%	0.02%
UPRO	29.5%	32.6%	1.41%	INTU	27.8%	26.1%	0.01%

For the period 2017–2018 matched sample, we excluded securities that were part of the Tick Size Pilot Program. Inclusion of those securities could have resulted in exogenous influences skewing the analyses.

Table 9A: NYSE Arca Retail Program Matched Sample: Nov. 2013 - Apr. 2014 vs. 2017 -2018							
Treatment Symbol	Pre-period CADV	Pre-Period VWAP	Pre-period Spread	Control Symbol	Pre-period CADV	Pre-Period VWAP	Pre-period Spread
AMLP	3,007,338	$17.60	6.00	NWSA	3,357,486	$17.26	6.05
CWB	572,853	$47.70	9.93	AZPN	517,518	$42.03	10.74
ERY	524,489	$20.52	7.41	ROIC	448,710	$14.81	9.01
FAS	4,451,848	$86.49	3.28	EWW	3,131,481	$63.93	3.32
FAZ	5,541,906	$21.99	4.63	EA	5,085,415	$25.51	4.31
FDN	510,853	$58.60	5.57	CTAS	591,467	$58.07	5.74
IAU	3,598,381	$12.28	8.03	ERIC	3,997,054	$12.43	8.01
PCY	694,303	$27.36	5.30	CPRT	667,005	$34.74	6.74
PGX	812,806	$13.84	7.63	PPC	807,418	$17.63	10.15
QID	4,541,066	$46.15	4.02	NTAP	4,558,899	$39.63	2.96
SCO	1,453,969	$31.80	3.46	NDAQ	1,565,999	$37.66	4.44
SDOW	829,547	$31.18	3.82	SEIC	732,007	$33.51	5.37
SDS	10,691,086	$30.24	3.18	FOXA	12,377,657	$32.83	3.00
SH	3,437,569	$25.51	4.00	GT	4,058,482	$24.76	4.46
SPXL	1,782,496	$61.03	2.94	CHRW	2,045,513	$55.89	3.17
SPXS	2,170,222	$33.73	3.28	URBN	2,158,361	$36.88	3.89
SPXU	4,455,952	$39.97	3.98	MYL	4,942,669	$47.49	3.45
SQQQ	3,675,009	$44.98	4.28	STX	3,408,889	$52.77	3.98
SRTY	900,263	$29.47	6.88	GNTX	902,148	$30.97	7.19
SVXY	1,026,925	$77.59	4.82	CHKP	1,036,819	$64.52	5.10
TQQQ	2,393,503	$72.25	2.93	BBBY	2,517,385	$68.83	2.84
TVIX	7,701,816	$7.79	13.18	WEN	7,961,985	$8.91	11.33
TWM	2,032,802	$33.47	5.28	LKQ	2,488,574	$28.39	5.39
UPRO	2,185,985	$92.31	2.90	INTU	1,844,913	$75.18	2.85
UVXY	6,793,121	$37.77	7.71	YNDX	4,751,282	$33.26	6.21

Table 9B: NYSE Arca Retail Program Matched Sample: Nov. 2013 - Apr. 2014 vs. 2017 - 2018 Comparive Statistics							
Treatment Symbol	Pre-period TRF	Post-period TRF	RTO Share of CADV	Control Symbol	Pre-period TRF	Post-period TRF	RTO Share of CADV
AMLP	56.4%	41.8%	0.98%	NWSA	31.0%	29.6%	0.00%
CWB	50.1%	58.3%	1.01%	AZPN	33.9%	31.5%	0.03%
ERY	25.1%	34.4%	0.57%	ROIC	35.2%	27.6%	0.01%
FAS	19.7%	31.1%	1.15%	EWW	21.1%	25.1%	0.08%
FAZ	26.3%	34.0%	1.92%	EA	33.7%	33.7%	0.00%
FDN	50.1%	53.1%	0.71%	CTAS	26.0%	27.3%	0.01%
IAU	51.3%	32.6%	0.43%	ERIC	36.7%	39.1%	0.00%
PCY	57.5%	50.3%	0.34%	CPRT	33.2%	33.3%	0.03%
PGX	65.8%	68.7%	2.94%	PPC	31.7%	30.5%	0.02%
QID	28.6%	37.8%	2.91%	NTAP	30.6%	30.4%	0.02%
SCO	25.5%	37.6%	0.25%	NDAQ	31.7%	27.4%	0.01%
SDOW	31.0%	36.3%	1.12%	SEIC	28.1%	29.0%	0.02%
SDS	38.7%	36.7%	3.82%	FOXA	33.3%	35.9%	0.00%
SH	51.2%	33.9%	0.78%	GT	34.8%	31.3%	0.01%
SPXL	31.0%	46.2%	1.39%	CHRW	33.8%	29.3%	0.02%
SPXS	28.8%	41.1%	1.78%	URBN	34.0%	32.9%	0.01%
SPXU	34.2%	41.4%	1.28%	MYL	32.7%	31.4%	0.01%
SQQQ	25.8%	42.3%	1.16%	STX	30.0%	33.5%	0.01%
SRTY	23.5%	23.4%	0.88%	GNTX	31.8%	30.9%	0.04%
SVXY	24.5%	29.1%	0.12%	CHKP	33.0%	30.3%	0.02%
TQQQ	31.3%	44.8%	0.27%	BBBY	30.9%	31.4%	0.02%
TVIX	42.7%	41.9%	0.75%	WEN	37.9%	37.3%	0.02%
TWM	33.6%	27.8%	3.18%	LKQ	37.2%	33.5%	0.03%
UPRO	29.5%	39.3%	1.41%	INTU	27.8%	29.7%	0.01%
UVXY	29.1%	39.6%	0.21%	YNDX	41.1%	35.8%	0.01%

The Exchange's DID analysis utilized the 25 treated and 25 control securities noted above for the following statistics:

- Time-weighted NYSE Arca quoted spreads in basis points.
- Time-weighted NYSE Arca quoted spreads in dollars and cents.
- Time-weighted consolidated quoted spreads in basis points.
- Time-weighted consolidated quoted spreads in dollars and cents.
- Trade Reporting Facility (''TRF'') share of volume during regular trading hours, excluding auctions.
- TRF share of volume, full day, including auctions.
- NYSE Arca share of volume during regular trading hours, excluding auctions.
- NYSE Arca share of volume, full day, including auctions.
- Trade-to-trade price change in basis points.

The Exchange calculated the DID regression for each of these statistics using the following formula:

$$Y_{it} = B_0 + B_1T + B_2I + B_3IT$$

where T equals zero during the pre-period and equals one during the treatment period, and where I is the Intervention.

As Table 10 shows, only one statistic showed any significance, and that at the weak 90% level. NYSE Arca market share during regular hours trading, excluding auctions, increased during the early comparison period.

Table 10: DiD Results (Nov. 2013 - Apr. 2014 vs. June 2014 - Nov. 2014)		
Estimated Measure	Estimate	Standard Error
Time-weighted NYSE Arca Spread^	1.6170	3.1540
Time-weighted NYSE Arca $ Spread	0.0070	0.0126
Time-weighted Consolidated Spread^	0.7520	2.0306
Time-weightedConsolidated $ Spread	0.0015	0.0069
NYSE Arca Regular Hours Share, no auctions	0.0344 .	0.0190
NYSE Arca Full Day Share	0.0132	0.0191
TRF Regular Hours Share, no auctions	0.0304	0.0439
TRF Full Day Share	0.0198	0.0435
Trade-to-trade price change	0.0458	0.7037

^ - Spreads in basis points unless otherwise noted

Significance: *** = 99.9%, ** = 99%, * = 95%, . = 90%

Table 11: DiD Results (Nov. 2013 - Apr. 2014 vs.2017 - 2018)		
Estimated Measure	Estimate	Standard Error
Time-weighted NYSE Arca Spread^	-7.6190 .	4.2070
Time-weighted NYSE Arca $ Spread	-0.0476 *	0.2097
Time-weighted Consolidated Spread^	-1.6891	1.8845
Time-weightedConsolidated $ Spread	-0.0128 .	0.0077
NYSE Arca Regular Hours Share, no auctions	0.0834***	0.0179
NYSE Arca Full Day Share	0.0093	0.0209
TRF Regular Hours Share, no auctions	0.0243	0.0431
TRF Full Day Share	0.0144	0.0426
Trade-to-trade price change	-0.0915	2.5654

^ - Spreads in basis points unless otherwise noted

Significance: *** = 99.9%, ** = 99%, * = 95%, . = 90%

Table 12: Share of Volume Based on Daily VWAP*						
	<$5.00	$5-$10	$10-$25	$25-$50	$50-$100	. $100
TRF Share	52.23%	43.47%	38.98%	34.95%	34.29%	36.86%
NYSE Arca RLP % of CADV	0.14%	0.33%	0.26%	0.15%	0.14%	0.14%

* - Includes all Tape B and Tape C Symbols

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Table 11 details results for the DID analysis comparing the pre-Program period during 2013–2014 with trading in 2017 and 2018. NYSE Arca spreads showed a drop in basis points with 90% significance and in dollars and cents at the 95% level. Consolidated dollar spreads also showed a drop, at the 90% significance level. NYSE Arca regular hours share showed an increase in share at the 99.9% confidence level. This is not surprising since, as noted earlier, the Program achieved about 8% share of NYSE Arca trading during 2017. As discussed below, the more significant drops in dollar-based spreads were expected as the nature of our matching effort, resulting in the selection of stocks that saw price decreases, impacted the spread calculations, and also may have impacted the NYSE Arca regular hours share.

As Table 12 shows, lower priced stocks tend to more likely trade on the TRF as well as in the Program. Even with the large share increase in NYSE Arca, TRF share also rose, highlighting the impact of the out-of-sample matching criteria. Spreads in basis points fell with 90% confidence on NYSE Arca, while spreads in cents fell with 95% confidence on NYSE Arca, and 90% confidence on a consolidated basis. As noted in the analysis of the NYSE Retail Program, the matching criteria used tends to focus on stocks with price drops, so the Exchange expected to see a fall in currency-based spreads.[60] Unlike the NYSE's experience, however, the price differences were more muted from this matching exercise, which allowed for a small regression-calculated drop in in basis points spreads as well. Average spreads in basis points did increase slightly, both for treatment and control securities.

All Tape B and Tape C Exchange-traded securities were eligible to participate in the program when it launched in 2014. Because of this factor,

[60] *See* Release No. 85160, 84 FR at 5768.

there was not a true control group for the Exchange to employ in its DID analysis. Instead, for purposes of making the Program permanent, the Exchange created an artificial control group and treatment group by identifying a matched sample based on the securities with the highest share of consolidated volume in the Program and matching these securities based on volume weighted average price, time-weighted quoted spread and CADV during the pre-treatment period (subject to the criteria noted above). By necessity, however, the percentage of activity in the Program itself had to be based on the post-treatment period.

This methodology provided several insights and permitted the Exchange to offer a more thorough analysis of the Program's impact. However, the Exchange believes that selection of securities with the highest share of consolidated volume in the Program for the treatment group created a biased treatment group. Securities with lower prices tend to trade more actively in the TRF as well as in the Program (Table 12). The percentage value of on low-price stocks provides greater savings to investors. For example, $0.0010 price improvement per share for a $5.00 stock saves an investor $2.00 per $10,000 invested. The same per share price improvement on a $50 stock is worth just $0.20. Table 12 shows this relationship for the 2017–2018 treatment period used in the analysis for securities eligible for the Program.

Tables 13 and 14 provide details of the changes in VWAPs, dollar-based and basis points-based spreads for both the early comparison period and the late comparison period. As shown by the last two columns in Table 13, there was virtually no difference in spreads or VWAPs both pre- and post-treatment during the early comparison period. However, in the case of the treated 2017–2018 study, when compared to November 2013–April 2014 pre-treatment period, there was an average price increase in control securities of 42%, compared to a drop of 14% for the treated stocks. This resulted in a small drop in dollar spreads and an increase in spreads in basis points for the treated stocks, while control stocks saw a small increase in percentage spreads and a larger rise in dollar spreads. Additionally, several of the treatment securities had average spreads during the pre-period near $0.01, the minimum, meaning a price drop was reflected solely in the spreads calculated in basis points and these stocks were tick-constrained.

In conclusion, the Exchange believes that the Program was a positive experiment in attracting retail order flow to a public exchange. The order flow the Program attracted to the Exchange provided tangible price improvement to retail investors through a competitive pricing process unavailable in non-exchange venues. As such, despite the low volumes, the Exchange believes that the Program satisfied the twin goals of attracting retail order flow to the Exchange and allowing such order flow to receive potential price improvement. Moreover, the Exchange believes that the data collected during the Program supports the conclusion that the Program's overall impact on market quality and structure was not negative. Although the results of the Program highlight the substantial advantages that broker-dealers retain when managing the benefits of retail order flow, the Exchange believes that the level of price improvement guaranteed by the Program justifies making the Program permanent. The Exchange accordingly believes that the pilot Program's rules, as amended, should be made permanent.

The Exchange notes that the proposed change is not otherwise intended to address any other issues and the Exchange is not aware of any problems that member organizations would have in complying with the proposed rule change.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[61] in general, and Section 6(b)(5) of the Act,[62] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposal is consistent with these principles because it seeks to make permanent a pilot and associated rule changes that were previously approved by the Commission as a pilot for which the Exchange has subsequently provided data and analysis to the Commission, and that this data and analysis, as well as the further analysis in this filing, shows that the Program has operated as intended and is consistent with the Act. The Exchange also believes that the proposed rule change is consistent with these principles because it would increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. Furthermore, as noted, similar programs instituted by NYSE and Nasdaq BX have recently been approved by the Commission to operate on a permanent basis.[63] The Exchange believes that its analysis, as well as the analysis conducted by NYSE and Nasdaq BX in their proposals for permanent approval, show that retail price improvement programs do not negatively impact market structure, and can therefore provide benefits to retail investors without negatively impacting the broader market.

The Exchange also believes the proposed rule change is designed to facilitate transactions in securities and to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because making the Program permanent would attract retail order flow to a public exchange and allow such order flow to receive potential price improvement. The data provided by the Exchange to the Commission staff demonstrates that the Program provided tangible price improvement to retail investors through a competitive pricing process unavailable in non-exchange venues and otherwise had an insignificant impact on the marketplace. The Exchange believes that making the Program permanent would encourage the additional utilization of, and interaction with, the NYSE and provide retail customers with an additional venue for price discovery, liquidity, competitive quotes, and price improvement. For the same reasons, the Exchange believes that making the Program permanent would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market.

Additionally, the Exchange believes the proposed rule change is designed to facilitate transactions in securities and to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because the competition promoted by the Program facilitates the price discovery process and potentially generates additional investor interest in trading securities. Making the Program permanent will allow the Exchange to continue to provide the Program's benefits to retail investors on a

[61] 15 U.S.C. 78f(b).

[62] 15 U.S.C. 78f(b)(5).

[63] *See* note 13, *supra*. As also noted above, the Commission also recently approved a third exchange's retail liquidity program that had not been previously approved on a pilot basis. *See* note 14, *supra*.

permanent basis and maintain the improvements to public price discovery and the broader market structure. The data provided to the Commission demonstrates that the Program provided tangible price improvement and transparency to retail investors through a competitive pricing process.

For the reasons stated above, the Exchange believes that making the Program permanent would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market.

Finally, as described further below in the Exchange's statement regarding the burden on competition, the Exchange also believes that it is subject to significant competitive forces and it would increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors.

For all of these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that making the Program permanent would continue to promote competition for retail order flow among execution venues. The Exchange also believes that making the Program permanent will promote competition between execution venues operating their own retail liquidity programs, including competition between the Program and similar programs currently operated by NYSE and Nasdaq BX on a permanent basis pursuant to a recently approved rule changes. Such competition will lead to innovation within the marketplace, thereby increasing the quality of the national market system and allowing national securities exchanges to compete both with each other and with off-exchange venues for order flow. Such competition ultimately benefits investors, and in this case specifically retail investors by providing multiple potential trading venues for the execution of their order flow, consistent with the principles of Regulation NMS, which was premised on promoting fair competition among markets. Finally, the Exchange notes that it operates in a highly competitive market in which market participants can easily direct their orders to competing venues, including off-exchange venues. In such an environment, the Exchange must continually review, and consider adjusting the services it offers and the requirements it imposes to remain competitive with other U.S. equity exchanges.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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–NYSEArca–2019–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–63. 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 offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2019–63, and should be submitted on or before October 1, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[64]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19458 Filed 9–9–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86865; File No. SR–NYSE–2019–46]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend the Exchange's Price List Related to Co-Location Services

September 4, 2019.

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 August 22, 2019, New York Stock Exchange LLC (''NYSE'' 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

[64] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Price List related to co-location services to provide access to NMS feeds. 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 Exchange proposes to amend the Price List related to co-location [4] services offered by the Exchange to provide Users [5] with an alternate, dedicated network connection to access the NMS feeds for which the Securities Industry Automation Corporation (''SIAC'') is engaged as the securities information processor (''SIP'').[6]

As described below, today Users can connect to Regulation NMS equities and options feeds [7] disseminated by the SIP using either of the co-location local area networks. Users do not pay an additional charge to connect to the NMS feeds: It comes with their connection to the local area network.

The Exchange has recently been authorized to build a new network in the Mahwah data center (the ''NMS network'') that will only connect to the NMS feeds. The new network will connect to the NMS feeds faster than either of the existing local area networks. The Exchange believes that under most circumstances, none of the Users that currently connect to the NMS feeds will have to pay any additional fees to connect to the NMS network. As described in detail below, there are limited circumstances when a User may incur a unique fee to connect to the NMS network. However, the Exchange does not expect to earn net revenue from any such fees for connecting to the NMS network.

As explained in more detail below, the Exchange proposes to amend the General Notes to provide that:

a. Users will have the option to use the NMS network or either of the existing local area networks to connect to the NMS feeds.

b. For each connection a User and its Affiliates have to the local area networks, the User and its Affiliates, together, will get a free connection to the NMS network, subject to a maximum limit of eight, so long as the User meets the requirements set forth below.

c. If a User wants to separately purchase an NMS network connection, it would pay the same fee as the same-sized 10 Gigabit (''Gb'') or 40 Gb internet protocol (''IP'') network circuit.

Subject to approval of this proposed rule change, the Exchange proposes to implement the rule change on the first day of the month after the NMS network is available. The Exchange will announce the implementation date through a customer notice.

Background

The Exchange's affiliate, SIAC, is engaged as the SIP for three separate Regulation NMS plans (collectively, the ''NMS Plans'').[8] SIAC operates as the SIP for the NMS Plans in the same data center where the Exchange and its Affiliate SROs operate. In that data center, Users can access SIAC as the SIP over the same network connections through which they access other services. Specifically, a User can access the SIAC SIP environment via either the IP network or the Liquidity Center Network (''LCN''), which are the local area networks in the data center.[9]

The Exchange offers Users connectivity to the SIAC SIP environment at no additional charge when a User purchases access to the LCN or IP network.[10] On the Price List, the SIAC feeds are referred to as the ''NMS feeds.'' As described in General Note 4 of the Price List, when a User purchases access to the LCN or IP network, it receives connectivity to certain market data products (the ''Included Data Products'') that it selects, subject to technical provisioning requirements and authorization from the provider of the data feed. The NMS feeds are included in the list of the Included Data Products that come with connections to the LCN or IP network. The remaining Included Data Products are proprietary feeds of the Exchange, its Affiliate SROs, and the Exchange's affiliate NYSE Chicago, Inc. (''NYSE Chicago'' and together with the Exchange and Affiliate SROs, the ''NYSE Exchanges'').

A User that purchases access to the LCN or IP network also receives the ability to access the trading and execution systems of the NYSE Exchanges (the ''Exchange Systems'') and the trading and execution systems of OTC Global, an alternative trading

[4] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), and NYSE National, Inc. (''NYSE National'' and together, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59).

[6] *See* Securities Exchange Act Release No. 79730 (January 4, 2017), 82 FR 3045 (January 10, 2017) (SR–NYSE–2016–92).

[7] The NMS feeds include the Consolidated Tape System and Consolidated Quote System data streams, as well as Options Price Reporting Authority (''OPRA'') feeds. *See id.*

[8] SIAC has been engaged as the SIP to, among other things, receive, process, validate and disseminate: (1) Last-sale price information in Tape A and Tape B-listed securities pursuant to the CTA Plan (''CTA Plan''), which is available here: *https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CTA%20Plan%20-%20Composite%20as%20of%20August%2027,%202018.pdf;* (2) quotation information in Tape A and B-listed securities pursuant to the CQ Plan (''CQ Plan''), which is available here: *https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CQ_Plan_Composite_as_of_July_9_2018.pdf;* and (3) quotation and last-sale price information in all exchange options trading pursuant to the OPRA Plan (''OPRA Plan''), which is available here: *https://uploads-ssl.webflow.com/5ba40927ac854d8c97bc92d7/5bf419a6b7c4f5085340f9af_opra_plan.pdf.*

[9] *See* 82 FR 3045, note 6, *supra.*

[10] As set forth on the Price List, the Exchange offers a range of LCN and IP network connectivity options at different rates depending on the bandwidth and latency profile of the applicable network.

system (''ATS''), subject, in each case, to authorization by the relevant entity.[11]

Accordingly, without paying an additional connectivity fee, a User that purchases access to either the LCN or IP network can use such network to:

1. Access the trading and execution services of five registered exchanges (five equities markets, two options markets, and a fixed income market) and an ATS;

2. Connect to the market data of five registered exchanges (five equities exchanges, two options markets, and a fixed income market); and

3. Connect to the NMS feeds.

A User may connect to the NMS feeds through the IP network or LCN. Until recently the operating committee for the CTA and CQ Plans (''CTA/CQ Plans'') mandated use of the IP network to access the NMS feeds.[12] As a result, all LCN connections to the NMS feeds go through the IP network before reaching the NMS feeds,[13] and so using the LCN to connect to an NMS feed is slower than using the IP network.[14]

Alternate, Dedicated Network Connection for NMS Feeds

As the SIP for the NMS Plans, SIAC continually assesses the services it provides and has been working with the operating committees of the NMS Plans and the industry-based advisory committee to the CTA/CQ Plans to identify potential performance enhancements. Among other initiatives, this group identified that, because the IP network was not designed as a low-latency network, the requirement to use the IP network to access the NMS feeds introduces a layer of latency.

To reduce network latency, the Exchange sought and received approval from the operating committees for the CTA/CQ Plans to build an alternate to the LCN and IP network to connect to the NMS feeds.[15] As approved by the CTA/CQ Plans, the Exchange is building a low-latency network in the data center that will provide Users with dedicated access to the NMS feeds (the ''NMS network'').[16]

The Exchange currently anticipates that the low-latency network will have a one-way reduction in latency to access the NMS feeds from the IP network and LCN of over 140 microseconds.

Connections to the NMS network will be available in 10 Gb and 40 Gb circuits. Because the NMS network will be an alternate network to access the NMS feeds, once it is available, Users would have the choice between continuing to use the LCN or IP network to connect to NMS feeds or switching to the NMS network.

Proposed Amendments to the Price List

The proposed fee structure for the NMS network has been designed so that, in most cases, a User would not have any new or different charges if it opts to connect to the NMS network compared to what it would be charged if it chooses to continue to use its LCN or IP network circuit to connect to the NMS feeds. At the same time, the proposed fees are designed to promote the efficient use of the NMS network so that Users do not subscribe to more NMS network connections than are necessary.

Options To Connect to the NMS Feeds

As noted above, Users that purchase access to the LCN or IP Network currently can use such networks to connect to the NMS feeds. The Exchange proposes to add text to the General Notes stating that a User authorized to receive connectivity to one or more NMS feeds may request to connect to the NMS feeds via the NMS network.

No Fee NMS Network Connections

The Exchange proposes to amend the Price List to state that if a User purchases access to the LCN or IP network and requests a connection to the NMS network, that User and its Affiliates, taken together, would not be charged for up to eight corresponding NMS network connections (each, a ''No Fee NMS Network Connection'') if such User, together with its Affiliates, purchases access to an LCN or IP network and:

1. Designates no more than four No Fee NMS Network Connections as corresponding to the LCN connections of the User, together with its Affiliates, on a one-to-one basis;

2. designates no more than four No Fee NMS Network Connections as corresponding to the IP network connections of the User, together with its Affiliates, on a one-to-one basis;

3. does not use the LCN or IP network connections that correspond to No Fee NMS Network Connections to access the NMS feeds; and

4. each of the No Fee NMS Network Connections is of equal size or smaller than the associated LCN or IP network connection purchased by it or its Affiliates.[17]

For example, if a User that has no Affiliates currently purchases three 40 Gb LCN circuits and two 10 Gb IP network circuits, and is authorized to access the NMS feeds through all five of these circuits, under the proposal, such User would not be charged any additional fees for up to three 40 Gb NMS network circuits and two 10 Gb NMS network circuits. If such User chooses to use all five corresponding NMS network connections, it would no longer be provided access to the NMS feeds over the three 40 Gb LCN circuits and the two 10 Gb IP network circuits.

Because the Exchange proposes that the number of No Fee NMS Network Connections would be applicable to both a User and its Affiliates, the Exchange proposes to amend the Price List to specify how a User must certify whether any other Users or Hosted Customers are Affiliates of the certificating User. As proposed, the certificating User would be required to inform the Exchange immediately of any event that causes another User or Hosted Customer to become an Affiliate. The Exchange would review available information regarding the entities and may request additional information to verify the Affiliate status of a User or Hosted Customer. The Exchange would provide No Fee NMS Network Connections to the certificating User unless it determines that the certification is not accurate.

[11] *See* 82 FR 3045, note 6, *supra,* and Securities Exchange Release No. 85952 (May 29, 2019), 84 FR 25884 (June 4, 2019) (SR–NYSE–2019–31). Information regarding the Included Data Products is currently set forth in the second paragraph of General Note 4. The Exchange proposes to split General Note 4 so that the discussion regarding Included Data Products will form General Note 5.

[12] The Operating Committee of the CTA/CQ Plans mandated the use of the IP network to access the NMS feeds because the IP network was built as a secure network designed for resiliency and redundancy.

[13] By contrast, the LCN does not connect to the IP network for access to the Exchange Systems or connectivity to the other Included Data Products.

[14] A User that uses the LCN to connect to an NMS feed does not need to separately purchase an IP network connection.

[15] The alternate network to access the NMS feeds will not be available outside of the data center.

[16] Because SIAC, as the SIP for the NMS Plans, is also responsible for collecting data from the participants of the CTA/CQ Plans and members of the OPRA Plan, Users that are participants of the applicable NMS Plans could use this alternate network connection for purposes of both transmitting and receiving data. Users that are not participants of the NMS Plans could use this alternate network connection for purposes of receiving data. This alternate network would not be available to connect to the other Included Data Products or to access the Exchange Systems or Global OTC.

[17] An ''Affiliate'' of a User would be any other User or Hosted Customer that has 50% or greater common ownership or control of the first User. A ''Hosted Customer'' means a customer of a Hosting User that is hosted in a Hosting User's co-location space, and a ''Hosting User'' means a User of co-location services that hosts a Hosted Customer in the User's co-location space. Such definitions are set forth in the Price List under ''Definitions.'' *See* Securities Exchange Act Release No. 77072 (February 5, 2016), 81 FR 7394 (February 11, 2016) (SR–NYSE–2015–53).

In addition, a User that has one or more NMS network connections may become affiliated with one or more other Users or Hosted Customers such that the User and its Affiliates would together exceed the limit of No Fee NMS Network Connections. In such case, for each NMS network connection that exceeds the limit of No Fee NMS Network Connections, the Exchange would charge the User for each NMS network connection at the same rate as it charges for an IP network connection of the same size. Such change would be effective as of the date that the User became affiliated with the other Users or Hosted Customers, as applicable.

This proposed rule text relating to how a User and its Affiliates would be charged in connection with the No Fee NMS Network Connections is based on text in General Note 2 relating to how a User must certify Affiliates in connection with the Partial Cabinet Solution bundle.[18]

Purchasing NMS Network Connections

In addition to the No Fee NMS Network Connections, the Exchange proposes that a User may purchase an NMS network connection. Accordingly, the Exchange proposes to add text to the Price List stating that a User may purchase an NMS network connection at the same fee as the same-sized 10 Gb or 40 Gb IP network circuits.[19]

Circumstances when a User would have to separately purchase an NMS network connection could include if such User:

1. Has not purchased access to the LCN or IP network and would like to connect to the NMS network;

2. has purchased access to the LCN or IP network and would like NMS network connections in excess of the number of No Fee NMS Network Connections that correspond to its LCN or IP network connections;[20] or

3. would like to use its LCN or IP network connections to continue to access the NMS feeds.

Expected Application of the Proposed Change

Currently, 48 Users connect to NMS feeds through connections to the LCN and IP networks (the ''Current Users''). The Exchange expects the number of Users connecting to the NMS feeds in the future to remain relatively constant with the number of Current Users, although it could increase or decrease with time. The fee will apply in the same manner to all Users, irrespective of what type or size of market participant they are.

The Range of Potential Fees

Depending on how a User chooses to connect, a User would pay for a connection to the NMS network between $0 and $18,000 per connection per month. More specifically, a User that utilizes a No Fee NMS Network Connection to connect to the NMS network would pay no initial fee or MRC. A User that does not utilize a No Fee NMS Network Connection would pay the same fee as the same-sized 10 Gb or 40 Gb IP network circuit. For the 10 Gb option, that would be a $10,000 initial charge and a $11,000 MRC per connection. For the 40 Gb option, that would be a $10,000 initial charge and a $18,000 MRC per connection.

As noted above, the Exchange believes that none of the Current Users will have to pay to connect to the NMS network, and so the $11,000 and $18,000 MRCs are largely theoretical. Based on a review of the Current Users' LCN and IP network connections, with two exceptions, the number of No Fee NMS Network Connections will be more than sufficient for such Users to maintain their current connections to the NMS network at no additional cost. Accordingly, the majority of Current Users would be able to opt to connect to the NMS network without any additional charges.

The exceptions are two Current Users that use more than four connections to the IP network and/or four connections to the LCN to connect to the NMS feeds. If these Users obtain an equal number of connections to the NMS network, the number of their connections to the NMS network would exceed their number of No Fee NMS Network Connections. As a result, they would have to pay for the excess NMS network connections. However, based on conversations with these two Users, the Exchange understands that they intend to optimize their connections by only using their No Fee NMS Network Connections to connect to the NMS feeds and would not need to purchase any additional NMS network connections. Accordingly, since they do not anticipate requiring NMS network connections in excess of the No Fee NMS Network Connections, the Exchange believes that they will not incur any additional cost. For this reason, the Exchange believes that providing up to eight free connections to the NMS network, each corresponding to a purchased connection of equal or larger size to the LCN or IP network, would meet the needs of the Current Users.

Based on the Exchange's review of Users' current numbers of connections to the LCN and IP network, the Exchange believes that the majority of Users that want access to the NMS feeds in the future would be able to meet their bandwidth needs for the NMS network with the proposed No Fee NMS Network Connections, and so are unlikely to incur any cost above their costs for accessing the LCN or IP network.

The Exchange's proposal to require a User to purchase access to the NMS network if it does not also purchase access to the LCN or IP network, or if it has connections to the LCN and IP network but wants a number of NMS network connections in excess of its No Fee NMS Network Connections, would not impose any new or different charges for such User. For example:

- Currently, if a User needs to connect to only the NMS feeds (and does not need that network connection to access the Exchange Systems or to connect to the other Included Market Data), such User must purchase access to either the LCN or IP network at the published rates on the Price List.
- As proposed, once the NMS network becomes available, such User would still need to purchase a network connection to connect to the NMS feeds, but will have a greater choice because it could opt to connect via the low-latency, dedicated NMS network instead of using the IP network. Access to the NMS network would be charged at the same rate as published rates for access to the IP network.

As another example:

- Currently, if a User needs (a) two connections to the LCN to meet its bandwidth needs to access the Exchange Systems and connect to Included Market Data, including the NMS feeds, and (b) an additional connection to the LCN or IP network to meet additional bandwidth needs to connect to NMS feeds, it would purchase a total of three network connections: Two LCN connections (to provide access to the Exchange Systems and connect to the Included Market Data) and one IP network connection (to provide connectivity only to the NMS feeds).
- As proposed, once the NMS network is available, such User could still purchase two connections to the LCN for its non-NMS feed needs, and

[18] *See id.*

[19] As set forth on the Price List, IP network access is: (1) $10,000 per connection initial charge and a $11,000 monthly recurring charge (''MRC'') per connection for a 10 Gb Circuit; and (2) $10,000 per connection initial charge and a $18,000 MRC for a 40 Gb Circuit.

[20] For example, if a User had four connections to the LCN and three connections to the IP network, those connections would correspond to seven No Fee NMS Network Connections. If the User wanted ten NMS network connections, it would receive seven at no fee and would pay for three.

could opt to use two No Fee NMS Network Connections of the same or smaller bandwidth that correlate to such LCN connections. To meet its additional bandwidth needs to connect to the NMS feeds, such User could now opt to purchase a connection to either the NMS network or the IP network at the same price. In either case, the User would be purchasing a total of three network connections (but receiving five connections) and would be charged at the same rates as are currently charged under the Price List.

In both of the above examples, a User that opts to purchase access to the NMS network instead of to the IP network to connect to the NMS feeds would receive a lower-latency connection than the IP network connection, for the same charge. The Exchange therefore believes that in the above-described circumstances, the proposed fees would be cost-neutral as compared to the current Price List, with the additional benefit that the User would have the option to select a lower-latency, dedicated network connection.

The Limitation on the Number of No Fee NMS Network Connections

As described above, the Exchange believes that the majority of Users would be able to meet their bandwidth needs for the NMS network with the proposed No Fee NMS Network Connections. The Exchange further believes that without the proposed limit on number of No Fee NMS Network Connections, Users may opt to connect to NMS network connections on a one-for-one basis for each LCN or IP network connection that they have purchased, even if such LCN or IP network connections are not currently used to access the NMS feeds. In such case, the Exchange does not believe that more than eight NMS network connections would be necessary or in furtherance of the User's needs to connect to the NMS feeds. To discourage Users from requesting more NMS network connections than they need, the Exchange proposes to charge for any NMS network connections in excess of the proposed limit of No Fee NMS Network Connections.

Similarly, the Exchange believes that if a User chooses to connect to the NMS feeds via both an LCN or IP network connection and an associated NMS network connection, that User would be receiving two separate network connections to access the NMS feeds. This would double its bandwidth available to access the NMS feeds and the Exchange believes that such User should be charged accordingly. The Exchange further believes it would promote efficient use of resources to charge for the NMS network connection in these circumstances because there would be operational costs for the Exchange to support access to both the NMS network and the LCN or IP networks at the same time. Stated otherwise, the Exchange is concerned that if the NMS network connections are free without any limits, Users may seek so many connections that it would increase both capital and operational expenses for the Exchange.

Defraying the Cost of Building the NMS Network

In addition to promoting the efficient use of NMS network connections, charging for NMS network connections under the limited circumstances described above may also defray the costs associated with implementing the NMS network. As described above, SIAC is the SIP for the NMS plans and is reimbursed for specified direct costs by the participants to the NMS Plans.[21] Even though the NMS network would connect only to the NMS feeds, the Exchange has agreed not to seek reimbursement of the costs to build the NMS network from the participants of the respective NMS Plans.

The one-time capital expenditure for the implementation of the NMS network will be approximately $3.8 million, which includes procurement of new low-latency network switches, network devices, and analytics tools and the one-time operational expenditures to build this new network. The estimate is based on the hardware that would be necessary to support the Current Users' present configurations if they replaced their LCN or IP network connections to the NMS feeds with NMS network connections, with some room for additional growth. If Users were to request NMS network connections in excess of the estimated number of connections, the Exchange would have to procure additional hardware, which would be an additional cost. In addition to these one-time implementation costs, the Exchange estimates that the ongoing cost to maintain and operate the dedicated NMS network will be approximately $215,000 annually.

The Exchange cannot predict with certainty what User behavior will be once the NMS network is available. As discussed above, based on current usage of the LCN and IP network, the Exchange anticipates that all Current Users will be able to connect to the NMS feeds without any new or different charges. The Exchange expects that some Users may even reduce the total number of circuits that they purchase because they will be able to obtain up to eight connections to the NMS network at no charge. Those No Fee NMS Network Connections will free up bandwidth over their LCN or IP network connections, allowing them to reduce the total number of LCN or IP network connections that they purchase.

Although the Exchange believes that none of the Current Users will have to pay additional fees to connect to the NMS network, the Exchange cannot fully anticipate User behavior once the NMS network is available. Some Current Users, or new Users, may elect to purchase NMS network connections in excess of the proposed limit on the number of No Fee NMS Network Connections, for which they would pay a charge. Given that, the Exchange has done an analysis of what would occur if Users request five unique new NMS network connections that are not No Fee NMS Network Connections. Assuming that such Users purchase 40 Gb NMS network circuits, these five new connections would result in $1,130,000 in revenue: $50,000 in initial charges and $1,080,000 in MRC. This revenue would likely be offset either in part or in whole by Users, including Current Users, reducing the total number of LCN or IP network circuits that they purchase. The Exchange could even experience a net decline in revenue as a result of the proposed commercial terms for the NMS network.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;[22] and (iii) a User would only incur one charge for the particular co-

[21] SIAC is reimbursed either directly (under the CTA/CQ Plans, participants reimburse SIAC directly) or indirectly (under the OPRA Plan, OPRA LLC reimburses SIAC).

[22] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[23]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[25] in particular, because 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 regulating, clearing, settling, processing information with respect to, and 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[26] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Would Remove Impediments to and Perfect the Mechanism of a Free and Open Market and a National Market System

The Exchange believes that the proposed change to establish access to the NMS network as a service available in co-location would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering access to the dedicated, low-latency NMS network, the Exchange will be providing Users with an additional option to connect to the NMS feeds. Until recently, SIAC was required to provide connectivity to the NMS feeds via only the IP network. As recently approved by the operating committees for the CTA/CQ Plans, SIAC is now authorized to offer connectivity to the NMS feeds in the data center via an alternate, dedicated, low-latency NMS network. The proposed NMS network has been designed consistent with this directive and will provide greater choice to Users that are seeking a low-latency network to connect to the NMS feeds.

The Proposed Rule Change Is Reasonable

As an initial matter, as required by Rule 603(b) of Regulation NMS, SIAC disseminates quotation and transaction information as the single plan processor for all Tape A and Tape B-listed securities and is also the single plan processor for all options exchanges. As the single plan processor, the pricing decisions relating to the dedicated NMS network are not constrained by competitive market forces.

Instead, as described above, the Exchange is funding the capital and operational expenses to build and operate the NMS network. Those implementation costs are applicable only to the NMS network, which will be used for the sole purpose of providing access to the NMS feeds. Simply put, none of the implementation costs are applicable to any other Exchange services. The Exchange has based its procurement needs—which correlate to the Exchange's estimated costs to build the NMS network—based on the Current Users' usage of the LCN or IP networks to connect to the NMS feeds, with some room for additional growth.

The Exchange believes that the proposed charges would be reasonable because such charges would defray the estimated costs the Exchange will incur to build and operate the NMS network. As described above, the proposed NMS network will be a dedicated, low-latency network that will provide access only to the NMS feeds. Because LCN and IP network fees on the Price List relate to charges for services either other than or in addition to connectivity to the NMS feeds, the Exchange currently does not assess any fees that are specific to connectivity to the NMS feeds. The proposed charges for access to the NMS network are designed to defray the specific costs that the Exchange will incur to build and maintain the infrastructure for the NMS network. As described above, the Exchange's capital expenditure costs for the build are estimated to be $3.8 million, which includes procurement of new low-latency network switches, network devices, and analytics tools and the one-time operational expenditures to build this new network. The estimate is based on the hardware that would be necessary to support the Current Users' present configurations if they replaced their LCN or IP network connections to the NMS feeds with NMS network connections, with some room for additional growth. If Users were to request NMS network connections in excess of the estimated number of connections, the Exchange would have to procure additional hardware, which would be an additional cost. In addition to this initial estimated approximately $3.8 million outlay, the Exchange anticipates that the ongoing costs to maintain and operate the NMS network will be approximately $215,000 annually.

The Exchange further believes that these proposed fees would be reasonable because unnecessary connections would impose a burden on the infrastructure that would be shared by all Users.

As stated above, the Exchange believes that the Current Users will use No Fee NMS Network Connections for the NMS network, and as a consequence, none of the Current Users will have to pay to connect to the NMS network. However, the Exchange cannot fully anticipate User behavior once the NMS network is available. Some Current Users, or new Users, may elect to purchase NMS network connections in excess of the proposed limit on number of No Fee NMS Network Connections, for which they would pay a charge. Given that, the Exchange has done an analysis of what would occur if Users request five unique NMS network connections that are not No Fee NMS Network Connections. Assuming that such connections were the larger size of 40 Gb, these five new connections would result in $1,130,000 in revenue: $50,000 in initial charges and $1,080,000 in MRC. But new revenue does not necessarily translate into net revenue gain.

First, the Exchange anticipates that once the NMS network is available, Users may lower the number of LCN or IP network connections that they purchase, offsetting any unique new charges and possibly leading to a net decline in revenues. Second, even if the Exchange assumes new revenue of $1,130,000 per year, such revenue would not fully offset the cost of building and maintaining the NMS network. Rather, the proposed charges, to the extent they would correlate to new revenue, would merely defray the costs that the Exchange will incur to build and support additional capacity for the NMS network. Assuming revenue equal to the MRCs, *i.e.* $1,080,000 per year, it would take four years before such revenue would fully offset the initial fixed costs to build the

[23] *See* 78 FR 51765, *supra* note 5, at 51766. NYSE American, NYSE Arca and NYSE National have submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEAmer–2019–34, SR–NYSEArca–2019–61, and SR–NYSENAT–2019–19.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78f(b)(4).

NMS network. The Exchange generally refreshes network hardware after three or four years, as such hardware has a limited life. Accordingly, the Exchange expects that it will incur substantial new costs to refresh the NMS network after three or four years. As a result, even after the initial fixed costs are offset, the MRC revenue will not necessarily cover the variable, ongoing costs to maintain and refresh the NMS network. If the revenue were to be a net gain, the Exchange does not believe such revenues would cover all the fixed costs that the Exchange would incur to refresh the network hardware or add additional infrastructure to meet Users' needs. Any revenue would assist with defraying the sizable investment needed to create the NMS network, but in the end the Exchange does not expect additional net revenues.

The Proposed Rule Change Is an Equitable Allocation of Fees

The Exchange believes that the proposed fee change is equitably allocated for multiple reasons.

The No Fee NMS Network Connection Is an Equitable Allocation of Fees

As described above, the proposed fee structure for the NMS network has been designed so that the majority of Users would not have any new or different charges if they opt to connect to the NMS network. Rather, Users will have a choice whether to use an IP network, LCN or NMS network connection to connect to the NMS feeds. The cost to purchase a NMS network connection would be the same as an IP network connection of the same size. A User that voluntarily chooses to exercise the choice to connect with the NMS network would receive the benefit of a low-latency connection without any additional charges.

More specifically, the Exchange proposes that if a User purchases access to the LCN or IP network and requests a connection to the NMS network, it, together with its Affiliates, will not be charged for up to eight corresponding No Fee NMS Network Connections. Such User, together with its Affiliates, will be entitled to a No Fee NMS Network Connection for each of the first four LCN or IP network connections that it purchases, so long as they meet the requirements sets forth above. A User that utilizes its No Fee NMS Network Connections to connect to the NMS network would have no or different charges.

The Exchange believes that the proposed limit on the number of No Fee NMS Network Connections would be equitably allocated because it is based on the number of LCN or IP network connections that Users currently purchase to connect to the NMS feeds. As noted above, based on a review of the Current Users' LCN and IP network connections and conversations with two of the Current Users, the Exchange believes that none of the Current Users will have to pay more to connect to the NMS network, and Users that want access to the NMS feeds in the future are unlikely to have to pay for their NMS network connections.

The Application of the Proposed Rule Change to Affiliates Is an Equitable Allocation of Fees

The Exchange likewise believes it would be equitable to apply the proposed limit on the number of No Fee NMS Network Connections to Users taken together with their Affiliates because all Users seeking to connect to NMS feeds using NMS network connections would be subject to the same parameters. The proposal avoids disparate treatment of Users that have divided their various business activities between separate corporate entities, as compared to Users that operate those business activities within a single corporate entity. It would discourage any User from taking deliberate advantage of the proposed connections to the NMS network by setting up separate corporate entities to act as Users, thereby obtaining more connections than allowed by the proposed limit on No Fee NMS Network Connections. The Exchange believes that using the existing definitions of Affiliate, Hosted Customer, and Hosting User is an equitable allocation of fees because it would promote consistency and clarity for Users.

The Proposed Charge for NMS Networks Is an Equitable Allocation of Fees

The Exchange believes that charging the same rate for accessing the NMS network as is currently charged for accessing a same-sized IP network connection for Users who do not also purchase an LCN or IP network connection or who have connections to the LCN and IP network but want a number of NMS network connections in excess of its No Fee NMS Network Connections, would be equitably allocated because a User that currently seeks to connect to the NMS feeds must pay, at a minimum, the charges for access to the IP network. With the addition of the NMS network, Users will have a choice to either continue using an IP network connection or instead connect via the NMS network to connect to the NMS feeds. Users that choose to connect via the NMS network will receive the benefit of a low-latency network as compared to access to the IP network at the same price as the access to the IP network.

To the extent a User may be subject to charges in addition to what they would be paying under the current Price List, *e.g.,* if a User needed more access to the NMS network than their allocated number of No Fee NMS Network Connections or if they wanted to continue to use the LCN or IP network to connect to the NMS feeds, the Exchange believes that the proposed charges would be equitably allocated because such charges would encourage efficient use of the NMS network and discourage Users to subscribe to more NMS network connections.

Current Users do not necessarily use all of their connections to the IP network and LCN to connect to the NMS feeds. If the Exchange were to provide them with an equal number of No Fee NMS Network Connections without any limitations on the number, the Current Users would have no incentive to make efficient decisions regarding the number of NMS network connections they had, and the Exchange would need to incur additional costs to support the infrastructure necessary to support those additional NMS network connections. In addition, Users would bear the burden of any unnecessary connections because of the strain on the infrastructure shared by all Users that access the NMS network. The Exchange believes that by charging for any connections to the NMS network in excess of the allocated number of No Fee NMS Network Connections, it will motivate Users to make rational decisions based on how many NMS network connections they need, rather than because they are simply available. These fees are therefore reasonable and not unfairly discriminatory because they will reduce the burden on all Users accessing the NMS network.

Finally, the Exchange believes that access to the proposed NMS network and related commercial terms would be equitably allocated because, in addition to access to the NMS network being completely voluntary, it would be available to all Users on an equal basis (*i.e.,* the same access would be available to all Users). All Users that voluntarily selected to receive access to the NMS network would be charged the same amount for the same service.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed fee change is not unfairly discriminatory for multiple reasons.

The No Fee NMS Network Connection Is Not Unfairly Discriminatory

As described above, the proposed fee structure for the NMS network has been designed so that the majority of Users would not have any new or different charges if they opt to connect to the NMS network. Rather, all Users will have a choice whether to use an IP network, LCN or NMS network connection to connect to the NMS feeds. The proposed fee therefore does not propose to impose any meaningful differences to different types of Users. Rather, the cost to purchase a NMS network connection would be the same as an IP network connection of the same size, which would be available to all Users on the same terms. Any User that voluntarily chooses to exercise the choice to connect with the NMS network would receive the benefit of a low-latency connection without any additional charges.

More specifically, the Exchange proposes that if a User purchases access to the LCN or IP network and requests a connection to the NMS network, it, together with its Affiliates, will not be charged for up to eight corresponding No Fee NMS Network Connections. Such User, together with its Affiliates, will be entitled to a No Fee Connection for each of the first four LCN or IP network connections that it purchases, so long as they meet the requirements sets forth above. A User that utilizes its No Fee NMS Network Connections to connect to the NMS network would have no new or different charges.

The Exchange believes that the proposed limit on the number of No Fee NMS Network Connections would not be unfairly discriminatory because it is based on the number of LCN or IP network connections that Users currently purchase to connect to the NMS feeds. As noted above, based on a review of the Current Users' LCN and IP network connections and conversations with two of the Current Users, the Exchange believes that none of the Current Users will have to pay more to connect to the NMS network, and Users that want access to the NMS feeds in the future are unlikely to have to pay for their NMS network connections.

The Application of the Proposed Rule Change to Affiliates Is Not Unfairly Discriminatory

The Exchange likewise believes it would not be unfairly discriminatory to apply the proposed limit on the number of No Fee NMS Network Connections to Users taken together with their Affiliates because all Users seeking to connect to NMS feeds using NMS network connections would be subject to the same parameters. The proposal avoids disparate treatment of Users that have divided their various business activities between separate corporate entities, as compared to Users that operate those business activities within a single corporate entity. It would discourage any User from taking deliberate advantage of the proposed connections to the NMS network by setting up separate corporate entities to act as Users, thereby obtaining more connections than allowed by the proposed limit on No Fee NMS Network Connections. The Exchange believes that using the existing definitions of Affiliate, Hosted Customer, and Hosting User would not be unfairly discriminatory because it would promote consistency and clarity for Users.

The Proposed Charge for NMS Networks Is Not Unfairly Discriminatory

The Exchange believes that charging the same rate for accessing the NMS network as is currently charged for accessing a same-sized IP network connection for Users who do not also purchase an LCN or IP network connection or who have connections to the LCN and IP network but want a number of NMS network connections in excess of its No Fee NMS Network Connections, would not be unfairly discriminatory because a User that currently seeks to connect to the NMS feeds must pay, at a minimum, the charges for access to the IP network. With the addition of the NMS network, all Users will have a choice to either continue using an IP network connection or instead connect via the NMS network to connect to the NMS feeds. Users that choose to connect via the NMS network will receive the benefit of a low-latency network as compared to access to the IP network at the same price as the access to the IP network.

To the extent a User may be subject to charges in addition to what they would be paying under the current Price List, *e.g.,* if a User needed more access to the NMS network than their allocated number of No Fee NMS Network Connections or if they wanted to continue to use the LCN or IP network to connect to the NMS feeds, the Exchange believes that the proposed charges would not be unfairly discriminatory because such charges would encourage efficient use of the NMS network and discourage Users to subscribe to more NMS network connections.

Current Users do not necessarily use all of their connections to the IP network and LCN to connect to the NMS feeds. If the Exchange were to provide them with an equal number of No Fee NMS Network Connections without any limitations on the number, the Current Users would have no incentive to make efficient decisions regarding the number of NMS network connections they had, and the Exchange would need to incur additional costs to support the infrastructure necessary to support those additional NMS network connections. In addition, Users would bear the burden of any unnecessary connections because of the strain on the infrastructure shared by all Users that access the NMS network. The Exchange believes that by charging for any connections to the NMS network in excess of the allocated number of No Fee NMS Network Connections, it will motivate Users to make rational decisions based on how many NMS network connections they need, rather than because they are simply available. These fees are therefore not unfairly discriminatory because they will reduce the burden on all Users accessing the NMS network.

Finally, the Exchange believes that access to the proposed NMS network and related commercial terms would not be unfairly discriminatory because, in addition to access to the NMS network being completely voluntary, it would be available to all Users on an equal basis (*i.e.,* the same access would be available to all Users). All Users that voluntarily selected to receive access to the NMS network would be charged the same amount for the same service.

For the reasons above, the proposed changes would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with 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 purposes of the Act. The Exchange believes that the proposed rule change would not impose any burden on competition because it is not designed to address any competitive issues. As described above, SIAC is the single plan processor for Tape A and B equities securities and all options securities and does not currently compete with any other providers for

these processor services. The proposed fee structure for the NMS network would be applied equally among all Users and it is their choice of whether and at what level to subscribe to such services, including whether to connect to the proposed NMS network. Accordingly, the Exchange does not believe that the proposed fee structure would place any Users at a relative disadvantage compared to other Users.

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 within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such 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–NYSE–2019–46 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–NYSE–2019–46. 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–NYSE–2019–46, and should be submitted on or before October 1, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19464 Filed 9–9–19; 8:45 am]

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[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86869; File No. SR–NYSENAT–2019–19]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing of Proposed Rule Change To Amend the Exchange's Price List Related to Co-Location Services

September 4, 2019.

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 August 22, 2019, NYSE National, Inc. (''NYSE National'' 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

The Exchange proposes to amend the Exchange's Price List related to co-location services to provide access to NMS feeds. 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 Exchange proposes to amend the Price List related to co-location[4] services offered by the Exchange to provide Users[5] with an alternate, dedicated network connection to access the NMS feeds for which the Securities Industry Automation Corporation (''SIAC'') is engaged as the securities information processor (''SIP'').[6]

As described below, today Users can connect to Regulation NMS equities and

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Commission in May 2018. *See* Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See id.* at note 9. As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange (''NYSE''), NYSE American LLC (''NYSE American''), and NYSE Arca, Inc. (''NYSE Arca'' and together, the ''Affiliate SROs''). *See id.* at note 11.

[6] *See id.* at 26316.

options feeds[7] disseminated by the SIP using either of the co-location local area networks. Users do not pay an additional charge to connect to the NMS feeds: It comes with their connection to the local area network.

The Exchange has recently been authorized to build a new network in the Mahwah data center (the ''NMS network'') that will only connect to the NMS feeds. The new network will connect to the NMS feeds faster than either of the existing local area networks. The Exchange believes that under most circumstances, none of the Users that currently connect to the NMS feeds will have to pay any additional fees to connect to the NMS network. As described in detail below, there are limited circumstances when a User may incur a unique fee to connect to the NMS network. However, the Exchange does not expect to earn net revenue from any such fees for connecting to the NMS network.

As explained in more detail below, the Exchange proposes to amend the General Notes to provide that:

a. Users will have the option to use the NMS network or either of the existing local area networks to connect to the NMS feeds.

b. For each connection a User and its Affiliates have to the local area networks, the User and its Affiliates, together, will get a free connection to the NMS network, subject to a maximum limit of eight, so long as the User meets the requirements set forth below.

c. If a User wants to separately purchase an NMS network connection, it would pay the same fee as the same-sized 10 Gigabit (''Gb'') or 40 Gb internet protocol (''IP'') network circuit.

Subject to approval of this proposed rule change, the Exchange proposes to implement the rule change on the first day of the month after the NMS network is available. The Exchange will announce the implementation date through a customer notice.

Background

The Exchange's affiliate, SIAC, is engaged as the SIP for three separate Regulation NMS plans (collectively, the ''NMS Plans'').[8] SIAC operates as the SIP for the NMS Plans in the same data center where the Exchange and its Affiliate SROs operate. In that data center, Users can access SIAC as the SIP over the same network connections through which they access other services. Specifically, a User can access the SIAC SIP environment via either the IP network or the Liquidity Center Network (''LCN''), which are the local area networks in the data center.[9]

The Exchange offers Users connectivity to the SIAC SIP environment at no additional charge when a User purchases access to the LCN or IP network.[10] On the Price List, the SIAC feeds are referred to as the ''NMS feeds.'' As described in General Note 4 of the Price List, when a User purchases access to the LCN or IP network, it receives connectivity to certain market data products (the ''Included Data Products'') that it selects, subject to technical provisioning requirements and authorization from the provider of the data feed. The NMS feeds are included in the list of the Included Data Products that come with connections to the LCN or IP network. The remaining Included Data Products are proprietary feeds of the Exchange, its Affiliate SROs, and the Exchange's affiliate NYSE Chicago, Inc. (''NYSE Chicago'' and together with the Exchange and Affiliate SROs, the ''NYSE Exchanges'').

A User that purchases access to the LCN or IP network also receives the ability to access the trading and execution systems of the NYSE Exchanges (the ''Exchange Systems'') and the trading and execution systems of OTC Global, an alternative trading system (''ATS''), subject, in each case, to authorization by the relevant entity.[11]

Accordingly, without paying an additional connectivity fee, a User that purchases access to either the LCN or IP network can use such network to:

1. Access the trading and execution services of five registered exchanges (five equities markets, two options markets, and a fixed income market) and an ATS;

2. Connect to the market data of five registered exchanges (five equities exchanges, two options markets, and a fixed income market); and

3. Connect to the NMS feeds.

A User may connect to the NMS feeds through the IP network or LCN. Until recently the operating committee for the CTA and CQ Plans (''CTA/CQ Plans'') mandated use of the IP network to access the NMS feeds.[12] As a result, all LCN connections to the NMS feeds go through the IP network before reaching the NMS feeds,[13] and so using the LCN to connect to an NMS feed is slower than using the IP network.[14]

Alternate, Dedicated Network Connection for NMS Feeds

As the SIP for the NMS Plans, SIAC continually assesses the services it provides and has been working with the operating committees of the NMS Plans and the industry-based advisory committee to the CTA/CQ Plans to identify potential performance enhancements. Among other initiatives, this group identified that, because the IP network was not designed as a low-latency network, the requirement to use the IP network to access the NMS feeds introduces a layer of latency.

To reduce network latency, the Exchange sought and received approval from the operating committees for the CTA/CQ Plans to build an alternate to the LCN and IP network to connect to the NMS feeds.[15] As approved by the CTA/CQ Plans, the Exchange is building a low-latency network in the data center that will provide Users with dedicated access to the NMS feeds (the ''NMS network'').[16]

[7] The NMS feeds include the Consolidated Tape System and Consolidated Quote System data streams, as well as Options Price Reporting Authority (''OPRA'') feeds.

[8] SIAC has been engaged as the SIP to, among other things, receive, process, validate and disseminate: (1) Last-sale price information in Tape A and Tape B-listed securities pursuant to the CTA Plan (''CTA Plan''), which is available here: *https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CTA%20Plan%20-%20Composite%20as%20of%20August%2027,%202018.pdf;* (2) quotation information in Tape A and B-listed securities pursuant to the CQ Plan (''CQ Plan''), which is available here: *https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CQ_Plan_Composite_as_of_July_9_2018.pdf;* and (3) quotation and last-sale price information in all exchange options trading pursuant to the OPRA Plan (''OPRA Plan''), which is available here: *https://uploads-ssl.webflow.com/5ba40927ac854d8c97bc92d7/5bf419a6b7c4f5085340f9af_opra_plan.pdf.*

[9] *See* 83 FR 26314, note 4, *supra,* at 26315–26316.

[10] As set forth on the Price List, the Exchange offers a range of LCN and IP network connectivity options at different rates depending on the bandwidth and latency profile of the applicable network.

[11] *See* 83 FR 26314, note 4, *supra,* at 26315–26316, and Securities Exchange Release No. 85959 (May 29, 2019), 84 FR 25887 (June 4, 2019) (SR–NYSENat–2019–13). Information regarding the Included Data Products is currently set forth in the second paragraph of General Note 4. The Exchange proposes to split General Note 4 so that the discussion regarding Included Data Products will form General Note 5.

[12] The Operating Committee of the CTA/CQ Plans mandated the use of the IP network to access the NMS feeds because the IP network was built as a secure network designed for resiliency and redundancy.

[13] By contrast, the LCN does not connect to the IP network for access to the Exchange Systems or connectivity to the other Included Data Products.

[14] A User that uses the LCN to connect to an NMS feed does not need to separately purchase an IP network connection.

[15] The alternate network to access the NMS feeds will not be available outside of the data center.

[16] Because SIAC, as the SIP for the NMS Plans, is also responsible for collecting data from the participants of the CTA/CQ Plans and members of the OPRA Plan, Users that are participants of the applicable NMS Plans could use this alternate network connection for purposes of both transmitting and receiving data. Users that are not

Continued

The Exchange currently anticipates that the low-latency network will have a one-way reduction in latency to access the NMS feeds from the IP network and LCN of over 140 microseconds.

Connections to the NMS network will be available in 10 Gb and 40 Gb circuits. Because the NMS network will be an alternate network to access the NMS feeds, once it is available, Users would have the choice between continuing to use the LCN or IP network to connect to NMS feeds or switching to the NMS network.

Proposed Amendments to the Price List

The proposed fee structure for the NMS network has been designed so that, in most cases, a User would not have any new or different charges if it opts to connect to the NMS network compared to what it would be charged if it chooses to continue to use its LCN or IP network circuit to connect to the NMS feeds. At the same time, the proposed fees are designed to promote the efficient use of the NMS network so that Users do not subscribe to more NMS network connections than are necessary.

Options to Connect to the NMS Feeds

As noted above, Users that purchase access to the LCN or IP Network currently can use such networks to connect to the NMS feeds. The Exchange proposes to add text to the General Notes stating that a User authorized to receive connectivity to one or more NMS feeds may request to connect to the NMS feeds via the NMS network.

No Fee NMS Network Connections

The Exchange proposes to amend the Price List to state that if a User purchases access to the LCN or IP network and requests a connection to the NMS network, that User and its Affiliates, taken together, would not be charged for up to eight corresponding NMS network connections (each, a ''No Fee NMS Network Connection'') if such User, together with its Affiliates, purchases access to an LCN or IP network and:

1. Designates no more than four No Fee NMS Network Connections as corresponding to the LCN connections of the User, together with its Affiliates, on a one-to-one basis;

2. designates no more than four No Fee NMS Network Connections as corresponding to the IP network connections of the User, together with its Affiliates, on a one-to-one basis;

3. does not use the LCN or IP network connections that correspond to No Fee NMS Network Connections to access the NMS feeds; and

4. each of the No Fee NMS Network Connections is of equal size or smaller than the associated LCN or IP network connection purchased by it or its Affiliates.[17]

For example, if a User that has no Affiliates currently purchases three 40 Gb LCN circuits and two 10 Gb IP network circuits, and is authorized to access the NMS feeds through all five of these circuits, under the proposal, such User would not be charged any additional fees for up to three 40 Gb NMS network circuits and two 10 Gb NMS network circuits. If such User chooses to use all five corresponding NMS network connections, it would no longer be provided access to the NMS feeds over the three 40 Gb LCN circuits and the two 10 Gb IP network circuits.

Because the Exchange proposes that the number of No Fee NMS Network Connections would be applicable to both a User and its Affiliates, the Exchange proposes to amend the Price List to specify how a User must certify whether any other Users or Hosted Customers are Affiliates of the certificating User. As proposed, the certificating User would be required to inform the Exchange immediately of any event that causes another User or Hosted Customer to become an Affiliate. The Exchange would review available information regarding the entities and may request additional information to verify the Affiliate status of a User or Hosted Customer. The Exchange would provide No Fee NMS Network Connections to the certificating User unless it determines that the certification is not accurate.

In addition, a User that has one or more NMS network connections may become affiliated with one or more other Users or Hosted Customers such that the User and its Affiliates would together exceed the limit of No Fee NMS Network Connections. In such case, for each NMS network connection that exceeds the limit of No Fee NMS Network Connections, the Exchange would charge the User for each NMS network connection at the same rate as it charges for an IP network connection of the same size. Such change would be effective as of the date that the User became affiliated with the other Users or Hosted Customers, as applicable.

This proposed rule text relating to how a User and its Affiliates would be charged in connection with the No Fee NMS Network Connections is based on text in General Note 2 relating to how a User must certify Affiliates in connection with the Partial Cabinet Solution bundle.[18]

Purchasing NMS Network Connections

In addition to the No Fee NMS Network Connections, the Exchange proposes that a User may purchase an NMS network connection. Accordingly, the Exchange proposes to add text to the Price List stating that a User may purchase an NMS network connection at the same fee as the same-sized 10 Gb or 40 Gb IP network circuits.[19]

Circumstances when a User would have to separately purchase an NMS network connection could include if such User:

1. Has not purchased access to the LCN or IP network and would like to connect to the NMS network;

2. has purchased access to the LCN or IP network and would like NMS network connections in excess of the number of No Fee NMS Network Connections that correspond to its LCN or IP network connections;[20] or

3. would like to use its LCN or IP network connections to continue to access the NMS feeds.

Expected Application of the Proposed Change

Currently, 48 Users connect to NMS feeds through connections to the LCN and IP networks (the ''Current Users''). The Exchange expects the number of Users connecting to the NMS feeds in the future to remain relatively constant with the number of Current Users, although it could increase or decrease with time. The fee will apply in the same manner to all Users, irrespective of what type or size of market participant they are.

participants of the NMS Plans could use this alternate network connection for purposes of receiving data. This alternate network would not be available to connect to the other Included Data Products or to access the Exchange Systems or Global OTC.

[17] An ''Affiliate'' of a User would be any other User or Hosted Customer that has 50% or greater common ownership or control of the first User. A ''Hosted Customer'' means a customer of a Hosting User that is hosted in a Hosting User's co-location space, and a ''Hosting User'' means a User of co-location services that hosts a Hosted Customer in the User's co-location space. Such definitions are set forth in the Price List under ''Definitions.'' *See* 83 FR 26314, note 4, *supra,* at 26315.

[18] *See id.*

[19] As set forth on the Price List, IP network access is: (1) $10,000 per connection initial charge and a $11,000 monthly recurring charge (''MRC'') per connection for a 10 Gb Circuit; and (2) $10,000 per connection initial charge and a $18,000 MRC for a 40 Gb Circuit.

[20] For example, if a User had four connections to the LCN and three connections to the IP network, those connections would correspond to seven No Fee NMS Network Connections. If the User wanted ten NMS network connections, it would receive seven at no fee and would pay for three.

The Range of Potential Fees

Depending on how a User chooses to connect, a User would pay for a connection to the NMS network between $0 and $18,000 per connection per month. More specifically, a User that utilizes a No Fee NMS Network Connection to connect to the NMS network would pay no initial fee or MRC. A User that does not utilize a No Fee NMS Network Connection would pay the same fee as the same-sized 10 Gb or 40 Gb IP network circuit. For the 10 Gb option, that would be a $10,000 initial charge and a $11,000 MRC per connection. For the 40 Gb option, that would be a $10,000 initial charge and a $18,000 MRC per connection.

As noted above, the Exchange believes that none of the Current Users will have to pay to connect to the NMS network, and so the $11,000 and $18,000 MRCs are largely theoretical. Based on a review of the Current Users' LCN and IP network connections, with two exceptions, the number of No Fee NMS Network Connections will be more than sufficient for such Users to maintain their current connections to the NMS network at no additional cost. Accordingly, the majority of Current Users would be able to opt to connect to the NMS network without any additional charges.

The exceptions are two Current Users that use more than four connections to the IP network and/or four connections to the LCN to connect to the NMS feeds. If these Users obtain an equal number of connections to the NMS network, the number of their connections to the NMS network would exceed their number of No Fee NMS Network Connections. As a result, they would have to pay for the excess NMS network connections. However, based on conversations with these two Users, the Exchange understands that they intend to optimize their connections by only using their No Fee NMS Network Connections to connect to the NMS feeds and would not need to purchase any additional NMS network connections. Accordingly, since they do not anticipate requiring NMS network connections in excess of the No Fee NMS Network Connections, the Exchange believes that they will not incur any additional cost. For this reason, the Exchange believes that providing up to eight free connections to the NMS network, each corresponding to a purchased connection of equal or larger size to the LCN or IP network, would meet the needs of the Current Users.

Based on the Exchange's review of Users' current numbers of connections to the LCN and IP network, the Exchange believes that the majority of Users that want access to the NMS feeds in the future would be able to meet their bandwidth needs for the NMS network with the proposed No Fee NMS Network Connections, and so are unlikely to incur any cost above their costs for accessing the LCN or IP network.

The Exchange's proposal to require a User to purchase access to the NMS network if it does not also purchase access to the LCN or IP network, or if it has connections to the LCN and IP network but wants a number of NMS network connections in excess of its No Fee NMS Network Connections, would not impose any new or different charges for such User. For example:

- Currently, if a User needs to connect to only the NMS feeds (and does not need that network connection to access the Exchange Systems or to connect to the other Included Market Data), such User must purchase access to either the LCN or IP network at the published rates on the Price List.
- As proposed, once the NMS network becomes available, such User would still need to purchase a network connection to connect to the NMS feeds, but will have a greater choice because it could opt to connect via the low-latency, dedicated NMS network instead of using the IP network. Access to the NMS network would be charged at the same rate as published rates for access to the IP network.

As another example:

- Currently, if a User needs (a) two connections to the LCN to meet its bandwidth needs to access the Exchange Systems and connect to Included Market Data, including the NMS feeds, and (b) an additional connection to the LCN or IP network to meet additional bandwidth needs to connect to NMS feeds, it would purchase a total of three network connections: Two LCN connections (to provide access to the Exchange Systems and connect to the Included Market Data) and one IP network connection (to provide connectivity only to the NMS feeds).
- As proposed, once the NMS network is available, such User could still purchase two connections to the LCN for its non-NMS feed needs, and could opt to use two No Fee NMS Network Connections of the same or smaller bandwidth that correlate to such LCN connections. To meet its additional bandwidth needs to connect to the NMS feeds, such User could now opt to purchase a connection to either the NMS network or the IP network at the same price. In either case, the User would be purchasing a total of three network connections (but receiving five connections) and would be charged at the same rates as are currently charged under the Price List.

In both of the above examples, a User that opts to purchase access to the NMS network instead of to the IP network to connect to the NMS feeds would receive a lower-latency connection than the IP network connection, for the same charge. The Exchange therefore believes that in the above-described circumstances, the proposed fees would be cost-neutral as compared to the current Price List, with the additional benefit that the User would have the option to select a lower-latency, dedicated network connection.

The Limitation on the Number of No Fee NMS Network Connections

As described above, the Exchange believes that the majority of Users would be able to meet their bandwidth needs for the NMS network with the proposed No Fee NMS Network Connections. The Exchange further believes that without the proposed limit on number of No Fee NMS Network Connections, Users may opt to connect to NMS network connections on a one-for-one basis for each LCN or IP network connection that they have purchased, even if such LCN or IP network connections are not currently used to access the NMS feeds. In such case, the Exchange does not believe that more than eight NMS network connections would be necessary or in furtherance of the User's needs to connect to the NMS feeds. To discourage Users from requesting more NMS network connections than they need, the Exchange proposes to charge for any NMS network connections in excess of the proposed limit of No Fee NMS Network Connections.

Similarly, the Exchange believes that if a User chooses to connect to the NMS feeds via both an LCN or IP network connection and an associated NMS network connection, that User would be receiving two separate network connections to access the NMS feeds. This would double its bandwidth available to access the NMS feeds and the Exchange believes that such User should be charged accordingly. The Exchange further believes it would promote efficient use of resources to charge for the NMS network connection in these circumstances because there would be operational costs for the Exchange to support access to both the NMS network and the LCN or IP networks at the same time. Stated otherwise, the Exchange is concerned that if the NMS network connections are free without any limits, Users may seek

so many connections that it would increase both capital and operational expenses for the Exchange.

Defraying the Cost of Building the NMS Network

In addition to promoting the efficient use of NMS network connections, charging for NMS network connections under the limited circumstances described above may also defray the costs associated with implementing the NMS network. As described above, SIAC is the SIP for the NMS plans and is reimbursed for specified direct costs by the participants to the NMS Plans.[21] Even though the NMS network would connect only to the NMS feeds, the Exchange has agreed not to seek reimbursement of the costs to build the NMS network from the participants of the respective NMS Plans.

The one-time capital expenditure for the implementation of the NMS network will be approximately $3.8 million, which includes procurement of new low-latency network switches, network devices, and analytics tools and the one-time operational expenditures to build this new network. The estimate is based on the hardware that would be necessary to support the Current Users' present configurations if they replaced their LCN or IP network connections to the NMS feeds with NMS network connections, with some room for additional growth. If Users were to request NMS network connections in excess of the estimated number of connections, the Exchange would have to procure additional hardware, which would be an additional cost. In addition to these one-time implementation costs, the Exchange estimates that the ongoing cost to maintain and operate the dedicated NMS network will be approximately $215,000 annually.

The Exchange cannot predict with certainty what User behavior will be once the NMS network is available. As discussed above, based on current usage of the LCN and IP network, the Exchange anticipates that all Current Users will be able to connect to the NMS feeds without any new or different charges. The Exchange expects that some Users may even reduce the total number of circuits that they purchase because they will be able to obtain up to eight connections to the NMS network at no charge. Those No Fee NMS Network Connections will free up bandwidth over their LCN or IP network connections, allowing them to reduce the total number of LCN or IP network connections that they purchase.

Although the Exchange believes that none of the Current Users will have to pay additional fees to connect to the NMS network, the Exchange cannot fully anticipate User behavior once the NMS network is available. Some Current Users, or new Users, may elect to purchase NMS network connections in excess of the proposed limit on the number of No Fee NMS Network Connections, for which they would pay a charge. Given that, the Exchange has done an analysis of what would occur if Users request five unique new NMS network connections that are not No Fee NMS Network Connections. Assuming that such Users purchase 40 Gb NMS network circuits, these five new connections would result in $1,130,000 in revenue: $50,000 in initial charges and $1,080,000 in MRC. This revenue would likely be offset either in part or in whole by Users, including Current Users, reducing the total number of LCN or IP network circuits that they purchase. The Exchange could even experience a net decline in revenue as a result of the proposed commercial terms for the NMS network.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;[22] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[23]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[25] in particular, because 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 regulating, clearing, settling, processing information with respect to, and 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[26] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Would Remove Impediments to and Perfect the Mechanism of a Free and Open Market and a National Market System

The Exchange believes that the proposed change to establish access to the NMS network as a service available in co-location would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering access to the dedicated, low-latency NMS network, the Exchange will be providing Users with an additional option to connect to the NMS feeds. Until recently, SIAC was required to provide connectivity to the NMS feeds via only the IP network. As recently approved by the operating committees for the CTA/CQ Plans, SIAC is now authorized to offer connectivity to the NMS feeds in the data center via an alternate, dedicated, low-latency NMS network. The proposed NMS network has been designed consistent with this directive and will provide greater choice to Users that are seeking a low-latency network to connect to the NMS feeds.

[21] SIAC is reimbursed either directly (under the CTA/CQ Plans, participants reimburse SIAC directly) or indirectly (under the OPRA Plan, OPRA LLC reimburses SIAC).

[22] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[23] *See* 83 FR 26314, *supra* note 4, at 26314. The NYSE, NYSE American, and NYSE Arca have submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2019–46, SR–NYSEAmer–2019–34, and SR–NYSEArca–2019–61.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78f(b)(4).

The Proposed Rule Change Is Reasonable

As an initial matter, as required by Rule 603(b) of Regulation NMS, SIAC disseminates quotation and transaction information as the single plan processor for all Tape A and Tape B-listed securities and is also the single plan processor for all options exchanges. As the single plan processor, the pricing decisions relating to the dedicated NMS network are not constrained by competitive market forces.

Instead, as described above, the Exchange is funding the capital and operational expenses to build and operate the NMS network. Those implementation costs are applicable only to the NMS network, which will be used for the sole purpose of providing access to the NMS feeds. Simply put, none of the implementation costs are applicable to any other Exchange services. The Exchange has based its procurement needs—which correlate to the Exchange's estimated costs to build the NMS network—based on the Current Users' usage of the LCN or IP networks to connect to the NMS feeds, with some room for additional growth.

The Exchange believes that the proposed charges would be reasonable because such charges would defray the estimated costs the Exchange will incur to build and operate the NMS network. As described above, the proposed NMS network will be a dedicated, low-latency network that will provide access only to the NMS feeds. Because LCN and IP network fees on the Price List relate to charges for services either other than or in addition to connectivity to the NMS feeds, the Exchange currently does not assess any fees that are specific to connectivity to the NMS feeds. The proposed charges for access to the NMS network are designed to defray the specific costs that the Exchange will incur to build and maintain the infrastructure for the NMS network. As described above, the Exchange's capital expenditure costs for the build are estimated to be $3.8 million, which includes procurement of new low-latency network switches, network devices, and analytics tools and the one-time operational expenditures to build this new network. The estimate is based on the hardware that would be necessary to support the Current Users' present configurations if they replaced their LCN or IP network connections to the NMS feeds with NMS network connections, with some room for additional growth. If Users were to request NMS network connections in excess of the estimated number of connections, the Exchange would have to procure additional hardware, which would be an additional cost. In addition to this initial estimated approximately $3.8 million outlay, the Exchange anticipates that the ongoing costs to maintain and operate the NMS network will be approximately $215,000 annually.

The Exchange further believes that these proposed fees would be reasonable because unnecessary connections would impose a burden on the infrastructure that would be shared by all Users.

As stated above, the Exchange believes that the Current Users will use No Fee NMS Network Connections for the NMS network, and as a consequence, none of the Current Users will have to pay to connect to the NMS network. However, the Exchange cannot fully anticipate User behavior once the NMS network is available. Some Current Users, or new Users, may elect to purchase NMS network connections in excess of the proposed limit on number of No Fee NMS Network Connections, for which they would pay a charge. Given that, the Exchange has done an analysis of what would occur if Users request five unique NMS network connections that are not No Fee NMS Network Connections. Assuming that such connections were the larger size of 40 Gb, these five new connections would result in $1,130,000 in revenue: $50,000 in initial charges and $1,080,000 in MRC. But new revenue does not necessarily translate into net revenue gain.

First, the Exchange anticipates that once the NMS network is available, Users may lower the number of LCN or IP network connections that they purchase, offsetting any unique new charges and possibly leading to a net decline in revenues. Second, even if the Exchange assumes new revenue of $1,130,000 per year, such revenue would not fully offset the cost of building and maintaining the NMS network. Rather, the proposed charges, to the extent they would correlate to new revenue, would merely defray the costs that the Exchange will incur to build and support additional capacity for the NMS network. Assuming revenue equal to the MRCs, *i.e.* $1,080,000 per year, it would take four years before such revenue would fully offset the initial fixed costs to build the NMS network. The Exchange generally refreshes network hardware after three or four years, as such hardware has a limited life. Accordingly, the Exchange expects that it will incur substantial new costs to refresh the NMS network after three or four years. As a result, even after the initial fixed costs are offset, the MRC revenue will not necessarily cover the variable, ongoing costs to maintain and refresh the NMS network. If the revenue were to be a net gain, the Exchange does not believe such revenues would cover all the fixed costs that the Exchange would incur to refresh the network hardware or add additional infrastructure to meet Users' needs. Any revenue would assist with defraying the sizable investment needed to create the NMS network, but in the end the Exchange does not expect additional net revenues.

The Proposed Rule Change Is an Equitable Allocation of Fees

The Exchange believes that the proposed fee change is equitably allocated for multiple reasons.

The No Fee NMS Network Connection Is an Equitable Allocation of Fees

As described above, the proposed fee structure for the NMS network has been designed so that the majority of Users would not have any new or different charges if they opt to connect to the NMS network. Rather, Users will have a choice whether to use an IP network, LCN or NMS network connection to connect to the NMS feeds. The cost to purchase a NMS network connection would be the same as an IP network connection of the same size. A User that voluntarily chooses to exercise the choice to connect with the NMS network would receive the benefit of a low-latency connection without any additional charges.

More specifically, the Exchange proposes that if a User purchases access to the LCN or IP network and requests a connection to the NMS network, it, together with its Affiliates, will not be charged for up to eight corresponding No Fee NMS Network Connections. Such User, together with its Affiliates, will be entitled to a No Fee NMS Network Connection for each of the first four LCN or IP network connections that it purchases, so long as they meet the requirements set forth above. A User that utilizes its No Fee NMS Network Connections to connect to the NMS network would have no or different charges.

The Exchange believes that the proposed limit on the number of No Fee NMS Network Connections would be equitably allocated because it is based on the number of LCN or IP network connections that Users currently purchase to connect to the NMS feeds. As noted above, based on a review of the Current Users' LCN and IP network connections and conversations with two of the Current Users, the Exchange believes that none of the Current Users

will have to pay more to connect to the NMS network, and Users that want access to the NMS feeds in the future are unlikely to have to pay for their NMS network connections.

The Application of the Proposed Rule Change to Affiliates Is an Equitable Allocation of Fees

The Exchange likewise believes it would be equitable to apply the proposed limit on the number of No Fee NMS Network Connections to Users taken together with their Affiliates because all Users seeking to connect to NMS feeds using NMS network connections would be subject to the same parameters. The proposal avoids disparate treatment of Users that have divided their various business activities between separate corporate entities, as compared to Users that operate those business activities within a single corporate entity. It would discourage any User from taking deliberate advantage of the proposed connections to the NMS network by setting up separate corporate entities to act as Users, thereby obtaining more connections than allowed by the proposed limit on No Fee NMS Network Connections. The Exchange believes that using the existing definitions of Affiliate, Hosted Customer, and Hosting User is an equitable allocation of fees because it would promote consistency and clarity for Users.

The Proposed Charge for NMS Networks Is an Equitable Allocation of Fees

The Exchange believes that charging the same rate for accessing the NMS network as is currently charged for accessing a same-sized IP network connection for Users who do not also purchase an LCN or IP network connection or who have connections to the LCN and IP network but want a number of NMS network connections in excess of its No Fee NMS Network Connections, would be equitably allocated because a User that currently seeks to connect to the NMS feeds must pay, at a minimum, the charges for access to the IP network. With the addition of the NMS network, Users will have a choice to either continue using an IP network connection or instead connect via the NMS network to connect to the NMS feeds. Users that choose to connect via the NMS network will receive the benefit of a low-latency network as compared to access to the IP network at the same price as the access to the IP network.

To the extent a User may be subject to charges in addition to what they would be paying under the current Price List, *e.g.,* if a User needed more access to the NMS network than their allocated number of No Fee NMS Network Connections or if they wanted to continue to use the LCN or IP network to connect to the NMS feeds, the Exchange believes that the proposed charges would be equitably allocated because such charges would encourage efficient use of the NMS network and discourage Users to subscribe to more NMS network connections.

Current Users do not necessarily use all of their connections to the IP network and LCN to connect to the NMS feeds. If the Exchange were to provide them with an equal number of No Fee NMS Network Connections without any limitations on the number, the Current Users would have no incentive to make efficient decisions regarding the number of NMS network connections they had, and the Exchange would need to incur additional costs to support the infrastructure necessary to support those additional NMS network connections. In addition, Users would bear the burden of any unnecessary connections because of the strain on the infrastructure shared by all Users that access the NMS network. The Exchange believes that by charging for any connections to the NMS network in excess of the allocated number of No Fee NMS Network Connections, it will motivate Users to make rational decisions based on how many NMS network connections they need, rather than because they are simply available. These fees are therefore reasonable and not unfairly discriminatory because they will reduce the burden on all Users accessing the NMS network.

Finally, the Exchange believes that access to the proposed NMS network and related commercial terms would be equitably allocated because, in addition to access to the NMS network being completely voluntary, it would be available to all Users on an equal basis (*i.e.,* the same access would be available to all Users). All Users that voluntarily selected to receive access to the NMS network would be charged the same amount for the same service.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed fee change is not unfairly discriminatory for multiple reasons.

The No Fee NMS Network Connection Is Not Unfairly Discriminatory

As described above, the proposed fee structure for the NMS network has been designed so that the majority of Users would not have any new or different charges if they opt to connect to the NMS network. Rather, all Users will have a choice whether to use an IP network, LCN or NMS network connection to connect to the NMS feeds. The proposed fee therefore does not propose to impose any meaningful differences to different types of Users. Rather, the cost to purchase a NMS network connection would be the same as an IP network connection of the same size, which would be available to all Users on the same terms. Any User that voluntarily chooses to exercise the choice to connect with the NMS network would receive the benefit of a low-latency connection without any additional charges.

More specifically, the Exchange proposes that if a User purchases access to the LCN or IP network and requests a connection to the NMS network, it, together with its Affiliates, will not be charged for up to eight corresponding No Fee NMS Network Connections. Such User, together with its Affiliates, will be entitled to a No Fee Connection for each of the first four LCN or IP network connections that it purchases, so long as they meet the requirements sets forth above. A User that utilizes its No Fee NMS Network Connections to connect to the NMS network would have no new or different charges.

The Exchange believes that the proposed limit on the number of No Fee NMS Network Connections would not be unfairly discriminatory because it is based on the number of LCN or IP network connections that Users currently purchase to connect to the NMS feeds. As noted above, based on a review of the Current Users' LCN and IP network connections and conversations with two of the Current Users, the Exchange believes that none of the Current Users will have to pay more to connect to the NMS network, and Users that want access to the NMS feeds in the future are unlikely to have to pay for their NMS network connections.

The Application of the Proposed Rule Change to Affiliates Is Not Unfairly Discriminatory

The Exchange likewise believes it would not be unfairly discriminatory to apply the proposed limit on the number of No Fee NMS Network Connections to Users taken together with their Affiliates because all Users seeking to connect to NMS feeds using NMS network connections would be subject to the same parameters. The proposal avoids disparate treatment of Users that have divided their various business activities between separate corporate entities, as compared to Users that operate those business activities within a single corporate entity. It would discourage any User from taking deliberate

advantage of the proposed connections to the NMS network by setting up separate corporate entities to act as Users, thereby obtaining more connections than allowed by the proposed limit on No Fee NMS Network Connections. The Exchange believes that using the existing definitions of Affiliate, Hosted Customer, and Hosting User would not be unfairly discriminatory because it would promote consistency and clarity for Users.

The Proposed Charge for NMS Networks Is Not Unfairly Discriminatory

The Exchange believes that charging the same rate for accessing the NMS network as is currently charged for accessing a same-sized IP network connection for Users who do not also purchase an LCN or IP network connection or who have connections to the LCN and IP network but want a number of NMS network connections in excess of its No Fee NMS Network Connections, would not be unfairly discriminatory because a User that currently seeks to connect to the NMS feeds must pay, at a minimum, the charges for access to the IP network. With the addition of the NMS network, all Users will have a choice to either continue using an IP network connection or instead connect via the NMS network to connect to the NMS feeds. Users that choose to connect via the NMS network will receive the benefit of a low-latency network as compared to access to the IP network at the same price as the access to the IP network.

To the extent a User may be subject to charges in addition to what they would be paying under the current Price List, *e.g.,* if a User needed more access to the NMS network than their allocated number of No Fee NMS Network Connections or if they wanted to continue to use the LCN or IP network to connect to the NMS feeds, the Exchange believes that the proposed charges would not be unfairly discriminatory because such charges would encourage efficient use of the NMS network and discourage Users to subscribe to more NMS network connections.

Current Users do not necessarily use all of their connections to the IP network and LCN to connect to the NMS feeds. If the Exchange were to provide them with an equal number of No Fee NMS Network Connections without any limitations on the number, the Current Users would have no incentive to make efficient decisions regarding the number of NMS network connections they had, and the Exchange would need to incur additional costs to support the infrastructure necessary to support those additional NMS network connections. In addition, Users would bear the burden of any unnecessary connections because of the strain on the infrastructure shared by all Users that access the NMS network. The Exchange believes that by charging for any connections to the NMS network in excess of the allocated number of No Fee NMS Network Connections, it will motivate Users to make rational decisions based on how many NMS network connections they need, rather than because they are simply available. These fees are therefore not unfairly discriminatory because they will reduce the burden on all Users accessing the NMS network.

Finally, the Exchange believes that access to the proposed NMS network and related commercial terms would not be unfairly discriminatory because, in addition to access to the NMS network being completely voluntary, it would be available to all Users on an equal basis (*i.e.,* the same access would be available to all Users). All Users that voluntarily selected to receive access to the NMS network would be charged the same amount for the same service.

For the reasons above, the proposed changes would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with 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 purposes of the Act. The Exchange believes that the proposed rule change would not impose any burden on competition because it is not designed to address any competitive issues. As described above, SIAC is the single plan processor for Tape A and B equities securities and all options securities and does not currently compete with any other providers for these processor services. The proposed fee structure for the NMS network would be applied equally among all Users and it is their choice of whether and at what level to subscribe to such services, including whether to connect to the proposed NMS network. Accordingly, the Exchange does not believe that the proposed fee structure would place any Users at a relative disadvantage compared to other Users.

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 within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such 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–NYSENAT–2019–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2019–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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–NYSENAT–2019–19, and should be submitted on or before October 1, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19460 Filed 9–9–19; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86700A; File No. SR–FINRA–2019–017]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend FINRA Rules 2210 (Communications With the Public) and 2241 (Research Analysts and Research Reports); Correction

September 4, 2019.

AGENCY: Securities and Exchange Commission.

ACTION: Notice; correction.

SUMMARY: The Securities and Exchange Commission published a document in the **Federal Register** on August 22, 2019, concerning a Financial Industry Regulatory Authority, Inc., Order Approving a Proposed Rule Change to Amend FINRA Rules 2210 (Communications with the Public) and 2241 (Research Analysts and Research Reports). The document contained a typographical error.

FOR FURTHER INFORMATION CONTACT: Daniel Fisher, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, (202) 551–5550.

Correction

In the **Federal Register** of August 22, 2019 in FR Doc. 2019–18076, on page 43836, in the third and fourth lines under the heading ''Conclusion'' in the second column, correct the reference to ''(SR–FINRA–2018–019)'' instead to ''(SR–FINRA–2019–017).''

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19465 Filed 9–9–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86864; File No. SR–EMERALD–2019–32]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 519, MIAX Emerald Order Monitor

September 4, 2019.

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 August 30, 2019, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 519, MIAX Emerald Order Monitor.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald* at MIAX Emerald's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 519, MIAX Emerald Order Monitor, to remove a term in the Exchange's rule which creates an ambiguity concerning the application of the rule. Specifically, subsection (4) of paragraph (a), Limit Orders to Sell, provides that ''[f]or options with a National Best Bid (''NBB'') equal to or greater than $0.25 the System[3] will reject an incoming limit order that has a limit price equal to or less than the NBB by the lesser of (i) $2.50, or (ii) 50% of the NBB price.'' The second provision of the rule provides that, ''[f]or options with an NBB of $0.25 or less the System will accept any incoming limit order.''

The statements an NBB ''equal to or greater than $0.25'' and ''an NBB of $0.25 or less'' both contemplate the NBB being equal to $0.25. The operation of the rule requires a bifurcation at $0.25 and only one action (accepting or rejecting an incoming order) can occur when the NBB is equal to $0.25. The desired behavior by the Exchange, for limit orders to sell, is to accept an order at any price when the NBB is equal to $0.25 or less. Therefore the Exchange proposes to remove the phrase ''equal to or'' from the first sentence in the rule.

The new proposed rule text will provide that, ''[f]or options with a National Best Bid (''NBB'') greater than $0.25 the System will reject an incoming limit order that has a limit price equal to or less than the NBB by the lesser of (i) $2.50, or (ii) 50% of the NBB price. For options with an NBB of $0.25 or less the System will accept any incoming limit order.

The Exchange believes its proposed change provides additional detail and clarity to the Exchange's rule and eliminates any inadvertent ambiguity in the rule text concerning order protections for incoming limit orders to sell.

2. Statutory Basis

MIAX Emerald believes that its proposed rule change is consistent with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(5) of the Act[5] 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 regulating, clearing, settling, processing information with respect to, and 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.

The Exchange believes its proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest by providing clarity and precision in the Exchange's rule text.

The Exchange believes that the proposed change to the rule text provides further clarification to Members,[6] investors, and the public, regarding the Exchange's handling of limit orders to sell. The Exchange believes it is in the interest of investors and the public to accurately describe the behavior of the Exchange's System in its rules as this information may be used by investors to make decisions concerning the submission of their orders. Transparency and clarity are consistent with the Act because it removes impediments to and helps perfect the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by accurately describing the behavior of the Exchange's System.

The Exchange believes that the proposed change promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest by providing additional detail and clarity in the Exchange's rules. Further, the Exchange's proposal provides transparency and clarity in the rule and is consistent with the Act because it removes impediments to and helps perfect the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by accurately describing the behavior of the Exchange's System. In particular, the Exchange believes that the proposed rule change will provide greater clarity to Members and the public regarding the Exchange's Rules, and it is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

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 proposed rule change is designed to remove an unintentional ambiguity introduced in a recent rule change.[7]

The Exchange does not believe that the proposed rule change will impose any burden on inter-market competition as the Rules apply equally to all Exchange Members. The proposed rule change is not a competitive filing and is intended to improve the clarity and precision of the Exchange's rule text.

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2019–32 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–EMERALD–2019–32. 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–EMERALD–2019–32 and

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[7] *See* Securities Exchange Release No. 85164 (February 19, 2019), 84 FR 6036 (February 25, 2019) (SR–EMERALD–2019–03).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

should be submitted on or before October 1, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19466 Filed 9–9–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86868; File No. SR–NYSEArca–2019–61]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend the NYSE Arca Options Fees and Charges and the NYSE Arca Equities Fees and Charges Related to Co-Location Services

September 4, 2019.

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 August 22, 2019, NYSE Arca, Inc. (''NYSE Arca'' 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

The Exchange proposes to amend the NYSE Arca Options Fees and Charges (the ''Options Fee Schedule'') and the NYSE Arca Equities Fees and Charges (the ''Equities Fee Schedule'' and, together with the Options Fee Schedule, the ''Fee Schedules'') related to co-location services to provide access to NMS feeds. The proposed 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 Exchange proposes to amend the Fee Schedules related to co-location[4] services offered by the Exchange to provide Users[5] with an alternate, dedicated network connection to access the NMS feeds for which the Securities Industry Automation Corporation (''SIAC'') is engaged as the securities information processor (''SIP'').[6]

As described below, today Users can connect to Regulation NMS equities and options feeds[7] disseminated by the SIP using either of the co-location local area networks. Users do not pay an additional charge to connect to the NMS feeds: It comes with their connection to the local area network.

The Exchange has recently been authorized to build a new network in the Mahwah data center (the ''NMS network'') that will only connect to the NMS feeds. The new network will connect to the NMS feeds faster than either of the existing local area networks. The Exchange believes that under most circumstances, none of the Users that currently connect to the NMS feeds will have to pay any additional fees to connect to the NMS network. As described in detail below, there are limited circumstances when a User may incur a unique fee to connect to the NMS network. However, the Exchange does not expect to earn net revenue from any such fees for connecting to the NMS network.

As explained in more detail below, the Exchange proposes to amend the General Notes to provide that:

a. Users will have the option to use the NMS network or either of the existing local area networks to connect to the NMS feeds.

b. For each connection a User and its Affiliates have to the local area networks, the User and its Affiliates, together, will get a free connection to the NMS network, subject to a maximum limit of eight, so long as the User meets the requirements set forth below.

c. If a User wants to separately purchase an NMS network connection, it would pay the same fee as the same-sized 10 Gigabit (''Gb'') or 40 Gb internet protocol (''IP'') network circuit.

Subject to approval of this proposed rule change, the Exchange proposes to implement the rule change on the first day of the month after the NMS network is available. The Exchange will announce the implementation date through a customer notice.

Background

The Exchange's affiliate, SIAC, is engaged as the SIP for three separate Regulation NMS plans (collectively, the ''NMS Plans'').[8] SIAC operates as the SIP for the NMS Plans in the same data center where the Exchange and its Affiliate SROs operate. In that data center, Users can access SIAC as the SIP over the same network connections through which they access other services. Specifically, a User can access the SIAC SIP environment via either the IP network or the Liquidity Center

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), and NYSE National, Inc. (''NYSE National'' and together, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80).

[6] *See* Securities Exchange Act Release No. 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEArca–2016–172).

[7] The NMS feeds include the Consolidated Tape System and Consolidated Quote System data streams, as well as Options Price Reporting Authority (''OPRA'') feeds. *See id.*

[8] SIAC has been engaged as the SIP to, among other things, receive, process, validate and disseminate: (1) Last-sale price information in Tape A and Tape B-listed securities pursuant to the CTA Plan (''CTA Plan''), which is available here: *https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CTA%20Plan%20-%20Composite%20as%20of%20August%2027,%202018.pdf;* (2) quotation information in Tape A and B-listed securities pursuant to the CQ Plan (''CQ Plan''), which is available here: *https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CQ_Plan_Composite_as_of_July_9_2018.pdf;* and (3) quotation and last-sale price information in all exchange options trading pursuant to the OPRA Plan (''OPRA Plan''), which is available here: *https://uploads-ssl.webflow.com/5ba40927ac854d8c97bc92d7/5bf419a6b7c4f5085340f9af_opra_plan.pdf.*

Network (''LCN''), which are the local area networks in the data center.[9]

The Exchange offers Users connectivity to the SIAC SIP environment at no additional charge when a User purchases access to the LCN or IP network.[10] On the Fee Schedules, the SIAC feeds are referred to as the ''NMS feeds.'' As described in General Note 4 of the Fee Schedules, when a User purchases access to the LCN or IP network, it receives connectivity to certain market data products (the ''Included Data Products'') that it selects, subject to technical provisioning requirements and authorization from the provider of the data feed. The NMS feeds are included in the list of the Included Data Products that come with connections to the LCN or IP network. The remaining Included Data Products are proprietary feeds of the Exchange, its Affiliate SROs, and the Exchange's affiliate NYSE Chicago, Inc. (''NYSE Chicago'' and together with the Exchange and Affiliate SROs, the ''NYSE Exchanges'').

A User that purchases access to the LCN or IP network also receives the ability to access the trading and execution systems of the NYSE Exchanges (the ''Exchange Systems'') and the trading and execution systems of OTC Global, an alternative trading system (''ATS''), subject, in each case, to authorization by the relevant entity.[11]

Accordingly, without paying an additional connectivity fee, a User that purchases access to either the LCN or IP network can use such network to:

1. Access the trading and execution services of five registered exchanges (five equities markets, two options markets, and a fixed income market) and an ATS;

2. Connect to the market data of five registered exchanges (five equities exchanges, two options markets, and a fixed income market); and

3. Connect to the NMS feeds.

A User may connect to the NMS feeds through the IP network or LCN. Until recently the operating committee for the CTA and CQ Plans (''CTA/CQ Plans'') mandated use of the IP network to access the NMS feeds.[12] As a result, all LCN connections to the NMS feeds go through the IP network before reaching the NMS feeds,[13] and so using the LCN to connect to an NMS feed is slower than using the IP network.[14]

Alternate, Dedicated Network Connection for NMS Feeds

As the SIP for the NMS Plans, SIAC continually assesses the services it provides and has been working with the operating committees of the NMS Plans and the industry-based advisory committee to the CTA/CQ Plans to identify potential performance enhancements. Among other initiatives, this group identified that, because the IP network was not designed as a low-latency network, the requirement to use the IP network to access the NMS feeds introduces a layer of latency.

To reduce network latency, the Exchange sought and received approval from the operating committees for the CTA/CQ Plans to build an alternate to the LCN and IP network to connect to the NMS feeds.[15] As approved by the CTA/CQ Plans, the Exchange is building a low-latency network in the data center that will provide Users with dedicated access to the NMS feeds (the ''NMS network'').[16]

The Exchange currently anticipates that the low-latency network will have a one-way reduction in latency to access the NMS feeds from the IP network and LCN of over 140 microseconds.

Connections to the NMS network will be available in 10 Gb and 40 Gb circuits. Because the NMS network will be an alternate network to access the NMS feeds, once it is available, Users would have the choice between continuing to use the LCN or IP network to connect to NMS feeds or switching to the NMS network.

Proposed Amendments to the Fee Schedules

The proposed fee structure for the NMS network has been designed so that, in most cases, a User would not have any new or different charges if it opts to connect to the NMS network compared to what it would be charged if it chooses to continue to use its LCN or IP network circuit to connect to the NMS feeds. At the same time, the proposed fees are designed to promote the efficient use of the NMS network so that Users do not subscribe to more NMS network connections than are necessary.

Options To Connect to the NMS Feeds

As noted above, Users that purchase access to the LCN or IP Network currently can use such networks to connect to the NMS feeds. The Exchange proposes to add text to the General Notes stating that a User authorized to receive connectivity to one or more NMS feeds may request to connect to the NMS feeds via the NMS network.

No Fee NMS Network Connections

The Exchange proposes to amend the Fee Schedules to state that if a User purchases access to the LCN or IP network and requests a connection to the NMS network, that User and its Affiliates, taken together, would not be charged for up to eight corresponding NMS network connections (each, a ''No Fee NMS Network Connection'') if such User, together with its Affiliates, purchases access to an LCN or IP network and:

1. Designates no more than four No Fee NMS Network Connections as corresponding to the LCN connections of the User, together with its Affiliates, on a one-to-one basis;

2. designates no more than four No Fee NMS Network Connections as corresponding to the IP network connections of the User, together with its Affiliates, on a one-to-one basis;

3. does not use the LCN or IP network connections that correspond to No Fee NMS Network Connections to access the NMS feeds; and

4. each of the No Fee NMS Network Connections is of equal size or smaller than the associated LCN or IP network connection purchased by it or its Affiliates.[17]

[9] *See* 82 FR 3061, note 6, *supra.*

[10] As set forth on the Fee Schedules, the Exchange offers a range of LCN and IP network connectivity options at different rates depending on the bandwidth and latency profile of the applicable network.

[11] *See* 82 FR 3061, note 6, *supra,* and Securities Exchange Release No. 85958 (May 29, 2019), 84 FR 25858 (June 4, 2019) (SR–NYSEArca–2019–40). Information regarding the Included Data Products is currently set forth in the second paragraph of General Note 4. The Exchange proposes to split General Note 4 so that the discussion regarding Included Data Products will form General Note 5.

[12] The Operating Committee of the CTA/CQ Plans mandated the use of the IP network to access the NMS feeds because the IP network was built as a secure network designed for resiliency and redundancy.

[13] By contrast, the LCN does not connect to the IP network for access to the Exchange Systems or connectivity to the other Included Data Products.

[14] A User that uses the LCN to connect to an NMS feed does not need to separately purchase an IP network connection.

[15] The alternate network to access the NMS feeds will not be available outside of the data center.

[16] Because SIAC, as the SIP for the NMS Plans, is also responsible for collecting data from the participants of the CTA/CQ Plans and members of the OPRA Plan, Users that are participants of the applicable NMS Plans could use this alternate network connection for purposes of both transmitting and receiving data. Users that are not participants of the NMS Plans could use this alternate network connection for purposes of receiving data. This alternate network would not be available to connect to the other Included Data Products or to access the Exchange Systems or Global OTC.

[17] An ''Affiliate'' of a User would be any other User or Hosted Customer that has 50% or greater common ownership or control of the first User. A ''Hosted Customer'' means a customer of a Hosting User that is hosted in a Hosting User's co-location space, and a ''Hosting User'' means a User of co-location services that hosts a Hosted Customer in the User's co-location space. Such definitions are

Continued

For example, if a User that has no Affiliates currently purchases three 40 Gb LCN circuits and two 10 Gb IP network circuits, and is authorized to access the NMS feeds through all five of these circuits, under the proposal, such User would not be charged any additional fees for up to three 40 Gb NMS network circuits and two 10 Gb NMS network circuits. If such User chooses to use all five corresponding NMS network connections, it would no longer be provided access to the NMS feeds over the three 40 Gb LCN circuits and the two 10 Gb IP network circuits.

Because the Exchange proposes that the number of No Fee NMS Network Connections would be applicable to both a User and its Affiliates, the Exchange proposes to amend the Fee Schedules to specify how a User must certify whether any other Users or Hosted Customers are Affiliates of the certificating User. As proposed, the certificating User would be required to inform the Exchange immediately of any event that causes another User or Hosted Customer to become an Affiliate. The Exchange would review available information regarding the entities and may request additional information to verify the Affiliate status of a User or Hosted Customer. The Exchange would provide No Fee NMS Network Connections to the certificating User unless it determines that the certification is not accurate.

In addition, a User that has one or more NMS network connections may become affiliated with one or more other Users or Hosted Customers such that the User and its Affiliates would together exceed the limit of No Fee NMS Network Connections. In such case, for each NMS network connection that exceeds the limit of No Fee NMS Network Connections, the Exchange would charge the User for each NMS network connection at the same rate as it charges for an IP network connection of the same size. Such change would be effective as of the date that the User became affiliated with the other Users or Hosted Customers, as applicable.

This proposed rule text relating to how a User and its Affiliates would be charged in connection with the No Fee NMS Network Connections is based on text in General Note 2 relating to how a User must certify Affiliates in connection with the Partial Cabinet Solution bundle.[18]

Purchasing NMS Network Connections

In addition to the No Fee NMS Network Connections, the Exchange proposes that a User may purchase an NMS network connection. Accordingly, the Exchange proposes to add text to the Fee Schedules stating that a User may purchase an NMS network connection at the same fee as the same-sized 10 Gb or 40 Gb IP network circuits.[19]

Circumstances when a User would have to separately purchase an NMS network connection could include if such User:

1. Has not purchased access to the LCN or IP network and would like to connect to the NMS network;
2. has purchased access to the LCN or IP network and would like NMS network connections in excess of the number of No Fee NMS Network Connections that correspond to its LCN or IP network connections; [20] or
3. would like to use its LCN or IP network connections to continue to access the NMS feeds.

Expected Application of the Proposed Change

Currently, 48 Users connect to NMS feeds through connections to the LCN and IP networks (the ''Current Users''). The Exchange expects the number of Users connecting to the NMS feeds in the future to remain relatively constant with the number of Current Users, although it could increase or decrease with time. The fee will apply in the same manner to all Users, irrespective of what type or size of market participant they are.

The Range of Potential Fees

Depending on how a User chooses to connect, a User would pay for a connection to the NMS network between $0 and $18,000 per connection per month. More specifically, a User that utilizes a No Fee NMS Network Connection to connect to the NMS network would pay no initial fee or MRC. A User that does not utilize a No Fee NMS Network Connection would pay the same fee as the same-sized 10 Gb or 40 Gb IP network circuit. For the 10 Gb option, that would be a $10,000 initial charge and a $11,000 MRC per connection. For the 40 Gb option, that would be a $10,000 initial charge and a $18,000 MRC per connection.

As noted above, the Exchange believes that none of the Current Users will have to pay to connect to the NMS network, and so the $11,000 and $18,000 MRCs are largely theoretical. Based on a review of the Current Users' LCN and IP network connections, with two exceptions, the number of No Fee NMS Network Connections will be more than sufficient for such Users to maintain their current connections to the NMS network at no additional cost. Accordingly, the majority of Current Users would be able to opt to connect to the NMS network without any additional charges.

The exceptions are two Current Users that use more than four connections to the IP network and/or four connections to the LCN to connect to the NMS feeds. If these Users obtain an equal number of connections to the NMS network, the number of their connections to the NMS network would exceed their number of No Fee NMS Network Connections. As a result, they would have to pay for the excess NMS network connections. However, based on conversations with these two Users, the Exchange understands that they intend to optimize their connections by only using their No Fee NMS Network Connections to connect to the NMS feeds and would not need to purchase any additional NMS network connections. Accordingly, since they do not anticipate requiring NMS network connections in excess of the No Fee NMS Network Connections, the Exchange believes that they will not incur any additional cost. For this reason, the Exchange believes that providing up to eight free connections to the NMS network, each corresponding to a purchased connection of equal or larger size to the LCN or IP network, would meet the needs of the Current Users.

Based on the Exchange's review of Users' current numbers of connections to the LCN and IP network, the Exchange believes that the majority of Users that want access to the NMS feeds in the future would be able to meet their bandwidth needs for the NMS network with the proposed No Fee NMS Network Connections, and so are unlikely to incur any cost above their costs for accessing the LCN or IP network.

The Exchange's proposal to require a User to purchase access to the NMS network if it does not also purchase access to the LCN or IP network, or if it has connections to the LCN and IP network but wants a number of NMS network connections in excess of its No

set forth in the Fee Schedules under ''Definitions.'' *See* Securities Exchange Act Release No. 77070 (February 5, 2016), 81 FR 7401 (February 11, 2016) (SR–NYSEArca–2015–102).

[18] *See id.*

[19] As set forth on the Fee Schedules, IP network access is: (1) $10,000 per connection initial charge and a $11,000 monthly recurring charge (''MRC'') per connection for a 10 Gb Circuit; and (2) $10,000 per connection initial charge and a $18,000 MRC for a 40 Gb Circuit.

[20] For example, if a User had four connections to the LCN and three connections to the IP network, those connections would correspond to seven No Fee NMS Network Connections. If the User wanted ten NMS network connections, it would receive seven at no fee and would pay for three.

Fee NMS Network Connections, would not impose any new or different charges for such User. For example:

• Currently, if a User needs to connect to only the NMS feeds (and does not need that network connection to access the Exchange Systems or to connect to the other Included Market Data), such User must purchase access to either the LCN or IP network at the published rates on the Fee Schedules.

• As proposed, once the NMS network becomes available, such User would still need to purchase a network connection to connect to the NMS feeds, but will have a greater choice because it could opt to connect via the low-latency, dedicated NMS network instead of using the IP network. Access to the NMS network would be charged at the same rate as published rates for access to the IP network.

As another example:

• Currently, if a User needs (a) two connections to the LCN to meet its bandwidth needs to access the Exchange Systems and connect to Included Market Data, including the NMS feeds, and (b) an additional connection to the LCN or IP network to meet additional bandwidth needs to connect to NMS feeds, it would purchase a total of three network connections: Two LCN connections (to provide access to the Exchange Systems and connect to the Included Market Data) and one IP network connection (to provide connectivity only to the NMS feeds).

• As proposed, once the NMS network is available, such User could still purchase two connections to the LCN for its non-NMS feed needs, and could opt to use two No Fee NMS Network Connections of the same or smaller bandwidth that correlate to such LCN connections. To meet its additional bandwidth needs to connect to the NMS feeds, such User could now opt to purchase a connection to either the NMS network or the IP network at the same price. In either case, the User would be purchasing a total of three network connections (but receiving five connections) and would be charged at the same rates as are currently charged under the Fee Schedules.

In both of the above examples, a User that opts to purchase access to the NMS network instead of to the IP network to connect to the NMS feeds would receive a lower-latency connection than the IP network connection, for the same charge. The Exchange therefore believes that in the above-described circumstances, the proposed fees would be cost-neutral as compared to the current Fee Schedules, with the additional benefit that the User would have the option to select a lower-latency, dedicated network connection.

The Limitation on the Number of No Fee NMS Network Connections

As described above, the Exchange believes that the majority of Users would be able to meet their bandwidth needs for the NMS network with the proposed No Fee NMS Network Connections. The Exchange further believes that without the proposed limit on number of No Fee NMS Network Connections, Users may opt to connect to NMS network connections on a one-for-one basis for each LCN or IP network connection that they have purchased, even if such LCN or IP network connections are not currently used to access the NMS feeds. In such case, the Exchange does not believe that more than eight NMS network connections would be necessary or in furtherance of the User's needs to connect to the NMS feeds. To discourage Users from requesting more NMS network connections than they need, the Exchange proposes to charge for any NMS network connections in excess of the proposed limit of No Fee NMS Network Connections.

Similarly, the Exchange believes that if a User chooses to connect to the NMS feeds via both an LCN or IP network connection and an associated NMS network connection, that User would be receiving two separate network connections to access the NMS feeds. This would double its bandwidth available to access the NMS feeds and the Exchange believes that such User should be charged accordingly. The Exchange further believes it would promote efficient use of resources to charge for the NMS network connection in these circumstances because there would be operational costs for the Exchange to support access to both the NMS network and the LCN or IP networks at the same time. Stated otherwise, the Exchange is concerned that if the NMS network connections are free without any limits, Users may seek so many connections that it would increase both capital and operational expenses for the Exchange.

Defraying the Cost of Building the NMS Network

In addition to promoting the efficient use of NMS network connections, charging for NMS network connections under the limited circumstances described above may also defray the costs associated with implementing the NMS network. As described above, SIAC is the SIP for the NMS plans and is reimbursed for specified direct costs by the participants to the NMS Plans.[21] Even though the NMS network would connect only to the NMS feeds, the Exchange has agreed not to seek reimbursement of the costs to build the NMS network from the participants of the respective NMS Plans.

The one-time capital expenditure for the implementation of the NMS network will be approximately $3.8 million, which includes procurement of new low-latency network switches, network devices, and analytics tools and the one-time operational expenditures to build this new network. The estimate is based on the hardware that would be necessary to support the Current Users' present configurations if they replaced their LCN or IP network connections to the NMS feeds with NMS network connections, with some room for additional growth. If Users were to request NMS network connections in excess of the estimated number of connections, the Exchange would have to procure additional hardware, which would be an additional cost. In addition to these one-time implementation costs, the Exchange estimates that the ongoing cost to maintain and operate the dedicated NMS network will be approximately $215,000 annually.

The Exchange cannot predict with certainty what User behavior will be once the NMS network is available. As discussed above, based on current usage of the LCN and IP network, the Exchange anticipates that all Current Users will be able to connect to the NMS feeds without any new or different charges. The Exchange expects that some Users may even reduce the total number of circuits that they purchase because they will be able to obtain up to eight connections to the NMS network at no charge. Those No Fee NMS Network Connections will free up bandwidth over their LCN or IP network connections, allowing them to reduce the total number of LCN or IP network connections that they purchase.

Although the Exchange believes that none of the Current Users will have to pay additional fees to connect to the NMS network, the Exchange cannot fully anticipate User behavior once the NMS network is available. Some Current Users, or new Users, may elect to purchase NMS network connections in excess of the proposed limit on the number of No Fee NMS Network Connections, for which they would pay a charge. Given that, the Exchange has done an analysis of what would occur

[21] SIAC is reimbursed either directly (under the CTA/CQ Plans, participants reimburse SIAC directly) or indirectly (under the OPRA Plan, OPRA LLC reimburses SIAC).

if Users request five unique new NMS network connections that are not No Fee NMS Network Connections. Assuming that such Users purchase 40 Gb NMS network circuits, these five new connections would result in $1,130,000 in revenue: $50,000 in initial charges and $1,080,000 in MRC. This revenue would likely be offset either in part or in whole by Users, including Current Users, reducing the total number of LCN or IP network circuits that they purchase. The Exchange could even experience a net decline in revenue as a result of the proposed commercial terms for the NMS network.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [22] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[23]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[25] in particular, because 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 regulating, clearing, settling, processing information with respect to, and 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[26] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Would Remove Impediments to and Perfect the Mechanism of a Free and Open Market and a National Market System

The Exchange believes that the proposed change to establish access to the NMS network as a service available in co-location would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering access to the dedicated, low-latency NMS network, the Exchange will be providing Users with an additional option to connect to the NMS feeds. Until recently, SIAC was required to provide connectivity to the NMS feeds via only the IP network. As recently approved by the operating committees for the CTA/CQ Plans, SIAC is now authorized to offer connectivity to the NMS feeds in the data center via an alternate, dedicated, low-latency NMS network. The proposed NMS network has been designed consistent with this directive and will provide greater choice to Users that are seeking a low-latency network to connect to the NMS feeds.

The Proposed Rule Change is Reasonable

As an initial matter, as required by Rule 603(b) of Regulation NMS, SIAC disseminates quotation and transaction information as the single plan processor for all Tape A and Tape B-listed securities and is also the single plan processor for all options exchanges. As the single plan processor, the pricing decisions relating to the dedicated NMS network are not constrained by competitive market forces.

Instead, as described above, the Exchange is funding the capital and operational expenses to build and operate the NMS network. Those implementation costs are applicable only to the NMS network, which will be used for the sole purpose of providing access to the NMS feeds. Simply put, none of the implementation costs are applicable to any other Exchange services. The Exchange has based its procurement needs—which correlate to the Exchange's estimated costs to build the NMS network—based on the Current Users' usage of the LCN or IP networks to connect to the NMS feeds, with some room for additional growth.

The Exchange believes that the proposed charges would be reasonable because such charges would defray the estimated costs the Exchange will incur to build and operate the NMS network. As described above, the proposed NMS network will be a dedicated, low-latency network that will provide access only to the NMS feeds. Because LCN and IP network fees on the Fee Schedules relate to charges for services either other than or in addition to connectivity to the NMS feeds, the Exchange currently does not assess any fees that are specific to connectivity to the NMS feeds. The proposed charges for access to the NMS network are designed to defray the specific costs that the Exchange will incur to build and maintain the infrastructure for the NMS network. As described above, the Exchange's capital expenditure costs for the build are estimated to be $3.8 million, which includes procurement of new low-latency network switches, network devices, and analytics tools and the one-time operational expenditures to build this new network. The estimate is based on the hardware that would be necessary to support the Current Users' present configurations if they replaced their LCN or IP network connections to the NMS feeds with NMS network connections, with some room for additional growth. If Users were to request NMS network connections in excess of the estimated number of connections, the Exchange would have to procure additional hardware, which would be an additional cost. In addition to this initial estimated approximately $3.8 million outlay, the Exchange anticipates that the ongoing costs to maintain and operate the NMS network will be approximately $215,000 annually.

The Exchange further believes that these proposed fees would be reasonable because unnecessary connections would impose a burden on the infrastructure that would be shared by all Users.

As stated above, the Exchange believes that the Current Users will use No Fee NMS Network Connections for

[22] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[23] *See* 78 FR 50459, *supra* note 5, at 50459. NYSE, NYSE American and NYSE National have submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2019–46, SR–NYSEAmer–2019–34, and SR–NYSENAT–2019–19.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78f(b)(4).

the NMS network, and as a consequence, none of the Current Users will have to pay to connect to the NMS network. However, the Exchange cannot fully anticipate User behavior once the NMS network is available. Some Current Users, or new Users, may elect to purchase NMS network connections in excess of the proposed limit on number of No Fee NMS Network Connections, for which they would pay a charge. Given that, the Exchange has done an analysis of what would occur if Users request five unique NMS network connections that are not No Fee NMS Network Connections. Assuming that such connections were the larger size of 40 Gb, these five new connections would result in $1,130,000 in revenue: $50,000 in initial charges and $1,080,000 in MRC. But new revenue does not necessarily translate into net revenue gain.

First, the Exchange anticipates that once the NMS network is available, Users may lower the number of LCN or IP network connections that they purchase, offsetting any unique new charges and possibly leading to a net decline in revenues. Second, even if the Exchange assumes new revenue of $1,130,000 per year, such revenue would not fully offset the cost of building and maintaining the NMS network. Rather, the proposed charges, to the extent they would correlate to new revenue, would merely defray the costs that the Exchange will incur to build and support additional capacity for the NMS network. Assuming revenue equal to the MRCs, *i.e.,* $1,080,000 per year, it would take four years before such revenue would fully offset the initial fixed costs to build the NMS network. The Exchange generally refreshes network hardware after three or four years, as such hardware has a limited life. Accordingly, the Exchange expects that it will incur substantial new costs to refresh the NMS network after three or four years. As a result, even after the initial fixed costs are offset, the MRC revenue will not necessarily cover the variable, ongoing costs to maintain and refresh the NMS network. If the revenue were to be a net gain, the Exchange does not believe such revenues would cover all the fixed costs that the Exchange would incur to refresh the network hardware or add additional infrastructure to meet Users' needs. Any revenue would assist with defraying the sizable investment needed to create the NMS network, but in the end the Exchange does not expect additional net revenues.

The Proposed Rule Change is an Equitable Allocation of Fees

The Exchange believes that the proposed fee change is equitably allocated for multiple reasons.

The No Fee NMS Network Connection is an Equitable Allocation of Fees

As described above, the proposed fee structure for the NMS network has been designed so that the majority of Users would not have any new or different charges if they opt to connect to the NMS network. Rather, Users will have a choice whether to use an IP network, LCN or NMS network connection to connect to the NMS feeds. The cost to purchase a NMS network connection would be the same as an IP network connection of the same size. A User that voluntarily chooses to exercise the choice to connect with the NMS network would receive the benefit of a low-latency connection without any additional charges.

More specifically, the Exchange proposes that if a User purchases access to the LCN or IP network and requests a connection to the NMS network, it, together with its Affiliates, will not be charged for up to eight corresponding No Fee NMS Network Connections. Such User, together with its Affiliates, will be entitled to a No Fee NMS Network Connection for each of the first four LCN or IP network connections that it purchases, so long as they meet the requirements sets forth above. A User that utilizes its No Fee NMS Network Connections to connect to the NMS network would have no or different charges.

The Exchange believes that the proposed limit on the number of No Fee NMS Network Connections would be equitably allocated because it is based on the number of LCN or IP network connections that Users currently purchase to connect to the NMS feeds. As noted above, based on a review of the Current Users' LCN and IP network connections and conversations with two of the Current Users, the Exchange believes that none of the Current Users will have to pay more to connect to the NMS network, and Users that want access to the NMS feeds in the future are unlikely to have to pay for their NMS network connections.

The Application of the Proposed Rule Change to Affiliates is an Equitable Allocation of Fees

The Exchange likewise believes it would be equitable to apply the proposed limit on the number of No Fee NMS Network Connections to Users taken together with their Affiliates because all Users seeking to connect to NMS feeds using NMS network connections would be subject to the same parameters. The proposal avoids disparate treatment of Users that have divided their various business activities between separate corporate entities, as compared to Users that operate those business activities within a single corporate entity. It would discourage any User from taking deliberate advantage of the proposed connections to the NMS network by setting up separate corporate entities to act as Users, thereby obtaining more connections than allowed by the proposed limit on No Fee NMS Network Connections. The Exchange believes that using the existing definitions of Affiliate, Hosted Customer, and Hosting User is an equitable allocation of fees because it would promote consistency and clarity for Users.

The Proposed Charge for NMS Networks is an Equitable Allocation of Fees

The Exchange believes that charging the same rate for accessing the NMS network as is currently charged for accessing a same-sized IP network connection for Users who do not also purchase an LCN or IP network connection or who have connections to the LCN and IP network but want a number of NMS network connections in excess of its No Fee NMS Network Connections, would be equitably allocated because a User that currently seeks to connect to the NMS feeds must pay, at a minimum, the charges for access to the IP network. With the addition of the NMS network, Users will have a choice to either continue using an IP network connection or instead connect via the NMS network to connect to the NMS feeds. Users that choose to connect via the NMS network will receive the benefit of a low-latency network as compared to access to the IP network at the same price as the access to the IP network.

To the extent a User may be subject to charges in addition to what they would be paying under the current Fee Schedules, *e.g.,* if a User needed more access to the NMS network than their allocated number of No Fee NMS Network Connections or if they wanted to continue to use the LCN or IP network to connect to the NMS feeds, the Exchange believes that the proposed charges would be equitably allocated because such charges would encourage efficient use of the NMS network and discourage Users to subscribe to more NMS network connections.

Current Users do not necessarily use all of their connections to the IP network and LCN to connect to the NMS

feeds. If the Exchange were to provide them with an equal number of No Fee NMS Network Connections without any limitations on the number, the Current Users would have no incentive to make efficient decisions regarding the number of NMS network connections they had, and the Exchange would need to incur additional costs to support the infrastructure necessary to support those additional NMS network connections. In addition, Users would bear the burden of any unnecessary connections because of the strain on the infrastructure shared by all Users that access the NMS network. The Exchange believes that by charging for any connections to the NMS network in excess of the allocated number of No Fee NMS Network Connections, it will motivate Users to make rational decisions based on how many NMS network connections they need, rather than because they are simply available. These fees are therefore reasonable and not unfairly discriminatory because they will reduce the burden on all Users accessing the NMS network.

Finally, the Exchange believes that access to the proposed NMS network and related commercial terms would be equitably allocated because, in addition to access to the NMS network being completely voluntary, it would be available to all Users on an equal basis (*i.e.,* the same access would be available to all Users). All Users that voluntarily selected to receive access to the NMS network would be charged the same amount for the same service.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed fee change is not unfairly discriminatory for multiple reasons.

The No Fee NMS Network Connection Is Not Unfairly Discriminatory

As described above, the proposed fee structure for the NMS network has been designed so that the majority of Users would not have any new or different charges if they opt to connect to the NMS network. Rather, all Users will have a choice whether to use an IP network, LCN or NMS network connection to connect to the NMS feeds. The proposed fee therefore does not propose to impose any meaningful differences to different types of Users. Rather, the cost to purchase a NMS network connection would be the same as an IP network connection of the same size, which would be available to all Users on the same terms. Any User that voluntarily chooses to exercise the choice to connect with the NMS network would receive the benefit of a low-latency connection without any additional charges.

More specifically, the Exchange proposes that if a User purchases access to the LCN or IP network and requests a connection to the NMS network, it, together with its Affiliates, will not be charged for up to eight corresponding No Fee NMS Network Connections. Such User, together with its Affiliates, will be entitled to a No Fee Connection for each of the first four LCN or IP network connections that it purchases, so long as they meet the requirements sets forth above. A User that utilizes its No Fee NMS Network Connections to connect to the NMS network would have no new or different charges.

The Exchange believes that the proposed limit on the number of No Fee NMS Network Connections would not be unfairly discriminatory because it is based on the number of LCN or IP network connections that Users currently purchase to connect to the NMS feeds. As noted above, based on a review of the Current Users' LCN and IP network connections and conversations with two of the Current Users, the Exchange believes that none of the Current Users will have to pay more to connect to the NMS network, and Users that want access to the NMS feeds in the future are unlikely to have to pay for their NMS network connections.

The Application of the Proposed Rule Change to Affiliates Is Not Unfairly Discriminatory

The Exchange likewise believes it would not be unfairly discriminatory to apply the proposed limit on the number of No Fee NMS Network Connections to Users taken together with their Affiliates because all Users seeking to connect to NMS feeds using NMS network connections would be subject to the same parameters. The proposal avoids disparate treatment of Users that have divided their various business activities between separate corporate entities, as compared to Users that operate those business activities within a single corporate entity. It would discourage any User from taking deliberate advantage of the proposed connections to the NMS network by setting up separate corporate entities to act as Users, thereby obtaining more connections than allowed by the proposed limit on No Fee NMS Network Connections. The Exchange believes that using the existing definitions of Affiliate, Hosted Customer, and Hosting User would not be unfairly discriminatory because it would promote consistency and clarity for Users.

The Proposed Charge for NMS Networks Is Not Unfairly Discriminatory

The Exchange believes that charging the same rate for accessing the NMS network as is currently charged for accessing a same-sized IP network connection for Users who do not also purchase an LCN or IP network connection or who have connections to the LCN and IP network but want a number of NMS network connections in excess of its No Fee NMS Network Connections, would not be unfairly discriminatory because a User that currently seeks to connect to the NMS feeds must pay, at a minimum, the charges for access to the IP network. With the addition of the NMS network, all Users will have a choice to either continue using an IP network connection or instead connect via the NMS network to connect to the NMS feeds. Users that choose to connect via the NMS network will receive the benefit of a low-latency network as compared to access to the IP network at the same price as the access to the IP network.

To the extent a User may be subject to charges in addition to what they would be paying under the current Fee Schedules, *e.g.,* if a User needed more access to the NMS network than their allocated number of No Fee NMS Network Connections or if they wanted to continue to use the LCN or IP network to connect to the NMS feeds, the Exchange believes that the proposed charges would not be unfairly discriminatory because such charges would encourage efficient use of the NMS network and discourage Users to subscribe to more NMS network connections.

Current Users do not necessarily use all of their connections to the IP network and LCN to connect to the NMS feeds. If the Exchange were to provide them with an equal number of No Fee NMS Network Connections without any limitations on the number, the Current Users would have no incentive to make efficient decisions regarding the number of NMS network connections they had, and the Exchange would need to incur additional costs to support the infrastructure necessary to support those additional NMS network connections. In addition, Users would bear the burden of any unnecessary connections because of the strain on the infrastructure shared by all Users that access the NMS network. The Exchange believes that by charging for any connections to the NMS network in excess of the allocated number of No Fee NMS Network Connections, it will motivate Users to make rational

decisions based on how many NMS network connections they need, rather than because they are simply available. These fees are therefore not unfairly discriminatory because they will reduce the burden on all Users accessing the NMS network.

Finally, the Exchange believes that access to the proposed NMS network and related commercial terms would not be unfairly discriminatory because, in addition to access to the NMS network being completely voluntary, it would be available to all Users on an equal basis (*i.e.,* the same access would be available to all Users). All Users that voluntarily selected to receive access to the NMS network would be charged the same amount for the same service.

For the reasons above, the proposed changes would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with 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 purposes of the Act. The Exchange believes that the proposed rule change would not impose any burden on competition because it is not designed to address any competitive issues. As described above, SIAC is the single plan processor for Tape A and B equities securities and all options securities and does not currently compete with any other providers for these processor services. The proposed fee structure for the NMS network would be applied equally among all Users and it is their choice of whether and at what level to subscribe to such services, including whether to connect to the proposed NMS network. Accordingly, the Exchange does not believe that the proposed fee structure would place any Users at a relative disadvantage compared to other Users.

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 within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such 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–NYSEArca–2019–61 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–61. 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–NYSEArca–2019–61, and should be submitted on or before October 1, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19461 Filed 9–9–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 12:30 p.m. on Thursday, September 12, 2019.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Regulatory matters regarding certain financial institutions;

Resolution of litigation claims; and

[27] 17 CFR 200.30–3(a)(12).

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: September 5, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–19617 Filed 9–6–19; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86876; File No. SR–FICC–2019–801]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Advance Notice To Amend the GSD Rulebook To Establish a Process To Address Liquidity Needs in Certain Situations in the GCF Repo and CCIT Services and Make Other Changes

September 5, 2019.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act''),[2] notice is hereby given that on August 9, 2019, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the advance notice SR–FICC–2019–801 (''Advance Notice'') as described in Items I, II and III below, which Items have been prepared by the clearing agency.[3] The Commission is publishing this notice to solicit comments on the Advance Notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This Advance Notice consists of amendments to the FICC Government Securities Division (''GSD'') Rulebook (the ''Rules'') [4] to: (i) Establish a new deadline and associated late fees for satisfaction of net cash obligations in GCF Repo Transaction [5] and CCIT Transaction [6] activity (hereinafter ''GCF Repo/CCIT activity'') [7] and remove the current 6:00 p.m. Collateral Allocation Obligation [8] deadline; (ii) establish a process to provide liquidity to FICC in situations where a Netting Member or CCIT Member [9] with a net cash obligation in GCF Repo/CCIT activity, that is otherwise in good standing, is either (1) delayed in satisfying or (2) unable to satisfy its cash obligation (in whole or in part); and (iii) make a clarification, certain technical changes and corrections, all as further described below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance Notice. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants, or Others

Written comments relating to this proposal have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

(B) Advance Notice Filed Pursuant to Section 806(e) of the Clearing Supervision Act

Nature of the Proposed Change

The proposed rule change would amend the Rules to: (i) Establish a new deadline and associated late fees for satisfaction of net cash obligations in GCF Repo/CCIT activity and remove the current 6:00 p.m. Collateral Allocation Obligation deadline; (ii) establish a process to provide liquidity to FICC in situations where a Netting Member or CCIT Member with a net cash obligation in GCF Repo/CCIT activity, that is otherwise in good standing, is either (1) delayed in satisfying or (2) unable to satisfy its cash obligation (in whole or in part); and (iii) make a clarification, certain technical changes and corrections, all as further described below.

(i) Proposed Change To Establish a New Deadline and Associated Late Fees for Satisfaction of Net Cash Obligations in GCF Repo/CCIT Activity and Remove the Current 6:00 p.m. Collateral Allocation Obligation Deadline

Securities Obligations (Collateral Allocation Obligations)

The Rules (Section 3 of Rule 20, the Schedule of GCF Timeframes and the Fee Structure) currently address a Netting Member's failure to satisfy its Collateral Allocation Obligation on a timely basis.[10] Specifically, Section 3 of Rule 20 states that Collateral Allocation Obligations must be satisfied by a Netting Member within the timeframes established for such by FICC.[11] The current deadline in the Schedule of GCF Timeframes for Netting Member allocation of collateral to satisfy securities obligations is 4:30 p.m.[12] This 4:30 p.m. deadline is the first deadline

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] On August 9, 2019, FICC filed this Advance Notice as a proposed rule change (SR–FICC–2019–004) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, 17 CFR 240.19b–4. A copy of the proposed rule change is *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[4] Capitalized terms not defined herein are defined in the Rules, *available at http://www.dtcc.com/legal/rules-and-procedures.*

[5] ''GCF Repo Transaction'' means a Repo Transaction involving Generic CUSIP Numbers the data on which are submitted to FICC on a Locked-In-Trade basis pursuant to the provisions of Rule 6C, for netting and settlement by FICC pursuant to the provisions of Rule 20. Rule 1, *supra* note 4.

[6] ''CCIT Transaction'' means a transaction that is processed by FICC in the CCIT Service. Because the CCIT Service leverages the infrastructure and processes of the GCF Repo Service, a CCIT Transaction must be: (i) In a Generic CUSIP Number approved for the GCF Repo Service and (ii) between a CCIT Member and a Netting Member who participates in the GCF Repo Service where the CCIT Member is the cash lender in the transaction. Rule 1, *supra* note 4.

[7] The GCF Repo Service is primarily governed by Rule 20 and enables Netting Members to trade general collateral finance repurchase agreement transactions based on rate, term, and underlying product throughout the day with brokers on a blind basis. The CCIT Service is governed by Rule 3B and enables tri-party repurchase agreement transactions in GCF Repo Securities between Netting Members that participate in the GCF Repo Service and institutional cash lenders (other than investment companies registered under the Investment Company Act of 1940, as amended). Rule 20 and Rule 3B, *supra* note 4.

[8] ''Collateral Allocation Obligation'' means the obligation of a Netting Member to allocate securities or cash for the benefit of FICC to secure such Member's GCF Net Funds Borrower Position. Rule 1, *supra* note 4.

[9] ''CCIT™'' means Centrally Cleared Institutional Triparty. The terms ''Centrally Cleared Institutional Triparty Member'' and ''CCIT Member'' mean a legal entity other than a Registered Investment Company approved to participate in the FICC's CCIT Service as a cash lender. Rule 1, *supra* note 4. Eligibility to become a CCIT Member is described in Section 2 of Rule 3B. Rule 3B, Section 2, *supra* note 4.

[10] Rule 20, Section 3, Schedule of GCF Timeframes, and Fee Structure, *supra* note 4. Collateral Allocation Obligations do not apply to CCIT Members because they can only be cash lenders in the CCIT Transactions.

[11] Rule 20, Section 3, *supra* note 4.

[12] Schedule of GCF Timeframes, *supra* note 4.

by which Netting Members that have Collateral Allocation Obligations must allocate their securities collateral or be subject to a late fee of $500 (the late fee is set forth in the Fee Structure of the Rules).[13] In addition, the Schedule of GCF Timeframes includes a second deadline of 6:00 p.m. by which Netting Members that have Collateral Allocation Obligations must allocate their securities collateral; after 6:00 p.m., FICC will process such collateral allocations on a good faith basis only.[14] These provisions are mirrored in Section 3 of Rule 20, which also references the ''final cutoff'' (*i.e.,* the 6:00 p.m. deadline).[15] Section 3 of Rule 20 also provides FICC's processing of such late allocations is on a good faith basis only.[16] Furthermore, Section 3 of Rule 20 states that Netting Members that do not satisfy their Collateral Allocation Obligations by the close of the Fedwire Funds Service shall be deemed to have failed on such Position (the consequence of which shall be that such Netting Member would not be entitled to receive the funds borrowed, but shall owe interest on such funds amount).[17]

With respect to the foregoing regarding allocation of securities collateral on a timely basis, FICC proposes to establish 4:30 p.m. as the only deadline for Netting Member allocation of collateral.[18] In other words, FICC proposes to remove the current second deadline (*i.e.,* 6:00 p.m.) by which Netting Members that have Collateral Allocation Obligations must allocate their securities obligations. This proposed change would align the deadline for allocating securities obligations with the proposed deadline for satisfying cash obligations (*i.e.,* 4:30 p.m. or one hour after the close of the Fedwire Securities Service reversals, if later). Netting Members typically have obligations to satisfy outside of FICC after the collateral allocations occur at FICC. FICC believes that all parties (including FICC) would benefit from securities settlement occurring by 4:30 p.m. This is because the more settlements that complete earlier, the more potential operational risk is removed from the market. Specifically, there is interconnectivity between the GCF Repo market and the tri-party market outside of FICC. The securities collateral that is used to settle GCF Repo positions can be subsequently used by Netting Members to complete tri-party transactions outside of FICC. Therefore, the earlier that securities settlement occurs in the GCF Repo Service, the less potential operational risk of incomplete tri-party transactions outside of FICC. Under the current Rules, the second deadline of 6:00 p.m. creates an environment of later settlement both at FICC and outside of FICC. Even though Netting Members are generally abiding by the 4:30 p.m. securities allocation deadline, FICC would like to address the possibility of later settlement by deleting the 6:00 p.m. deadline. Therefore, by imposing 4:30 p.m. as the only deadline, FICC believes it would be lowering potential operational risk in the market that could arise if Netting Members chose to avail themselves of the current 6:00 p.m. deadline. This risk is the risk of disorder if firms are attempting to fulfill GCF Repo settlement and tri-party transaction settlement at the same time later in the day. Under the proposal, FICC would continue to process collateral allocations after the 4:30 p.m. deadline on a good faith basis only (like it currently does for collateral allocations after the current 6:00 p.m. deadline). Netting Members would remain subject to the $500 late fee if they do not meet the 4:30 p.m. deadline unless FICC determines, in its sole discretion, that failure to meet this timeframe is not primarily the fault of the Netting Member, as currently stated in Section IX of the Fee Structure. This determination would be made by FICC Product Management based on input from the GCF Clearing Agent Bank, internal FICC Operations staff and the Netting Member. The Netting Member would not be charged if the lateness is due to the GCF Clearing Agent Bank or FICC.

Cash Obligations

The Rules do not currently contain a deadline for a Netting Member's or CCIT Member's satisfaction of cash obligations in the GCF Repo Service and the CCIT Service. FICC proposes to establish 4:30 p.m. (or one hour after the close of the Fedwire Securities Service reversals, if later) as the deadline for a ''Net Funds Payor'' (as defined by this proposed rule change)[19] to satisfy their cash obligations after which a late fee of $500 would be imposed unless FICC determines that failure to meet this timeframe is not the fault of the Net Funds Payor. This determination would be made by FICC Product Management based on input from the GCF Clearing Agent Bank, internal FICC Operations staff and the Netting Member. The Net Funds Payor would not be charged if the lateness is due to the GCF Clearing Agent Bank or FICC. To encourage Netting Members and CCIT Members that are Net Funds Payors to satisfy their cash obligations by the 4:30 p.m. deadline, the proposed rule change would provide for progressive increases in the amount of the late fee for additional late occurrences. Specifically, the late fees would apply as follows: (a) $500 for the first occurrence (within 30 calendar days), (b) $1,000 for the second occurrence (within 30 calendar days), (c) $2,000 for the third occurrence (within 30 calendar days), and (d) $3,000 for the fourth occurrence (within 30 calendar days) or additional occurrences (within the 30 calendar days). The Rules currently set forth a late fee of $500 for late securities settlement. As such, for late cash settlement, FICC is also proposing to establish $500 as the initial late fee; however, as described above, there would be progressive increases in the amount of the late fee for additional late occurrences. FICC derived these amounts by starting with the equivalent late fee of $500 that is currently imposed with respect to late securities settlement and then increased the late fee amounts to provide a disincentive effect.[20]

In addition, FICC proposes to establish additional late fees that would be imposed on Netting Members and CCIT Members that are Net Funds Payors that fail to make the required payment of cash by the close of the Fedwire Funds Service. Specifically, the following additional late fees would be imposed if cash obligations are not satisfied by the close of the Fedwire Funds Service (unless FICC determines that the failure to meet this timeframe is not primarily the fault of the Net Funds Payors[21]): (a) 100 basis points on

[13] Fee Structure, *supra* note 4.

[14] Schedule of GCF Timeframes, *supra* note 4. Today, after 6:00 p.m., FICC will process collateral allocations on a good faith basis, namely if FICC is able to contact both affected Netting Members and such Netting Members agree to settle such transaction, then FICC and its GCF Clearing Agent Bank will settle such transaction.

[15] Rule 20, Section 3, *supra* note 4.

[16] *Id.*

[17] *Id.*

[18] *See* Schedule of GCF Timeframes, *supra* note 4. Currently, the Schedule of GCF Timeframes provides that the first deadline for collateral allocation is 4:30 p.m. or one hour after the close of the securities FedWire, if later. The reference regarding one hour after the FedWire close would remain, subject to a correction discussed below in Item II(B)(iii) of this filing.

[19] FICC is proposing to add ''Net Funds Payor'' as a new definition as explained in Item II(B)(iii) below.

[20] Because the deadline for cash settlement is newly proposed, FICC would like to provide a disincentive for cash lateness and, therefore, is proposing fee increases.

[21] This determination would be made by FICC Product Management based on input from the GCF Clearing Agent Bank, internal FICC Operations staff and the Netting Member. The Net Funds Payor

Continued

the unsatisfied cash obligation amount for the first occurrence (within 90 calendar days),[22] (b) 200 basis points on the unsatisfied cash obligation amount for the second occurrence (within 90 calendar days), (c) 300 basis points on the unsatisfied cash obligation amount for the third occurrence (within 90 calendar days), and (d) 400 basis points on the unsatisfied cash obligation amount for the fourth occurrence (within 90 calendar days) or additional occurrences (within the 90 calendar days). As there is no comparative data, FICC believes these amounts in this section represent reasonable and scaling incentives for Netting Members and CCIT Members that are Net Funds Payors to satisfy their cash obligations in a timely manner. The proposed late fees related to the 4:30 p.m. deadline are in flat dollar amounts whereas the proposed late fees related to cash obligations not being satisfied by the close of the Fedwire Funds Service are in basis points and based on the amount of unsettled cash obligations. FICC has structured its proposal in this way because the proposed late fees related to the 4:30 p.m. deadline would address lateness whereas the proposed late fee related to cash obligations not being satisfied by the close of the Fedwire Funds Service would charge for the amount of cash that was not settled.

(ii) Proposed Change To Establish a Process To Provide Liquidity to FICC in Situations Where a Netting Member or CCIT Member With a Net Cash Obligation in GCF Repo/CCIT Activity, That Is Otherwise in Good Standing, Is Either (1) Delayed in Satisfying or (2) Unable To Satisfy Its Cash Obligation (in Whole or in Part)

Proposed Process

FICC is proposing to establish a process to address FICC's liquidity needs in situations in which a Netting Member or CCIT Member that is a Net Funds Payor, that is otherwise in good standing with FICC, is delayed or unable to satisfy (either in whole or in part) its GCF Repo/CCIT activity cash obligations.[23] The proposed process would not apply if FICC ceases to act for the Netting Member or CCIT Member, in which case the close-out rules would apply.[24] Because settlement of GCF Repo/CCIT activity occurs late in the day, having an established process to handle a non-default related liquidity need would benefit FICC and its members by improving FICC's ability to complete settlement and thereby reduce risk to FICC and the industry. This proposal would provide FICC with the tools to replace failed settlement with a financing transaction with FICC, as further described below.

FICC would first evaluate whether to recommend to the Board's Risk Committee that FICC cease to act for such Net Funds Payor. FICC would consider, but would not be limited to, the following factors in its evaluation: (i) The Net Funds Payor's current financial position, (ii) the amount of the outstanding payment, (iii) the cause of the late payment, (iv) current market conditions, and (v) the size of the potential overnight reverse repurchase transactions under the GCF Repo Allocation Waterfall MRAs (as defined below) on the GSD membership.[25]

Pursuant to the proposal, once FICC determines that a Net Funds Payor is in good standing with GSD but is experiencing an issue, such as an operational issue, that may result in a late payment, partial payment or non-payment of its cash obligation on the settlement date, the following process would occur:

- In the case where the Net Funds Payor only satisfies part of its cash obligation, the GCF Clearing Agent Bank would settle the cash it received pursuant to such GCF Clearing Agent Bank's settlement algorithm (as is done today). The GCF Clearing Agent Bank has its own settlement algorithm, which would allocate the partial amount of cash received from the Net Funds Payor among the various Net Funds Receivers.[26]
- FICC would evaluate whether FICC will provide liquidity (in the form of end-of-day borrowing of Clearing Fund cash (''EOD Clearing Fund Cash,'' which is a new definition proposed to be added by this filing) and/or GCF Clearing Agent Bank loans) to satisfy any remaining unsettled cash obligation of a Net Funds Payor on a pro rata basis based upon such Net Funds Receivers' percentage of the entire remaining amount of the unsettled cash obligation.
- FICC would first consider whether its GCF Clearing Agent Bank will provide overnight financing. Because FICC's overnight financing arrangements with its GCF Clearing Agent Bank are uncommitted, such arrangements are subject to the GCF Clearing Agent Bank's discretion. Financing extended by the GCF Clearing Agent Bank would use such bank's haircut schedule, and Clearing Fund securities would be used to satisfy the haircut.[27] FICC would not set a priority between the Clearing Fund cash and the overnight financing arrangements from its GCF Clearing Agent Bank (if any) because GSD's decision to use either or both resources would be influenced on a case-by-case basis by factors such as the specific circumstances, availability of a bank loan, market conditions, commercial considerations and ease of operational execution.[28]
- FICC's use of EOD Clearing Fund Cash for this situation would be subject to certain internal limitations. Specifically, GSD would establish a cap on the amount of EOD Clearing Fund Cash that may be used for this purpose to the lesser of $1 billion or 20 percent of available Clearing Fund Cash. GSD reviewed GCF and CCIT settlement activity for the period from July 2, 2018 through February 28, 2019 and noted that the average cash amount required across all 71 Members was between zero and $23.7 billion. Over this period, there were 27 Members with no cash amount required and 18 Members with an average cash amount of less than $1 billion. Therefore, FICC believes that the proposed cap would provide resources to facilitate settlement for a typical cash amount at a level that would not materially impact its liquidity resources in the event that there is a simultaneous need for liquidity both under the scenario this proposal is seeking to address and another Member-related default. GSD would not set a priority between Clearing Fund cash and overnight financing by the GCF Clearing Agent Bank (if any) because GSD's decision to use either or both resources would be influenced on a case-by-case

would not be charged if the lateness is due to the GCF Clearing Agent Bank or FICC.

[22] The late fee is based on the ACT/360 day count convention, where ''ACT'' represents the actual number of days in the period. For example, assuming a first occurrence unsatisfied cash obligation of $100 million, the late fee would be $100 million * 100/3600000 = $2,777.78. This example uses the first occurrence amount. This calculation would apply to the rest of the proposed late fees in this section.

[23] Such delay could, for example, be due to operational issues experienced by the Net Funds Payor. If a Netting Member with a collateral obligation does not deliver its securities, FICC considers it a fail. However, if a Netting Member or CCIT Member with a cash obligation is unable to deliver its cash (and is in good standing), FICC intends to employ the proposed process.

[24] *See* Rule 22A, *supra* note 4.

[25] FICC already has the authority to cease to act for a member that does not fulfill an obligation to FICC and will continually evaluate throughout the proposed process whether FICC will cease to act.

[26] An example of how the satisfaction of a partial cash obligation may be allocated among the Net Funds Receivers is provided in the third paragraph under ''Example'' in this section of this filing.

[27] *See* Rule 4, Section 5, *supra* note 4.

[28] The specific circumstances that FICC would consider are the time of day and the size of the shortfall. Regarding the market conditions, FICC would consider whether there are stress events occurring in the market. With respect to commercial considerations, FICC would consider the current loan rates.

basis by various factors, as described in the previous bullet.

• The cash amount that FICC would be able to raise from EOD Clearing Fund Cash and/or GCF Clearing Agent Bank loans would be applied to unsettled cash obligations of the Net Funds Receivers on a pro rata basis. The proration would be based upon the percentage of each Net Fund Receiver's unsettled obligation versus the total amount of all unsettled obligations.

• For example, assume the unsettled obligations totaled $1 billion and the liquidity raised is $800 million. In this case, FICC would instruct the GCF Clearing Agent Bank(s) to apply the liquidity amount ($800 million) to the remaining unsettled GCF Repo/CCIT obligations. Assume there are two Net Funds Receivers with unsettled obligations (one Netting/CCIT Member is short $600 million and the other is short $400 million). In this case, the first Net Funds Receiver would receive 60 percent of the $800 million ($480 million) and the second Net Funds Receiver would receive 40 percent of the $800 million ($320 million). The remaining unfunded $200 million would be distributed via overnight reverse repurchase transactions.[29]

• To the extent that the amount from the application of the Clearing Fund cash and overnight financing arrangement (if any) is insufficient to cover the outstanding cash obligations, FICC would enter into overnight repurchase agreements with Net Funds Receivers that are in unsettled Net Funds Receiver Positions. These repos would be done pursuant to the ''GCF Repo Allocation Waterfall MRA'' (as proposed to be added by this filing) and would be Rules-based.

• FICC would notify each unsettled Net Funds Receiver at the GCF Clearing Agent Bank that did not satisfy its cash obligation, and each such Net Funds Receiver would be required to enter into an overnight reverse repurchase agreement at the applicable Generic CUSIP Number with FICC. The amount of such reverse repurchase agreement would be at the remaining unsettled amount per Net Funds Receiver. Therefore, amounts received by FICC from these overnight reverse repurchase agreements would be used to satisfy remaining unsettled cash obligations.

• Such reverse repurchase agreements would be entered into pursuant to the terms of a 1996 SIFMA Master Repurchase Agreement,[30] which would be incorporated into the Rules, subject to specific changes set forth in the Rules. Such reverse repurchase transactions would be overnight trades at a market rate.[31] The associated overnight interest of the reverse repurchase agreement would be debited from the Net Funds Payor that did not satisfy its cash obligation and credited to the affected Net Funds Receivers in the funds-only settlement process as a Miscellaneous Adjustment Amount.[32]

• Any resulting costs incurred by the Net Funds Receivers would be debited from the Net Funds Payor whose shortfall raised the need for the reverse repurchase agreement. The Net Funds Receivers requesting compensation in this regard would need to submit a formal claim to FICC. Upon review and approval by FICC, the Net Funds Receiver would receive a credit that would be processed in the funds-only settlement process as a Miscellaneous Adjustment Amount.[33] The debit of the Net Funds Payor would be processed in the same way.

• Unless FICC has restricted the Member's access to services pursuant to Rule 21 or Rule 21A or has ceased to act for the Member pursuant to Rule 21 or Rule 21A, the Net Funds Payor shall be permitted to continue to submit activity to FICC.

Example

The following example illustrates the application of the proposed rule changes described above:

Assume that Dealer A has a cash payment obligation for $100 million and Dealers B, C, D and E are in GCF Net Funds Receiver Positions for $25 million each. Assume further that by 4:30 p.m., Dealer A satisfies only $60 million of its cash obligation thereby leaving $40 million outstanding. Dealer A would be subject to a late fee of $500.

The GCF Clearing Agent Bank satisfies transactions based upon its own settlement algorithms. As such, assume that the $60 million was settled as follows: (i) $25 million was settled with Dealer B, (ii) $10 million was settled with Dealer C, (iii) $25 million was settled with Dealer D, and (iv) $0 was settled with Dealer E.

As such, $40 million remains unfunded. Assume FICC uses its liquidity resources (EOD Clearing Fund Cash and financing arrangements with the GCF Clearing Agent Bank (if available)) and is only able to raise $30 million. Dealer A would be responsible for the financing costs incurred by FICC. The $30 million borrowed by FICC would be prorated among the Netting Members in GCF Net Funds Receiver Positions that still have unsettled obligations. In this example, Dealer C has an unsettled obligation of $15 million and Dealer E has an unsettled obligation of $25 million. The proration calculation would be the percentage of the dealer's unsettled obligation versus the entire unsettled amount. In Dealer C's case, the $15 million unsettled amount is 38 percent of the $40 million total unsettled amount and in Dealer E's case, the $25 million unsettled amount is 62 percent of the $40 million. Dealer C would receive 38 percent of the $30 million that was raised by FICC (*i.e.,* $11,400,000), and Dealer E would receive 62 percent of the $30 million that was raised by FICC (*i.e.,* $18,600,000).

At this point, $10 million remains unsettled. This is the amount that would need to be satisfied using overnight reverse repos under the GCF Repo Allocation Waterfall MRA and would be distributed between the two remaining unsettled amounts with Dealer C (*i.e.,* $3,600,000) and Dealer E (*i.e.,* $6,400,000). FICC would notify these dealers and initiate the GCF Repo Allocation Waterfall MRA requirement with each of them. Dealer A would be subject to a late fee for failing to settle by the close of the Fedwire Funds Service. Such late fee of 100 basis points would be calculated based on the $40 million that Dealer A did not fund. In addition, the reverse repurchase agreements would be overnight trades at a market rate;[34] the associated overnight interest of the reverse repurchase agreement would be debited from Dealer A and credited to Dealers C and E in funds-only settlement. If Dealers C and/or E incurred any damages from the cost of securing alternate financing, FICC would determine if such costs are sufficiently demonstrated and would charge Dealer A for such costs to the extent that they do not include special, consequential, or punitive damages.

Throughout the foregoing process, Dealer A is subject to disciplinary action, up to and including termination of its GSD membership. Moreover, FICC retains its right to cease to act for Dealer A.

[29] All pro-ration calculations would be rounded to the nearest million unless a smaller denomination is required to complete settlement.

[30] The September 1996 Securities Industry and Financial Markets Association Master Repurchase Agreement is *available at http://www.sifma.org/services/standard-forms-and-documentation/mra,-gmra,-msla-and-msftas/.*

[31] The market rate would be the overnight par weighted average rate at the Generic CUSIP Number level.

[32] *See* Rule 13, Section 1(m) and Rule 3B, Section 13(a)(ii), *supra* note 4.

[33] *Id.*

[34] *Supra* note 31.

(iii) Clarification, Technical Changes and Corrections

FICC proposes to make a clarification to Section 3 of Rule 20 by adding a descriptive parenthetical regarding net-of-net settlement.

FICC also proposes to make a technical change to the title of the ''Schedule of GCF Timeframes,'' which would be amended to ''Schedule of GCF Repo Timeframes'' to enhance accuracy. References to ''Schedule of GCF Timeframes'' in Section 3 of Rule 20 would also be updated to ''Schedule of GCF Repo Timeframes.''

FICC also proposes to make a correction by revising the language in ''Late Fee Related to GCF Repo Transactions'' in Section IX (Late Fees) of the Fee Structure from ''Fedwire reversals'' to ''Fedwire Securities Service reversals.'' FICC also proposes to revise ''securities FedWire'' to ''Fedwire Securities Service reversals'' in the Schedule of GCF Timeframes to be consistent with the proposed change in ''Late Fee Related to GCF Repo Transactions'' in Section IX (Late Fees) of the Fee Structure. FICC also proposes to revise the title from ''Late Fee Related to GCF Repo Transactions'' to ''Late Fees Related to GCF Repo Transactions.'' FICC believes these proposed changes would enhance consistency, clarity, and accuracy.

FICC also proposes to update the current references to ''dealer,'' ''dealers,'' or ''GCF Counterparties (''dealers'')'' in the ''Schedule of GCF Timeframes'' and ''Fee Structure'' to ''Netting Member'' or ''Netting Members'' for additional clarity and consistency because the GCF Repo Service is not only available to Dealer Netting Members and FICC believes that the references to ''dealers'' may cause confusion.

In addition, FICC proposes to update the descriptions for 3:00 p.m. and 3:30 p.m. in the Schedule of GCF Timeframes to correct certain descriptions that appear to have been reversed in error. Specifically, the description for 3:00 p.m. currently states that collateral allocations begin. However, collateral allocations actually begin at 3:30 p.m. and therefore, FICC proposes to correct this error by deleting the reference to collateral allocations beginning in the 3:00 p.m. description and adding a reference to the 3:30 p.m. description that would state that collateral allocations begin. Furthermore, the current 3:00 p.m. description states that notifications by FICC to banks and dealers of final positions occurs at this time, which is incorrect. There is not a strict established time for notifications by FICC to Members of final positions. FICC believes that it is reasonably and fairly implied that output would follow the cut-off for trade submission and therefore, does not believe the phrase ''notification by FICC to banks and dealers of final positions'' is necessary in the Schedule of GCF Timeframes. As such, FICC proposes to correct this error by deleting the reference to notifications by FICC to banks and dealers of final positions from the 3:00 p.m. description.

Furthermore, in connection with the proposed changes described herein, FICC also proposes to revise four relevant defined terms that indicate whether a Netting Member's obligation is a cash obligation or a securities obligation with respect to GCF Repo/CCIT activity (*i.e.,* ''GCF Net Funds Borrower Position,'' ''GCF Net Funds Borrower,'' ''GCF Net Funds Lender Position,'' and ''GCF Net Funds Lender''). In addition, FICC would add two new defined terms (*i.e.,* ''Net Funds Payor Position'' and ''Net Funds Receiver Position'') to distinguish the foregoing defined terms from a Netting Member's or CCIT Member's *after* net-of-net settlement.[35]

Specifically, there are currently four relevant defined terms that indicate whether a Netting Member's obligation is a cash obligation or a securities obligation with respect to GCF Repo/CCIT activity. These terms are: ''GCF Net Funds Borrower Position,''[36] ''GCF Net Funds Borrower,'' ''GCF Net Funds Lender Position,''[37] and ''GCF Net Funds Lender.'' With respect to CCIT Members, which are only permitted to initiate transactions as cash lenders for submission to GSD, the applicable definitions are ''GCF Net Funds Lender Position'' and ''GCF Net Funds Lender.'' The four existing terms represent a Netting Member's and CCIT Member's position with respect to GCF Repo/CCIT activity that is processed by GSD on a particular Business Day *prior to* net-of-net settlement[38] and the proposed rule change would add language in the definitions of ''GCF Net Funds Borrower Position'' and ''GCF Net Funds Lender Position'' to make this clear.

To distinguish the foregoing from a Netting Member's or CCIT Member's position *after* net-of-net settlement, FICC proposes to amend Rule 1 (Definitions) to add two new defined terms, ''Net Funds Payor Position'' and ''Net Funds Receiver Position'' with two additional defined terms embedded within these definitions, ''Net Funds Payor'' and ''Net Funds Receiver,'' respectively. These defined terms would represent a Netting Member's and CCIT Member's, as applicable, position in GCF Repo/CCIT activity *as a result of* net-of-net settlement. Specifically, as a result of net-of-net settlement, a Netting Member or CCIT Member may be either in a cash debit position (*i.e.,* in a ''Net Funds Payor Position'' or a ''Net Funds Payor'') or cash credit position (*i.e.,* in a ''Net Funds Receiver Position'' or a ''Net Funds Receiver'').[39]

(iv) Implementation Timeframe

Subject to no objection to this Advance Notice and the approval of the related proposed rule change (the ''Proposed Rule Change'')[40] by the Commission, FICC would implement the proposed changes no later than 60 days after the later of the approval of the Proposed Rule Change and no objection to this Advance Notice by the Commission. FICC would announce the effective date of the proposed changes

[35] A Netting Member's or CCIT Member's obligation prior to net-of-net settlement describes such Netting Member's or CCIT Member's obligation for that particular Business Day. A Netting Member's or CCIT Member's obligation *after* net-of-net settlement describes such Netting Member's or CCIT Member's obligation after its obligation from the previous Business Day has been netted with its obligation for that particular Business Day.

[36] The term ''GCF Net Funds Borrower Position'' means, with respect to a particular Generic CUSIP Number, both the amount of funds that a Netting Member has borrowed as the net result of its outstanding GCF Repo Transactions and CCIT Transactions and the equivalent amount of Eligible Netting Securities and/or cash that such Netting Member is obligated, pursuant to Rule 20, to allocate to the Corporation to secure such borrowing (such Netting Member holding a GCF Net Funds Borrower Position, a ''GCF Net Funds Borrower''). *See* Rule 1, *supra* note 4.

[37] The term ''GCF Net Funds Lender Position'' means, with respect to a particular Generic CUSIP Number, both the amount of funds that a Netting Member or CCIT Member has lent as the result of its outstanding GCF Repo Transactions or its outstanding CCIT Transactions, as applicable, and the equivalent amount of Eligible Netting Securities and/or cash that such Netting Member or CCIT Member, as applicable, is entitled, pursuant to Rule 20, to be allocated for its benefit to secure such loan (such Netting Member or CCIT Member holding a GCF Net Funds Lender Position, a ''GCF Net Funds Lender''). *See* Rule 1, *supra* note 4.

[38] Net-of-net settlement is described in Section 3 of Rule 20 and the proposal would add a parenthetical to clarify that such applicable paragraph in this section refers to net-of-net settlement, as described further below.

[39] Even though CCIT Members can only initiate cash lending transactions, they could be Net Funds Receivers. For example, assume that on Monday, a CCIT Member entered into a CCIT Transaction to lend $125 million and on Tuesday, the same CCIT Member entered into a CCIT Transaction to lend $50 million in the same Generic CUSIP Number. On Tuesday, after net-of-net settlement, the CCIT Member would be in a Net Funds Receiver Position of $75 million.

[40] *Supra* note 3.

by Important Notice posted to its website.

Expected Effect on Risks to the Clearing Agency, its Participants and the Market

FICC believes that the proposed rule change described in Item II(B)(i) above to establish a new deadline and associated late fees for satisfaction of net cash obligations in GCF Repo/CCIT activity and remove the current 6:00 p.m. Collateral Allocation deadline would help lower the potential operational risk of incomplete tri-party transactions outside of FICC. As described above, FICC believes that all parties (including FICC) would benefit from securities settlement occurring by 4:30 p.m. because the more settlements that complete earlier, the more potential operational risk is removed from the market. Specifically, FICC believes having securities settlement occur by 4:30 p.m. would lower the risk of disorder that could arise if firms are attempting to fulfill GCF Repo settlement and tri-party transaction settlement at the same time later in the day. There is interconnectivity between the GCF Repo market and the tri-party market outside of FICC, so the securities collateral that is used to settle GCF Repo positions can be subsequently used by Netting Members to complete tri-party transactions outside of FICC. FICC believes the current second deadline of 6:00 p.m. for allocation of securities collateral creates an environment of later settlement both at FICC and outside of FICC. FICC believes that it would be lowering potential operational risk in the market (*i.e.,* the risk of disorder) that could arise if Members chose to avail themselves of the current 6:00 p.m. deadline. FICC believes that timely settlement at FICC would help with timely completion of onward processing outside of FICC.

FICC also proposes to establish a deadline for a Netting Member's or CCIT Member's satisfaction of cash obligations in the GCF Repo Service and the CCIT Service. As described above, for late cash settlement, the initial late fee would be $500 and would progressively increase for additional late occurrences. In addition, FICC would also impose additional late fees on Netting Members and CCIT Members that are Net Funds Payors that fail to make the required payment of cash by the close of the Fedwire Funds Service. Because the deadline for cash settlement is newly proposed, FICC would like to provide a disincentive for cash lateness, and therefore, is proposing fee increases for repeated late occurrences in satisfying cash obligations. FICC believes that the proposed deadline for satisfaction of cash obligations and the associated late fees would mitigate the risk of later settlement by incenting Netting Members and CCIT Members to meet their settlement obligations on a more timely basis, which would better enable FICC to settle on a timely basis.

FICC believes that the proposed rule change described in Item II(B)(ii) above to establish a process to provide liquidity to FICC in situations where a Netting Member or CCIT Member with a net cash obligation in GCF Repo/CCIT activity, that is otherwise in good standing, is either (1) delayed in satisfying or (2) unable to satisfy its cash obligation (in whole or in part) would benefit FICC and its members. FICC believes that because settlement of GCF Repo/CCIT activity occurs late in the day, having an established process to handle non-default related liquidity would improve FICC's ability to complete settlement and thereby reduce risk to FICC and the industry.

Management of Identified Risks

FICC believes that that the proposed changes described in Item II(B)(i) above are designed to help FICC manage the potential operational risk (*i.e.,* the risk of disorder) of incomplete tri-party transactions outside of FICC. FICC believes that, removing the 6:00 p.m. deadline and establishing 4:30 p.m. as the deadline for securities settlement, it would encourage Members to complete more settlements earlier and thereby, lower potential operational risk from the market.

FICC believes that the proposed changes described in Item II(B)(i) above to establish a new deadline and associated late fees for satisfaction of net cash obligations in GCF Repo/CCIT activity are designed to help FICC manage the risk of later settlement. FICC believes that the proposed new deadline and the related increasing late fees would provide an incentive for Netting Members and CCIT Members to meet their cash settlement obligations on a more timely basis, which in turn, would better enable FICC to complete settle on a timely basis.

FICC believes that the proposed changes described in Item II(B)(ii) above are designed to help FICC manage its risks by establishing a process to provide liquidity to FICC in situations where a Netting Member or CCIT Member with a net cash obligation in GCF Repo/CCIT activity, that is otherwise in good standing, is either (1) delayed in satisfying or (2) unable to satisfy its cash obligation (in whole or in part). This proposed process would provide a process for FICC to raise liquidity to complete settlement. By better enabling FICC to complete settlement by providing FICC with a process to raise liquidity, FICC and its members would be less likely to be faced with the uncertainty of unsettled obligations and the risks related thereto. As such, FICC believes this proposed process would better enable FICC to better manage its risk related to the uncertainty of unsettled obligations and later settlement.

Consistency With the Clearing Supervision Act

FICC believes that the proposed rule change would be consistent with Section 805(b) of the Clearing Supervision Act.[41] The objectives and principles of Section 805(b) of the Clearing Supervision Act are to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system.[42]

FICC believes that the proposed changes described in Item II(B)(i) regarding securities collateral above are designed to promote robust risk management, promote safety and soundness, and support the stability of the broader financial system. FICC believes that all parties (including FICC) would benefit from securities settlement occurring by 4:30 p.m. This is because the more settlements that complete earlier, the more potential operational risk is removed from the market. Specifically, there is interconnectivity between the GCF Repo market and the tri-party market outside of FICC. The securities collateral that is used to settle GCF Repo positions can be subsequently used by Netting Members to complete tri-party transactions outside of FICC. Therefore, the earlier that securities settlement occurs in the GCF Repo Service, the less potential operational risk of incomplete tri-party transactions outside of FICC. Under the current Rules, the second deadline of 6:00 p.m. creates an environment of later settlement both at FICC and outside of FICC. Even though Netting Members are generally abiding by the 4:30 p.m. securities allocation deadline, FICC would like to address the possibility of later settlement by deleting the 6:00 p.m. deadline. Therefore, by imposing 4:30 p.m. as the only deadline, FICC believes it would be lowering potential operational risk in the market that could arise if Netting Members chose to avail themselves of the current 6:00 p.m. deadline. This risk is the risk of disorder if firms are attempting to fulfill GCF Repo settlement and tri-party

[41] 12 U.S.C. 5464(b).

[42] *Id.*

transaction settlement at the same time later in the day. As such, FICC believes the proposed change to remove the 6:00 p.m. deadline for securities settlement would promote robust risk management by lessening the potential operational risk of incomplete tri-party transactions outside of FICC and also promote the safety and soundness and support the stability of the broader financial market by lessening the risk of disorder if firms are attempting to fulfill GCF Repo settlement and tri-party transactions settlement at the same time later in the day.

FICC also believes that the proposed changes described in Item II(B)(i) above to establish a new deadline and associated late fees for satisfaction of net cash obligations in GCF Repo/CCIT activity are designed to help promote robust risk management, promote safety and soundness, and support the stability of the broader financial system. Specifically, FICC believes the proposed deadline and associated late fees are designed to promote robust risk management by helping FICC manage the risk of later settlement because FICC believes that the proposed new deadline and the related increasing late fees would provide an incentive for Netting Members and CCIT Members to meet their cash settlement obligations on a more timely basis, which in turn, would better enable FICC to complete settle on a timely basis. FICC believes that having settlement complete on a timely basis would promote safety and soundness and also support the stability of the broader financial system by lessening the potential operational risk of incomplete settlement.

FICC believes that the proposed changes described in Item II(B)(ii) above are designed to promote robust risk management, promote safety and soundness, and support the stability of the broader financial market. FICC believes this proposed process is designed to promote robust risk management because the proposed process would enable FICC to mitigate the risks related to the uncertainty of unsettled obligations and later settlement in certain circumstances. FICC would be able to mitigate these risks because the proposed process is designed to provide FICC with liquidity in certain circumstances (*i.e.,* where a Netting Member or CCIT Member with a net cash obligation in GCF Repo/CCIT activity, that is otherwise in good standing, is either (1) delayed in satisfying or (2) unable to satisfy its cash obligation (in whole or in part)). FICC believes having a proposed process to provide FICC with liquidity in the circumstances described above would better enable FICC to complete timely settlement. In turn, timely settlement would promote safety and soundness by providing FICC's members with certainty as to the completion of their transactions that were submitted to FICC. Furthermore, timely settlement at FICC would support the stability of the broader financial system by aiming to avoid the market disruption that could occur if FICC cannot settle. Timely settlement at FICC demonstrates to the market that parties' rights and obligations vis-à-vis settlement have been completed and therefore, promotes certainty and stability.

FICC also believes that the proposed conforming and technical changes described above are designed to provide clear and coherent Rules regarding GCF Repo transactions for Netting Members and CCIT Members. FICC believes that clear and coherent Rules would enhance the ability of FICC and its Netting Members and CCIT Members to more effectively plan for, manage, and address the risks related to GCF Repo transactions. As such, FICC believes that the conforming and technical changes are designed to promote robust risk management, consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

FICC believes the proposal would be consistent with Rule 17Ad–22(e)(7)(i), (ii), and (viii), as promulgated under the Act, for the reasons described below.[43]

Rule 17Ad–22(e)(7)(i) requires FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by maintaining sufficient liquid resources to effect same-day settlement of payment obligations in the event of a default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions.[44] FICC believes that the proposal would be consistent with Rule 17Ad–22(e)(7)(i) because the GCF Repo Allocation Waterfall MRA would help FICC maintain sufficient liquid resources to settle the same-day cash obligations of a Netting Member or CCIT Member that is otherwise in good standing with FICC but (i) is delayed in satisfying its cash obligation related to its GCF Repo/CCIT activity or (ii) does not fulfill, or only partially fulfills, such cash obligation.[45] FICC believes that the proposal would be consistent with Rule 17Ad–22(e)(7)(i) because the GCF Repo Allocation Waterfall MRA would be sized based on the actual liquidity need which would help FICC maintain sufficient liquid resources to settle the cash obligations of a Netting Member.[46] The GCF Repo Allocation Waterfall MRA would be a committed arrangement, and all transactions entered into pursuant to the GCF Allocation Waterfall MRA are designed to be readily available to meet the cash obligations owed to Netting Members.

Rule 17Ad–22(e)(7)(ii) requires FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by holding qualifying liquid resources[47] sufficient to meet the minimum liquidity resource requirement under Rule 17Ad–22(e)(7)(i) in each relevant currency for which the covered clearing agency has payment obligations owed to clearing Members.[48] FICC believes that the proposed rule change would be consistent with Rule 17Ad–22(e)(7)(ii) because the GCF Repo Allocation Waterfall MRA would be a committed arrangement,[49] and all transactions entered into pursuant to the GCF Repo Allocation Waterfall MRA are designed to be readily available to meet the cash obligations owed to Netting Members.[50]

Rule 17Ad–22(e)(7)(viii) requires FICC to establish, implement, maintain

[43] 17 CFR 240.17Ad–22(e)(7)(i), (ii), and (viii).

[44] 17 CFR 240.17Ad–22(e)(7)(i).

[45] *Id.*

[46] *Id.*

[47] ''Qualifying liquid resources'' means, for any covered clearing agency, the following, in each relevant currency: (i) Cash held either at the central bank of issue or at creditworthy commercial banks; (ii) Assets that are readily available and convertible into cash through prearranged funding arrangements, such as: (A) Committed arrangements without material adverse change provisions, including (1) Lines of credit; (2) Foreign exchange swaps; and (3) Repurchase agreements; or (B) Other prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions by the board of directors of the covered clearing agency following a review conducted for this purpose not less than annually; and (iii) Other assets that are readily available and eligible for pledging to (or conducting other appropriate forms of transactions with) a relevant central bank, if the covered clearing agency has access to routine credit at such central bank in a jurisdiction that permits said pledges or other transactions by the covered clearing agency. 17 CFR 240.17Ad–22(a)(14).

[48] 17 CFR 240.17Ad–22(e)(7)(ii).

[49] *See* 17 CFR 240.17Ad–22(a)(14).

[50] *Id.*

and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by addressing foreseeable liquidity shortfalls that would not be covered by the covered clearing agency's liquid resources and seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations.[51] FICC believes that the proposed rule change would be consistent with Rule 17Ad–22(e)(7)(viii) because the GCF Repo Allocation Waterfall MRA would be a committed arrangement that would be available to avoid unwinding, revoking, or delaying same-day settlement obligations. All transactions entered into pursuant to the GCF Repo Allocation Waterfall MRA are designed to be readily available to settle same-day cash obligations owed to non-defaulting Netting Members in instances where existing resources (i) may not be readily available after 4:30 p.m. to permit timely settlement or (ii) are maintained primarily to settle the outstanding transactions in the event of a default of a Member and its entire affiliated family.

III. Date of Effectiveness of the Advance Notice, and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the Advance Notice is consistent with the Clearing Supervision 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–FICC–2019–801 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2019–801. 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 Advance Notice that are filed with the Commission, and all written communications relating to the Advance Notice 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 FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–FICC–2019–801 and should be submitted on or before September 25, 2019.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19538 Filed 9–9–19; 8:45 am]

BILLING CODE 8011–01–P

[51] 17 CFR 240.17Ad–22(e)(7)(viii).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86874]

Order Granting Application by The Financial Information Forum and Security Traders Association for an Exemption Pursuant to Rule 606(c) of Regulation NMS Under the Exchange Act From Certain Requirements of Rule 606 of Regulation NMS Under the Exchange Act

September 4, 2019.

I. Introduction

The Financial Information Forum (''FIF'') and Security Traders Association (''STA'') have filed with the Securities and Exchange Commission (''Commission'') an application for an exemption from certain requirements [1] of Rule 606 of Regulation NMS under the Exchange Act.[2]

This order grants the following exemptive relief from certain requirements of Rule 606, subject to certain conditions, which are outlined in greater detail below: (1) All broker-dealers are exempt from the requirement to comply with Rule 606(a) until January 1, 2020; (2) all broker-dealers that engage in self-routing activity are exempt from the requirement to comply with Rule 606(b)(3) until January 1, 2020; and (3) all broker-dealers that engage in outsourced routing activity are exempt from the requirement to comply with Rule 606(b)(3) until April 1, 2020.

II. Background

On November 2, 2018, the Commission adopted amendments to Rules 600, 605, and 606 of Regulation NMS under the Exchange Act.[3] The

[1] *See* letter from Christopher Bok, Director, FIF, and James Toes, President & CEO, STA, to Brett Redfearn, Director, Division of Trading and Markets (''Division''), Securities and Exchange Commission (''Commission''), dated August 2, 2019 (''FIF/STA Letter'').

[2] 17 CFR 242.606.

[3] *See* Exchange Act Release No. 84528 (November 2, 2018), 83 FR 58338 (November 19, 2018) (''Adopting Release'').

amendments to Rule 606(b) added a new disclosure requirement, set forth in paragraph (b)(3), that requires a broker-dealer, upon request of its customer, to provide specific disclosures related to the routing and execution of the customer's NMS stock orders submitted on a not held basis for the prior six months, subject to two de minimis exceptions. The Commission also amended the customer-specific disclosure requirement in paragraph (b)(1) of Rule 606 to apply to NMS stock orders submitted on a held basis, NMS stock orders that are submitted on a not held basis and the broker-dealer is not required to provide the customer a report under paragraph (b)(3), and NMS securities that are options contracts. In addition, the Commission amended the quarterly public order routing disclosure requirement in Rule 606(a) to apply to NMS stock orders submitted on a held basis, among other things. The Commission also amended Rule 605 of Regulation NMS to require that the public order execution report be kept publicly available for a period of three years.

On April 30, 2019, the Commission extended the compliance date for the amendments to Rule 606 to begin following September 30, 2019, to provide broker-dealers with time to implement fully the systems and other changes necessary to comply with amended Rule 606.[4]

FIF/STA request that: (1) The data collection period for Rule 606(a) be extended to commence on January 1, 2020; (2) the data collection period for Rule 606(b)(3) for broker-dealers that engage in ''self-routing activity'' (as defined below) be extended to 180 days following the issuance of Commission staff responses to frequently asked questions regarding amended Rule 606 (''Staff FAQs''); and (3) the Commission delay the Rule 606(b)(3) reporting requirement for broker-dealers that engage in ''outsourced routing activity'' (as defined below).[5]

According to FIF/STA, broker-dealers and other industry stakeholders are unable to meaningfully comply with amended Rule 606 within the current implementation timeframe.[6] FIF/STA set forth several implementation challenges that they state would affect a broker-dealer's ability to comply, in particular, with the Rule 606(b)(3) requirement that it provide customer-specific reports of data regarding its handling of customers' not held NMS stock orders.[7] In addition, according to FIF/STA, these challenges are greater when a broker-dealer must report the information required under Rule 606(b)(3) for orders handled using the order routing systems of another broker-dealer (''outsourced routing activity'') than they are for orders handled using a broker-dealer's own systems (''self-routing activity'').[8] Self-routing activity for the purposes of this exemption is when a broker-dealer receives a customer's order and routes it (or child orders thereof) to venues using its own systems. Outsourced routing activity is when a broker-dealer receives a customer's order and utilizes the systems of another broker-dealer to route it (or child orders thereof) to venues.

With respect to the quarterly public reporting requirement in Rule 606(a), FIF/STA state that ''the majority of 606(a) provisions are implementable within a relatively short timeframe'' after the issuance of requested guidance.[9]

III. Order Granting Conditional Exemption

Rule 606(c)[10] authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this section, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. The Commission, by the Division pursuant to delegated authority,[11] is granting a temporary exemption from reporting obligations under Rules 606(a) and 606(b)(3) to provide additional time for broker-dealers to complete the development of systems and processes necessary to begin collecting the data required by the rule. As described below, however, the length of time of the exemption from reporting obligations under Rule 606(b)(3) differs based on whether a broker-dealer is engaged in self-routing activity or outsourced routing activity.[12]

A. Amended Rule 606(a)

The Commission has determined that providing broker-dealers with an exemption from the quarterly public reporting requirements of amended Rule 606(a) relating to held orders and options orders until January 1, 2020 is necessary or appropriate in the public interest, and is consistent with the protection of investors. While the Commission previously extended the compliance date for the amendments to Rule 606(a), FIF/STA note that a few open items remain before implementation efforts are finalized.[13] The Commission agrees with the importance of what FIF/STA describe as consistent, complete and accurate reporting across broker-dealers complying with all aspects of amended Rule 606(a). As FIF/STA state, complete and accurate data will ''provide customers with the value the Rule intends.'' Pursuant to this exemption, a broker-dealer has three additional months from the current compliance date to comply with amended Rule 606(a) and therefore must begin collecting the amended Rule 606(a) data for the first quarter of 2020, and the public report of first quarter 2020 data is required by the end of April 2020.[14]

B. Rule 606(b)(3) for Broker-Dealers Engaged in Self-Routing Activity

Further, the Commission has determined that providing a temporary exemption from reporting obligations under Rule 606(b)(3) for not held orders for a broker-dealer engaged in self-routing activity is necessary or appropriate in the public interest, and is consistent with the protection of

[4] *See* Exchange Act Release No. 85714 (April 24, 2019), 84 FR 18136 (April 30, 2019) (''Rule 606 Compliance Date Extension Release''). The original compliance date set forth in the Adopting Release was May 20, 2019. The Rule 606 Compliance Date Extension Release did not extend the original compliance date for the amendment to Rule 605.

[5] *See* FIF/STA Letter, *supra* note 2, at 2. We note that Commission staff issued the Staff FAQs on August 16, 2019. *See* Responses to Frequently Asked Questions Concerning Rule 606 of Regulation NMS, *https://www.sec.gov/tm/faq-rule-606-regulation-nms.* The Staff FAQs are not a rule, regulation, or statement of the Commission, and the Commission has neither approved nor disapproved their content. The Staff FAQs have no legal force or effect: they do not alter or amend applicable law, and they create no new or additional obligations for any person.

[6] *See* FIF/STA Letter, *supra* note 2, at 1–4.

[7] *See id.* at 4–8.

[8] *See id.* (using the terms ''look through information'' or ''look through data'' and ''non-look through information'' or ''non-look through data,'' respectively).

[9] *See id.* at 2.

[10] 17 CFR 242.606(c).

[11] 17 CFR 200.30–3(a)(69).

[12] The Commission is not issuing an exemption from any other provisions of Rule 606. Accordingly, compliance with Rule 606(b)(1) and the obligation to provide, upon request, customer-specific reports on routing of the following securities is still required to begin following September 30, 2019: (1) NMS stock orders submitted on a held basis; (2) NMS stock orders that are submitted on a not held basis and the broker-dealer is not required to provide the customer a report under paragraph (b)(3); and NMS securities that are options contracts. *See* Rule 606 Compliance Date Extension Release, *supra* note 4.

[13] *See* FIF/STA Letter, *supra* note 2, at 9 (noting that compliance efforts continue with, *e.g.,* options reporting and the capture of aggregated fee information for orders).

[14] The Commission is granting the exemption as requested by FIF/STA. *See* FIF/STA Letter, *supra* note 2, at 2.

investors because it will provide additional time to finalize development efforts. Specifically, the Commission believes that further time will allow the industry to complete implementation, ultimately allowing broker-dealers to provide customers with consistent, complete, and accurate 606(b)(3) reports, as described above.[15] Accordingly, a broker-dealer engaged in self-routing activity is exempt until January 1, 2020 from the requirement to start collecting the data required by Rule 606(b)(3) for such activity. For customer requests that are made on or before February 15, 2020, a broker-dealer is exempt from the requirement to provide a report for self-routing activity covering January 2020 data until seven business days after February 15, 2020. Pursuant to this exemption, a broker-dealer has three additional months from the current compliance date to prepare to collect the data required by Rule 606(b)(3) for self-routing activity, and has extra time in February 2020 to prepare the first report relating to self-routing activity for January 2020 data.[16]

While the Commission is not granting the specific relief requested by FIF/STA and is instead granting a shorter extension, the Commission believes that this new date should provide self-routing broker-dealers with sufficient time to finalize their internal development efforts.

C. Rule 606(b)(3) for Broker-Dealers Engaged in Outsourced Routing Activity

Finally, the Commission has determined that providing a temporary exemption from reporting obligations under Rule 606(b)(3) for not held orders for a broker-dealer engaged in outsourced routing activity is necessary or appropriate in the public interest, and is consistent with the protection of investors. This exemption will provide additional time to coordinate and finalize development efforts, including among third parties.

As also is the case for broker-dealers engaged in self-routing activity, discussed above, the Commission believes that further time will allow the industry to complete implementation, ultimately allowing broker-dealers to provide customers with consistent, complete, and accurate 606(b)(3) reports.[17] Specifically, to comply with Rule 606(b)(3), broker-dealers may need to develop systems to pass the data required by Rule 606(b)(3) from an executing broker to an introducing broker. To the extent that any broker-dealers that handle outsourced routing activity require additional time to complete development of specific portions of their systems, *e.g.,* the required XML schema and PDF renderer, the Commission believes that the six-month exemption it is granting today provides sufficient time to finalize that development. Further, the Commission believes that this additional time should permit broker-dealers that outsource their routing activity to third parties the additional time needed to finalize updating their routing arrangements with such parties.

Accordingly, a broker-dealer engaged in outsourced routing activity is exempt from the requirement to start collecting the Rule 606(b)(3) data until April 1, 2020 for such activity. For customer requests that are made on or before May 15, 2020, a broker-dealer is exempt from the requirement to provide a Rule 606(b)(3) report for outsourced routing activity covering April 2020 data until seven business days after May 15, 2020. Pursuant to this exemption, a broker-dealer has six additional months from the current compliance date to prepare to collect the data required by Rule 606(b)(3) for outsourced routing activity, and has extra time in May 2020 to prepare the first report relating to outsourced routing activity for April 2020 data.[18]

Accordingly, *it is ordered,* pursuant to Rule 606(c) of Regulation NMS under the Exchange Act,[19] that:

(1) Broker-dealers are exempt from the requirement to comply with amended Rule 606(a) by the current compliance date of October 1, 2019 and instead must begin collecting amended Rule 606(a) data for the first quarter of 2020. The public report of first quarter 2020 data is required by April 30, 2020.

(2) Broker-dealers engaged in self-routing activity are exempt from the requirement to start collecting the data required by Rule 606(b)(3) until January 1, 2020 for such activity. For customer requests that are made on or before February 15, 2020, a broker-dealer is exempt from the requirement to provide a report for self-routing activity covering January 2020 data until seven business days after February 15, 2020.

(3) Broker-dealers engaged in outsourced routing activity are exempt from the requirement to start collecting the Rule 606(b)(3) data until April 1, 2020 for such activity. For customer requests that are made on or before May 15, 2020, a broker-dealer is exempt from the requirement to provide a Rule 606(b)(3) report for outsourced routing activity covering April 2020 data until seven business days after May 15, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19469 Filed 9–9–19; 8:45 am]

BILLING CODE 8011–01–P

[15] *See* FIF/STA Letter, *supra* note 2, at 9 (noting that compliance efforts continue with, *e.g.,* options reporting and the capture of aggregated fee information for orders).

[16] Under Rule 606(b)(3), if a customer requests a report on the first of the month for example, the broker-dealer is required to provide the report within seven business days of the customer's request. Under the relief provided herein, however, if a customer requests a report of January 2020 data on February 1, 2020, the broker-dealer is not required to provide the report within seven business days of February 1, 2020; instead, the broker-dealer is required to provide the report within seven business days of February 15.

[17] *See* FIF/STA Letter, *supra* note 2, at 9 (noting that compliance efforts continue with, *e.g.,* options reporting and the capture of aggregated fee information for orders).

[18] The Commission notes that FIF/STA did not request a specific alternative compliance date for the Rule 606(b)(3) reporting requirement for broker-dealers that outsource routing services. *See* FIF/STA Letter, *supra* note 2, at 2.

[19] 17 CFR 242.606(c).

[20] 17 CFR 200.30–3(a)(69).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86861; File No. SR–CBOE–2019–035]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Amend Rule 6.49A Concerning Off-Floor Position Transfers

September 4, 2019.

On July 3, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') 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 proposal to amend Rule 6.49A concerning off-floor position transfers. The proposed rule change was published for comment in the **Federal Register** on July 23, 2019.[3] The Exchange submitted Amendment No. 1 to its filing on August 6, 2019.[4] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86400 (July 17, 2019), 84 FR 35438.

[4] In Amendment No. 1, the Exchange removed the proposed change to permit off-floor risk-weighted assets (''RWA'') transfers. The exchange then filed that material as a separate proposed rule change filing. *See* Securities Exchange Act Release No. 86603 (August 8, 2019), 84 FR 40460 (August 14, 2019) (SR–CBOE–2019–044). When the Exchange filed Amendment No. 1 to CBOE–2019–035, it also submitted the text of the amendment as a comment letter to the filing, which is available at *https://www.sec.gov/comments/sr-cboe-2019-035/srcboe2019035-5917170-189047.pdf.*

Commission received one comment letter on the proposed rule change.[5]

Section 19(b)(2) of the Act[6] provides that, within 45 days of publication of the notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is September 6, 2019.

The Commission hereby is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, including the comment letter received on the filing.

Accordingly, pursuant to Section 19(b)(2) of the Act,[7] the Commission designates October 21, 2019 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CBOE–2019–035).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19459 Filed 9–9–19; 8:45 am]

BILLING CODE 8011–01–P

[5] *See* Letter from Gerald D. O'Connell, SIG—Compliance Coordinator, dated August 19, 2019, *available at https://www.sec.gov/comments/sr-cboe-2019-035/srcboe2019035.htm.*

[6] 15 U.S.C. 78s(b)(2).

[7] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[8] 17 CFR 200.30–3(a)(31).

SURFACE TRANSPORTATION BOARD

[Docket No. EP 552 (Sub-No. 23)]

Railroad Revenue Adequacy—2018 Determination

AGENCY: Surface Transportation Board.

ACTION: Notice of decision.

SUMMARY: On September 5, 2019, the Board served a decision announcing the 2018 revenue adequacy determinations for the Nation's Class I railroads. Three carriers (CSX Transportation, Inc., Soo Line Corporation, and Union Pacific Railroad Company) were found to be revenue adequate.

DATES: This decision is effective on September 5, 2019.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C 10704(a)(3), the Board is required to make an annual determination of railroad revenue adequacy. A railroad is considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment (ROI) equal to at least the current cost of capital for the railroad industry. For 2018, this number was determined to be 12.22% in *Railroad Cost of Capital—2018,* EP 558 (Sub-No. 22) (STB served Aug. 6, 2019). The Board then applied this revenue adequacy standard to each Class I railroad. Three Class I carriers (CSX Transportation, Inc., Soo Line Corporation, and Union Pacific Railroad Company) were found to be revenue adequate for 2018.

The decision in this proceeding is posted at *www.stb.gov.*

Decided: September 4, 2019.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2019–19487 Filed 9–9–19; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed highway project, Interstate 805/Palm Avenue Interchange Improvements in the County of San Diego, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before February 7, 2020. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Bruce April, Deputy District Director—Environmental, California Department of Transportation—District 11, 4050 Taylor Street, MS 242, San Diego, CA 92110, 9 a.m.–5 p.m., (619) 688–0100, *bruce.april@dot.ca.gov.* For FHWA, contact David Tedrick at (916) 498–5024 or *david.tedrick@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The project proposes to improve the Interstate 805 and Palm Avenue interchange and would increase capacity at this Interchange to address the increase in local traffic that has occurred and is expected to occur in the future. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment/Finding of No Significant Impact (FEA/FONSI) for the project, approved on June 28, 2019 and in other documents in the Caltrans' project records. The FEA, FONSI, and other project records are available by contacting Caltrans at the address provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council of Environmental Quality Regulations (40 CFR 1500 *et seq.,* 23 CFR 771);
2. National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et seq;*
3. Federal-Aid Highway Act of 1970, (23 U.S.C. 109, as amended by FAST Act Section 1404(a), Pub. L. 114–94, and 23 U.S.C. 128);
4. Department of Transportation Act of 1966, Section 4(f);
5. Clean Water Act of 1977 and 1987 (33 U.S.C. 1251 *et seq.*);
6. Clean Air Act, as amended (42 U.S.C. 7401 *et seq.* (Transportation Conformity), 40 CFR part 93);
7. Endangered Species Act of 1973;
8. Executive Order 13112, Invasive Species;
9. Executive Order 13186, Migratory Bird Treaty Act;

10. Title VI of the Civil Rights Act of 1964, as amended.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: September 3, 2019.

Tashia J. Clemons,

Director, Planning and Environment, Federal Highway Administration, Sacramento, California.

[FR Doc. 2019–19537 Filed 9–9–19; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed extension of El Segundo from Allied Way to Nash Street in the County of Los Angeles, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before February 7, 2020. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Michael Enwedo, Branch Chief Environmental Planning Division, California Department of Transportation—District 7, 100 South Main Street, Los Angeles, California 8:00 a.m. to 5:00 p.m., Pacific Standard Time, telephone 213–897–3245 or email *michael.enwedo@dot.ca.gov.* For FHWA, contact David Tedrick at 916–498–5024 or email *david.tedrick@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The City of El Segundo proposes to extend Park Place from Allied Way to Nash Street with a railroad grade separation. Park Place currently exists in two segments with a roughly quarter mile gap across an undeveloped area which consists of Union Pacific Railroad (UPRR) and Burlington Northern Santa Fe (BNSF) railroad spurs. The project would implement a gap closure to develop Park Place as an alternate east-west route between Pacific Coast Highway (PCH) and Douglas Street to relieve congestion along portions of Rosecrans Avenue and PCH, as well as to improve local traffic circulation and access to and from the 1–105 freeway. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (EA) with a Finding of No Significant Impact (FONSI) and Environmental Impact Report (EIR) with a NOD (Notice of Determination) for the project, approved on April 4, 2019, and in other documents in the FHWA project records. The Final EA/FONSI and EIR/NOD, and other project records are available by contacting Caltrans at the addresses provided above. The Final EA/FONSI and EIR/NOD can be viewed and downloaded from the project website at *https://www.elsegundo.org/depts/planningsafety/planning/ea_1152_park_place_extension_project/default.asp,* or viewed at public libraries in the project area.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality Regulations (40 CFR 1500 *et seq.,* 23 CFR 771);
2. National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.;*
3. Federal-Aid Highway Act of 1970, (23 U.S.C § 109, as amended by FAST Act Section 1404(a), Pub. L. 114–94, and 23 U.S.C. 128);
4. MAP–21, the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141)
5. Clean Air Act, as amended (42 U.S.C. 7401 *et seq.* (Transportation Conformity), 40 CFR part 93);
6. Clear Water Act of 1977 and 1987 (33 U.S.C. 1251 *et seq.*);
7. Federal Water Pollution Control Act of 1972 (see Clean Water Act of 1977 & 1987)
8. Federal Land Policy and Management Act of 1976, Public Law 94–579
9. Noise Control Act of 1972
10. Safe Drinking Water Act of 1944, as amended
11. Endangered Species Act of 1973
12. Executive Order 11990, Protection of Wetlands
13. Executive Order 13112, Invasive Species
14. Executive Order 13186, Migratory Birds
15. Fish and Wildlife Coordination Act of 1934, as amended
16. Migratory Bird Treaty Act
17. Water Bank Act Wetlands Mitigation Banks, ISTEA 1991, Sections 1006–1007
18. Wildflowers, Surface Transportation and Uniform Relocation Act of 1987 Section 130
19. Coastal Zone Management Act of 1972
20. Coastal Zone Management Act of Reauthorization Amendments of 1900
21. Executive Order 11988, Floodplain Management
22. Department of Transportation (DOT) Executive Order 5650.2—Floodplain Management and Protection (April 23, 1979)
23. Rivers and Harbors Appropriation Act of 1899, Sections 9 and 10
24. Title VI of the Civil Rights Act of 1964, as amended
25. Executive Order 12898, Federal Actions to Address Environmental Justice and Low-Income Populations

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: September 3, 2019.

Tashia J. Clemons,

Director, Planning and Environment, Federal Highway Administration, California Division.

[FR Doc. 2019–19536 Filed 9–9–19; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2019–0061]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on August 28, 2019, the Port Terminal Railroad Association (PTRA), petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240, *Qualification and Certification of Locomotive Engineers,* and part 242, *Qualification and Certification of Conductors.* FRA assigned the petition Docket Number FRA–2019–0061.

The relief is requested as part of PTRA's proposed implementation of and participation in FRA's Confidential Close Call Reporting System (C^3RS) Program. PTRA seeks to shield reporting employees and the railroad from mandatory punitive sanctions that would otherwise arise as provided in 49 CFR 240.117(e)(1)–(4); 240.305(a)(l)–(4) and (a)(6); 240.307; 242.403(b), (c), (e)(l)–(4), (e)(6)–(11), (f)(l)–(2); and 242.407. The C^3RS Program encourages certified operating crew members to report close calls and protect the employees and the railroad from discipline or sanctions arising from the incidents reported per the C^3RS Implementing Memorandum of Understanding.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by October 25, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2019–19485 Filed 9–9–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2019–0062]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on August 26, 2019, the Northern Plains Railroad (NPR), petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240, *Qualification and Certification of Locomotive Engineers,* and part 242, *Qualification and Certification of Conductors.* FRA assigned the petition Docket Number FRA–2019–0062.

The relief is requested as part of NPR's proposed implementation of and participation in FRA's Confidential Close Call Reporting System (C^3RS) Program. NPR seeks to shield reporting employees and the railroad from mandatory punitive sanctions that would otherwise arise as provided in 49 CFR 240.117(e)(1)–(4); 240.305(a)(l)–(4) and (a)(6); 240.307; 242.403(b), (c), (e)(l)–(4), (e)(6)–(11), (f)(l)–(2); and 242.407. The C^3RS Program encourages certified operating crew members to report close calls and protect the employees and the railroad from discipline or sanctions arising from the incidents reported per the C^3RS Implementing Memorandum of Understanding.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by October 25, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2019–19484 Filed 9–9–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation Advisory Board—Notice of Public Meetings

AGENCY: Saint Lawrence Seaway Development Corporation (SLSDC); USDOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the public meeting via conference call of the Saint Lawrence Seaway Development Corporation Advisory Board.

DATES: The public meeting will be held on (all times Eastern):

- Wednesday, September 25, 2019 from 9:00 a.m.–10:30 a.m. EST

ADDRESSES: The meeting will be held via conference call at the SLSDC's Operations location, 180 Andrews Street, Massena, New York 13662.

FOR FURTHER INFORMATION CONTACT: Wayne Williams, Chief of Staff, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue SE, Washington, DC 20590; 202–366–0091.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC). The agenda for this meeting will be as follows:

September 25, 2019 From 9:00 a.m.–10:30 a.m. EST

1. Opening Remarks
2. Consideration of Minutes of Past Meeting
3. Quarterly Report
4. Old and New Business
5. Closing Discussion
6. Adjournment

Public Participation

Attendance at the meeting is open to the interested public. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact the person listed under the heading, **FOR FURTHER INFORMATION CONTACT**, not later than Wednesday, September 18, 2019. Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on September 4, 2019.

Carrie Lavigne,

(Approving Official) Chief Counsel, Saint Lawrence Seaway Development Corporation.

[FR Doc. 2019–19441 Filed 9–9–19; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Securities Exchange Act Disclosure Rules

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the renewal of its information collection titled ''Securities Exchange Act Disclosure Rules.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received on or before October 10, 2019.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0106, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0106'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0106, U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by email to *oira_submission@omb.eop.gov.*

You may review comments and other related materials that pertain to this information collection [1] following the close of the 30-day comment period for this notice by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0106'' or ''Securities Exchange Act Disclosure Rules.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202)

[1] On March 29, 2019, the OCC published a 60-day notice for this information collection, 84 FR 12029. On May 20, 2019, the OCC published a correction, 84 FR 22933.

649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks that OMB extend its approval of the information collection in this notice.

Title: Securities Exchange Act Disclosure Rules.

OMB Control No.: 1557–0106.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB approve its revised burden estimates.

The Securities and Exchange Commission (SEC) is required by statute to collect, in accordance with its regulations, certain information and documents from any firm that is required to register its stock with the SEC.[2] Federal law requires the OCC to apply similar regulations to any national bank or federal savings association similarly required to be registered with the OCC (generally those with a class of equity securities held by 2,000 or more shareholders).[3]

12 CFR part 11 ensures that a national bank or federal savings association whose securities are subject to registration provides adequate information about its operations to current and potential shareholders, and the public. The OCC reviews the information to ensure that it complies with federal law and makes public all information required to be filed under the rule.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Frequency of Response: On occasion.

Estimated Number of Respondents: 41.

Estimated Total Annual Burden: 408.948 hours.

On March 29, 2019, the OCC issued a notice for 60 days of comment concerning this collection, 84 FR 12029. The notice was reissued on May 20, 2019 to correct an error in the burden estimates, 84 FR 22933. No comments were received in response to the notices.

Comments continue to be requested on:

(a) Whether the information collections are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 4, 2019.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2019–19516 Filed 9–9–19; 8:45 am]

BILLING CODE 4810–33–P

[2] 15 U.S.C. 78m(a)(1).

[3] 15 U.S.C. 78l(i).

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Renewal Without Change of Information Collection Requirements in Connection With the Imposition of a Special Measure Concerning North Korea as a Jurisdiction of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of a continuing effort to reduce paperwork and respondent burden, the Financial Crimes Enforcement Network (''FinCEN'') invites comment on a renewal, without change, to information collection requirements finalized on November 9, 2016, imposing a special measure with respect to North Korea as a jurisdiction of primary money laundering concern. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome and must be received on or before November 12, 2019.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2019–0003 and the specific Office of Management and Budget (''OMB'') control number 1506–0071.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2019–0003 and OMB control number 1506–0071.

Please submit comments by one method only. Comments will also be incorporated to FinCEN's retrospective regulatory review process, as mandated by E.O. 12866 and 13563. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: FinCEN Resource Center at 1–800–767–2825 or 1–703–905–3591 (not a toll free number) and select option 3 for regulatory questions. Email inquiries can be sent to *FRC@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

a. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56 (the USA PATRIOT Act). Title III of the USA PATRIOT Act amended the anti-money laundering (AML) provisions of the Bank Secrecy Act (BSA), codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury (the Secretary) to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.[1]

Section 311 of the USA PATRIOT Act (Section 311), codified at 31 U.S.C. 5318A, grants FinCEN the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, financial institution, class of transactions, or type of account is of ''primary money laundering concern,'' to require domestic financial institutions and financial agencies to take certain ''special measures'' to address the primary money laundering concern.

[1] Therefore, references to the authority of the Secretary of the Treasury under Section 311 of the USA PATRIOT Act apply equally to the Director of FinCEN.

FinCEN may impose one or more of these special measures in order to protect the U.S. financial system from these threats. Special measures one through four, codified at 31 U.S.C. 5318A(b)(1)–(b)(4), impose additional recordkeeping, information collection, and reporting requirements on covered U.S. financial institutions. The fifth special measure, codified at 31 U.S.C. 5318A(b)(5), allows FinCEN to impose prohibitions or conditions on the opening or maintenance of certain correspondent accounts.

b. Overview of the Current Regulatory Provisions Regarding Special Measures Concerning North Korea

FinCEN issued the final rule imposing the fifth special measure to prohibit U.S. financial institutions from opening or maintaining a correspondent account for, or on behalf of, North Korean banking institutions.[2] The rule further prohibits U.S. financial institutions from processing transactions for the correspondent account of a foreign bank in the United States if such a transaction involves a North Korean financial institution, and requires institutions to apply special due diligence to guard against such use by North Korean financial institutions. See 31 CFR 1010.659.

Information Collection Under the Fifth Special Measure

The notification requirement in section 1010.659(b)(3)(i)(A) is intended to aid cooperation from correspondent account holders in denying North Korea access to the U.S. financial system. The information required to be maintained by section 1010.659(b)(4)(i) will be used by federal agencies and certain self-regulatory organizations to verify compliance by covered financial institutions with the provisions of 31 CFR 1010.659.

II. Paperwork Reduction Act (PRA)

Title: Renewal of Information Collection Requirements in connection with the Imposition of a Special Measure concerning North Korea as a Jurisdiction of Primary Money Laundering Concern.

Office of Management and Budget (OMB) Control Number: 1506–0071.

Abstract: FinCEN is issuing this notice to renew the OMB control number for the imposition of a special measure against North Korea as a jurisdiction of primary money laundering concern pursuant to the authority contained in 31 U.S.C. 5318A. See 31 CFR 1010.659.

Type of Review: Renewal without change of a currently approved collection.

Affected Public: Businesses and certain not-for-profit institutions.

Frequency: One time notification. See 31 CFR 1010.659(b)(3)(i)(A) and 1010.659(b)(4)(i).

Estimated Number of Respondents: 23,615.[3]

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden: 23,615 hours.

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 OMB control number. Records required to be retained under the BSA must be retained for five years. Generally, information collected pursuant to the BSA is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

When the final rule was published in November 2016, the number of financial institutions affected by the rule was estimated at 5,000. FinCEN has since revised the estimated number of affected financial institutions upward to account for all domestic financial institutions that could potentially maintain correspondent accounts for foreign banks, and to ensure that all U.S. financial institutions are conducting their due diligence and not processing transactions that may involve DPRK financial institutions.

There are approximately 23,615 such financial institutions doing business in the United States. As noted, this revision should not have a significant impact on a substantial number of small entities. In addition, all U.S. persons, including U.S. financial institutions, currently exercise some degree of due diligence in order to comply with existing U.S. sanctions programs applicable to North Korea.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Authority: Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A).

Jamal El-Hindi,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2019–19486 Filed 9–9–19; 8:45 am]

BILLING CODE 4810–02–P

[2] *See* 81 FR 78715, RIN 1506–AB35, November 9, 2016.

[3] The above Estimated Number of Respondents is based on sum of the following numbers:

- 5,358 banks [Federal Deposit Insurance Corporation, *Key Statistics* web page, April 25, 2019];
- 5,375 federally-insured credit unions [National Credit Union Administration, *Quarterly Credit Union Data Summary,* December 31, 2018];
- 125 privately-insured credit unions [General Accountability Office, *PRIVATE DEPOSIT INSURANCE: Credit Unions Largely Complied with Disclosure Rules, but Rules Should Be Clarified,* March 2017];
- 1,130 introducing brokers [National Futures Association website, March 31, 2019];
- 64 futures commission merchants [National Futures Association website, March 31, 2019];
- 3,607 securities firms [Financial Industry Regulatory Authority website, December 31, 2018]; and,
- 7,956 U.S. mutual funds [Investment Company Institute, *2018 Factbook,* 2018].

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's 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's 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, October 9, 2019.

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 a meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be

held Wednesday, October 9, 2019, at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, 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: September 4, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–19452 Filed 9–9–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's 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's 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 Wednesday, October 9, 2019.

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 Wednesday, October 9, 2019, 12:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, 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.

Dated: September 4, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–19454 Filed 9–9–19; 8:45 am]

BILLING CODE 4830–01–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's 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, October 8, 2019.

FOR FURTHER INFORMATION CONTACT: Carolyn Duckworth at 1–888–912–1227 or (336) 690–6217.

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's Taxpayer Communications Project Committee will be held Tuesday, October 8, 2019, at 3:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Carolyn Duckworth. For more information please contact Carolyn Duckworth at 1–888–912–1227 or (336) 690–6217, or write TAP Office, 1222 Spruce, St. Louis, MO 63103 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: September 4, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–19451 Filed 9–9–19; 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 Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center 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, October 10, 2019.

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 an open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Project Committee will be held Thursday, October 10, 2019, at 3:00 p.m. Eastern time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, 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.

Dated: September 4, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–19456 Filed 9–9–19; 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, October 31, 2019.

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 an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, October 31, 2019, at 1:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, 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 various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: September 4, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–19457 Filed 9–9–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's 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 Wednesday, October 9, 2019.

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's Notices and Correspondence Project Committee will be held Wednesday, October 9, 2019, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, 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 Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: September 4, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–19453 Filed 9–9–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Special Projects Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's 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 Thursday, October 10, 2019.

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's Special Projects Committee will be held Thursday, October 10, 2019, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Fred Smith. For more information please contact Fred Smith at 1–888–912–1227 or (202) 317–3087, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.*

Dated: September 4, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–19455 Filed 9–9–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning forest activities schedule.

DATES: Written comments should be received on or before November 12, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Forest Activities Schedule.

OMB Number: 1545–0007.

Form Number: Form T.

Abstract: Form T is filed by individuals and corporations to report income and deductions from the operation of a timber business. The IRS uses Form T to determine if the correct amount of income and deductions are reported.

Current Actions: There are no changes being made to the form at this time. However, the agency is updating the estimated number of respondents based on the most recent filing data and creation of OMB numbers 1545–0074 and 1545–0123.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, Businesses or other for-profit organizations.

Estimated Number of Respondents: 10.

Estimated Time per Respondent: 36 hours, and 11 minutes.

Estimated Total Annual Burden Hours: 362 hours.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 4, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–19539 Filed 9–9–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Advisory Committee on Risk-Sharing Mechanisms

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces that the U.S. Department of the Treasury's Advisory Committee on Risk-Sharing Mechanisms (ACRSM) will convene a meeting on Monday, September 30, 2019, in the Cash Room, Room 2121, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20220, from 1:00 p.m.–3:00 p.m. Eastern Time. The meeting is open to the public, and the site is accessible to individuals with disabilities.

DATES: The meeting will be held on Monday, September 30, 2019, from 1:00 p.m.–3:00 p.m. Eastern Time.

ADDRESSES: The ACRSM meeting will be held in Room 2121 (Cash Room), U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20220. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must either:

1. Register online. Attendees may visit *http://www.cvent.com/d/9yqrp2/4W* and fill out a secure online registration form. A valid email address will be required to complete online registration. (Note: Online registration will close at 5:00 p.m. Eastern Time on Monday, September 23, 2019.)

2. Contact the Federal Insurance Office at (202) 622–3220, by 5:00 p.m. Eastern Time on Monday, September 23, 2019, and provide registration information.

Requests for reasonable accommodations under Section 504 of the Rehabilitation Act should be directed to Mariam G. Harvey, Office of Civil Rights and Diversity, U.S. Department of the Treasury at (202) 622–0316, or *mariam.harvey@do.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Lindsey Baldwin, Senior Policy Analyst, Federal Insurance Office, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220, at (202) 622–3220 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2), through implementing regulations at 41 CFR 102–3.150.

Public Comment: Members of the public wishing to comment on the business of the ACRSM are invited to submit written statements by any of the following methods:

Electronic Statements

• Send electronic comments to *acrsm@treasury.gov.*

Paper Statements

• Send paper statements in triplicate to the Advisory Committee on Risk-Sharing Mechanisms, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220.

In general, the U.S. Department of the Treasury will post all statements on its website *https://www.treasury.gov/initiatives/fio/acrsm/Pages/default.aspx* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The U.S. Department of the Treasury will also make such statements available for public inspection and copying in the U.S. Department of the Treasury's Library, 720 Madison Place NW, Room 1020, Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–2000. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Background: The ACRSM provides advice and recommendations to the Federal Insurance Office (FIO) with respect to the creation and development of non-governmental, private market risk-sharing mechanisms for protection against losses arising from acts of terrorism.

Tentative Agenda/Topics for Discussion: This will be the second ACRSM meeting of 2019. In this meeting, the ACRSM will address, consistent with its charter's mandate, topics related to the role of nongovernmental mechanisms in supporting the terrorism risk insurance market. The ACRSM will receive updates with respect to: Terrorism risk modeling; implications of non-renewal of the Terrorism Risk Insurance Program (TRIP); the TRIP event certification process; nuclear, biological, chemical, and radiological risk and its effect on TRIP; and private risk-sharing mechanisms. The ACRSM will also discuss potential event loss scenarios to analyze TRIP's risk-sharing mechanisms and other topics as necessary.

Dated: September 3, 2019.

Steven Seitz,

Director, Federal Insurance Office.

[FR Doc. 2019–19502 Filed 9–9–19; 8:45 am]

BILLING CODE 4810–25–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meeting Notice; Unified Carrier Registration Plan Audit Subcommittee Meeting

TIME AND DATE: September 19, 2019, from 1:00 p.m. to 4:00 p.m., Eastern daylight time.

PLACE: The Towers at Wildwood, 3200 Windy Hill Road SE, Suite 600W, Atlanta, GA 30339. This meeting will also be accessible via conference call. Any interested person may call 1–866–210–1669, passcode 5253902#, to listen and participate in the meeting.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Audit Subcommittee (the ''Subcommittee'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Proposed Agenda

I. Call to Order—Subcommittee Chair

Chair will call the meeting to order.

II. Verification of Publication of Meeting Notice—Chief Legal Officer

Chief Legal Officer will verify the publication of meeting notice on the UCR website and in the **Federal Register**.

III. Roll Call and Confirmation of Quorum—Operations Manager

Operations Manager will call roll of the Subcommittee members and confirm whether a quorum is present.

IV. Approval of Minutes From June 3, 2019 Meeting—Operations Manager

Minutes from the June 3, 2019 Registration System Subcommittee meeting will be reviewed and the Subcommittee will consider action to approve.

V. Status Report on 2019 Audit Plan—Depository Manager

- *Depository Audit:* Depository Manager will report on the status of the independent financial review recently conducted by a third-party accounting firm for the UCR Depository.
- *State Compliance Reviews:* Depository Manager will provide an update on the recent state compliance review conducted in Kansas, as well as plans to conduct reviews in Minnesota and Wisconsin later this year.

VI. 2020 Proposed Audit Plan—Depository Manager

For Discussion and Possible Subcommittee Action:

- *State Compliance Reviews:* Subcommittee will review and possibly approve recommending to the Board a proposal for conducting UCR compliance reviews for eight (8) participating states in 2020.
- *National Registration System Financial Review:* Subcommittee will review and possibly approve recommending to the Board a proposed plan to conduct an independent financial review of the National Registration System next year.
- *Independent State System Interconnection:* Subcommittee will consider and possibly approve recommending to the Board criteria for interconnecting independent UCR registration systems, operated at the state level, to the National Registration System.
- *Depository Audit:* Subcommittee will consider and possibly approve recommending to the Board a preferred vendor to conduct the independent financial audit of the UCR Depository next year.
- *Carrier Audit Procedure for States:* Subcommittee will consider and possibly approve recommending to the Board a proposal to amend the UCR state carrier audit procedure to include a new step that would require states to review unregistered carriers based in their respective state.

VII. Amendment to UCR Refund Procedure—Subcommittee Chair

For Discussion and Possible Subcommittee Action: Subcommittee will consider and possibly approve recommending to the Board a proposal to amend the UCR refund procedure for the purpose of establishing the timing and criteria for the potential issuance of a refund that may result from an audit of a UCR registrant.

VIII. Solicitation of New and Unregistered Motor Carriers—Subcommittee Chair

For Discussion and Possible *Subcommittee Action:* Subcommittee will consider and possibly approve a recommendation to the Board concerning a plan for solicitation of new and unregistered motor carriers to encourage compliance.

IX. Definition of a Commercial Motor Vehicle in UCR Agreement—Subcommittee Chair

For Discussion and *Possible Subcommittee Action:* Subcommittee will consider and possibly approve recommendation to the Board of a revised definition of a Commercial Motor Vehicle in the UCR Agreement.

X. 2018 State Carrier Audits

Subcommittee Chair will report on the number of participating states that have completed their 2018 annual carrier audits.

XI. Audit Portal in National Registration System—Seikosoft

Subcommittee will receive an update on new functionality in the National Registration System for states to conduct and manage annual carrier audits.

XII. Focused Anomalies Review (FARs)—DSL Transportation

Subcommittee will receive an update on the amount of registration fees collected through the Focused Anomalies Review program in 2019 to date.

XIII. 2020 Operating Budget—Depository Manager

Depository Manager will report on the development of a proposed budget for 2020, particularly any expenses related to the UCR audit program.

XIV. Other Items—Subcommittee Chair

The Subcommittee Chair will call for any other items the subcommittee members would like to discuss.

XV. Adjourn—Subcommittee Chair

Chair will adjourn the meeting.

This agenda will be available no later than 5:00 p.m. Eastern daylight time, September 7, 2019 at: *https://plan.ucr.gov.*

CONTACT FOR MORE INFORMATION: Elizabeth Leaman, Acting Chair, Unified Carrier Registration Plan Board of Directors, PH: (617) 305–3783, EMAIL: *elizabeth.leaman@state.ma.us.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2019–19620 Filed 9–6–19; 11:15 am]

BILLING CODE 4910–YL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0162]

Agency Information Collection Activity: Monthly Certification of Flight Training

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 12, 2019.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or Danny S. Green, VA Clearance Officer, Office of Quality, Performance and Risk, Veterans Benefit Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Danny.Green2@va.gov.* Please refer to ''OMB Control No. 2900–0162'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 3032(e), 3231(e), 3313(g)(3)(C), and 3680(g).

Title: Monthly Certification of Flight Training, VA Form 22–6553c.

OMB Control Number: 2900–0162.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans, individuals on active duty training and reservist training, may receive benefits for enrolling in or pursuing approved vocational flight training. VA Form 22–6553c serves as a report of flight training pursued and termination of such training. Payments are based on the number of hours of flight training completed during the month.

Affected Public: Individuals.

Estimated Annual Burden: 11,343 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion (6 responses per respondent annually).

Estimated Number of Respondents: 3,781 (22,686 responses).

By direction of the Secretary.

Danny S. Green,

VA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2019–19546 Filed 9–9–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 84 Tuesday,

No. 175 September 10, 2019

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 26, 32, 36 and 71

2019–2020 Station-Specific Hunting and Sport Fishing Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 26, 32, 36, and 71

[Docket No. FWS–HQ–NWRS–2019–0040; FXRS12610900000–190–FF09R20000]

RIN 1018–BD79

2019–2020 Station-Specific Hunting and Sport Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), open seven National Wildlife Refuges (NWRs) that are currently closed to hunting and sport fishing. In addition, we expand hunting and sport fishing at 70 other NWRs, and add pertinent station-specific regulations for other NWRs that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2019–2020 season. We also formally open 15 units of the National Fish Hatchery System to hunting and sport fishing. We also add pertinent station-specific regulations that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing at these 15 National Fish Hatcheries (NFHs) for the 2019–2020 season. This rule includes global administrative updates to every NWR entry in our refuge-specific regulations and the reorganization of general public use regulations. We remove approximately 2,100 regulations that will have no impact on the administration of hunting and sport fishing within the National Wildlife Refuge System. We also simplify over 2,900 refuge-specific regulations to comply with a Presidential mandate to adhere to plain language standards and to reduce the regulatory burden on the public. Lastly, we remove the provision concerning same-day airborne hunting of the regulations specific to Alaska NWRs.

DATES: This rule is effective August 29, 2019.

FOR FURTHER INFORMATION CONTACT: Katherine Harrigan, (703) 358–2440.

SUPPLEMENTARY INFORMATION:

Background

The National Wildlife Refuge System Administration Act of 1966 closes NWRs in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or sport fishing, upon a determination that the use is compatible with the purposes of the refuge and National Wildlife Refuge System mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

We annually review hunting and sport fishing programs to determine whether to include additional stations or whether individual station regulations governing existing programs need modifications. Changing environmental conditions, State and Federal regulations, and other factors affecting fish and wildlife populations and habitat may warrant modifications to station-specific regulations to ensure the continued compatibility of hunting and sport fishing programs and to ensure that these programs will not materially interfere with or detract from the fulfillment of station purposes or the Services mission.

Provisions governing hunting and sport fishing on refuges are in title 50 of the Code of Federal Regulations in part 32 (50 CFR part 32), on hatcheries in part 71 (50 CFR part 71). We regulate hunting and sport fishing to:

- Ensure compatibility with refuge and hatchery purpose(s);
- Properly manage fish and wildlife resource(s);
- Protect other values;
- Ensure visitor safety; and
- Provide opportunities for fish- and wildlife-dependent recreation.

On many stations where we decide to allow hunting and sport fishing, our general policy of adopting regulations identical to State hunting and sport fishing regulations is adequate in meeting these objectives. On other stations, we must supplement State regulations with more-restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined in the Statutory Authority section, below. We issue station-specific hunting and sport fishing regulations when we open wildlife refuges and fish hatcheries to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations may list the wildlife species that you may hunt or fish, seasons, bag or creel (container for carrying fish) limits, methods of hunting or sport fishing, descriptions of areas open to hunting or sport fishing, and other provisions as appropriate. You may find previously issued station-specific regulations for hunting and sport fishing in 50 CFR part 32.

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966 (Administration Act; 16 U.S.C. 668dd–668ee, as amended by the National Wildlife Refuge System Improvement Act of 1997 [Improvement Act]) govern the administration and public use of refuges and the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) (Recreation Act) govern the administration and public use of refuges and hatcheries.

Amendments enacted by the Improvement Act were built upon the Administration Act in a manner that provides an ''organic act'' for the Refuge System, similar to organic acts that exist for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the Refuge System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus our Refuge System mission on conservation of fish, wildlife, and plant resources and their habitats. The Improvement Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible with the purpose for which the refuge was established and the mission of the Refuge System. The Improvement Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the Refuge System, through which the American public can develop an appreciation for fish and wildlife. The Improvement Act established six wildlife-dependent recreational uses as the priority general public uses of the Refuge System. These uses are hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Recreation Act authorizes the Secretary to administer areas within the Refuge System and Hatchery System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge or hatchery lands be compatible with the primary purpose(s) for which we established the

refuge and not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop specific management plans for each refuge prior to opening it to hunting or sport fishing. In many cases, we develop station-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge or hatchery and the Refuge and Hatchery System mission. We ensure initial compliance with the Administration Act and the Recreation Act for hunting and sport fishing on newly acquired land through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and sport fishing in 50 CFR parts 32 and 71. We ensure continued compliance by the development of comprehensive conservation plans and step-down management plans, and by annual review of hunting and sport fishing programs and regulations.

Summary of Comments and Responses

On June 26, 2019, we published a proposed rule in the **Federal Register** (84 FR 30314) to open 7 NWRs that are currently closed to hunting and sport fishing, formally open 15 NFHs to hunting and sport fishing, expand hunting and sport fishing at 70 other NWRs, and add pertinent station-specific regulations for other NWRs that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2019–2020 season. We accepted public comments on the proposed rule for 45 days, ending August 12, 2019. By that date, we received 918 comments on the proposed rule. A large number of these comments expressed general support for the proposed changes in the rule. These comments of support came from individuals, States, and nongovernmental organizations. A number of State responses specifically expressed their support for the Service's efforts to increase access for hunters and anglers, and to more closely align to State hunting and fishing regulations, in support of Secretarial Orders 3347 and 3356, as well as Service laws, regulations, and policies. For all State recommendations we received on the rule, the Service will work closely with individual States to address these in future rulemakings. We discuss the remaining comments we received below by topic.

Comment (1): Many commenters expressed general opposition to any hunting or fishing in the National Wildlife Refuge System (NWRS, or Refuge System). In many cases, commenters stated that hunting was antithetical to the purposes of a ''refuge''.

Our Response: The Administration Act, as amended, stipulates that hunting (along with fishing, wildlife observation and photography, and environmental education and interpretation), if found to be compatible, is a legitimate and priority general public use of a refuge and should be facilitated. The Service has adopted policies and regulations implementing the requirements of the Administration Act that refuge managers comply with when considering hunting and fishing programs.

We allow hunting of resident wildlife on NWRs only if such activity has been determined compatible with the established purpose(s) of the refuge and the mission of the Refuge System as required by the Administration Act. Hunting of resident wildlife on NWRs generally occurs consistent with State regulations, including seasons and bag limits. Refuge-specific hunting regulations can be more restrictive (but not more liberal) than State regulations and often are more restrictive in order to help meet specific refuge objectives. These objectives include resident wildlife population and habitat objectives, minimizing disturbance impacts to wildlife, maintaining high-quality opportunities for hunting and other wildlife-dependent recreation, eliminating or minimizing conflicts with other public uses and/or refuge management activities, and protecting public safety.

Each refuge manager makes a decision regarding hunting on that particular refuge only after rigorous examination of the available information. Developing or referencing a comprehensive conservation plan (CCP), a 15-year plan for the refuge, is generally the first step a refuge manager takes. Our policy for managing units of the Refuge System is that we will manage all refuges in accordance with an approved CCP, which, when implemented, will achieve refuge purposes; help fulfill the Refuge System mission; maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; help achieve the goals of the National Wilderness Preservation System; and meet other mandates. The CCP will guide management decisions and set forth goals, objectives, and strategies to accomplish these ends. The next step for refuge managers is developing or referencing step-down plans, of which a hunting plan would be one. Part of the process for opening a refuge to hunting after completing the step-down plan would be appropriate compliance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), such as conducting an environmental assessment accompanied by the appropriate decision documentation (record of decision, finding of no significant impact, or environmental action memorandum or statement). The rest of the elements in the opening package are an evaluation of section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); copies of letters requesting State and/or tribal involvement; and draft refuge-specific regulatory language. We make available the CCP, hunt plan, and NEPA documents, and request public comments on them, as well as on any proposed rule, before we allow hunting on a refuge.

In sum, this illustrates that the decision to allow hunting on an NWR is not a quick or simple process. It is full of deliberation and discussion, including review of all available data to determine the relative health of a population before we allow it to be hunted.

The word ''refuge'' includes the idea of providing a haven of safety for wildlife, and as such, hunting might seem an inconsistent use of the NWRS. However, again, the Administration Act stipulates that hunting, if found compatible, is a legitimate and priority general public use of a refuge. Furthermore, we manage refuges to support healthy wildlife populations that in many cases produce harvestable surpluses that are a renewable resource. As practiced on refuges, hunting and fishing do not pose a threat to wildlife populations. It is important to note that taking certain individual species through hunting does not necessarily reduce a population overall, as hunting can simply replace other types of mortality. In some cases, however, we use hunting as a management tool with the explicit goal of reducing a population; this is often the case with exotic and/or invasive species that threaten ecosystem stability. Therefore, facilitating hunting opportunities is an important aspect of the Service's roles and responsibilities as outlined in the legislation establishing the NWRS, and the Service will continue to facilitate these opportunities where compatible with the purpose of the specific refuge and the mission of the NWRS.

We did not make any changes to the rule as a result of these comments.

Comment (2): We received a comment with general support for the proposed changes in the rule, but with multiple concerns at a national level. These concerns included a perceived lack of consistency with regulations for dogs on refuges, non-alignment to State hunting and fishing regulations across the National Wildlife Refuge System, the lack of clarity of the proposed changes within the rule, and frustration with the speed at which the Service promulgates rulemakings for hunting and fishing, with a desire for rulemakings to be made two or four times a year.

Our Response: Even though State regulations may allow dogs during hunting activities, our general refuge regulations prohibit all domesticated animals at 50 CFR 26.21(b) unless authorized at 50 CFR part 32. While refuges adopt State hunting and fishing regulations to the extent practicable, they must also comply with the general refuge regulations. Therefore, in order to allow dogs during hunting activities, each refuge must authorize the use of dogs during hunting activities in their refuge-specific entries at 50 CFR part 32. As we explained in our response to *Comment (1),* all uses on refuges must be found compatible and must not conflict with refuge objectives. Some refuges have found that the use of dogs during hunting activities must be limited or not authorized in order to avoid conflict with refuge objectives. Where we do allow the use of dogs while hunting, we attempt to have consistency with regulations between refuges, especially within States and geographic regions.

The Service has implemented a national effort to review all hunting and sport fishing regulations for alignment to State regulations. A team of Service employees performed an assessment at each field station of hunting and sport fishing regulations for alignment to State regulations and potential opportunities for increased access for hunters and anglers. As a result, over the past two regulatory cycles (2018–2019 and 2019–2020), the Service has proposed to remove 43 percent of the station-specific regulations (most of which were redundant to State regulations or overly burdensome to the public) and to simplify 42 percent of the station-specific regulations in an effort to reduce the regulatory burden on the public and increase alignment to State regulations.

The Office of the Federal Register determined that the Service has been utilizing a nonstandard codification system in the Code of Federal Regulations (CFR) for 50 CFR part 32, and directed the Service to update relevant sections of subchapter C of chapter I in title 50 of the CFR as part of this rule. The update requires us to apply paragraph designations where our regulations lacked them at 50 CFR 26.34, 32.7, and 32.20 through 32.70. We must reprint the entirety of these sections of the regulations to accomplish the update. In addition, with the number of regulations removed (approximately 2,170 regulations) and simplified (approximately 2,940 regulations), as well as the large number of openings and expansions on 89 refuges and hatcheries, the length of the rule would have increased substantially if we had explained every regulatory change in the preamble of the rule in addition to setting forth all of §§ 32.20 through 32.70, as well as other relevant sections of the regulations. At the proposed rule stage, interested parties had the opportunity to compare a NWR's current regulations against the regulations we proposed for that NWR.

The Service will continue to open and expand hunting and sport fishing opportunities across refuges and hatcheries; however, as detailed in our response to *Comment (1)* above, the decision to allow hunting or sport fishing on a refuge or hatchery is not a quick or simple process. The annual regulatory cycle begins in June or July of each year for the following hunting and sport fishing season (the planning cycle for this 2019–2020 final rule began in June 2018). This annual timeline allows the Service time to collaborate closely with our State, tribal, and territorial partners, and other partners including nongovernmental organizations on potential opportunities, and to complete the requirements for opening or expanding new opportunities. Therefore, it would be impracticable to complete multiple regulatory cycles in one calendar year due to the logistics of coordinating with various partners. Once the Service determines that a hunting or sport fishing opportunity can be carried out in a manner compatible with individual station purposes and objectives, we work expeditiously to open it.

We did not make any changes to the rule as a result of this comment.

Comment (3): The Voigt Intertribal Task Force of the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) submitted comments on behalf of member tribes within ceded territories over portions of Minnesota, Wisconsin, and Michigan. The comments were specific to tribal members exercising their treaty rights on ceded territory for hunting on Crane Meadows NWR and Iron River NFH, and hunting and fishing on Whittlesey Creek NWR. They requested that there be an explicit acknowledgement in the station-specific regulations and in the Whittlesey Creek NWR fishing plan that tribal members from tribes with reserved treaty rights in the 1837 and 1842 Ceded Territories can hunt and fish pursuant to tribal regulations.

Our Response: The Service thanks the GLIFWC for their comments. These comments are substantial and due to their complexity, we do not feel we can adequately address them within the timeframe of this year's rulemaking process. We have a long-term, cooperative, successful working relationship with GLIFWC and its member tribes on Treaty issues. Therefore, in order to facilitate the adequate review needed to address these comments, we will request to initiate a formal government-to-government consultation process with GLIFWC for next year's hunting and fishing rule development. Until we can finalize a rule in 2020, we will strive to accommodate GLIFWC tribal members who wish to exercise their Treaty rights on these refuges and fish hatcheries through our existing special-use-permit process. We look forward to the consultation process, and working with all our partners, to develop a rule for 2020–2021. Edits made specifically to the Whittlesey Creek NWR fishing plan will be discussed during the consultation process.

We made no changes to the rule as a result of this comment.

Comment (4): We received general comments of support from the New York State Department of Environmental Conservation, the Oklahoma Department of Wildlife Conservation, and the Georgia Department of Natural Resources. However, all three States requested additional openings or expansions for hunting and sport fishing beyond what the Service proposed on June 26, 2019 (84 FR 30314).

Our Response: The Service is committed to working with our State partners to identify additional opportunities for expansion of hunting and sport fishing on Service lands and waters. We have initiated steps to update our hunt plans for NWRs in New York. All efforts to improve opportunities for hunters and better align with State regulations for our updated hunt plans will be coordinated with the New York State Department of Environmental Conservation, and will be included next year in the Service's proposed rule for the 2020–2021 station-

specific hunting and sport fishing regulations.

A timeline, which outlines by annual regulatory cycle when these opportunities will be addressed based on available resources, has been provided to the Oklahoma Department of Wildlife Conservation. Additionally, the Service has verbally committed to working with the Oklahoma Department of Wildlife Conservation on specific refuges in Oklahoma to expand fishing opportunities within our legal framework prior to development of refuge-specific fishing plans.

A high priority for the Service's Southeast Region will be to work with the Georgia Department of Natural Resources to discuss and consider proposals to open or expand additional hunting opportunities where compatible on NWRs in Georgia in the 2020–2021 regulatory cycle. This includes proposals to open or expand alligator hunting opportunities where compatible at refuges; proposals to open or expand opportunities where compatible for small game hunting, waterfowl hunting, and archery deer hunting at additional refuges; and alignment of general administrative regulations. Another high priority for the Service's Southeast Region will be to work with the Georgia Department of Natural Resources to discuss a consistent customer service approach to quota-managed hunts and the use of a consistent online hunt permit system.

We did not make any changes to the rule as a result of these comments.

Comment (5): We received a comment from the West Virginia Division of Natural Resources with five specific requests for clarification on Canaan Valley and Ohio River Islands NWRs in West Virginia. The requests included clarification of dog regulations for upland game hunting on Ohio River Islands NWR, the use of crossbows during archery deer season on both refuges, refuge access hours for anglers on Ohio River Islands NWR, the status of sport fishing on Canaan Valley NWR, and potential R3 (recruitment, retention, and reactivation) activities on both refuges.

Our Response: The first request asked the Service to clarify whether dogs are allowed for hunting upland game on Ohio River Islands NWR, as the refuge does not have specific language authorizing dogs for this activity (see our response to *Comment (2)*). The use of pursuit dogs for upland game hunting (*i.e.,* rabbits and squirrels) is not a compatible use on Ohio River Islands NWR, and is therefore prohibited. On this NWR, we only allow dogs to locate, point, and retrieve when hunting for migratory birds.

The second request asked the Service to include crossbows during archery deer seasons on both the Ohio River Islands and Canaan Valley NWRs to align with State regulations. The Service agrees with this suggestion, and this rule authorizes the use of crossbows on both refuges during archery deer seasons.

The third request asked how anglers who are legally fishing in the Ohio River after legal sunset will be able to distinguish refuge property from State waters, as Ohio River Islands NWR will close to anglers from 1 hour after legal sunset to 1 hour before legal sunrise. The Service marks all refuge boundaries with signs that notify anglers where the refuge boundary lies.

The fourth request noted that Canaan Valley NWR is closed for sport fishing. The Service has initiated steps to open Canaan Valley NWR to sport fishing for the 2020–2021 season. Any changes or strategies that are developed during the planning process will be made in close coordination with the West Virginia Division of Natural Resources staff and through the general public. The plan will be accompanied with a compatibility determination and appropriate NEPA compliance, and draft documents will likely be ready for public review and comment in the spring of 2020.

Finally, the last request was for the Service to consider additional R3 (recruitment, retention, and reactivation) activities in addition to efforts to be more consistent with State regulations. The Service will consider new R3 initiatives at West Virginia refuges and hopes to work with the West Virginia Division of Natural Resources to coordinate capacity and opportunities.

In response to this comment, we have added regulatory language to authorize the use of crossbows during deer archery seasons at Ohio River Islands and Canaan Valley NWRs.

Comment (6): We received a letter from the Arizona Game and Fish Department (AGFD) with support for the Service's effort to increase alignment of hunting and sport fishing regulations with State regulations, and with specific comments and recommendations for refuges within the State of Arizona.

Our Response: The Service appreciates the comments regarding hunting and fishing in Arizona, and the ongoing coordination with the AGFD during the two meetings with our Regional Directorate Team as well as consistent coordination among the field managers within our agencies.

The Service proposed 832,170 acres across seven refuges in expanded hunting opportunities in Arizona for the 2019–2020 season and will be working with the staff of the AGFD to add new opportunities over the next 3 years. For the 2020–2021 season, we plan to propose opening new opportunities at Buenos Aires, Cabeza Prieta, Cibola, and Leslie Canyon NWRs. In the 2 years following, we plan to propose opening additional new opportunities at Havasu, Bill Williams, San Bernardino, and Imperial NWRs. The order of proposals is subject to change, and we welcome input on priority setting for the future.

The Service is working to increase hunting opportunities within the State of Arizona. We focused our attention this year on hunting and alignments where possible. Full alignment with current State hunting and fishing regulations may not be reached in all cases based on the need to balance recreational uses like hunting and fishing with sensitive and trust species like the masked bobwhite quail and Sonoran pronghorn, and public demand for other priority public uses of the National Wildlife Refuge System and public safety considerations. Specifically, though Eurasian collared-dove hunting is open year-round in Arizona, it will only be open on NWRs during dove season in order to minimize disturbance to non-targeted game species. Deer hunting and waterfowl hunting will be in partial alignment with State seasons, times, and lawful methods, and will allow additional methods. For waterfowl, we are not making hunt time changes in some units to minimize disturbance to roosting waterfowl and sandhill cranes. As for AGFD's request to include the voluntary use of nontoxic shot or ammunition, refuges that already require non-lead ammunition will continue to maintain this requirement.

We look forward to continuing our ongoing efforts to provide more hunting and fishing opportunities on NWRs in Arizona and aligning species, season dates, bag limits, and methods of take with State laws and regulations where appropriate.

We did not make any changes to the rule as a result of this comment.

Comment (7): We received general comments of support from the Washington Department of Fish and Wildlife (WDFW) for the proposal to expand waterfowl hunting at Billy Frank Jr. Nisqually NWR, and to open San Juan Islands NWR and four NFHs (Entiat, Leavenworth, Little White Salmon, and Spring Creek NFHs) to fishing. However, the WDFW stated that they were not provided the opportunity

to review or comment on the fishing proposals prior to their release for public comment.

Our Response: The Service appreciates the WDFW's support for the hunting expansion at Billy Frank Jr. Nisqually NWR, and expansion of fishing opportunities on San Juan Islands NWR and the four NFHs.

We acknowledge the WDFW's concern that they were not provided the opportunity to review or comment on the fishing proposals prior to their release for public comment. Notification occurred on a local level, as the Service has done in the past. The Washington Maritime National Wildlife Refuge Complex staff notified the WDFW's North Puget Sound (Region 4) office of the Service's intent to open the fishing opportunity on Turn Island, part of the San Juan Islands NWR, on January 31, 2019, several months prior to publication of the proposed rule in the **Federal Register** (84 FR 30314; June 26, 2019). The Service's authorization of shoreline fishing at San Juan Islands NWR is in compliance and consistent with the WDFW's fishing regulations for Marine Area 7 (San Juan Islands). We note that the waters surrounding the refuge are already open to fishing; we are allowing shoreline fishing from Turn Island, which is already open to other public uses.

In addition, the Service's Columbia-Pacific Northwest Region Fisheries Program staff sent a coordination letter to the WDFW's District 5 biologists on February 13, 2019, notifying them of the proposal to formally open the Little White Salmon and Spring Creek NFHs to fishing. On August 13, 2019, the WDFW's Regional Director for Region 2 confirmed that: ''Communications about fishing opportunities and season structures are well-coordinated between the WDFW and the Leavenworth Fisheries Complex in central Washington, which includes the Entiat and Leavenworth NFHs. The Service communicates frequently with WDFW staff on all fish returns and seasonal opportunities to open fisheries involving Service-produced stocks. The WDFW's Region 2 staff are aware of areas that are open to these fisheries (including NFHs). The Service has worked routinely with the WDFW to explore new areas of opportunities and will continue to do so.''

The formal opening of San Juan Islands NWR and the Entiat, Leavenworth, Little White Salmon, and Spring Creek NFHs to fishing does not lead to new, modified, or revised fishing rules in the State. We are codifying an activity (fishing) that had been taking place for many decades at these facilities; the formal openings, therefore, do not represent an increase in fishing opportunities. The Service received no responses from the local WDFW offices on the proposals.

We made no changes to the rule as a result of this comment.

Comment (8): We received general comments of support from the Idaho Department of Fish and Game (IDFG) for expansion of hunting and fishing opportunities at Minidoka NWR. However, IDFG stated that the June 26, 2019, proposed rule (84 FR 30314) falls well short of the opportunities originally identified by the IDFG in a letter submitted to the Service in November 2017, in response to Secretarial Order No. 3347 (U.S. Dept. of the Interior) to ''expand access significantly for recreational hunting and fishing on public lands,'' and ''to improve recreational hunting and fishing cooperation, consultation, and communication with [S]tate wildlife managers.''

Our Response: The proposed rule for the 2019–2020 season includes opening Minidoka NWR to archery elk hunting in an area open to waterfowl and upland game hunting, and expanding the boating season by one month to provide additional fishing opportunities. As the Service acknowledged in a July 23, 2019, meeting between Service staff and the IDFG, the proposed rule's two changes for Idaho are just the beginning of a larger effort to work with the State of Idaho in a phased approach to identify additional opportunities for expansion of hunting and sport fishing on Service lands and waters. The Service looks forward to working with the IDFG in the coming months to develop additional proposals for the 2020–2021 season.

We made no changes to the rule as a result of this comment.

Comment (9): We received a comment from the Alaska Department of Fish and Game regarding the proposed changes to 50 CFR part 36. While the State was supportive of the removal of the same-day airborne hunting regulation in alignment with State hunting statute (Alaska Statutes (AS) 16.05.783) and State hunting regulations (Alaska Administrative Code (AAC) at 5 AAC 92.085), the State did not support the other proposed changes to part 36. The State also requested that the Service undertake future rulemakings for removal of other regulations.

Our Response: We recognize the State of Alaska's concerns about the proposed amended regulations. We will work in coordination with the State on the future rulemaking as noted in their comment. In response, the only regulatory change we are making to 50 CFR part 36 in this rule is to remove the restriction at 50 CFR 36.32(c)(1)(iv) concerning same-day airborne hunting, as consistent with State regulations.

Comment (10): We received a few comments that opposed the proposal to remove the restriction at 50 CFR 36.32(c)(1)(iv) concerning same-day airborne hunting on national wildlife refuge lands in Alaska. The commenters felt that the Service had failed to explain our change in position, and that with the removal of this restriction, the State may try to implement predator control programs on Alaska refuges. The commenters also stated that there would be a risk that the State could change their regulations, therefore allowing the same-day airborne take of wolves and wolverines.

Our Response: The Service initiated this rulemaking process to standardize and clarify our regulations. Further, in response to Secretarial Orders 3347 and 3356, we organized a national team to review refuge-specific regulations for consistency with State regulations specifically focused on non-subsistence hunting and fishing uses. Through this evaluation, we determined that the same-day airborne regulations were redundant with existing State of Alaska regulations, and we are amending our regulations accordingly. 50 CFR 36.32(c)(1)(iv) duplicates a State of Alaska law and regulation (AS 16.05.783 and 5 AAC 92.085) that already prohibits same-day airborne hunting of wolves and wolverines. For that reason, such practices will continue to be prohibited on NWRs in Alaska despite the removal of 50 CFR 36.32(c)(1)(iv). If the State of Alaska changes its same-day airborne regulation to permit this activity for certain species, then the Service may initiate a rulemaking process to reinstate its Alaska-specific regulation prohibiting same-day airborne hunting.

Active predator control on refuges by the State of Alaska is not allowed unless the State is granted a permit from a refuge manager. In this manner, the Service retains its authority and control over this activity. Moreover, the Service remains authorized to institute emergency closure measures under 50 CFR 36.42, or to promulgate new regulations to ensure protection of resources and compliance with the Service's statutory obligations. Thus, the Service's management authority is not being abrogated.

We did not make any changes to the rule as a result of these comments.

Comment (11): We received a number of comments, including the Arizona Game and Fish Department, requesting

that the Service allow falconry as a use across the NWRS. These comments emphasized the cultural heritage and tradition of the sport of falconry, and requested that falconry be approved as a default use on all refuges. These comments were concerned with the ambiguity with which falconry is addressed in refuge-specific regulations, where some refuges allow falconry, some refuges prohibit falconry, and some refuges do not address falconry in their refuge-specific regulations. These comments also requested that falconry be considered a ''regular method of take'' and not a special hunt on refuges. Overall, these comments expressed interest in increasing opportunities for falconry on refuges.

Our Response: As stated in our response to *Comment (1),* we allow hunting of resident wildlife on NWRs only if such activity (including specific methods of take) has been determined to be compatible with the established purpose(s) of the refuge and the mission of the Refuge System as required by the Administration Act. Service policy, as outlined in our Fish and Wildlife Service Manual (FW) at 605 FW 2.7M (Special Hunts), stipulates, ''We will address special types of hunts, such as falconry, in the hunt section of the visitor service plan (VSP).'' In other words, each refuge manager, when developing their step-down VSP (which would include a hunt plan, if appropriate) from their CCP, must first determine if hunting is compatible. Assuming it is found to be compatible, the refuge manager would next determine the conduct of the hunt, which might include the use of falconry or other methods of take. A refuge manager has discretion to restrict hunting and types of hunting, specifically falconry and other methods of take, if, for example, endangered or threatened species are present, the cumulative impacts of a type of hunt have not been analyzed or are not available, or if a type of hunt is not compatible with the refuge; thus, this issue is decided individually on a refuge-by-refuge basis.

We did not make any changes to the rule as a result of these comments.

Comment (12): We received a comment with general support for the proposed changes in the rule but with concerns that the hunting and sport fishing seasons on the refuges and hatcheries had no ending date, and would be open year-round.

Our Response: Hunting and sport fishing seasons on refuges and hatcheries align to State hunting and sport fishing regulations when opened and must not be more liberal than State regulations. Refuges and hatcheries may designate more restrictive season dates as necessary in order to make the activity compatible with the refuge or hatchery mission and purpose. Some State hunting or sport fishing opportunities may be open year-round. Therefore, the hunting and sport fishing opportunities in this rule either open and close at the same time as State hunting and sport fishing, or are limited to a shorter amount of time for biological purposes or to balance public uses on the station, as is generally the case for hunting opportunities where the State is open year-round. None of the hunting openings or expansions within this rule are open year-round.

We did not make any changes to the rule as a result of this comment.

Comment (13): We received a substantial number of comments requesting that the Service open all lands to hunting and sport fishing, and not pursue any action to close lands to hunting or sport fishing, or impose any restrictions on hunters or anglers.

Our Response: Through this final rule, the Service is opening or expanding hunting and/or sport fishing opportunities on over 1.4 million acres at 89 stations (refuges and hatcheries) across 37 States. This is the largest number of openings and expansions the Service has proposed in a single rule, and is the result of a national effort to increase access for hunters and anglers on Service lands and waters. In addition, this final rule removes over 2,100 regulations and simplifies over 2,900 regulations, in an effort to achieve greater alignment with State regulations and reduce the regulatory burden on the public.

We made no changes to the rule as a result of these comments.

Comment (14): Multiple commenters said the Service should increase predator management by using any and all tools or methods in order to decrease depredation of both game animals and livestock in Idaho.

Our Response: Refuge managers consider predator management on a case-by-case basis. As with all species, a refuge manager makes a decision about managing predator populations, including allowing predatory species to be hunted, only after careful examination to ensure the action would comply with relevant laws, policies, and directives. The Administration Act, as amended, directs the Service to manage refuges for ''biological integrity, diversity, and environmental health.'' Predators play a critical role in the integrity, diversity, and overall health of ecosystems, so managing predators is not always appropriate. Before beginning a predator management protocol, or allowing predators to be hunted, a refuge manager would have to ensure that these actions would not threaten the integrity, diversity, or health of the refuge ecosystem. The manager would also have to determine that the actions were compatible with refuge purposes and was in keeping with the refuge's CCP and other step-down plans. The Service manages all refuges in accordance with an approved CCP, which, when implemented, will achieve refuge purposes; help fulfill the Refuge System mission; maintain, and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; help achieve the goals of the National Wilderness Preservation System; and meet other mandates. In addition, the refuge manager would have to analyze the impacts of the proposed actions through the NEPA process, which would include the opportunity for public comment. Finally, the proposed actions would be open to public comment through the rulemaking process.

We did not make any changes to the rule as a result of these comments.

Comment (15): One commenter felt that predators (coyotes, bobcats, coyotes, cougars, bears, and wolves) should not be hunted on refuges due to their biological importance in refuge ecosystems, and that the cumulative impacts of hunting these species was not thoroughly analyzed by the Service. The commenter also felt that ''trophy hunting'' of these species is inappropriate. They also felt that hunting of these species is unethical and the common methods of take for these species, including baiting, hounding, and trapping, are unsportsmanlike. Another commenter suggested that predators be introduced onto the refuges as a management tool rather than using hunters.

Our Response: As stated in our response to *Comment (14),* refuge managers consider predator management on a case-by-case basis. As with all species, a refuge manager makes a decision about managing predator populations, including allowing predatory species to be hunted, only after careful examination to ensure the action would comply with relevant laws, policies, and directives. We considered the impacts of hunting on predator populations through individual environmental assessments for each of the proposed hunting openings and expansions. We also consider the cumulative impacts of all proposed hunts in the 2019–2020 cumulative impacts report accompanying the proposed rule.

The Service does not attempt to define or authorize ''trophy hunting'' in any of our laws, regulations, or policies concerning hunting. We follow State hunting and fishing regulations, except for where we are more restrictive on individual stations, including State regulations concerning responsible hunting, or prohibitions on wanton waste (defined as ''to intentionally waste something negligently or inappropriately''). As stated in our response to *Comment (1),* we only allow hunting on refuges and hatcheries when we have determined that the opportunity is sustainable and compatible.

Most of the predator species listed, if they are allowed to be hunted on a refuge, are only allowed to be taken incidentally during other refuge hunts with only weapons authorized for that hunt. Baiting is prohibited on all refuges outside Alaska under 50 CFR 32.2(h), unless specifically authorized under station-specific regulations, and it is uncommon for baiting to be authorized. The use of dogs for hounding is prohibited on refuges by 50 CFR 26.21(b) unless authorized by station-specific regulations, and many refuges only authorize the use of dogs for retrieval of migratory birds, upland game birds, and small game. Most refuges that allow dogs require the dogs to be under the immediate control of the hunter at all times, or leashed unless actively retrieving an animal.

Under the Improvement Act, trapping is not considered a priority wildlife-dependent recreational use of the Refuge System. Trapping programs on refuges are generally implemented to accomplish wildlife management objectives. These objectives vary between refuges, and are often an essential tool in meeting refuge management objectives (*e.g.,* trapping of predators may be necessary to accomplish waterfowl production objectives or to protect an endangered species).

As for utilizing predators as a management tool instead of hunters, we would need to follow the same process as outlined in our response to *Comment (14).* The Administration Act, as amended, directs the Service to manage refuges for ''biological integrity, diversity, and environmental health.'' Predators and prey species both play a critical role in the integrity, diversity, and overall health of ecosystems, so management actions concerning all species must be considered on a station-by-station basis.

We did not make any changes to the rule as a result of this comment, though we clarified our cumulative impacts report as a result of this comment.

Comment (16): One commenter was of the opinion that hunting can disrupt the natural balance of the ecosystem and conflicts with the mission of the NWRS. The commenter also felt that the Service relied on outdated and insufficient data to support the proposed openings and expansions, that increased hunting would have negative impacts on target species and refuge ecosystems, and that the Service needs to publish current population data for all target species at the refuge and national levels. The commenter also felt that the Service did not properly analyze the cumulative impacts of hunting on ''keystone species,'' including federally listed species and migratory birds.

Our Response: We do not allow hunting on a refuge if it is found incompatible with that individual refuge's purposes or with the mission of the NWRS. In addition, the Service's biological integrity, diversity, and environmental health (BIDEH) policy (601 FW 3) guides decision-making with respect to management of activities on refuges, including hunting. Service biologists and wildlife professionals, in consultation with the State, determine the optimal number of each game animal that should reside in an ecosystem and then establish hunt parameters (*e.g.,* bag limits, sex ratios) based on those analyses. We carefully consider how a proposed hunt fits with individual refuge goals, objectives, and strategies before allowing the hunt. None of the known, estimated, or projected harvests of migratory game birds, upland game, or big game species in this rulemaking is expected to have significant adverse direct, indirect, or cumulative impacts to hunted populations, non-hunted wildlife, endangered or threatened species, plant or habitat resources, wildlife-dependent recreation, prescribed fire, air, soil, water, cultural resources, refuge facilities, solitude, or socio-economics. We analyze these impacts not only in each refuge's NEPA document, but also in the 2019–2020 cumulative impacts report.

The Service does not collect population data at the national level, and is able to use State population data when analyzing the impacts at individual stations or within a State. When determining the compatibility of an activity, Service policy (603 FW 2) directs station managers to utilize all available data in exercising their sound professional judgement in the decision-making process.

''Keystone species'' are species on which other species in an ecosystem depend, and if these species were removed, the ecosystem would change drastically. As stated above, the Service thoroughly analyzes the impacts of allowing species to be hunted, including keystone species, both in station NEPA documents and in the 2019–2020 cumulative impacts report. For federally listed species, the Service is required to complete an Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) section 7 consultation prior to opening hunting of a species. The Service does not allow hunting if its effect would conflict with refuge purposes or the mission of the Service, including significant cumulative effects on individual species, federally listed species, or migratory birds.

We made no changes to the rule as a result of this comment, though we clarified our cumulative impacts report as a result of this comment.

Comment (17): Two commenters asserted that we should prepare an environmental impact statement (EIS) before proposing to expand hunting and fishing opportunities on refuges or hatcheries. According to the commenter, the proposed rule is of sufficient context and intensity to indicate that it is significant enough to warrant an EIS, and that the Service did not adequately analyze the cumulative impacts across the country on all huntable populations with the cumulative impacts report.

Our Response: The Service disagrees with the assertion that we should prepare an EIS before proposing expanded hunting and fishing opportunities on refuges or hatcheries. The Service's NEPA-related analysis of the impacts of the proposed rule demonstrated that the rule would not have significant impacts at the local, regional, or national level, and the commenter has provided no additional information that would change our analysis. As discussed above, we annually conduct management activities on refuges and hatcheries that minimize or offset impacts of hunting and fishing on physical and cultural resources, including establishing designated areas for hunting; restricting levels of use; confining access and travel to designated locations; providing education programs and materials for hunters, anglers, and other users; and conducting law enforcement activities.

The Service completed individual environmental assessments for or applied categorical exclusions to 89 refuges and hatcheries in compliance with NEPA to evaluate the impacts of opening or expanding hunting and fishing opportunities on the stations in connection with this rulemaking. These environmental assessments and

categorical exclusions underwent regional and national review to address and consider these actions from a multi-State or flyway perspective, and to consider the cumulative impacts from this larger geographical context. The 2019–2020 cumulative impacts report concludes that, after analyzing the impacts of these 89 environmental assessments and categorical exclusions collectively with the refuges that already allow hunting and fishing, the rule will not result in significant adverse impacts to the human environment. A court found that this approach was an appropriate way for the Service to analyze the impacts of the rule in compliance with NEPA (see *Fund for Animals* v. *Hall,* 777 F. Supp. 2d 92, 105 (D.D.C. 2011)). Therefore, we did not find that the impacts to the human environment were severe, as the commenter suggests.

We did not make any changes to the rule as result of these comments.

Comment (18): One commenter stated that the Service is improperly deferring to State wildlife management authority with the proposed changes in the rule.

Our Response: The Service works closely with our State partners in managing hunting and fishing programs on refuge lands. As stated in our response to *Comment (1),* the Service generally allows hunting or fishing of wildlife on refuges and hatcheries consistent with State regulations, including seasons and bag limits. Refuge-specific hunting and fishing regulations can be more restrictive (but not more liberal) than State regulations and often are more restrictive in order to help meet specific refuge objectives. Our authority to do so stems from the Administration Act, as amended, which states, ''when the Secretary [of the Interior] determines that a proposed wildlife-dependent recreational use is a compatible use within a refuge, that activity should be facilitated, subject to such restrictions or regulations as may be necessary, reasonable, and appropriate'' (16 U.S.C. 668dd(a)(3)(D)), and ''[r]egulations permitting hunting or fishing of fish and resident wildlife within the [Refuge] System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans'' (16 U.S.C. 668dd(m)).

We made no changes to the rule as a result of this comment.

Comment (19): A few commenters stated that the majority of Americans do not hunt and were of the opinion that allowing hunting would impede ''non-consumptive'' uses of refuges, including photography and wildlife viewing. These comments expressed that hunting is contrary to public interest.

Our Response: Congress, through the Administration Act, as amended, envisioned that hunting, fishing, wildlife observation and photography, and environmental education and interpretation would all be treated as priority public uses of the NWRS. Therefore, the Service facilitates all of these uses on refuges, as long as they are found compatible with the purposes of the specific refuge and the mission of the NWRS. For this rulemaking, we analyzed impacts of the proposed changes to hunting programs at each refuge and hatchery through the NEPA process, which included analyzing impacts to other wildlife-dependent uses. The 74 refuges and 15 hatcheries for which we are opening or expanding hunting and/or sport fishing in this rulemaking completed environmental assessments (EAs) or applied categorical exclusions as previous actions were considered under an EA. We also provided opportunities for the public to comment on the proposed hunt opening and expansions when we developed the CCP, hunt plan, and compatibility determination, and through the NEPA process. When looking at the 89 EAs and categorical exclusions completed for this specific rulemaking, collectively with the refuges that already allow for hunting in the cumulative impacts report, the Service has determined that there are no significant impacts to other wildlife-dependent recreation opportunities.

The refuges and hatcheries in this rulemaking use a variety of techniques to reduce user conflict, such as specific hunt seasons, limited hunting hours, restricting which parts of the station are open to hunting, and restricting the number of hunters. Station managers also use public outreach tools, such as signs and brochures, to make users aware of hunting and their options for minimizing conflict. Most stations have station-specific regulations to improve the quality of the hunting experience as well as provide for quality wildlife-dependent experiences for other users. The Service is aware of several studies showing a correlation between increased hunting and decreased wildlife sightings, which underscores the importance of using the aforementioned techniques, particularly time and space zoning of hunting, to ensure a quality experience for all refuge and hatchery visitors. More information on how a specific station facilitates various wildlife-dependent recreation opportunities can be found in the station's CCP, hunt plan, and/or station-specific EA or environmental impact statement (EIS). The public may contact the specific refuge for any of these materials.

We did not make any changes to the rule as a result of these comments.

Comment (20): We received one comment with concern that the increase in openings and expansions of hunting and sport fishing would overwhelm existing law enforcement capacity and have a detrimental impact to public safety, wildlife, and other Service resources.

Our Response: As we discussed in our response to *Comment (1),* in order to open or expand hunting or sport fishing on a refuge, we must find the activity compatible. In order to find an activity compatible, the activity must not ''materially interfere or detract from'' public safety, wildlife resources, or the purpose of the refuge. For all 89 openings and expansions in this rule, we determined that the proposed actions would not have these detrimental impacts and found the actions to be compatible.

Service policy (603 FW 2.12(7)) requires station managers to determine that adequate resources (including personnel, which would include law enforcement) exist or can be provided by the Service or a partner to properly develop, operate, and maintain the use in a way that will not materially interfere with or detract from fulfillment of the refuge purpose(s) and the Service mission. If resources are lacking for establishment or continuation of wildlife-dependent recreational uses, the refuge manager will make reasonable efforts to obtain additional resources or outside assistance from States, other public agencies, local communities, and/or private and nonprofit groups before determining that the use is not compatible. When Service law enforcement resources are lacking, we are often able to rely upon State fish and game law-enforcement capacity to assist in enforcement of hunting and fishing regulations.

We made no changes to the rule based on this comment, though we clarified our cumulative impacts report based on this comment.

Comment (21): We received one comment with concern that the openings and expansions at 14 refuges that are also designated as Urban National Wildlife Refuges as part of the Urban Wildlife Conservation Program would have potential negative effects on the management goals of these refuges.

Our Response: Standard 2 of *The Urban Standards of Excellence* states, ''[c]onnect urban people with nature via stepping stones of engagement.'' Urban NWRs provide opportunities to

introduce new audiences to hunting and fishing activities, and include them in outdoor traditions. Hunting and fishing activities can provide urban dwellers with opportunities to experience the outdoors, obtain organic protein, and learn new skills. Offering hunting and fishing opportunities on urban refuges can also help to re-engage city dwellers who used to enjoy hunting or fishing. Providing hunting and fishing opportunities near population centers can also increase license and equipment sales, which benefit wildlife conservation programs.

As described in our response to *Comment (19),* refuge managers, both urban and rural, balance refuge uses by opening and closing areas to activities at different times for a variety of reasons. They may include management actions (prescribed burning, constructing water control structures); safety (flooding, downed timber); and reduction of conflicts between users (hunters vs. wildlife-viewers). Restricting an area to hunting or fishing for short periods of time to allow that use is simply using time management and zoning to reduce conflicts.

In addition, urban refuges often have an overabundance of deer, geese, or other animals that are negatively impacting refuge resources. Hunt opportunities allow refuges and States to manage the populations, while providing opportunities for citizens to enjoy the outdoors and learn about population management.

We made no changes to the rule as result of this comment.

Comment (22): We received a comment in general support of the proposed changes to increase hunting and sport fishing, specifically at Laguna Atascosa and Lower Rio Grande Valley NWRs. However, this commenter expressed that if the refuges are going to hold lotteries, then hunters from the local area near the refuge should be given ''preference points'' so that these local hunters have a greater chance of being chosen for the hunt, similar to the lottery system used by the Texas Parks and Wildlife Department (TPWD).

Our Response: Both Laguna Atascosa and Lower Rio Grande Valley National Wildlife Refuges administer their lotteries through the TPWD lottery system. TPWD already has a system of ''preference points'' available for all hunters that are not drawn for a hunt. TPWD gives greater weight to unsuccessful applicants for future year drawings. This system likely helps local hunters over time as compared to out-of-town hunters who are less likely to reapply over numerous years for our hunts. Otherwise, there is currently no geographical weighting of applicants to favor applicants from the surrounding area within the TPWD lottery system.

We did not make any changes to the rule as a result of this comment.

Comment (23): We received two comments concerning Anahuac, McFaddin, and Texas Point NWRs, and the lack of consistency among the three refuges and their boating regulations, despite their close proximity to each other. The commenters pointed out that as proposed, these regulations do not meet the compatibility standards as listed in the stipulations necessary to ensure compatibility in the CCP covering all three refuges.

Our Response: We agree with the comment, and as a result of this comment, we have added clarifying language to the station-specific regulations for Anahuac, McFaddin, and Texas Point NWRs regarding the types of boats allowed and horsepower restrictions. These revisions ensure consistency for the applicable provisions across all three refuges.

Comment (24): We received two comments requesting that Erie NWR reopen woodcock hunting on the refuge.

Our Response: Woodcock hunting has been open on Erie NWR previously and was only closed for a number of years to allow the Service to conduct research on the refuge. The refuge has coordinated with the State of Pennsylvania on reopening woodcock hunting, and has determined that the use should be reopened to the public. All requirements to allowing the use have already been completed.

In response to these comments, we have added woodcock to the list of species available to hunt for Erie NWR.

Comment (25): We received a substantial number of comments for Hutton Lake NWR on the refuge's environmental assessment and hunt plan expressing concern that allowing hunting could cause disturbance to wildlife and potentially cause conflict with other refuge visitors.

Our Response: Based on these comments, the Service is adopting a youth-only waterfowl hunt. Youth hunters would be able to hunt during the Wyoming Zone C2 ''special youth waterfowl hunting days.'' The Service has determined that the short temporal nature of the hunt will result in minimal disturbance to wildlife and other refuge users in the closed area. We intend to conduct a more detailed review of this issue in the future.

As a result of this comment, we have updated the language in the station-specific regulations for Hutton Lake NWR to allow only youth waterfowl hunting and only on certain days.

Comment (26): Hutton Lake and Medicine Lake NWRs received a comment from the Northern Cheyenne Tribe requesting monitoring measures to ensure continued cultural resource protections of sites.

Our Response: The Service will monitor known cultural resources. Staff will monitor cultural resources so that they may note any unusual activity or disturbance. The Service's cultural resource staff will visit the resources and note any changes in condition when possible, taking appropriate action. The cultural resources staff will be notified of discovery of previously unknown resources and ensure compliance with regulations and procedures.

We did not make any changes to the rule as a result of this comment.

Comment (27): Hutton Lake NWR received a comment from the Cheyenne and Arapahoe Tribes requesting continued protection and compliance with regulations and procedures pertaining to traditional cultural properties.

Our Response: The Service remains committed to continued protection of cultural resource sites and compliance with regulation and procedures.

We did not make any changes to the rule as a result of this comment.

Comment (28): One commenter felt that the Service did not properly consider the cumulative impacts of hunting beaver at Cross Creeks and Salt Plains NWRs.

Our Response: Both environmental assessments for Cross Creeks NWR and Salt Plains NWR sufficiently analyze and discuss the cumulative impacts of allowing beavers to be taken incidentally in addition to other refuge hunts. Beavers are already managed by refuge staff to prevent habitat damage caused by beaver dams, which can have negative impacts on vegetation, moist soil units, and other refuge resources. The Service does not anticipate a substantial take of beavers, as these refuges are not allowing standalone beaver hunting. Hunters will be allowed to take beavers incidentally during other designated refuge hunts.

We did not make any changes to the rule as a result of this comment.

Comment (29): We received one comment specific to Tamarac and Crane Meadows NWRs, and to Iron River NFH, suggesting these stations undergo further environmental review prior to approving the proposed rule, and that these stations are especially deficient in their analysis of impacts of hunting, hounding, and trapping of bobcats, coyotes, and bears (including impacts to ESA-listed species) on the Federal lands. Furthermore, they stated that

incidental take of wolves and lynx was not sufficiently analyzed in all three plans and the ESA consultation was not available for public review. Specific to Tamarac NWR, they stated that there was a violation of the Administrative Procedure Act (5 U.S.C. subchapter II) by failing to explain a change in position in allowing the use of dogs to hunt bobcats in the proposed rule. For Iron River NFH, they commented on opening to the hounding of bears in wolf habitat based on possible conflicts with wolves. Additionally, they expressed concerns about the adequacy of an environmental assessment to evaluate the environmental impacts of opening to hunting using all methods of take, including hounding and trapping, described in State of Wisconsin hunting regulations.

Our Response: To be clear, hounding is not allowed for hunting furbearers on Crane Meadows and Tamarac NWRs. Both of these refuges have refuge-specific regulations outlined in their hunting brochures available on their websites that state that the use of dogs for furbearer hunting is prohibited on the refuge. Additionally, the use of dogs for hunting species of waterfowl and upland game is only allowed if the dog is under the immediate control of the hunter at all times, as described in the proposed rule. To clarify that the use of dogs to hunt furbearers is prohibited on Tamarac and Crane Meadows NWRs, we add the following condition to relevant section of this final rule: ''We allow the use of dogs when hunting, except when hunting furbearers, provided the dog is under the immediate control of the hunter at all times.'' Bobcats and coyotes are considered furbearers under State of Minnesota regulations. At no point in time have dogs been allowed for furbearer hunting on Tamarac NWR; thus, no violation of the Administrative Procedure Act has occurred. Iron River NFH is allowing the use of dogs for all hunting as defined by the State of Wisconsin hunting regulations to maintain consistency with surrounding State and Federal land. In both cases, the stations are aligning with State hunting regulations outside the use of dogs for furbearers.

As stated in our response to *Comment (15),* trapping is not considered a priority wildlife-dependent recreational use of the Refuge System, and is therefore not considered for the purposes of this rule.

Intra-Service consultations conducted under the ESA's section 7 (section 7 consultations) are considered internal documents between the Division of Ecological Services and other Service programs such as Fisheries or Refuges. Final section 7 consultations were completed for all stations prior to the local public comment period on the refuges' NEPA documents and draft hunt plans that started May 1, 2019. These documents are not required to be made available for public comment; however, they can be made available upon request. Within their completed section 7 consultation, Iron River made a ''no effect'' determination for Canada lynx and gray wolf. The section 7 consultation points out that although the gray wolf occurs in Bayfield County, there is no evidence of gray wolves on Iron River NFH. Therefore, there would be no conflict with wolves by allowing hounding of bear. Within their section 7 consultation, Crane Meadows NWR determined that the hunting of coyotes and bobcats ''may affect'' but likely will not ''adversely affect'' Canada lynx and gray wolf due to those species' current ranges and distributions and to sightings of those species on the refuge being very rare. Tamarac NWR determined that implementing the proposed hunt plan ''may affect, but not adversely affect'' gray wolf populations because: (1) The current wolf density on the refuge is considered viable and sustainable, and juveniles natal to the refuge are dispersing to form other packs outside the refuge; (2) most of the expansion of hunting opportunities involves non-prey species for wolves; (3) the disturbance from activities associated with the new species proposed for hunting is expected to be minimal and not significantly more than what exists from other current recreational uses; (4) access for the newly proposed species and seasons will remain similar to what currently exists; (5) gray wolves established themselves on Tamarac NWR since the last amended hunt plan (1994) during an era where an established hunt program existed for migratory birds, small game, big game, and furbearers; (6) the timing of the proposed expanded hunting seasons falls primarily outside the breeding and denning period for wolf activity, which is a critical period in their life stage; and (7) a significant area, which encompasses the core home range for wolves using the refuge, is not hunted. Tamarac NWR falls outside the current lynx range and designated critical habitat. The evaluation provided by these stations' environmental assessments demonstrate no significant impacts as defined by NEPA (which is corroborated by the completed Intra-Service section 7 consultations).

The States of Minnesota and Wisconsin provide hunters with guidance in their regulations on how to tell the difference between wolves and coyotes. Wisconsin also provides guidance on how to tell the difference between lynx and bobcats. This education outreach will be augmented by outreach at the station to reduce the potential for incidental take of lynx and wolves. Managers will monitor potential incidental take of these species and respond accordingly. Wolves are currently protected under the ESA, and no final determination about their proposed delisting (84 FR 9648; March 15, 2019) has been made.

The environmental assessment completed for Iron River NFH sufficiently reviewed all methods of take when estimating potential harvest of species recommended for opening to hunting within their hunt plan, and found that all Wisconsin-related methods of take for the species proposed to be hunted would not have significant impact on the human environment.

Comment (30): We received 48 public comments on the Monomoy NWR draft hunt plan and comments from multiple organizations on the 2019–2020 station-specific hunting and sport fishing proposed rule. Collectively, these comments indicate there is strong opposition and little support for opening Monomoy NWR to coyote hunting. Locally, only three individuals supported the proposal, with two of those supporting specifically for the purposes of predator management for bird protection.

Our Response: Significant concerns were raised during the comment period by the U.S. Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) and other local and national nonprofit conservation organizations regarding the likelihood for seal disturbance. The Service did not complete the necessary coordination with NOAA to identify Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) concerns prior to the release of the environmental assessment. Therefore, in this rule, the Service will not allow for a coyote hunting program at Monomoy NWR for 2019–2020. Monomoy NWR will implement the waterfowl hunting program in 2019–2020, as proposed.

Changes From the Proposed Rule

As discussed above, under Summary of Comments and Responses, based on comments we received on the proposed rule and NEPA documents for individual refuges and hatcheries, we made changes in this final rule to Erie, Monomoy, Hutton Lake, Anahuac, McFaddin, Texas Point, Tamarac, Ohio River Islands, and Canaan Valley NWRs. Specifically, in response to comments,

we added woodcock to the list of species open to hunting under migratory game birds on Erie NWR. Woodcock was open previously on the refuge and was temporarily closed to allow the refuge to conduct research. In coordination with the State of Pennsylvania, the Service has determined that the previous NEPA documents and compatibility determination are still valid, and with this rule, we open woodcock hunting on the refuge. In response to comments received on the draft hunt plan for Monomoy NWR, we will not be implementing a coyote-hunting program on the refuge in 2019–2020. Therefore, we have removed the proposed coyote regulations from the station-specific entry for Monomoy NWR. In response to comments received on the refuge's NEPA documents, Hutton Lake NWR will choose a different alternative from their environmental assessment and allow only youth waterfowl hunting in alignment with the State youth waterfowl hunt. In response to comments, we added clarifying language regarding boating regulations to Anahuac, McFaddin, and Texas Point NWRs. We also added clarifying language for Tamarac and Crane Meadows NWRs regarding the prohibition of dogs when hunting furbearers. In response to comments, on both Ohio River Islands and Canaan Valley NWRs, we added crossbow to the list of allowed weapons during deer archery seasons.

In response to comments received on the proposed rule, we limit our changes to 50 CFR 36.32 to only the removal of the same-day airborne hunting restriction at § 36.32(c)(1)(iv). In addition, we made several small edits to clarify or correct, like revising the name of a permit from ''signed brochure'' to ''check-in card,'' and editing a species list from ''fox, squirrel'' to ''fox squirrel.'' Also, throughout this rule, we have changed the name of ''Dexter National Fish Hatchery'' to the correct name, ''Southwest Native Aquatic Resources and Recovery Center.'' This name correction does not change the provisions in this final rule applicable to the Southwest Native Aquatic Resources and Recovery Center.

Effective Date

We are making this rule effective upon public inspection (see **DATES**, above). We provided a 45-day public comment period for the June 26, 2019, proposed rule (84 FR 30314). We have determined that any further delay in implementing these station-specific hunting and sport fishing regulations would not be in the public interest, in that a delay would hinder the effective planning and administration of refuges' and hatcheries' hunting and sport fishing programs. This rule does not impact the public generally in terms of requiring lead time for compliance. Rather, it relieves restrictions in that it allows activities on refuges and hatcheries that we would otherwise prohibit. Therefore, we find good cause under 5 U.S.C. 553(d)(3) to make this rule effective upon public inspection.

Amendments to Existing Regulations

Updates to Hunting and Fishing Opportunities on NWRs and NFHs

This document codifies in the Code of Federal Regulations all of the Service's hunting and/or sport fishing regulations updated since the last time we published a rule amending these regulations (83 FR 45758; September 10, 2018) and that are applicable at Refuge System and Hatchery System units previously opened to hunting and/or sport fishing. This rule better informs the general public of the regulations at each station, increases understanding and compliance with these regulations, and makes enforcement of these regulations more efficient. In addition to now finding these regulations in 50 CFR parts 32 and 71, visitors to our refuges and hatcheries may find them reiterated in literature distributed by each station or posted on signs.

TABLE 1—CHANGES FOR 2019–2020 HUNTING/SPORT FISHING SEASON

Station	State	Migratory bird hunting	Upland game hunting	Big game hunting	Sport fishing
Bandon Marsh	Oregon	Already Open	Closed	Closed	D.
Bill Williams River	Arizona	E	E	Already Open	Already Open.
Billy Frank Jr. Nisqually	Washington	D	Closed	Closed	Already Open.
Bitter Lake	New Mexico	E	E	Already Open	Closed.
Bond Swamp	Georgia	Already Open	E	E	Already Open.
Bosque del Apache	New Mexico	E	E	E	Already Open.
Boyer Chute	Nebraska	D	Closed	C/E	Already Open.
Buenos Aires	Arizona	Already Open	E	E	Closed.
Cedar Point	Ohio	Closed	Closed	Already Open	D.
Cherry Valley	Pennsylvania	Already Open	Already Open	Already Open	B.
Cibola	Arizona	E	E	E	Already Open.
Clarks River	Kentucky	Already Open	E	Already Open	Already Open.
Colusa	California	Already Open	C	Closed	Closed.
Crab Orchard	Illinois	C/E	C/E	E	Already Open.
Craig Brook NFH	Maine	Closed	Closed	Closed	A.
Crane Meadows	Minnesota	B	B	D	Closed.
Cross Creeks	Tennessee	Already Open	C	E	Already Open.
Currituck	North Carolina	E	Closed	E	Closed.
Cypress Creek	Illinois	C/D	C/D	D	Already Open.
Deep Fork	Oklahoma	C	Already Open	E	Already Open.
Delevan	California	Already Open	C	Closed	Closed.
Desoto	Iowa and Nebraska	Closed	Already Open	E	Already Open.
Edenton NFH	North Carolina	Closed	Closed	Closed	A.
Entiat NFH	Washington	Closed	Closed	Closed	A.
Grand Bay	Mississippi and Alabama	E	Already Open	Already Open	Closed.
Great Bay	New Hampshire	Already Open	Closed	C/E	Closed.
Great River	Illinois and Missouri	Already Open	E	E	Already Open.
Green Bay	Wisconsin	Closed	Closed	A	A.
Hackmatack	Illinois and Wisconsin	Already Open	Already Open	Already Open	B.
Hagerman	Texas	D	D	D	Already Open.
Harrison Lake NFH	Virginia	Closed	Closed	Closed	A.

TABLE 1—CHANGES FOR 2019–2020 HUNTING/SPORT FISHING SEASON—Continued

Station	State	Migratory bird hunting	Upland game hunting	Big game hunting	Sport fishing
Havasu	Arizona	E	Already Open	Already Open	Already Open.
Hotchkiss NFH	Colorado	Closed	Closed	Closed	A.
Hutton Lake	Wyoming	A	Closed	Closed	Closed.
Imperial	Arizona	E	E	Already Open	Already Open.
Inks Dam NFH	Texas	Closed	Closed	Closed	A.
Iron River NFH	Wisconsin	A	A	A	Closed.
Key Cave	Alabama	C	C	B	Closed.
Kirwin	Kansas	D	Already Open	Already Open	Already Open.
Kofa	Arizona	Closed	E	Already Open	Closed.
Laguna Atascosa	Texas	Closed	Closed	E	Already Open.
Las Vegas	New Mexico	E	Closed	Closed	Closed.
Leadville NFH	Colorado	A	A	A	A.
Leavenworth NFH	Washington	Closed	Closed	Closed	A.
Little River	Oklahoma	Already Open	C	E	Already Open.
Little White Salmon NFH	Washington	Closed	Closed	Closed	A.
Lower Rio Grande Valley	Texas	Already Open	Closed	E	Closed.
Marin Islands	California	Closed	Closed	Closed	A.
Mashpee	Massachusetts	A	A	A	Closed.
Mattamuskeet	North Carolina	Already Open	Closed	E	Already Open.
McKay Creek	Oregon	C	C	B	Already Open.
Medicine Lake	Montana	C	Already Open	Already Open	E.
Middle Mississippi River	Illinois and Missouri	Already Open	D	E	D.
Minidoka	Idaho	Already Open	Already Open	B	E.
Monomoy	Massachusetts	B	B	Closed	Already Open.
Neal Smith	Iowa	D	D	D	Closed.
Nestucca Bay	Oregon	Already Open	Closed	Closed	B.
Northern Tallgrass Prairie	Iowa and Minnesota	D	D	D	B.
Okefenokee	Georgia	Closed	Already Open	E	Already Open.
Orangeburg NFH	South Carolina	Closed	Closed	Closed	A.
Ottawa	Ohio	Already Open	Already Open	Already Open	D.
Ozark Plateau	Oklahoma	Closed	A	A	Closed.
Parker River	Massachusetts	D/E	B	D/E	Already Open.
Patoka River	Indiana	D	D	D	D.
Patuxent	Maryland	Already Open	Already Open	D	Already Open.
Piedmont	Georgia	Closed	E	E	Already Open.
Sacramento	California	Already Open	C	Closed	Closed.
Salt Plains	Oklahoma	C/D	C/D	C/E	Already Open.
San Bernardino	Arizona	E	Already Open	Closed	Closed.
Sand Lake	South Dakota	Already Open	Already Open	E	Already Open.
San Juan Islands	Washington	Closed	Closed	Closed	A.
San Pablo Bay	California	E	Already Open	Closed	Already Open.
Seedskadee	Wyoming	Already Open	Already Open	C	Already Open.
Sequoyah	Oklahoma	Already Open	Already Open	C	Already Open.
Silvio O. Conte	Massachusetts and Connecticut.	A	A	A	A.
Southwest Native Aquatic Resources and Recovery Center.	New Mexico	A	A	Closed	Closed.
Spring Creek NFH	Washington	Closed	Closed	Closed	A.
St. Marks	Florida	Already Open	D	D	Already Open.
Stone Lakes	California	Already Open	Closed	Closed	B.
Sutter	California	Already Open	C	Closed	Closed.
Tamarac	Minnesota	C	C	Already Open	Already Open.
Tishomingo	Oklahoma	B	Closed	C	Already Open.
Tishomingo NFH	Oklahoma	Closed	Closed	Closed	A.
Trinity River	Texas	E	E	E.	Already Open
Valentine	Nebraska	Already Open	E	Already Open	Already Open.
Valley City NFH (6)	North Dakota	Closed	Closed	Closed	A.
Washita	Oklahoma	C/D	C	Already Open	Already Open.
Wichita Mountains	Oklahoma	B	B	C	Already Open.
Whittlesey Creek	Wisconsin	Already Open	Closed	Already Open	B.

Key:

*number in ( ) refers to the Region as explained in the preamble to this proposed rule for additional information regarding refuge specific regulations.

A = New station opened (Opening).

B = New activity on a station previously open to other activities (Opening).

C = Station already open to activity but added new species to hunt (Opening).

D = Station already open to activity, but added new lands/waters or modified areas open to hunting or fishing (Expansion).

E = Station already open to activity, but existing opportunity expanded through season dates, method of take, bag limits, quota permits, youth hunt, etc. (Expansion).

F = Activity is being closed on the station.

The changes for the 2019–2020 hunting/fishing season noted in the chart above are each based on a complete administrative record which, among other detailed documentation, also includes a hunt plan, a compatibility determination (for refuges), and the appropriate National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) analysis, all of which were the subject of a public review and comment process. These documents are available upon request.

Through these openings and expansions, we are opening or expanding an additional 1,451,131 acres to hunting and sport fishing within the National Wildlife Refuge System and the National Fish Hatchery System. These actions are the only changes to the administration of hunting and sport fishing opportunities on Service lands and waters.

Other Updates to the Regulations for NWRs

In this rulemaking, we standardize and clarify the language of existing regulations.

We update the existing nonstandard codification system of 50 CFR part 32, as well as 50 CFR 26.34, to the standard Code of Federal Regulations (CFR) paragraph designation system. Therefore, in addition to setting forth all of §§ 26.34 and 32.7 to bring them into conformity with the CFR's standard codification system, we also set forth every entry for our refuge-specific regulations in 50 CFR part 32 in this rule for reformatting.

Further, as part of a national effort to assess hunting and sport fishing on Service lands and waters, we reviewed over 7,200 station-specific regulations to, in part, identify unnecessary redundancy in existing Federal regulations that apply to all stations and relevant State hunting and fishing regulations. As a result of that review, we remove approximately 2,100 regulations that will have no impact on the administration of hunting and sport fishing within the National Wildlife Refuge System.

We also simplify over 2,900 refuge-specific regulations to comply with a Presidential mandate to adhere to plain language standards and to reduce the regulatory burden on the public. In this rule, the editorial revisions to use plain language in regulations do not modify the substance of the previous regulations. These types of changes include using ''you'' to refer to the reader and ''we'' to refer to the Refuge System, using the word ''allow'' instead of ''permit'' when we do not require the use of a permit for an activity, using consistent language to present requirements concerning hunters' ages for youth hunt opportunities, and using active voice (*e.g.,* ''We restrict entry into the refuge'' vs. ''Entry into the refuge is restricted''). Some of these changes also include adding clarifying language or Office of Management and Budget (OMB) approved form numbers for permits to comply with Paperwork Reduction Act (PRA) and information collection requirements.

Another result of our review of our station-specific regulations is the identification of general public use regulations, for activities like camping and boating, in 50 CFR part 32 that are better placed elsewhere in our regulations. Therefore, we move those general public use regulations not exclusively pertaining to hunting and sport fishing activities from 50 CFR part 32 to 50 CFR 26.34. This reorganization does not establish any new regulations, nor does it make any changes to the enforcement of public use or hunting and sport fishing on Service lands.

In 50 CFR 26.34, we remove the provisions concerning the issuance of medical access waiver permits for Back Bay National Wildlife Refuge in Virginia. We make this change because, as the current regulations state, we have not issued any such waivers for more than 30 years, and we will not issue any in the future. Therefore, these provisions are obsolete and should be removed from the regulations.

Lastly, we make changes to 50 CFR part 36, the regulations concerning Alaska NWRs. Specifically, we remove the same-day airborne hunting prohibition set forth at 50 CFR 36.32(c)(1)(iv). This prohibition duplicates a State of Alaska law and regulation (Title 16 of the Alaska Statutes (AS) at chapter 5, section 783 (AS 16.05.783), and Title 5 of the Alaska Administrative Code (AAC) at chapter 92, section 85 (5 AAC 92.085)). Further, the State of Alaska's animal control programs may only be conducted on Alaska NWRs in accordance with a Federal special use permit issued by the Refuge Manager (50 CFR 36.32(e)). We also make editorial changes to these regulations for clarity and consistency.

Fish Advisory

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can find information about current fish-consumption advisories on the internet at: *http://www.epa.gov/fish-tech.*

Required Determinations

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. OIRA has determined that this rulemaking is not significant.

Executive Order (E.O.) 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The 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.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

This rule is not an Executive Order (E.O.) 13771 (82 FR 9339, February 3, 2017) regulatory action because this rule is not significant under E.O. 12866.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 *et seq.*), whenever a Federal 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 effect 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 an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic

impact on a substantial number of small entities.

This rule opens 7 NWRs and 15 NFHs to sport fishing and hunting and expands hunting or fishing activities on 67 additional NWRs. As a result, visitor use for wildlife-dependent recreation on these stations will change. If the stations establishing new programs were a pure addition to the current supply of those activities, it would mean an estimated increase of 18,258 user days (one person per day participating in a recreational opportunity; see Table 2). Because the participation trend is flat in these activities since 1991, this increase in supply will most likely be offset by other sites losing participants. Therefore, this is likely to be a substitute site for the activity and not necessarily an increase in participation rates for the activity.

TABLE 2—ESTIMATED CHANGE IN RECREATION OPPORTUNITIES IN 2019–2020

[Dollars in thousands]

Station	Additional hunting days	Additional fishing days	Additional expenditures
Bandon Marsh		100	$4.4
Bill Williams River	15		0.6
Billy Frank Jr. Nisqually	311		12.8
Bitter Lake	333		13.7
Bond Swamp	24		1.0
Bosque del Apache	360		14.9
Boyer Chute	327		13.5
Buenos Aires	45		1.9
Cedar Point		30	1.3
Cherry Valley		365	16.0
Cibola	400		16.5
Clarks River	60		2.5
Colusa	476		19.6
Crab Orchard	1,099		45.4
Craig Brook NFH		365	16.0
Crane Meadows	304		12.5
Cross Creeks	11		0.5
Currituck			
Cypress Creek	378		15.6
Deep Fork	450		18.6
Delevan	715		29.5
Desoto	85		3.5
Edenton NFH		300	13.2
Entiat NFH			
Grand Bay	25		1.0
Great Bay	64		2.6
Great River	320		13.2
Green Bay	752	50	33.2
Hackmatack		50	2.2
Hagerman	5,400		222.9
Harrison Lake NFH		365	16.0
Havasu	205		8.5
Hotchkiss NFH		300	13.2
Hutton Lake	94		3.9
Imperial	30		1.2
Inks Dam NFH			
Iron River NFH	1,145		47.3
Key Cave	150		6.2
Kirwin	172		7.1
Kofa	35		1.4
Laguna Atascosa			
Las Vegas	65		2.7
Leadville NFH			
Leavenworth NFH			
Little River	658		27.2
Little White Salmon NFH			
Lower Rio Grande Valley			
Marin Islands		1,825	80.2
Mashpee	225		9.3
Mattamuskeet	1		<0.1
McKay Creek	85		3.5
Medicine Lake	10,350	60	429.8
Middle Mississippi River	40	20	2.5
Minidoka	120	900	44.5
Monomoy	165		6.8
Neal Smith	200		8.3
Nestucca Bay		100	4.4
Northern Tallgrass Prairie	124	50	7.3
Okefenokee	182		7.5
Orangeburg NFH		300	13.2

TABLE 2—ESTIMATED CHANGE IN RECREATION OPPORTUNITIES IN 2019–2020—Continued

[Dollars in thousands]

Station	Additional hunting days	Additional fishing days	Additional expenditures
Ottawa		365	16.0
Ozark Plateau	522		21.5
Parker River	92		3.8
Patoka River	150	50	8.4
Patuxent			
Piedmont	10		0.4
Sacramento	783		32.3
Salt Plains	300		12.4
San Bernardino	5		0.2
San Juan Islands			
San Pablo Bay	200		8.3
Sand Lake	49		2.0
Seedskadee	60		2.5
Sequoyah	100		4.1
Silvio O. Conte			
Southwest Native Aquatic Resources and Recovery Center			
Spring Creek NFH			
St. Marks			
Stone Lakes		1,825	80.2
Sutter	378		15.6
Tamarac	200		8.3
Tishomingo	500		20.6
Tishomingo NFH			
Trinity River	92		3.8
Valentine	88		3.6
Valley City NFH		300	13.2
Washita	4,000		165.1
Whittlesey Creek		50	2.2
Wichita Mountains	1,000		41.3
Total	14,508	3,750	763.5

To the extent visitors spend time and money in the area of the station that they would not have spent there anyway, they contribute new income to the regional economy and benefit local businesses. Due to the unavailability of site-specific expenditure data, we use the national estimates from the 2011 National Survey of Fishing, Hunting, and Wildlife Associated Recreation to identify expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with the maximum expected additional participation of the Refuge System and the Hatchery System yields approximately $763,500 in recreation-related expenditures (see Table 2, above). By having ripple effects throughout the economy, these direct expenditures are only part of the economic impact of these recreational activities. Using a national impact multiplier for hunting activities (2.27) derived from the report ''Hunting in America: An Economic Force for Conservation'' and for fishing activities (2.40) derived from the report ''Sportfishing in America'' yields a total economic impact of approximately $1.8 million (2018 dollars) (Southwick Associates, Inc., 2012). Using a local impact multiplier would yield more accurate and smaller results. However, we employed the national impact multiplier due to the difficulty in developing local multipliers for each specific region.

Since we know that most of the fishing and hunting occurs within 100 miles of a participant's residence, then it is unlikely that most of this spending will be ''new'' money coming into a local economy; therefore, this spending will be offset with a decrease in some other sector of the local economy. The net gain to the local economies will be no more than $1.8 million, and most likely considerably less. Since 80 percent of the participants travel less than 100 miles to engage in hunting and fishing activities, their spending patterns will not add new money into the local economy and, therefore, the real impact will be on the order of about $351,000 annually.

Small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait-and-tackle shops, and similar businesses) may be affected by some increased or decreased station visitation. A large percentage of these retail trade establishments in the local communities around NWRs and NFHs qualify as small businesses (see Table 3, below). We expect that the incremental recreational changes will be scattered, and so we do not expect that the rule will have a significant economic effect on a substantial number of small entities in any region or nationally. As noted previously, we expect approximately $763,500 to be spent in total in the refuges' local economies. The maximum increase will be less than three-tenths of 1 percent for local retail trade spending (see Table 3, below).

TABLE 3—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL STATION VISITATION FOR 2019–2020

[Thousands, 2018 dollars]

Station/county(ies)	Retail trade in 2012	Estimated maximum addition from new activities	Addition as % of total	Establishments in 2012	Establishments with fewer than 10 employees in 2012
Bandon Marsh:					
Coos, OR	$815,690	$4.4	<0.01	261	106
Bill Williams River:					
La Paz, AZ	476,807	0.3	<0.01	80	57
Mohave, AZ	2,966,929	0.3	<0.01	594	245
Billy Frank Jr. Nisqually:					
Pierce, WA	11,062,118	6.4	<0.01	2,144	1,481
Thurston, WA	3,642,910	6.4	<0.01	769	516
Bitter Lake:					
Chaves, NM	978,967	13.7	<0.01	233	153
Bond Swamp:					
Bibb, GA	2,840,899	0.5	<0.01	803	580
Twiggs, GA	30,550	0.5	<0.01	15	12
Bosque del Apache:					
Socorro, NM	131,026	14.9	0.01	39	31
Boyer Chute:					
Washington, NE	817,449	13.5	<0.01	55	36
Cedar Point:					
Lucas, OH	6,538,026	1.3	<0.01	1,452	965
Cherry Valley:					
Monroe, PA	2,340,937	8.0	<0.01	633	424
Northampton, PA	3,967,299	8.0	<0.01	879	603
Cibola:					
La Paz, AZ	476,807	8.3	<0.01	80	57
Imperial, CA	1,833,974	8.3	<0.01	448	297
Clarks River:					
Graves, KY	441,526	1.2	<0.01	125	90
Marshall, KY	429,097	1.2	<0.01	103	71
McCracken, KY	1,792,028	1.2	<0.01	415	256
Colusa:					
Colusa, CA	139,868	19.6	0.01	59	45
Crab Orchard:					
Jackson, IL	1,102,806	15.1	<0.01	227	143
Union, IL	182,761	15.1	0.01	64	47
Williamson, IL	1,220,878	15.1	<0.01	274	185
Cross Creeks:					
Stewart, TN	94,752	0.5	<0.01	37	28
Cypress Creek:					
Alexander, IL	26,475	3.9	0.01	23	20
Johnson, IL	96,890	3.9	<0.01	28	18
Pulaski, IL	38,240	3.9	0.01	18	15
Union, IL	182,761	3.9	<0.01	64	47
Deep Fork:					
Okmulgee,OK	372,982	18.6	<0.01	126	97
Delevan:					
Colusa, CA	139,868	29.5	0.02	59	45
Desoto:					
Harrison, IA	215,702	1.2	<0.01	53	36
Pottawatamie, IA	1,922,235	1.2	<0.01	311	194
Washington, NE	817,449	1.2	<0.01	55	36
Edenton NFH:					
Chowan, NC	130,344	13.2	0.01	58	44
Grand Bay:					
Mobile, AL	5,580,676	0.5	<0.01	1,465	1,005
Jackson, MS	1,334,845	0.5	<0.01	425	326
Great Bay:					
Rockingham, NH	7,398,381	2.6	<0.01	1,596	1,106
Great River:					
Pike, IL	208,851	4.4	<0.01	64	45
Clark, MO	110,758	4.4	<0.01	32	28
Shelby, MO	64,462	4.4	0.01	35	25
Green Bay:					
Door, WI	452,931	33.2	0.01	260	225
Hackmatack:					
McHenry, IL	4,007,709	1.1	<0.01	940	629
Walworth, WI	1,350,117	1.1	<0.01	359	264

TABLE 3—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL STATION VISITATION FOR 2019–2020—Continued

[Thousands, 2018 dollars]

Station/county(ies)	Retail trade in 2012	Estimated maximum addition from new activities	Addition as % of total	Establishments in 2012	Establishments with fewer than 10 employees in 2012
Hagerman:					
Montague, TX	210,612	222.9	0.11	69	56
Harrison Lake NFH:					
Charles City, VA	16,075	16.0	0.10	10	9
Havasu:					
Mohave, AZ	2,966,929	4.2	<0.01	594	394
San Bernardino, CA	26,664,942	4.2	<0.01	4,769	3,123
Hotchkiss NFH:					
Delta, CO	338,829	13.2	<0.01	117	93
Hutton Lake:					
Albany, WY	524,488	3.9	<0.01	141	103
Imperial:					
Imperial, CA	1,833,974	0.6	<0.01	448	297
La Paz, AZ	476,807	0.6	<0.01	80	57
Iron River NFH:					
Bayfield, WI	92,470	47.3	0.05	69	57
Key Cave:					
Lauderdale, AL	1,302,366	6.2	<0.01	420	302
Kirwin:					
Phillips, KS	56,297	7.1	0.01	35	27
Kofa:					
La Paz, AZ	476,807	0.7	<0.01	80	57
Yuma, AZ	2,182,997	0.7	<0.01	452	302
Las Vegas:					
San Miguel, NM	241,627	2.7	<0.01	82	52
Little River:					
McCurtain, OK	301,003	27.2	0.01	101	81
Marin Islands:					
Marin, CA	5,564,228	80.2	<0.01	1,050	762
Mashpee:					
Barnstable, MA	4,218,338	9.3	<0.01	1,507	1,160
Mattamuskeet:					
Hyde, NC	33,265	<0.1	<0.01	38	35
McKay Creek:					
Umatilla, OR	877,978	3.5	<0.01	224	155
Medicine Lake:					
Roosevelt, MT	174,121	214.9	0.12	41	24
Sheridan, MT	66,779	214.9	0.32	27	18
Middle Mississippi River:					
Monroe, IL	1,816,999	0.8	<0.01	97	72
Randolph, IL	408,338	0.8	<0.01	102	62
Jefferson, MO	2,135,540	0.8	<0.01	482	324
Minidoka:					
Blaine, ID	326,573	11.1	<0.01	185	153
Cassia, ID	354,240	11.1	<0.01	117	89
Minidoka, ID	172,744	11.1	0.01	62	47
Power, ID	32,404	11.1	0.03	18	13
Monomoy:					
Barnstable, MA	4,218,338	6.8	<0.01	1,507	1,160
Neal Smith:					
Jasper, IA	388,658	8.3	<0.01	108	74
Nestucca Bay:					
Tillamook, OR	272,191	4.4	<0.01	115	94
Northern Tallgrass Prairie:					
Dickinson, IA	320,317	0.5	<0.01	111	85
Jasper, IA	388,658	0.5	<0.01	108	74
Kossuth, IA	269,945	0.5	<0.01	93	69
O'Brien, IA	223,641	0.5	<0.01	100	71
Clay, MN	727,392	0.5	<0.01	169	97
Kandiyohi, MN	728,828	0.5	<0.01	225	154
Kittson, MN	140,472	0.5	<0.01	30	21
Lincoln, MN	73,219	0.5	<0.01	38	29
Murray, MN	51,137	0.5	<0.01	43	34
Norman, MN	51,396	0.5	<0.01	30	20
Otter Tail, MN	849,239	0.5	<0.01	261	201
Pope, MN	151,479	0.5	<0.01	41	32

TABLE 3—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL STATION VISITATION FOR 2019–2020—Continued

[Thousands, 2018 dollars]

Station/county(ies)	Retail trade in 2012	Estimated maximum addition from new activities	Addition as % of total	Establishments in 2012	Establishments with fewer than 10 employees in 2012
Rock, MN	113,737	0.5	<0.01	42	31
Stevens, MN	229,738	0.5	<0.01	50	32
Okefenokee:					
Clinch, GA	48,875	2.5	0.01	21	17
Charlton, GA	64,316	2.5	<0.01	32	27
Ware, GA	686,193	2.5	<0.01	206	147
Orangeburg NFH:					
Orangeburg, SC	1,111,896	13.2	<0.01	376	267
Ottawa:					
Lucas, OH	6,538,026	8.0	<0.01	1,452	965
Ottawa, OH	467,762	8.0	<0.01	142	109
Ozark Plateau:					
Adair, OK	134,909	7.2	0.01	57	42
Cherokee, OK	427,195	7.2	<0.01	146	110
Delaware, OK	403,757	7.2	<0.01	140	111
Parker River:					
Essex, MA	10,978,447	3.8	<0.01	2,598	1,875
Patoka River:					
Gibson, IN	609,814	4.2	<0.01	122	84
Pike, IN	79,329	4.2	0.01	31	23
Piedmont:					
Jasper, GA	52,113	0.2	<0.01	24	18
Jones, GA	106,034	0.2	<0.01	50	40
Sacramento:					
Colusa, CA	139,868	16.2	0.01	59	45
Glenn, CA	209,140	16.2	0.01	73	58
Salt Plains:					
Alfalfa, OK	62,493	12.4	0.02	24	19
San Bernardino:					
Cochise, AZ	1,386,009	0.2	<0.01	414	301
San Pablo Bay:					
Marin, CA	5,564,228	2.8	<0.01	1,050	762
Solano, CA	5,585,119	2.8	<0.01	1,066	682
Sonoma, CA	6,580,062	2.8	<0.01	1,766	1,274
Sand Lake:					
Brown, SD	885,325	2.0	<0.01	201	136
Seedskadee:					
Sweetwater, WY	1,007,782	2.5	<0.01	197	145
Sequoyah:					
Haskell, OK	156,313	2.1	<0.01	33	22
Muskogee, OK	1,014,880	2.1	<0.01	258	178
Stone Lakes:					
Sacramento, CA	16,654,079	80.2	<0.01	3,512	2,361
Sutter:					
Sutter, CA	1,169,700	15.6	<0.01	287	201
Tamarac:					
Becker, MN	502,743	8.3	<0.01	135	92
Tishomingo:					
Johnston, OK	66,800	10.3	0.02	35	31
Marshall, OK	174,821	10.3	0.01	53	42
Trinity River:					
Liberty, TX	871,294	3.8	<0.01	198	142
Valentine:					
Cherry, NE	95,506	3.6	<0.01	38	27
Valley City NFH:					
Barnes, ND	133,136	13.2	0.01	47	29
Washita:					
Custer, OK	580,592	165.1	0.03	148	102
Whittlesey Creek:					
Bayfield, WI	92,470	2.2	<0.01	69	57
Wichita Mountains:					
Comanche, OK	1,539,705	41.3	<0.01	409	285

With the small change in overall spending anticipated from this rule, it is unlikely that a substantial number of small entities will have more than a small impact from the spending change near the affected stations. Therefore, we certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This rule:

a. Will not have an annual effect on the economy of $100 million or more. The minimal impact will be scattered across the country and will most likely not be significant in any local area.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This rule will have only a slight effect on the costs of hunting opportunities for Americans. If the substitute sites are farther from the participants' residences, then an increase in travel costs will occur. The Service does not have information to quantify this change in travel cost but assumes that, since most people travel less than 100 miles to hunt, the increased travel cost will be small. We do not expect this rule to affect the supply or demand for hunting opportunities in the United States, and, therefore, it should not affect prices for hunting equipment and supplies, or the retailers that sell equipment.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule represents only a small proportion of recreational spending at NWRs. Therefore, this rule will have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide.

Unfunded Mandates Reform Act

Since this rule applies to public use of federally owned and managed refuges, it will not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule will not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, this rule will not have significant takings implications. This rule affects only visitors at NWRs and NFHs, and describes what they can do while they are on a Service station.

Federalism (E.O. 13132)

As discussed under *Regulatory Planning and Review* and *Unfunded Mandates Reform Act,* above, this rule will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement under E.O. 13132. In preparing this rule, we worked with State governments.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Department of the Interior has determined that this 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.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule adds 7 NWRs to the list of refuges open to hunting and sport fishing, opens or expands hunting or sport fishing at 67 other NWRs, and opens 15 NFHs to hunting and/or sport fishing, it is not a significant regulatory action under E.O. 12866, and we do not expect it to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on NWRs and NFHs with Tribal governments having adjoining or overlapping jurisdiction before we propose the regulations.

Paperwork Reduction Act (PRA)

This final rule contains a collection of information that we have submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). 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. The OMB has reviewed and approved the information collection requirements associated with hunting and sport fishing activities across the National Wildlife Refuge System and assigned the following OMB control numbers:

- 1018–0140, ''Hunting and Sport Fishing Application Forms and Activity Reports for National Wildlife Refuges, 50 CFR 25.41, 25.43, 25.51, 26.32, 26.33, 27.42, 30.11, 31.15, 32.1 to 32.72'' (Expires 07/30/2021),
- 1018–0153, ''National Wildlife Refuge Visitor Check-In Permit and Use Report'' (Expires 04/30/2022),
- 1018–0102, ''National Wildlife Refuge Special Use Permit Applications and Reports, 50 CFR 25, 26, 27, 29, 30, 31, 32, & 36'' (Expires 08/31/2020),
- 1018–0135, ''Electronic Federal Duck Stamp Program'' (Expires 01/31/2020),
- 1018–0093, ''Federal Fish and Wildlife Permit Applications and Reports—Management Authority; 50 CFR 13, 15, 16, 17, 18, 22, 23'' (Expires 08/31/2020), and
- 1024–0252, ''The Interagency Access Pass and Senior Pass Application Processes'' (Expires 08/31/2020).

This final rule authorizes DOI to collect the following information associated with hunting and sport fishing activities across the National Wildlife Refuge System:

(1) Labeling/Marking Requirements—As a condition of the permit, some refuges require permittees to label hunting and fishing gear left overnight. This equipment may include items such as the following: Tree stands, blinds, or game cameras; hunting dogs (collars); flagging/trail markers; boats; and/or fishing equipment such as jugs, trotlines, and crawfish or crab traps. Refuges require the owner label their equipment with their last name, the state issued hunting/fishing license number, and/or hunting/fishing permit number. Refuges may also require equipment for youth hunters include ''YOUTH'' on the label. This minimal information is necessary in the event the refuge needs to contact the owner.

(2) Notifications—On occasion, hunters may find their game has landed

outside of established hunting boundaries. In this situation, hunters must notify an authorized refuge employee to obtain consent to retrieve the game from an area closed to hunting or entry only upon specific consent. Certain refuges also require hunters to notify the refuge manager when hunting specific species (*e.g.,* black bear, bobcat, or eastern coyote) with trailing dogs. Refuges may also require advance notification by disabled hunters requesting special accommodations on the refuge.

(3) Transfer of FWS Form 3–2405—OMB approval of FWS Form 3–2405 was under OMB Control No. 1018–0153. OMB approved the transfer of the form into OMB Control No. 1018–0140 so all forms associated with hunting and/or sport fishing activities in use by the National Wildlife Refuge System are contained under the same information collection. We will discontinue OMB Control No. 1018–0153 on the effective date of this final rule for 1018–BD79.

(4) OMB approved FWS Form 3–2439, Hunt Application—National Wildlife Refuge System, to replace existing FWS Forms 3–2354 through 3–2357. This streamlines the application process and reduces the regulatory burden on the public.

Title of Collection: Hunting and Fishing Application Forms and Activity Reports for National Wildlife Refuges, 50 CFR 25.41, 25.43, 25.51, 26.32, 26.33, 27.42, 30.11, 31.15, 32.1 to 32.72.

OMB Control Number: 1018–0140.

Form Number: FWS Forms 3–2405, 3–2439, and 3–2358 through 3–2362.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals and households.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $84,000.

Activity	Annual number of responses	Completion time per response	Total annual burden hours
Hunting and Fishing Permit Applications:			
Form 3–2439 Hunt Application/Permit	348,689	10 minutes	58,115
Form 3–2358 Fish/Crab/Shrimp Application/Permit	2,472	5 minutes	206
Subtotal Applications:	*351,161*	.....	*58,321*
Harvest Activity Reports:			
Form 3–2359 Big Game Harvest Report	91,879	15 minutes	22,970
Form 3–2360 Fishing Harvest Report	421,112	15 minutes	105,278
Form 3–2361 Migratory Bird Harvest Report	32,821	15 minutes	8,205
Form 3–2362 Upland Game Furbearer Harvest Report	25,024	15 minutes	6,256
Subtotal Activity Reports:	*570,836*	.....	*142,709*
New Information Collections Added to Collection:			
Labeling/Marking Requirements	2,160	10 minutes	360
Notifications	384	30 minutes	192
Form 3–2405 Check-In/Out Permit *(from 1018–0153)*	650,000	5 minutes	54,167
Subtotal Other Requirements:	652,544	.....	54,719
Totals:	1,574,541	.....	255,749

On June 26, 2019, we published a proposed rule (84 FR 30314) that solicited comments on the new/revised information collection requirements described in this supporting statement for a period of 30 days, ending July 26, 2019. We received no comments concerning the information collection in response to the proposed rule. Additional comments are being solicited through publication of this final rule.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

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

(4) Ways to minimize the burden of the collection of information on respondents.

Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). You may view the information collection at *http://www.reginfo.gov/public/do/PRAMain*. Please provide a copy of your comments to the Service Information Collection Clearance Officer, Madonna Baucum, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB/PERMA (JAO–1N), Falls Church, VA 22041–3803 (mail); (703) 358–2503 (telephone); or *Info_Coll@fws.gov* (email). Please reference OMB Control Number 1018–0140 in the subject line of your comments.

Endangered Species Act Section 7 Consultation

We comply with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), when developing comprehensive conservation plans and step-down management plans—which include hunting and/or fishing plans—for public use of refuges and hatcheries, and prior to implementing any new or revised public recreation program on a station as identified in 50 CFR 26.32. We have completed section 7 consultation on each of the affected stations.

National Environmental Policy Act

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), 43 CFR part 46, and 516 Departmental Manual (DM) 8.

A categorical exclusion from NEPA documentation applies to publication of

amendments to station-specific hunting and fishing regulations because they are technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (43 CFR 46.210 and 516 DM 8). Concerning the actions that are the subject of this rulemaking, we have complied with NEPA at the project level when developing each proposal. This is consistent with the Department of the Interior instructions for compliance with NEPA where actions are covered sufficiently by an earlier environmental document (43 CFR 46.120).

Prior to the addition of a refuge or hatchery to the list of areas open to hunting and fishing in 50 CFR parts 32 and 71, we develop hunting and fishing plans for the affected stations. We incorporate these proposed station hunting and fishing activities in the station comprehensive conservation plan and/or other step-down management plans, pursuant to our refuge planning guidance in 602 Fish and Wildlife Service Manual (FW) 1, 3, and 4. We prepare these comprehensive conservation plans and step-down plans in compliance with section 102(2)(C) of NEPA, the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500 through 1508, and the Department of Interior's NEPA regulations 43 CFR part 46. We invite the affected public to participate in the review, development, and implementation of these plans. Copies of all plans and NEPA compliance are available from the stations at the addresses provided below.

Available Information for Specific Stations

Individual refuge and hatchery headquarters have information about public use programs and conditions that apply to their specific programs and maps of their respective areas. To find out how to contact a specific refuge or hatchery, contact the appropriate Service office for the States listed below:

Hawaii, Idaho, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 NE 11th Avenue, Portland, OR 97232–4181; Telephone (503) 231–6214.

Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, P.O. Box 1306, 500 Gold Avenue SW, Albuquerque, NM 87103; Telephone (505) 248–6937.

Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; Telephone (612) 713–5360.

Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345; Telephone (404) 679–7166.

Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589; Telephone (413) 253–8307.

Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, CO 80228; Telephone (303) 236–8145.

Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, AK 99503; Telephone (907) 786–3545.

California and Nevada. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825; Telephone (916) 414–6464.

Primary Author

Katherine Harrigan, Division of Natural Resources and Conservation Planning, National Wildlife Refuge System, is the primary author of this rulemaking document.

List of Subjects

50 CFR Part 26

Recreation and recreation areas, Wildlife refuges.

50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

50 CFR Part 71

Fish, Fishing, Hunting, Wildlife.

Regulation Promulgation

For the reasons set forth in the preamble, we amend title 50, chapter I, subchapters C and E of the Code of Federal Regulations as follows:

Subchapter C—The National Wildlife Refuge System

PART 26—PUBLIC ENTRY AND USE

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

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i; Pub. L. 96–315 (94 Stat. 958) and Pub. L. 98–146 (97 Stat. 955).

■ 2. Revise § 26.34 to read as follows:

§ 26.34 What are the special regulations concerning public access, use, and recreation for individual national wildlife refuges?

The following refuge units, listed in alphabetical order by State and unit name, have refuge-specific regulations for public access, use, and recreation.

(a) *Alabama*—(1) *Bon Secour National Wildlife Refuge.* (i) We allow only nonmotorized boats and boats with electric motors on Gator and Little Gator Lakes.

(ii) [Reserved]

(2) *Eufaula National Wildlife Refuge.* (i) We prohibit the use of motorized watercraft in all refuge waters not directly connected to Lake Eufaula.

(ii) We prohibit the use of all air-thrust boats, including airboats, aircraft, boats with secondary fans, and hovercraft.

(iii) We prohibit the use of personal watercraft or air-cooled propulsion engines outside of marked navigation channels.

(iv) We prohibit the mooring or storing of boats from 1½ hours after legal sunset to 1½ hours before legal sunrise.

(3) *Wheeler National Wildlife Refuge.* (i) We prohibit mooring or storing of boats from legal sunset to legal sunrise.

(ii) We prohibit airboats and hovercraft on all waters within the refuge boundaries.

(iii) We prohibit inboard waterthrust boats such as, but not limited to, personal watercraft, watercycles, and waterbikes on all waters of the refuge except that portion of the Tennessee River and Flint Creek from its mouth to mile marker 3.

(b) *Arizona*—(1) *Bill Williams River National Wildlife Refuge.* (i) We prohibit personal watercraft (PWC as governed by State law), air thrust boats, and hovercraft on all waters within the boundaries of the refuge.

(ii) We designate all refuge waters as wakeless speed zones (as governed by State law) as indicated by signs or regulatory buoys.

(iii) The nonmotorized watercraft launch and Central Arizona Project (CAP) peninsula are day-use only areas and are open from ½ hour before legal sunrise to ½ hour after legal sunset. We allow fishing and the launching of watercraft at these and other areas 24 hours a day.

(iv) We prohibit the possession or consumption of open containers of alcohol or the possession of glass beverage containers in improved areas, including the nonmotorized watercraft launch and the CAP peninsula.

(2) *Havasu National Wildlife Refuge.* (i) We prohibit the use of all air-thrust boats, including floating aircraft.

(ii) The following conditions apply only on Topock Marsh:

(A) We close designated portions to all entry from October 1 through the last day of the waterfowl hunt season (including the State junior waterfowl hunt).

(B) We close designated portions to all entry from April 1 through August 31. These areas are indicated in refuge brochures and identified by buoys and or signs.

(C) We prohibit personal watercraft (PWC, as governed by State law).

(iii) The following conditions apply to all waters of the Colorado River within the refuge from the south regulatory buoy line to the north regulatory buoy line at Interstate 40 (approximately 17 miles (27.2 kilometers)):

(A) We prohibit personal watercraft (PWC, as governed by State law) as indicated by signs or regulatory buoys in all backwaters.

(B) We limit watercraft speed as indicated by signs or regulatory buoys to no wake (as governed by State law) in all backwaters.

(C) We prohibit water-skiing, tubing, wake boarding, or other recreational-towed devices.

(iv) The following conditions apply to improved areas within the refuge; improved areas consist of the Mesquite Bay areas, Castle Rock, the Diving Cliffs, Catfish Paradise, Five Mile Landing, and North Dike:

(A) We prohibit entry of all motorized watercraft in all three bays of the Mesquite Bay areas as indicated by signs or regulatory buoys.

(B) Improved areas are day-use only and are open from ½ hour before legal sunrise to ½ hour after legal sunset. We allow fishing and launching watercraft at these and other areas 24 hours a day.

(C) We prohibit the possession of open containers of alcohol or the possession of glass beverage containers in improved areas.

(c) *Arkansas*—(1) *Bald Knob National Wildlife Refuge.* (i) We prohibit mooring houseboats to the refuge bank on the Little Red River.

(ii) [Reserved]

(2) *Big Lake National Wildlife Refuge.* (i) We prohibit boats from November 1 through February 28, except on that portion of the refuge open for public fishing with electric motors and Ditch 28.

(ii) [Reserved]

(3) *Cache River National Wildlife Refuge.* (i) We prohibit the mooring of houseboats to refuge property.

(ii) [Reserved]

(4) *Dale Bumpers White River National Wildlife Refuge.* (i) We allow camping only in designated sites and areas identified in the refuge user brochure (signed brochure), and we restrict camping to individuals involved in wildlife-dependent activities. We limit camping on the refuge to no more than 14 days during any 30 consecutive-day period. Campers must occupy camps daily. We prohibit all disturbances, including use of generators, after 10 p.m.

(ii) We allow refuge users to leave boats 16 feet (4.8 meters) or less in length unattended overnight from March 1 to October 31, as long as the owner clearly and prominently displays his or her boat registration number.

(5) *Felsenthal National Wildlife Refuge.* (i) We allow camping only at designated primitive campground sites identified in the refuge hunt brochure, and we restrict camping to individuals involved in wildlife-dependent refuge activities.

(ii) Campers may stay no more than 14 days during any 30 consecutive-day period in any campground and must occupy camps daily.

(iii) We prohibit all disturbances, including use of generators, after 10 p.m.

(6) *Overflow National Wildlife Refuge.* (i) We prohibit all boat motors (including surface drive motors, mud motors, etc.) larger than 25 horsepower.

(ii) [Reserved]

(7) *Pond Creek National Wildlife Refuge.* (i) We allow camping only at designated primitive campground sites identified in the refuge hunt brochure. We restrict camping to the individuals involved in refuge wildlife-dependent activities. Campers may stay no more than 14 days during any consecutive 30-day period in a campground and must occupy the camps daily. We prohibit all disturbances, including use of generators, after 10 p.m.

(ii) You must unload all hunting firearms and crossbows (see § 27.42(b) of this chapter) within 100 yards (90 meters) of a campground.

(iii) We prohibit camping on the refuge while hunting off the refuge.

(iv) We prohibit consumption or possession of opened container(s) of alcoholic beverage(s) in parking lots, on roadways, and in plain view in campgrounds.

(v) We prohibit fires outside of campgrounds.

(vi) We prohibit possession or use of fireworks.

(vii) We prohibit geocaching.

(d) *California*—(1) *Colusa National Wildlife Refuge.* (i) No person may build or maintain fires, except in portable gas stoves in designated parking/overnight stay areas.

(ii) We only allow overnight stays in vehicles, motor homes, and trailers at the check station parking areas on Tuesdays, Fridays, and Saturdays (closed on Federal holidays).

(iii) You must restrain dogs on a leash within all designated parking areas and vehicle access roads.

(2) *Delevan National Wildlife Refuge.* (i) No person may build or maintain fires, except in portable gas stoves in designated parking/overnight stay areas.

(ii) We only allow overnight stays in vehicles, motor homes, and trailers at the check station parking areas on Tuesdays, Fridays, and Saturdays (closed on Federal holidays).

(iii) You must restrain dogs on a leash within all designated parking areas and vehicle access roads.

(3) *Lower Klamath National Wildlife Refuge.* (i) We prohibit air-thrust and inboard water-thrust boats.

(ii) You may use only nonmotorized boats and boats with electric motors on designated motorless units from the start of the hunting season through November 30. You may use motorized boats on designated motorless units from December 1 through the end of hunting season.

(4) *Sacramento National Wildlife Refuge.* (i) No person may build or maintain fires, except in portable gas stoves in designated parking/overnight stay areas.

(ii) We only allow overnight stays in vehicles, motor homes, and trailers at the check station parking areas on Tuesdays, Fridays, and Saturdays (closed on Federal holidays).

(iii) You must restrain dogs on a leash within all designated parking areas and vehicle access roads.

(5) *Sacramento River National Wildlife Refuge.* (i) We prohibit fires on the refuge, except we allow portable gas stoves on gravel bars (see § 27.95(a) of this chapter).

(ii) We open the refuge for day-use access from 2 hours before legal sunrise until 1½ hours after legal sunset. We

allow access during other hours on gravel bars only.

(iii) On Packer Lake and Drumheller North, due to primitive access, we only allow boats up to 14 feet (4.2 meters) and canoes. Electric motors only.

(6) *San Pablo Bay National Wildlife Refuge.* (i) We prohibit launching of boats and access to the Bay or sloughs from refuge property except from designated boat launch sites (Cullinan Ranch Unit and Dickson Ranch Unit).

(ii) We allow only nonmotorized crafts at the Cullinan Ranch Unit and Dickson Ranch Unit launch sites.

(7) *Sutter National Wildlife Refuge.* (i) No person may build or maintain fires, except in portable gas stoves in designated parking/overnight stay areas.

(ii) We only allow overnight stays in vehicles, motor homes, and trailers at the check station parking areas on Tuesdays, Fridays, and Saturdays (closed on Federal holidays).

(iii) You must restrain dogs on a leash within all designated parking areas and vehicle access roads.

(e)–(f) [Reserved]

(g) *Delaware*—(1) *Prime Hook National Wildlife Refuge.* (i) The maximum horsepower allowed for boat motors is 30 horsepower. You must abide by the slow, no-wake zones on designated portions of refuge waterways as depicted in maps or within the brochure.

(ii) [Reserved]

(2) [Reserved]

(h) *Florida*—(1) *Arthur R. Marshal Loxahatchee National Wildlife Refuge.* (i) We allow only boats equipped with factory-manufactured-water-cooled outboard motors, boats with electric motors, and nonmotorized boats. We prohibit boats with air-cooled engines, airboats, fan boats, hovercraft, and personal watercraft (*e.g.,* Jet Skis, jet boats, wave runners).

(ii) There is a 35 miles per hour (mph) speed limit in all waters of the refuge. A 500-foot (150-meter) ''idle speed zone'' is at each of the refuge's three boat ramps.

(iii) We require all boats operating outside of the main perimeter canals (the L–40 Canal, L–39 Canal, L–7 Canal, and L–101 Canal) in interior areas of the refuge and within the hunt area to fly a 12-inch by 12-inch (30-centimeters (cm) by 30-cm) orange flag 10 feet (3 meters) above the vessel's waterline.

(2) *Chassahowitzka National Wildlife Refuge.* (i) We allow airboats only on the designated airboat route within Citrus County and on all navigable waterways within Hernando County with a refuge Special Use Permit (General Activities Special Use Permit Application, FWS Form 3–1383–G) issued by the U.S. Fish and Wildlife Service.

(ii) We prohibit the use of airboats on vegetation.

(3) *J.N. ''Ding'' Darling National Wildlife Refuge.* (i) We prohibit kite surfing, kite boarding, wind surfing, and sail boarding.

(ii) We allow vessels propelled only by polling, paddling, or floating in the posted ''no-motor zone'' of the J.N. ''Ding'' Darling Wilderness Area. All motors, including electric motors, must be in a nonuse position (out of the water) when in the ''no-motor zone.''

(iii) We allow vessels propelled only by polling, paddling, floating, or electric motors in the posted ''pole/troll zone'' of the Wulfert Flats Management Area. All non-electric motors must be in a nonuse position (out of the water) when in the ''pole/troll zone.''

(iv) We allow launching of canoes and kayaks anywhere on the right (north) side of Wildlife Drive. We prohibit launching motorized vessels over 14 feet (4.2 meters) in length from Wildlife Drive. Motorized vessels less than 14 feet (4.2 meters) in length may only be launched from designated site #2.

(v) We prohibit airboats, hovercraft, personal watercraft, and ''Go-Devil''-style outboard motors.

(vi) Vessels must not exceed slow speed/minimum wake in refuge waters.

(4) *Lake Woodruff National Wildlife Refuge.* (i) During hunting seasons, we close hunting areas on the refuge to all public use except to hunters possessing a valid permit. Hunting areas are marked on refuge maps.

(ii) We close the refuge between legal sunset and legal sunrise.

(iii) We prohibit the use of airboats on the refuge.

(5) *Lower Suwannee National Wildlife Refuge.* (i) We prohibit leaving boats on the refuge overnight.

(ii) [Reserved]

(6) *St. Marks National Wildlife Refuge.* (i) We prohibit use of boats with motors over 10 horsepower on any refuge lake or pond.

(ii) We allow use of hand-launched boats on impoundments on the St. Marks Unit from March 15 through October 15 each year. We prohibit launching of boats from trailers in the impoundments in the St. Marks Unit. We prohibit all gasoline-powered motors in the impoundments in the St. Marks Unit.

(iii) You may not launch commercially registered boats, air-thrust boats, or personal watercraft at the saltwater boat ramp on the St. Marks Unit. We also prohibit commercial guides from launching any type of watercraft at the saltwater boat ramp on the St. Marks Unit.

(iv) You may not launch air-thrust boats or personal watercraft from Wakulla Beach. We also prohibit commercial guides from launching any type of watercraft from Wakulla Beach.

(7) *St. Vincent National Wildlife Refuge.* (i) We restrict camping and fires (see § 27.95(a) of this chapter) to the two designated camping areas. We may restrict or ban fires during dry periods.

(ii) We prohibit the use or possession of alcoholic beverages during the refuge hunt period (see § 32.2(j) of this chapter).

(iii) We prohibit motorized equipment, generators, or land vehicles (except bicycles).

(iv) Visitors must observe quiet time in the campground between 9 p.m. and 5 a.m. We prohibit loud or boisterous behavior or activity.

(v) We allow boats with electric motors. You must remove all other motors from the boats and secure them to a designated motor rack with a lock and chain.

(vi) We allow boats in refuge lakes from May 15 through September 30.

(8) *Ten Thousand Islands National Wildlife Refuge.* (i) We prohibit air-thrust boats, hovercraft, personal watercraft (*e.g.,* Jet Skis, jet boats, wave runners), and off-road vehicles in the freshwater and brackish marsh area south of U.S. 41.

(ii) We limit vessels to a maximum of 25 horsepower outboard motor.

(i) *Georgia*—(1) *Banks Lake National Wildlife Refuge.* (i) We prohibit swimming, wading, jet skiing, water skiing, and the use of airboats.

(ii) [Reserved]

(2) *Bond Swamp National Wildlife Refuge.* (i) We prohibit overnight camping.

(ii) We prohibit overnight parking.

(iii) We allow boat launching at the Stone Creek Boat Launch. During periods of high water, we allow boats to be launched from refuge roads normally open to vehicle traffic. We allow gasoline motors only during periods of high water as defined as a reading of 18 feet (5.5 meters) or higher at the Macon Gauge on the Ocmulgee River.

(iv) We prohibit bicycles on foot travel roads or off road. We restrict bicycles to roads designated open to vehicles.

(3) *Okefenokee National Wildlife Refuge.* (i) We only allow foot and bicycle traffic on the refuge portion of Cowhouse Island.

(ii) We only allow the use of 10 horsepower motors or less on the refuge.

(iii) We prohibit paddleboarding, air boats, swimming, and wading.

(iv) We require all boats to be off the water by posted time.

(4) *Piedmont National Wildlife Refuge.* (i) The refuge is a day-use-only area, with the exception of legal hunting activities.

(ii) We prohibit bicycles on foot travel roads or off road. We restrict bicycles to gravel roads designated open to vehicles.

(iii) We prohibit overnight camping and/or parking except in the designated campgrounds at Pippins Lake during quota deer hunts with a valid permit (state-issued).

(iv) We allow alcoholic beverages only in the designated campground.

(j) [Reserved]

(k) *Idaho*—(1) *Deer Flat National Wildlife Refuge.* (i) From April 15 through September 30, we allow motorized and nonmotorized boats from ½ hour before legal sunrise to ½ hour after legal sunset throughout the Lake Lowell Unit.

(ii) [Reserved]

(2) *Grays Lake National Wildlife Refuge.* (i) We only allow nonmotorized boats on the refuge.

(ii) [Reserved]

(3) *Minidoka National Wildlife Refuge.* (i) We allow the use of float tubes year-round, throughout all of Lake Walcott.

(ii) We allow boats on designated areas of Lake Walcott from April 1 through October 31.

(l) *Illinois*—(1) *Chautauqua National Wildlife Refuge.* (i) Motorboats must not exceed ''no-wake'' speeds.

(ii) We prohibit the public entering Weis Lake on the Cameron-Billsbach Unit of the refuge from October 16 through January 31.

(iii) We prohibit leaving boats on refuge waters overnight (see § 27.93 of this chapter).

(2) *Crab Orchard National Wildlife Refuge.* (i) We restrict motorboats on all refuge waters to slow speeds leaving ''no wake'' within 150 feet (45 meters) of any shoreline, swimming area, marina entrance, boat ramp, causeway tunnel, and areas indicated on the lake zoning map in the refuge fishing brochure.

(ii) We prohibit the use of boat motors of more than 10 horsepower on Devils Kitchen and Little Grassy Lakes.

(iii) We prohibit the use of gas-powered motors in the southeastern section of Devils Kitchen Lake (consult lake zoning map in the refuge fishing brochure).

(3) *Emiquon National Wildlife Refuge.* (i) We allow the use of motorized boats at no-wake speeds on all refuge waters.

(ii) We prohibit leaving boats on refuge waters overnight.

(4) *Meredosia National Wildlife Refuge.* (i) We prohibit leaving boats on refuge waters overnight.

(ii) Motorboats must not exceed ''no-wake'' speeds.

(5) *Port Louisa National Wildlife Refuge.* (i) We close the following divisions to all public access:

(A) Louisa Division—September 15 until January 1;

(B) Horseshoe Bend Division—September 15 until December 1; and

(C) Keithsburg Division—September 15 until January 1.

(ii) [Reserved]

(6) *Upper Mississippi River National Wildlife and Fish Refuge.* Refer to paragraph (v)(2) of this section for regulations.

(m) *Indiana*—(1) *Big Oaks National Wildlife Refuge.* (i) We allow boats only if rowed, paddled, or powered by an electric trolling motor on the Old Timbers Lake.

(ii) [Reserved]

(2) *Muscatatuck National Wildlife Refuge.* (i) We allow the use of boats (hand- or foot-propelled only) on Stanfield Lake. We prohibit the use of electric or gasoline motors.

(ii) We allow the use of kayaks and nonmotorized canoes on Richart Lake.

(3) *Patoka River National Wildlife Refuge and Management Area.* (i) We allow motorboats only on Snakey Point Marsh east of the South Fork River and the Patoka River. All other areas are open to either manual-powered boats or boats with battery-driven motors only.

(ii) Motorboats must not exceed ''no wake'' speeds.

(iii) We prohibit the use of powered airboats on the refuge.

(n) *Iowa*—(1) *Desoto National Wildlife Refuge.* (i) We limit boating to ''no-wake'' speeds, not to exceed 5 miles per hour.

(ii) [Reserved]

(2) *Upper Mississippi River National Wildlife and Fish Refuge.* Refer to paragraph (v)(2) of this section for regulations.

(o) *Kansas*—(1) *Kirwin National Wildlife Refuge.* (i) We allow motorized boating in the main body of Kirwin Reservoir and in Bow Creek. You must not create a wake in Bow Creek or within 100 yards (90 meters) of any shoreline or island in the main body of Kirwin Reservoir. We prohibit motorized boats in the Solomon Arm of Kirwin Reservoir.

(ii) We allow motorless boats in the Solomon Arm of Kirwin Reservoir from August 1 through September 30.

(2) *Marais des Cygnes National Wildlife Refuge.* (i) We restrict outboard motor use to the westernmost 5.5 miles (8.8 kilometers) of the Marais des Cygnes River. You may use only nonmotorized boats and electric trolling motors on remaining waters in designated areas of the refuge.

(ii) [Reserved]

(p) *Kentucky*—(1) *Clarks River National Wildlife Refuge.* (i) We allow horseback riding on refuge roads and portions of the abandoned railroad tracks owned by the refuge for access purposes while engaged in wildlife activities. We prohibit horses and mules off these secondary access routes for any reason.

(ii) [Reserved]

(2) [Reserved]

(q) *Louisiana*—(1) *Bayou Sauvage National Wildlife Refuge.* (i) The refuge is open from 30 minutes before legal sunrise to 30 minutes after legal sunset.

(ii) We allow only outboard motors 25 horsepower or less in waterways inside the hurricane protection levee.

(2) *Bayou Teche National Wildlife Refuge.* (i) You may use motorized boats only in existing canals, ditches, trenasses, and ponds. We prohibit motorized boat use in areas marked as nonmotorized use only.

(ii) The refuge is open from legal sunrise until legal sunset unless stated otherwise.

(iii) We open the Franklin Unit canals (birdfoot canals) for motorized boats between April 15 and August 31. This unit is open to nonmotorized boats all year.

(3) *Big Branch Marsh National Wildlife Refuge.* (i) We prohibit air-thrust boats, aircraft, mud boats, and air-cooled propulsion engines on the refuge.

(ii) We open the refuge to public entry from ½ hour before legal sunrise to ½ hour after legal sunset.

(4) *Black Bayou National Wildlife Refuge.* (i) You may enter the refuge ½ hour before legal sunrise, and you must exit no later than ½ hour after legal sunset.

(ii) You may only launch boats at the concrete ramp adjacent to the visitor center. We prohibit launching boats with motors greater than 50 horsepower.

(iii) We prohibit leaving boats or other equipment on the refuge overnight (see § 27.93 of this chapter).

(iv) We require a boat launch fee. You must pay the launch fee before launching boat.

(v) We prohibit crossing the water hyacinth booms in a boat or traveling over idle speed within the booms.

(5) *Bogue Chitto National Wildlife Refuge.* (i) We allow primitive camping within 100 feet (30 meters) of designated streams. These include either bank of the Boque Chitto River, Wilson Slough, and West Pearl River

south of Wilson Slough; refuge lands along the East Pearl River; and Holmes Bayou. Campers must mark their campsite with the owner's State license/identification number, or boat identification number, and dates of occupancy placed in a conspicuous location in the center of camp.

(ii) [Reserved]

(6) *Cameron Prairie National Wildlife Refuge.* (i) We prohibit overnight camping on the refuge.

(ii) We allow only nonpowered boats in the Bank Fishing Road waterways.

(iii) We allow operation of outboard motors in refuge canals, bayous, and lakes. We allow only trolling motors in the marsh.

(7) *Catahoula National Wildlife Refuge.* (i) We allow the use of nonmotorized boats or boats with motors of 10 horsepower or less on refuge lakes and waters as designated. We prohibit the use of air-thrust boats, water-thrust boats, or personal watercraft.

(ii) We prohibit overnight camping on the refuge.

(iii) We prohibit overnight parking on the refuge.

(8) *Cat Island National Wildlife Refuge.* (i) We prohibit overnight camping on the refuge.

(ii) We prohibit overnight parking on the refuge.

(iii) We prohibit air-thrust boats on the refuge.

(iv) We prohibit boat launching by trailer from all refuge roads and parking lots except at designated boat ramps.

(9) *D'Arbonne National Wildlife Refuge.* (i) We prohibit motorized boats in the No Gun Hunting Area (the ''Beanfield'') from November 1 through January 31.

(ii) We prohibit leaving boats and other personal property on the refuge overnight.

(10) *Grand Cote National Wildlife Refuge.* (i) We prohibit overnight camping on the refuge.

(ii) We prohibit overnight parking on the refuge.

(iii) We allow only electric-powered or nonmotorized boats.

(11) *Lacassine National Wildlife Refuge.* (i) We prohibit overnight camping on the refuge.

(ii) We allow boats of all motor types with 40 horsepower or less in Lacassine Pool.

(iii) We prohibit boats in Lacassine Pool and Unit D from October 16 through March 14. We prohibit boats in Units A and C.

(iv) We prohibit air-thrust boats, all-terrain vehicles (ATVs), and Jet Skis on the refuge (see § 27.31(f) of this chapter).

(v) We prohibit dragging or driving of boats over levees.

(vi) You must only launch trailered boats at the cement ramps at the public boat launches in Lacassine Pool.

(vii) We only allow boats powered by paddling or trolling motors in the Unit D impoundment within Lacassine Pool.

(12) *Lake Ophelia National Wildlife Refuge.* (i) We allow watercraft with motors up to 36 horsepower in Possum Bayou (north of boat ramp), Palmetto Bayou, Duck Lake, Westcut Lake, Point Basse, and Nicholas Lake.

(ii) We allow electric-powered or nonmotorized boats in Doomes Lake, Lake Long, Possum Bayou (south of boat ramp), and Lake Ophelia.

(iii) We prohibit overnight camping on the refuge.

(iv) We prohibit overnight parking on the refuge.

(13) *Mandalay National Wildlife Refuge.* (i) We allow air-cooled propulsion engines on the refuge.

(ii) We prohibit air-thrust boats or marsh buggies on the refuge. We restrict motorized boat use to existing canals, ditches, trenasses, and ponds.

(14) *Sabine National Wildlife Refuge.* (i) You may access the hunt areas by boat using the boat launches at the West Cove Public Use Area or by access through Burton Canal. You may access hunt areas by vehicle from Vastar Road or designated turnouts within the refuge public hunt area along State Highway 27 (see § 27.31 of this chapter) unless otherwise posted.

(ii) We allow hand launching of small boats along Vastar Road (no trailers allowed). We allow hand launching of nonmotorized boats into Units 1A and 1B from Blue Crab Recreation Area for recreational paddling year-round.

(iii) We allow operation of outboard motors in designated refuge canals only. We allow trolling motors within the refuge marshes.

(iv) We prohibit air-thrust boats, personal motorized watercraft (*e.g.,* Jet Skis), and all-terrain vehicles (ATVs) on the refuge (see § 27.31(f) of this chapter) unless otherwise posted.

(v) We prohibit overnight camping on the refuge.

(vi) We prohibit swimming and/or wading in the refuge canals and waterways.

(15) *Tensas River National Wildlife Refuge.* (i) We allow nonmotorized boats, electric motors, and boats with motors 10 horsepower or less in refuge lakes, streams, and bayous. Boaters must follow State boating regulations, including those for navigation lights. We prohibit boat storage on the refuge.

(ii) We allow use of nonmotorized bicycles on designated all-terrain vehicle (ATV) trails.

(16) *Upper Ouachita National Wildlife Refuge.* (i) We prohibit outboard motors in the Wigeon Ponds (only trolling motors allowed).

(ii) We prohibit launching boats from a trailer or from a nondesignated boat ramp within the Mollicy levee.

(r) *Maine*—(1) *Rachel Carson National Wildlife Refuge.* (i) We allow car-top launching from legal sunrise to legal sunset on the following areas of the refuge:

(A) At Brave Boat Harbor division on Chauncey Creek at the intersection of Cutts Island Road and Sea Point Road.

(B) At Little River division at the end of Granite Point Road into the Little River.

(C) At Spurwink River division on the upstream side of Route 77 at the old road crossing.

(ii) [Reserved]

(2) [Reserved]

(s) *Maryland*—(1) *Blackwater National Wildlife Refuge.* (i) We prohibit boat launching from refuge lands except from the car-top boat launch located near the Blackwater River Bridge on Route 335. Only canoes, kayaks, and small jon boats under 17 feet are considered car-top boats.

(ii) We prohibit the use of airboats on refuge waters.

(2) *Eastern Neck National Wildlife Refuge.* (i) We prohibit boat launching from refuge lands except for canoes and kayaks at the canoe/kayak ramp located at the Ingleside Recreation Area.

(ii) [Reserved]

(t)–(u) [Reserved]

(v) *Minnesota*—(1) *Big Stone National Wildlife Refuge.* (i) We allow nonmotorized boats and boats using electric motors only in the Minnesota River channel. We prohibit boats on all other refuge waters.

(ii) [Reserved]

(2) *Upper Mississippi River National Wildlife and Fish Refuge*—(i) *Wildlife observation, photography, interpretation, environmental education, and other general recreational uses.* We allow wildlife-dependent uses and other recreational uses, such as, but not limited to, sightseeing, hiking, bicycling on roads or trails, picnicking, and swimming, on areas designated by the refuge manager and shown on maps available at refuge offices, subject to the following conditions:

(A) In areas posted and shown on maps as ''No Entry—Sanctuary,'' we prohibit entry as specified on signs or maps (see § 32.42 of this chapter for list of areas and locations).

(B) In areas posted and shown on maps as ''Area Closed,'' ''Area Closed—No Motors,'' and ''No Hunting Zone'' (Goose Island), we ask that you practice voluntary avoidance of these areas by

any means or for any purpose from October 15 to the end of the respective State duck hunting season. In areas marked ''no motors,'' we prohibit the use of motors on watercraft from October 15 to the end of the respective State duck hunting season (see § 32.42 of this chapter for list of areas and locations).

(C) Commercial tours and filming (see § 27.71 of this chapter) require a permit (FWS Form 3–1383–C) issued by the refuge or district manager.

(D) We allow the collecting of edible fruits, nuts, mushrooms, or other plant parts for personal use (no sale or barter allowed). We limit the amount you may collect to 2 gallons by volume per person, per day. We also allow the collecting of shed deer antlers for personal use.

(E) We prohibit the harvest of wild rice; plant and animal specimens; and other natural objects, such as rocks, stones, or minerals (see § 27.21 of this chapter). We only allow the collection of plants or their parts for ornamental use by permit (FWS Form 3–1383–G) issued by the refuge or district manager.

(F) We prohibit the cutting, removal, or damage of any tree or vegetation on the refuge without a permit from the refuge or district manager. We prohibit attaching nails, screws, or other hardware to any tree (see § 32.2(i) of this chapter).

(G) We prohibit all vehicle use on or across refuge lands at any time except on designated routes of travel or on the ice over navigable waters accessed from boat landings. We prohibit parking beyond vehicle control barriers or on grass or other vegetation. We prohibit parking or operating vehicles in a manner that obstructs or impedes any road, trail, fire lane, boat ramp, access gate, or other facility, or in a manner that creates a safety hazard or endangers any person, property, or environmental feature. We may impound any vehicle left parked in violation at the owner's expense (see § 27.31(h) of this chapter).

(H) We allow dogs and other domestic animals on the refuge subject to the following conditions:

(*1*) We prohibit dogs disturbing or endangering wildlife or people while on the refuge.

(*2*) While on the refuge, all dogs must be under the control of their owners/handlers at all times or on a leash.

(*3*) We prohibit allowing dogs to roam.

(*4*) All dogs must be on a leash when on hiking trails, or other areas so posted.

(*5*) We allow working a dog in refuge waters by tossing a retrieval dummy or other object for out-and-back exercise.

(*6*) We encourage the use of dogs for hunting (see § 32.42 of this chapter), but we prohibit field trials and commercial/professional dog training.

(*7*) Owners/handlers of dogs are responsible for disposal of dog droppings in refuge public use concentration areas such as trails, sandbars, and boat landings.

(*8*) We prohibit horses and all other domestic animals on the refuge unless confined in a vehicle, boat, trailer, kennel, or other container (see § 26.21 of this chapter).

(I) We prohibit the discharging of firearms (including dog training pistols and dummy launchers), air guns, or any other weapons on the refuge, unless you are a licensed hunter or trapper engaged in authorized activities during established seasons, as governed by Federal, State, and local regulations. We prohibit target practice on the refuge (see §§ 27.42 and 27.43 of this chapter).

(J) We prohibit the use or possession of glass food and beverage containers on lands within the refuge.

(K) We require that you keep all refuge lands clean during your period of use or occupancy. At all times you must keep all refuse, trash, and litter contained in bags or other suitable containers and not left scattered on the ground or in the water. You must remove all personal property, refuse, trash, and litter immediately upon vacating a site. We require that human solid waste and associated material be either removed and properly disposed of off-refuge or be buried on site to a depth of 6 to 8 inches (15 to 20 centimeters) and at least 50 feet (15 meters) from water's edge (see § 27.94 of this chapter).

(ii) *Watercraft.* We allow the use of watercraft of all types and means of propulsion on all navigable waters of the refuge as governed by State regulations subject to the following conditions:

(A) In areas posted and shown on maps as ''Electric Motor Area,'' we prohibit motorized vehicles and watercraft year-round except watercraft powered by electric motors or nonmotorized means. We do not prohibit the possession of watercraft motors in these areas, only their use. These areas are:

(*1*) Island 42, Pool 5, Minnesota, 459 acres.

(*2*) Snyder Lake, Pool 5A, Minnesota, 182 acres.

(*3*) Mertes Slough, Pool 6, Wisconsin, 222 acres.

(*4*) Browns Marsh, Pool 7, Wisconsin, 827 acres.

(*5*) Hoosier Lake, Pool 10, Wisconsin, 162 acres.

(B) In areas posted and shown on maps as ''Slow No Wake Area,'' we require watercraft to travel at slow, no-wake speed (as governed by applicable State law) from March 16 through October 31. We also prohibit the operation of airboats or hovercraft in these areas from March 16 through October 31. These areas are:

(*1*) Nelson-Trevino, Pool 4, Wisconsin, 2,626 acres.

(*2*) Denzers Slough, Pool 5A, Minnesota, 83 acres.

(*3*) Black River Bottoms, Pool 7, Wisconsin, 815 acres.

(*4*) Blue/Target Lake, Pool 8, Minnesota, 1,834 acres.

(*5*) Root River, Pool 8, Minnesota, 695 acres.

(*6*) Reno Bottoms, Pool 9, Minnesota, 2,536 acres.

(*7*) Nine Mile Island, Pool 12, Iowa, 454 acres.

(*8*) Princeton, Pool 14, Iowa, 327 acres.

(C) In water access and travel routes posted and shown on maps as ''Slow No Wake Zone,'' we require watercraft to travel at slow, no-wake speed (as governed by applicable State law) at all times unless otherwise posted.

(D) In portions of Spring Lake and Crooked Slough—Lost Mound, Pool 13, Illinois, posted as ''Slow, 5 mph When Boats Present'' and marked on maps as ''Speed/Distance Regulation,'' we require watercraft operators to reduce the speed of their watercraft to less than 5 miles per hour (mph) (8 kilometers per hour (kph)) when within 100 feet (30 meters) of another watercraft that is anchored or underway at 5 mph (8 kph) or less.

(E) We prohibit the mooring, beaching, or storing of watercraft on the refuge not used at least once every 24 hours. We define ''used'' as a watercraft moved at least 100 feet (30 meters) on the water with the operator on board. We prohibit the mooring of watercraft within 200 feet (60 meters) of refuge boat landings or ramps. We may impound any watercraft moored in violation at the owner's expense (see § 27.32 of this chapter).

(F) The conditions set forth in paragraphs (v)(2)(i)(A), (B), and (K) of this section apply.

(iii) *Camping.* We allow camping on all lands and waters of the refuge as designated by the refuge manager and shown on maps available at refuge offices subject to the following conditions:

(A) We define ''camping'' as:

(*1*) Erecting a tent or shelter of natural or synthetic material;

(*2*) Preparing a sleeping bag or other bedding material for use;

(*3*) Parking of a motor vehicle or mooring or anchoring of a vessel, for the apparent purpose of overnight occupancy; or

(*4*) Occupying or leaving personal property, including boats or other craft, at a site anytime between the hours of 11 p.m. and 3 a.m.

(B) We prohibit camping at any one site for a period longer than 14 days during any 30-consecutive-day period. After 14 days, you must move all persons, property, equipment, and boats to a new site located at least 0.5 mile (0.8 kilometer) from the previous site.

(C) We prohibit camping within 200 feet (60 meters) of any refuge boat landing, access area, parking lot, structure, road, trail, or other recreation or management facility.

(D) We prohibit camping during waterfowl hunting seasons within areas posted ''No Entry—Sanctuary,'' ''Area Closed,'' ''Area Closed—No Motors,'' and ''No Hunting Zone'' or on any sites not clearly visible from the main commercial navigation channel of the Mississippi River (see § 32.42 of this chapter).

(E) You must occupy campsites daily. We prohibit the leaving of tents, camping equipment, or other property unattended at any site for over 24 hours, and we may impound any equipment left in violation at the owner's expense. We define ''occupy'' and ''attended'' as being present at a site for a minimum of 2 hours daily.

(F) You must remove any tables, fireplaces, or other facilities erected upon vacating a camping or day-use site.

(G) We allow campfires in conjunction with camping and day-use activities subject to the following conditions (see §§ 27.95 and 32.42 of this chapter):

(*1*) You may only use dead wood on the ground, or materials brought into the refuge such as charcoal or firewood. You must remove any unused firewood brought into the refuge upon departure due to the threat of invasive insects.

(*2*) We prohibit building, attending, and maintaining a campfire without sufficient clearance from flammable materials so as to prevent its escape.

(*3*) We prohibit building a fire at any developed facility, including, but not limited to, boat landings, access areas, parking lots, roads, trails, or any other recreation or management facility or structure.

(*4*) We prohibit burying live fires or hot coals when vacating a campfire site.

(*5*) We prohibit burning or attempting to burn any nonflammable materials or any materials that may produce toxic fumes or leave hazardous waste. These materials include, but are not limited to, metal cans, plastic containers, glass, fiberglass, treated wood products, wood containing nails or staples, wire, flotation materials, or other refuse.

(H) The conditions set forth in paragraphs (v)(2)(i)(D) through (K) of this section apply.

(w) *Mississippi*—(1) *Grand Bay National Wildlife Refuge.* (i) We prohibit the use of airboats, mudboats, motorized pirogues, and air-cooled propulsion engines on the refuge.

(ii) [Reserved]

(2) *Hillside National Wildlife Refuge.* (i) With the exception of raccoon hunting and frogging, we limit all refuge entry and exit to the period of 4 a.m. to 1½ hours after legal sunset.

(ii) We allow all-terrain vehicles (ATVs) and utility-type vehicles (UTVs) only on designated trails from September 15 through February 28.

(3) *Holt Collier National Wildlife Refuge.* (i) With the exception of raccoon hunting, we limit all refuge entry and exit to the period of 4 a.m. to 1½ hours after legal sunset.

(ii) [Reserved]

(4) *Mathews Brake National Wildlife Refuge.* (i) With the exception of raccoon hunting and frogging, we limit all refuge entry and exit to the period of 4 a.m. to 1½ hours after legal sunset.

(ii) Beginning the day before duck season opens and ending the last day of duck season, we close refuge waters to all public use from 1 p.m. until 4 a.m.

(5) *Morgan Brake National Wildlife Refuge.* (i) With the exception of raccoon hunting and frogging, we limit refuge entry and exit to the period of 4 a.m. to 1½ hours after legal sunset.

(ii) We allow all-terrain vehicles (ATVs) and utility-type vehicles (UTVs) only on designated trails from September 15 through February 28.

(6) *Panther Swamp National Wildlife Refuge.* (i) With the exception of raccoon hunting and frogging, we limit refuge entry and exit to the period of 4 a.m. to 1½ hours after legal sunset.

(ii) We allow all-terrain vehicles (ATVs)/utility-type vehicles (UTVs) only on designated trails from September 15 through February 28.

(7) *Sam D. Hamilton Noxubee National Wildlife Refuge.* (i) We prohibit the use of airboats, sailboats, hovercrafts, and inboard-water-thrust boats such as, but not limited to, personal watercraft, watercycles, and waterbikes.

(ii) [Reserved]

(8) *St. Catherine Creek National Wildlife Refuge.* (i) You must hand-launch boats except at designated boat ramps, where you may trailer-launch them.

(ii) We allow all-terrain vehicles (ATVs) and utility-type vehicles (UTVs) as governed by State waterfowl management area (WMA) regulations and size specifications on designated trails from scouting season until February 28.

(iii) You must be age 16 or older to operate an ATV or UTV on the refuge.

(iv) We prohibit overnight parking.

(9) *Yazoo National Wildlife Refuge.* (i) With the exception of raccoon hunting, we limit refuge entry and exit to the period of 4 a.m. to 1½ hours after legal sunset.

(ii) [Reserved]

(x) [Reserved]

(y) *Montana*—(1) *Benton Lake National Wildlife Refuge.* (i) We only allow the use of nonmotorized boats.

(ii) [Reserved]

(2) *Black Coulee National Wildlife Refuge.* (i) We only allow the use of nonmotorized boats.

(ii) [Reserved]

(3) *Bowdoin National Wildlife Refuge.* (i) We only allow the use of nonmotorized boats.

(ii) [Reserved]

(4) *Hewitt Lake National Wildlife Refuge.* (i) We prohibit air-thrust boats and boats with motors greater than 25 horsepower.

(ii) [Reserved]

(5) *Red Rock Lakes National Wildlife Refuge*—(i) *Boats.* We only allow nonmotorized boats in the hunt area east of the Lower Red Rock Lake dam. We allow boats with motors 10 horsepower or less west of Lower Red Rock Lake dam.

(ii) *Camping.* (A) We allow camping only in two established campgrounds. We prohibit camping along roadsides.

(B) We restrict camping to 16 consecutive days within any 30-day period.

(C) We prohibit horses in the campgrounds.

(D) From March 1 to December 1, all bear attractants, including, but not limited to, food, garbage, and carcasses or parts thereof, must be acceptably stored at night (unless in immediate use) and during the day if unattended. Acceptably stored means any of the following:

(*1*) Suspended at least 10 feet high and 4 feet from any vertical support 100 yards from any camp or hiking trail;

(*2*) Secured in a certified bear-safe container; or

(*3*) Secured in a hard-sided vehicle, including an enclosed camper or horse trailer.

(z) *Nebraska*—(1) *Boyer Chute National Wildlife Refuge.* (i) We allow boating at no-wake speeds, not to exceed 5 miles per hour (8 kilometers

per hour), on side or back channels. We prohibit all watercraft in the Boyer Chute waterway or other areas as posted.

(ii) [Reserved]

(2) *Crescent Lake National Wildlife Refuge.* (i) We only allow boating and float tubes on Island Lake. We prohibit use of internal combustion motors for boats on Island Lake.

(ii) [Reserved]

(3) *Rainwater Basin Wetland Management District.* (i) We prohibit the use of motorboats. We allow only nonpowered motorboats and those powered by electric motors (see § 27.32 of this chapter).

(ii) [Reserved]

(aa) *Nevada*—(1) *Pahranagat National Wildlife Refuge.* (i) We only allow motorless boats or boats with electric motors on the Upper Lake, Middle Marsh, and Lower Lake, with the exception that we close Upper Lake to all boating from October 1 through February 1.

(ii) We prohibit the use of boats, rubber rafts, or other flotation devices on the North Marsh.

(2) *Ruby Lake National Wildlife Refuge.* (i) We prohibit boats on refuge waters from January 1 through June 14.

(ii) During the boating season, we allow boats only on the South Marsh. From June 15 through July 31, we allow only motorless boats or boats with battery-powered electric motors. Anglers must remove all gasoline-powered motors. From August 1 through December 31, we allow only motorless boats and boats propelled with motors with a total of 10 horsepower or less.

(iii) We allow launching of boats only from designated landings.

(3) *Sheldon National Wildlife Refuge.* (i) We only allow nonmotorized boats or boats with electric motors.

(ii) [Reserved]

(4) *Stillwater National Wildlife Refuge.* (i) We prohibit boating outside of the waterfowl and youth waterfowl hunting season except in Swan Check Lake, where we allow nonmotorized boating all year.

(ii) We prohibit boats on Swan Lake, the northeast corner of North Nutgrass Lake, and the north end of Pintail Bay. We allow the use of nonmotorized carts, sleds, floating blinds, and other floating devices in these areas to transport hunting equipment and to conceal hunters, but not to transport hunters.

(iii) We only allow outboard motor boats on Lead Lake, Tule Lake, Goose Lake, South Nutgrass Lake, the southeast corner of North Nutgrass Lake, and south end of Pintail Bay.

(iv) We only allow air-thrust boats on Goose Lake, South Nutgrass Lake, the southeast corner of North Nutgrass Lake, and the south end of Pintail Bay.

(v) You may not operate air-thrust boats until 1 hour after the legal shooting time on opening day of waterfowl season.

(vi) We require air-thrust boat owners to get a Special Use Permit (FWS Form 3–1383–G) from the refuge manager and to display a number on their airboats.

(vii) We allow nonmotorized boats on all lakes and bays except Swan Lake, the northeast corner of North Nutgrass Lake, and the north end of Pintail Bay.

(viii) We allow camping only in designated areas.

(bb)–(dd) [Reserved]

(ee) *New York*—(1) *Iroquois National Wildlife Refuge.* (i) We only allow the use of nonmotorized boats.

(ii) [Reserved]

(2) [Reserved]

(ff) *North Carolina*—(1) *Mattamuskeet National Wildlife Refuge.* (i) We allow motorized and nonmotorized fishing boats, canoes, and kayaks from March 1 through October 31.

(ii) We prohibit airboats, sailboats, Jet Skis, and windboards.

(2) *Pee Dee National Wildlife Refuge.* (i) We prohibit boats utilizing gasoline-powered motors.

(ii) You must unload and load boats by hand on all waters except those having designated launch ramps.

(iii) We prohibit swimming.

(3) *Pocosin Lakes National Wildlife Refuge.* (i) We only prohibit boats on Pungo Lake.

(ii) We prohibit leaving a boat anywhere on the refuge overnight.

(gg) *North Dakota*—(1) *J. Clark Salyer National Wildlife Refuge.* (i) We only allow nonmotorized boats or boats with electric motors.

(ii) [Reserved]

(2) *Lake Ilo National Wildlife Refuge.* (i) We open the refuge to boating from May 1 through September 30.

(ii) [Reserved]

(3) *Long Lake National Wildlife Refuge.* (i) We restrict boats to 25 horsepower maximum.

(ii) We restrict boats to the period from May 1 through September 30.

(4) *Silver Lake National Wildlife Refuge.* (i) We allow boats on Silver Lake and on refuge waters south of the confluence of the Mauvais Coulee and Little Coulee from May 1 through September 30 of each year.

(ii) We prohibit water activities not related to fishing (*e.g.,* sailing, skiing, tubing, etc.).

(5) *Tewaukon National Wildlife Refuge.* (i) We open the refuge to boating from May 1 through September 30.

(ii) We allow snowmobiles, all-terrain vehicles (ATVs), utility terrain vehicles (UTVs), motor vehicles, and fish houses on the ice as conditions allow.

(6) *Upper Souris National Wildlife Refuge.* (i) We prohibit the use of bicycles or similar vehicles on the refuge.

(ii) We prohibit the use of amphibious vehicles or personal watercraft on the refuge.

(hh) *Ohio*—(1) *Cedar Point National Wildlife Refuge.* (i) We allow nonmotorized boats and flotation devices in designated areas.

(ii) We prohibit the use of off-road vehicles and snowmobiles on refuge lands.

(2) *Ottawa National Wildlife Refuge.* (i) The Crane Creek and Crane Creek Estuary are closed to all boats and flotation devices from State Route 2 to the mouth of Crane Creek at Lake Erie.

(ii) We allow nonmotorized boats and flotation devices in designated areas.

(iii) We prohibit the use of off-road vehicles and snowmobiles on refuge lands.

(ii) *Oklahoma*—(1) *Sequoyah National Wildlife Refuge.* (i) We allow boats, and you must operate them under applicable State laws and comply with all licensing and marking regulations from their State of origin.

(ii) We prohibit boating on the closed portion of Sally Jones Lake from September 1 to March 31.

(iii) We prohibit alcoholic beverages.

(2) *Tishomingo National Wildlife Refuge.* (i) We prohibit glass containers.

(ii) We prohibit airboats, hovercrafts, and personal watercraft (*e.g.,* Jet Skis, wave runners, jet boats) year round on refuge waters.

(iii) We prohibit swimming and water sports.

(3) *Washita National Wildlife Refuge.* (i) We do not allow boats and other flotation devices on refuge waters from October 15 through March 14.

(ii) [Reserved]

(4) *Wichita Mountains National Wildlife Refuge.* (i) We allow hand-powered boats only on Jed Johnson, Rush, Quanah Parker, and French Lakes.

(ii) Anglers may use electric trolling motors on boats 14 feet or less in length only on Jed Johnson, Rush, Quanah Parker, and French Lakes.

(jj) *Oregon*—(1) *Baskett Slough National Wildlife Refuge.* (i) We prohibit overnight camping on the refuge.

(ii) We prohibit parking on the refuge after the refuge is closed to public entry.

(2) *Cold Springs National Wildlife Refuge.* (i) We prohibit overnight camping.

(ii) We prohibit overnight parking.

(iii) We allow use of only nonmotorized boats and boats with electric motors.

(3) *Lower Klamath National Wildlife Refuge.* (i) We prohibit the use of air-thrust and water-thrust boats.

(ii) [Reserved]

(4) *McKay Creek National Wildlife Refuge.* (i) We prohibit overnight camping.

(ii) We prohibit overnight parking.

(5) *Umatilla National Wildlife Refuge.* (i) We prohibit overnight camping.

(ii) We prohibit overnight parking.

(6) *Upper Klamath National Wildlife Refuge.* (i) Motorized boats must not exceed 10 miles per hour in any stream, creek, or canal, and on that portion of Pelican Bay west of a line beginning at designated points on the north shore of Pelican Bay ¼ mile (402 meters) east of Crystal Creek and extending due south to the opposite shore of the lake.

(ii) [Reserved]

(kk)–(ll) [Reserved]

(mm) *South Carolina*—(1) *Cape Romain National Wildlife Refuge.* (i) We prohibit camping on the refuge except for designated archery hunters on Bulls Island and individuals obtaining a Special Use Permit (FWS Form 3–1383–G) from the refuge manager.

(ii) We allow boats to operate in salt water. We prohibit motorized equipment on the refuge islands or in refuge inholdings.

(iii) We prohibit private boats in the refuge boat basins at Garris Landing and Bulls Island. We clearly mark these areas with Closed Area signs.

(iv) We prohibit overnight parking at Garris Landing, except for archery hunters during the designated refuge archery white-tailed deer season and individuals obtaining a Special Use Permit (FWS Form 3–1383–G) from the refuge manager.

(v) We close Marsh Island, White Banks, and Sandy Point to public entry from February 15 through September 15 to protect nesting birds. This closed area extends from the low mean water mark to the highest elevation on these islands.

(2) *Carolina Sandhills National Wildlife Refuge.* (i) We allow nonmotorized boats and boats with electric motors. We allow boats with permanently mounted gas motors as long as you lock the propeller out of the water. You must hand load and unload boats except at designated boat ramps. We prohibit skidding boats up or down dams or on water control structures. We provide boat ramps at Pool D, Pool L, Honkers Lake, and Mays Lake.

(ii) We prohibit swimming and wading in any areas of the refuge.

(3) *Santee National Wildlife Refuge.* (i) We prohibit overnight camping.

(ii) We prohibit overnight parking.

(iii) We prohibit overnight mooring of boats.

(iv) We prohibit swimming and wading.

(v) We allow pets only in designated areas, and they must remain on a leash or within vehicles/vessels.

(vi) We prohibit nighttime access to boat-launching areas.

(vii) We prohibit mooring or attaching boats to any refuge boundary marker, post, or navigational post within refuge waters.

(viii) We prohibit air-thrust boats, hovercraft, airboats, and personal watercraft (*e.g.,* Jet Skis) within the waters of and/or boundary of the refuge.

(nn) *South Dakota*—(1) *LaCreek National Wildlife Refuge.* (i) We allow boat use only on Pools 3, 4, 7, and 10, and the Little White River Recreation Area.

(ii) We prohibit the use of internal combustion motors in Pools 3, 4, 7, and 10.

(2) *Sand Lake Wetland Management District.* (i) We allow the use of motorized boats.

(ii) [Reserved]

(oo) *Tennessee*—(1) *Chickasaw National Wildlife Refuge.* (i) We seasonally close the refuge sanctuary area to the public from November 15 through March 15.

(ii) We allow horses only on roads open to motorized traffic.

(2) *Cross Creeks National Wildlife Refuge.* (i) We prohibit leaving boats unattended on the refuge after daylight use hours.

(ii) We prohibit swimming in refuge impoundments and from boat ramps and boat docks.

(3) *Hatchie National Wildlife Refuge.* (i) We seasonally close the sanctuary areas of the refuge to the public from November 15 through March 15.

(ii) We allow horses only on roads open to motorized traffic.

(iii) We allow the use of nonmotorized boats and boats with electric motors only; we prohibit the use of gas and diesel motors on refuge lakes except in the waterfowl hunting area.

(4) *Lake Isom National Wildlife Refuge.* (i) We seasonally close the sanctuary areas of the refuge to the public from November 15 through March 15.

(ii) We allow horses only on roads open to motorized traffic.

(iii) We allow boats with only electric or outboard motors of 10 horsepower or less.

(5) *Lower Hatchie National Wildlife Refuge.* (i) We seasonally close the sanctuary area of the refuge and the southern unit of Sunk Lake Public Use Natural Area to the public from November 15 through March 15.

(ii) We allow horses only on roads open to motorized traffic.

(iii) We allow the use of only nonmotorized boats and boats with electric motors on Sunk Lake Public Use Natural Area.

(6) *Reelfoot National Wildlife Refuge.* (i) We seasonally close the sanctuary areas of the refuge to the public from November 15 through March 15.

(ii) We allow horses only on roads open to motorized traffic.

(iii) We prohibit airboats, hovercraft, or personal watercraft (*e.g.,* Jet Skis) on any waters within the refuge boundary.

(7) *Tennessee National Wildlife Refuge.* (i) We limit boats to no wake speed on all refuge impoundments.

(ii) We prohibit swimming in refuge impoundments and from boat ramps and boat docks.

(pp) *Texas*—(1) *Anahuac National Wildlife Refuge.* (i) We prohibit boats and other flotation devices on inland waters.

(ii) You may launch motorized boats in East Bay at the East Bay Boat Ramp on Westline Road and at the Oyster Bayou Boat Ramp (boat canal). We prohibit the launching of airboats or personal watercraft on the refuge.

(iii) You may launch nonmotorized boats only along East Bay Bayou and along the shoreline of East Galveston Bay.

(2) *Aransas National Wildlife Refuge.* (i) We prohibit camping on the refuge.

(ii) [Reserved]

(3) *Big Boggy National Wildlife Refuge.* (i) We prohibit camping on the refuge.

(ii) [Reserved]

(4) *Brazoria National Wildlife Refuge.* (i) We prohibit camping in all public hunting areas and parking lots.

(ii) We prohibit campfires in all public hunting areas and parking lots.

(iii) We allow only nonmotorized boat launching at designated areas.

(5) *Hagerman National Wildlife Refuge.* (i) We prohibit glass containers on the refuge.

(ii) We prohibit boats and other floating devices on all open waters of Lake Texoma, except Big Mineral Creek from October 1 through March 14 annually.

(iii) At the point where Big Mineral Creek joins Lake Texoma, Big Mineral Creek becomes a year-round no wake zone to the end of upstream navigable waters.

(iv) From October 1 through March 14, we allow only nonmotorized boats in Big Mineral Creek from the point where it joins Lake Texoma to the upstream end of navigable waters. You may not have any type of gas or electric motor onboard that is capable of use. You may launch boats from a boat ramp only from L Pad Road or by hand at the Big Mineral Day Use Area.

(6) *Laguna Atascosa National Wildlife Refuge.* (i) We only allow camping at Adolph Thomae Jr. County Park.

(ii) [Reserved]

(7) *Lower Rio Grande Valley National Wildlife Refuge.* (i) We prohibit overnight camping.

(ii) [Reserved]

(8) *McFaddin National Wildlife Refuge.* (i) On inland waters of the refuge open to motorized boats, we restrict the use of boats powered by air-cooled or radiator-cooled engines to those powered by a single engine of 25 horsepower or less and utilizing a propeller 9 inches (22.5 centimeters) in diameter or less.

(ii) On inland waters of the refuge open to motorized boats, we restrict the operation of motorized boats to lakes, ponds, ditches, and other waterways. We prohibit the operation of motorized boats on or through emergent wetland vegetation.

(9) *San Bernard National Wildlife Refuge.* (i) We prohibit camping in all public hunting areas and parking lots.

(ii) We prohibit campfires in all public hunting areas and parking lots.

(10) *Texas Point National Wildlife Refuge.* (i) On inland waters of the refuge open to motorized boats, we restrict the use of boats powered by air-cooled or radiator-cooled engines to those powered by a single engine of 25 horsepower or less and utilizing a propeller 9 inches (22.5 centimeters) in diameter or less.

(ii) On inland waters of the refuge open to motorized boats, we restrict the operation of motorized boats to lakes, ponds, ditches, and other waterways. We prohibit the operation or motorized boats on or through emergent wetland vegetation.

(11) *Trinity River National Wildlife Refuge.* (i) We limit motors to a maximum of 10 horsepower.

(ii) [Reserved]

(qq)–(rr) [Reserved]

(ss) *Virginia*—(1) *Back Bay National Wildlife Refuge*—(i) *Access: Qualifications and specifications.* (A) As provided for in Public Law 96–315, we issue permits to permanent, full-time residents who can furnish to the refuge manager, Back Bay National Wildlife Refuge, adequate proof of continuous and continuing residency, commencing prior to December 31, 1979, on the Outer Banks from the refuge boundary south to and including the village of Corolla, North Carolina, as long as they remain permanent, full-time residents. The south boundary of the area for access consideration is defined as a straight east-west line extending from Currituck Sound to the Atlantic Ocean and passing through a point 1,600 feet due south of the Currituck lighthouse. ''Residence'' means a place of general abode; ''Place of general abode'' means a person's principal, actual dwelling place in fact, without regard to intent. A ''dwelling'' means a residential structure occupied on a year-round basis by the permit applicant and shall not include seasonal or part-time dwelling units such as beach houses, vacation cabins, or structures which are intermittently occupied.

(B) As provided for in Public Law 98–146, up to 15 additional permits shall be granted to those persons meeting any one of the following conditions:

(*1*) A resident as of July 1, 1982, who held a valid Service access permit for improved property owners at any time during the period from July 29, 1976, through December 31, 1979.

(*2*) Anyone in continuous residency since 1976, in the area bounded on the north by the refuge boundary, and on the south by a straight line passing through a point in the east-west prolongation of the centerline of Albacore Street, Whaleshead Club Subdivision, Currituck County, North Carolina.

(*3*) Any permanent, full time resident as of April 1, 1983, residing in the area outlined in paragraph (ss)(1)(i)(B)(*2*) of this section and not otherwise eligible, who can substantiate to the Secretary of the Interior that access is essential to their maintaining a livelihood, as long as they maintain full-time continuous employment in the Norfolk, Virginia, area may qualify for access.

(C) The burden of proving that the prospective permittee meets these criteria shall be on the applicant by presentation of adequate documentation to the refuge manager. Permittees may be required to submit additional documentation of their eligibility to the refuge manager in order to maintain access. Permits (FWS Form 3–1383–G) will be issued only to those who legally qualify for them.

(D) Only one permit will be issued per family. All permits issued will be terminated in the event that alternate access becomes available during the permit period.

(E) Permits are issued for the purpose of providing entry and exit across the refuge beach to the permittee's residence. Personal access is limited to permittees, and their families, relatives, and guests while being transported in the permittee's vehicle. ''Personal access'' means private, non-commercial use. Permits are not transferable by sale or devise.

(F) All vehicle occupants must provide positive identification upon the request of any refuge official.

(ii) *Access: Routes of travel.* Access to, and travel along, the refuge beach by motorized vehicles may be allowed between the dune crossing at the key card operated gate near the refuge headquarters, and the south boundary of the refuge only after a permit has been issued or authorization provided by the refuge manager. Travel along the refuge beach by motorized vehicle shall be below the high tide line, within the intertidal zone, to the maximum extent practicable. This may require permittees to adjust their travel times to avoid high tides which would require the use of the emergency storm access/evacuation route over the east dike.

(iii) *Access: Number of trips allowed.* Permittees and members of their immediate families residing with them are limited to a total of two round trips per day per household.

(iv) *Access: Hours of travel.* Travel along the designated route is allowed 24 hours per day from October 1 through April 30. Travel is restricted to the hours of 5 a.m. to 12 a.m. (midnight) from May 1 through September 30.

(v) *Access: Medical emergencies.* (A) Private vehicles used in a medical emergency will be granted access. A ''medical emergency'' means any condition that threatens human life or limb unless medical treatment is immediately obtained.

(B) The vehicle operator is required to provide the refuge manager with a doctor's statement confirming the emergency within 36 hours after the access has occurred.

(vi) *Access: Military, fire, or emergency vehicles.* (A) Military, fire, emergency or law enforcement vehicles used for emergency purposes may be granted access.

(B) Vehicles used by an employee/agent of the Federal, State or local government, in the course of official duty other than for emergency purposes, may be granted access upon advance request to the refuge manager.

(C) Continuous or recurring use of the refuge beach for other than emergency purposes shall require the issuance of a permit (FWS Form 3–1383–G) from the refuge manager.

(vii) *Access: Public utility vehicles.* Public utility vehicles used on official business will be granted access. A permit (FWS Form 3–1383–G) specifying the times and types of access will be issued by the refuge manager. A ''public utility vehicle'' means any vehicle owned or operated by a public utility company enfranchised to supply Outer Banks residents with electricity or telephone service.

(viii) *Access: Essential commercial service vehicles.* (A) Essential

commercial service vehicles on business calls during the hours of 8 a.m. to 5 p.m. Monday through Friday will be granted access, only upon prior approval of the refuge manager when responding to a request from a permittee. Such requests may be verbal or in writing. Access by essential commercial service vehicles will be granted only after all other reasonable alternatives to access through the refuge have been exhausted as determined by the refuge manager.

(B) ''Commercial service vehicle'' means any vehicle owned or operated by or on behalf of an individual, partnership, or corporation that is properly licensed to engage entirely in the business of furnishing emergency repair services, including, but not limited to, plumbing, electrical, and repairs to household appliances.

(C) The refuge manager, upon reasonable notification, will be able to authorize essential service/emergency repair access, outside the prescribed time periods, for emergency situations should they arise.

(ix) *False Cape State Park employees.* False Cape State Park and Virginia Game Commission employees who are residents in the park will be considered as permanent, full-time residents as defined in paragraph (ss)(1)(i) of this section with access privileges identical to those of other permittees with beach access privileges.

(x) *Access: Commercial fishermen, businesses, and their employees.* (A) Commercial fishermen who have verified that their fishing operations on the Outer Banks of Virginia Beach, Virginia, or Currituck County, North Carolina, have been dependent since 1972 on entry and exit to or across the refuge are granted permits (FWS Form 3–1383–G) for access. Travel through the refuge by commercial fishermen from Currituck County, North Carolina, will be permitted only when directly associated with commercial fishing operations. Drivers and passengers on trips through the refuge are limited to commercial fishing crew members. A ''commercial fisherman'' means one who harvests finfish by gill net or haul seine in the Atlantic Ocean, and who has owned and operated a commercial fishing businesses continuously since 1972. Commercial permits are not transferable by sale or devise. The level of commercial permittee travel across the refuge shall not increase above the average yearly levels maintained in the 1985–1987 period.

(B) Other businesses who have verified that their business operations on the Outer Banks of Currituck County, North Carolina, have been dependent since 1972 on entry and exit to or across the refuge will be granted permits (FWS Form 3–1383–G) for access in accordance with the limitations outlined in paragraph (ss)(1)(x)(A) of this section.

(C) Each commercial fisherman or other business may be granted a maximum of five designated employees to travel the refuge beach for commercial fishing or other business-related purposes only. Commercial fishing employees may carry only other commercial fishing employees as passengers. Other business employees may carry only other employees of that business. The hauling of trailers associated with the conduct of commercial fishing or other business activities is authorized.

(D) Employees of commercial fishermen and/or other businesses who apply for access permits (FWS Form 3–1383–G) shall have the burden of proving, by the presentation of appropriate documentation to the refuge manager, that they are an ''employee'' for purposes of this section. ''Appropriate documentation'' is defined as the submission of standardized and verifiable employment forms including: Signed W–2 and W–4 forms, IRS form #1099, official earnings statements for specified periods, employee income tax withholding submissions to State and Federal tax offices (*e.g.,* IRS form W–3 with W–2s attached), State unemployment tax information, or other proof of actual employment. Documentation for each employee must be submitted in advance of access being granted, or, for new employees, within 30 days of their starting date. Failure to provide verification of employment for new employees within 30 days will result in termination of access privileges.

(xi) *Access: Suspension or waiver of rules in this paragraph (ss)(1).* (A) In an emergency, the refuge manager may suspend any or all of the restrictions in this paragraph (ss)(1) on vehicular travel and announce each suspension by whatever means are available. In the event of adverse weather conditions, the refuge manager may close all or any portion of the refuge to vehicular traffic for such periods as deemed advisable in the interest of public safety.

(B) The refuge manager may make exceptions to access restrictions, if they are compatible with refuge purposes, for qualified permittees who have demonstrated to the refuge manager a need for additional access relating to health or livelihood.

(C) The refuge manager may grant one-time use authorization for vehicular access through the refuge to individuals, not otherwise qualified in paragraph (ss)(1)(xi)(B) of this section, who have demonstrated to the refuge manager that there is no feasible alternative to the access requested. Authorization for access under this paragraph (ss)(1)(xi)(C) will not be based on convenience to the applicant.

(xii) *Access: Violation of rules in this paragraph (ss)(1).* Violators of the regulations in this paragraph (ss)(1) pertaining to Back Bay National Wildlife Refuge are subject to legal action as prescribed by 50 CFR 25.43 and 50 CFR part 28, including suspension or revocation of all permits issued to the violator or responsible permittee. The refuge manager may deny access permits to applicants who, during the 2 years immediately preceding the date of application, have formally been charged and successfully prosecuted for three or more violations of these or other regulations in effect at Back Bay National Wildlife Refuge. Individuals whose vehicle access privileges are suspended, revoked, or denied may, within 30 days, file a written appeal of the action to the Assistant Regional Director, Refuges and Wildlife, at the address for the Northeast Regional Office provided at 50 CFR 2.2(e), in accordance with 50 CFR 25.45(c).

(xiii) *Other access rules in this paragraph (ss)(1).* (A) No permit will remain in effect beyond December 31 of the year in which it was issued. Permits may be renewed upon the submission of appropriate updated information relating to the permit, and a signed statement that the conditions under which the previous permit was issued have not changed. In the event of any changes of conditions under which the permit is granted, the permittee shall notify the refuge manager in writing within 30 days. Failure to report changes may result in suspension/revocation of the permit.

(B) Vehicles shall be operated on the refuge beach only by the permittee or other authorized drivers. Permit holders shall not tow, transport, or operate vehicles owned by non-permit holders through the refuge. Non-commercial permit holders may tow utility and boat trailers when being used for their personal use only. Any towed vehicle shall have advance approval from the refuge manager prior to being brought through the refuge. The access privilege in this paragraph (ss)(1)(xiii)(B) is not to be used for any commercial purpose.

(C) The refuge manager may prescribe restrictions as to the types of vehicles to be permitted to ensure public safety and adherence to all applicable rules and regulations.

(D) A magnetic card will be issued to each authorized driver only for his or

her operation of the computer-controlled gate. No more than two cards will be issued per family. Only one vehicle will be permitted to pass for each gate opening. Unauthorized use of the magnetic card may result in suspension of the permit. A fee will be charged to replace lost or misplaced cards. Malfunctioning cards will be replaced at no charge.

(E) Access is granted for the purpose of travel to and from the permittee's residence and/or place of business. Access is not authorized for the purpose of transporting individuals for hire, or for the transport of prospective real estate clients to or from the Outer Banks of North Carolina, or for any other purpose not covered by this paragraph (ss)(1).

(xiv) *General rules in this paragraph (ss)(1)*—(A) *Entry on foot, bicycle, or motor vehicle.* Entry on foot, bicycle, or by motor vehicle on designated routes is allowed one-half hour before sunrise to one-half hour after sunset for the purposes of nature observation and study, photography, hiking, surf fishing, and bicycling.

(B) *Beach-oriented uses.* Designated areas of the refuge beach are open to wildlife/wildlands-oriented recreation only as outlined in paragraph (ss)(1)(xiv)(A) of this section. Entry to the beach is via designated access points only.

(C) *Parking.* Limited parking at the refuge office/visitor contact station is allowed only in designated spaces. Parking is available on a first-come, first-served basis for persons engaged in wildlife/wildlands-oriented recreation only as outlined in paragraph (ss)(1)(xiv)(A) of this section.

(D) *Fires.* All fires are prohibited.

(E) *Pets.* Dogs and other pets, on a hand-held leash not exceeding 10 feet in length, are allowed from October 1 through March 31.

(F) *Sand dunes.* Pedestrians and vehicular traffic in the sand dunes are prohibited.

(G) *Groups.* Use by all groups exceeding 10 individuals will require a Special Use Permit (FWS Form 3–1383–G), issued by the refuge manager.

(H) *Motorized vehicles.* Registered motor vehicles and motorized bicycles (mopeds) are allowed on the paved refuge access road and parking lot at refuge headquarters. All other motorized vehicular use is prohibited, except as specifically authorized pursuant to this paragraph (ss)(1).

(2) [Reserved]

(tt) *Washington*—(1) *Billy Frank Jr. Nisqually National Wildlife Refuge.* (i) We prohibit boat launching on the refuge.

(ii) The maximum speed limit is 5 miles per hour for boats in all refuge waters.

(2) *Columbia National Wildlife Refuge.* (i) We prohibit overnight camping.

(ii) We prohibit overnight parking.

(3) *Conboy Lake National Wildlife Refuge.* (i) We prohibit overnight camping.

(ii) We prohibit overnight parking.

(4) *Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge.* (i) We prohibit overnight camping.

(ii) We prohibit overnight parking.

(iii) We allow only nonmotorized boats and boats with electric motors on the WB–10 Pond (Wahluke Lake) and with walk-in access only.

(5) *McNary National Wildlife Refuge.* (i) We prohibit overnight camping.

(ii) We prohibit overnight parking.

(6) *Toppenish National Wildlife Refuge.* (i) We prohibit overnight camping.

(ii) We prohibit overnight parking.

(7) *Umatilla National Wildlife Refuge.* (i) We prohibit overnight camping.

(ii) We prohibit overnight parking.

(8) *Willapa National Wildlife Refuge.* (i) We prohibit camping on the refuge except in designated campgrounds on Long Island for up to 14 days.

(ii) [Reserved]

(uu) [Reserved]

(vv) *Wisconsin*—(1) *Upper Mississippi River National Wildlife and Fish Refuge.* Refer to paragraph (v)(2) of this section for regulations.

(2) [Reserved]

(ww) *Wyoming*—(1) *Seedskadee National Wildlife Refuge.* (i) You must only launch or pick up trailered boats at the following boat ramps: Dodge Bottom, Hayfarm, Lombard, and Six-Mile.

(ii) [Reserved]

(2) [Reserved]

(xx) *Information collection requirements.* The information collection requirements contained in this section have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0140. The information is being collected to provide the refuge managers the information needed to decide whether or not to allow the requested use. A response is required in order to obtain a benefit. The Service 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. Direct comments regarding the burden estimate or any other aspect of these information collection requirements to the Service's Information Collection Clearance Officer at the address provided at 50 CFR 2.1(b).

PART 32—HUNTING AND FISHING

■ 3. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i; Pub. L. 115–20, 131 Stat. 86.

Subpart A—General Provisions

■ 4. Revise § 32.7 to read as follows:

§ 32.7 What refuge units are open to hunting and/or sport fishing?

Refuge units open to hunting and/or sport fishing in accordance with the provisions of this subpart and §§ 32.20 through 32.70, inclusive, are as follows:

(a) *Alabama.* (1) Bon Secour National Wildlife Refuge.

(2) Cahaba River National Wildlife Refuge.

(3) Choctaw National Wildlife Refuge.

(4) Eufaula National Wildlife Refuge.

(5) Grand Bay National Wildlife Refuge.

(6) Key Cave National Wildlife Refuge.

(7) Mountain Longleaf National Wildlife Refuge.

(8) Sauta Cave National Wildlife Refuge.

(9) Wheeler National Wildlife Refuge.

(b) *Alaska.* (1) Alaska Maritime National Wildlife Refuge.

(2) Alaska Peninsula National Wildlife Refuge.

(3) Arctic National Wildlife Refuge.

(4) Becharof National Wildlife Refuge.

(5) Innoko National Wildlife Refuge.

(6) Izembek National Wildlife Refuge.

(7) Kanuti National Wildlife Refuge.

(8) Kenai National Wildlife Refuge.

(9) Kodiak National Wildlife Refuge.

(10) Koyukuk National Wildlife Refuge.

(11) Nowitna National Wildlife Refuge.

(12) Salawik National Wildlife Refuge.

(13) Tetlin National Wildlife Refuge.

(14) Togiak National Wildlife Refuge.

(15) Yukon Delta National Wildlife Refuge.

(16) Yukon Flats National Wildlife Refuge.

(c) *Arizona.* (1) Bill Williams River National Wildlife Refuge.

(2) Buenos Aires National Wildlife Refuge.

(3) Cabeza Prieta National Wildlife Refuge.

(4) Cibola National Wildlife Refuge.

(5) Havasu National Wildlife Refuge.

(6) Imperial National Wildlife Refuge.

(7) Kofa National Wildlife Refuge.

(8) San Bernardino National Wildlife Refuge.

(d) *Arkansas.* (1) Bald Knob National Wildlife Refuge.
(2) Big Lake National Wildlife Refuge.
(3) Cache River National Wildlife Refuge.
(4) Dale Bumpers White River National Wildlife Refuge.
(5) Felsenthal National Wildlife Refuge.
(6) Holla Bend National Wildlife Refuge.
(7) Overflow National Wildlife Refuge.
(8) Pond Creek National Wildlife Refuge.
(9) Wapanocca National Wildlife Refuge.
(e) *California.* (1) Cibola National Wildlife Refuge.
(2) Clear Lake National Wildlife Refuge.
(3) Colusa National Wildlife Refuge.
(4) Delevan National Wildlife Refuge.
(5) Don Edwards San Francisco Bay National Wildlife Refuge.
(6) Havasu National Wildlife Refuge.
(7) Humboldt Bay National Wildlife Refuge.
(8) Imperial National Wildlife Refuge.
(9) Kern National Wildlife Refuge.
(10) Lower Klamath National Wildlife Refuge.
(11) Marin Islands National Wildlife Refuge.
(12) Merced National Wildlife Refuge.
(13) Modoc National Wildlife Refuge.
(14) Sacramento National Wildlife Refuge.
(15) Sacramento River National Wildlife Refuge.
(16) Salinas River National Wildlife Refuge.
(17) San Luis National Wildlife Refuge.
(18) San Pablo Bay National Wildlife Refuge.
(19) Sonny Bono Salton Sea National Wildlife Refuge.
(20) Stone Lakes National Wildlife Refuge.
(21) Sutter National Wildlife Refuge.
(22) Tule Lake National Wildlife Refuge.
(f) *Colorado.* (1) Alamosa National Wildlife Refuge.
(2) Arapaho National Wildlife Refuge.
(3) Baca National Wildlife Refuge.
(4) Browns Park National Wildlife Refuge.
(5) Monte Vista National Wildlife Refuge.
(6) Rocky Mountain Arsenal.
(g) *Connecticut.* (1) Silvio O. Conte National Fish and Wildlife Refuge.
(2) Stewart B. McKinney National Wildlife Refuge.
(h) *Delaware.* (1) Bombay Hook National Wildlife Refuge.
(2) Prime Hook National Wildlife Refuge.
(i) *Florida.* (1) Arthur R. Marshall Loxahatchee National Wildlife Refuge.
(2) Cedar Keys National Wildlife Refuge.
(3) Chassahowitzka National Wildlife Refuge.
(4) Egmont Key National Wildlife Refuge.
(5) Hobe Sound National Wildlife Refuge.
(6) J.N. ''Ding'' Darling National Wildlife Refuge.
(7) Lake Woodruff National Wildlife Refuge.
(8) Lower Suwannee National Wildlife Refuge.
(9) Merritt Island National Wildlife Refuge.
(10) Pelican Island National Wildlife Refuge.
(11) Pinellas National Wildlife Refuge.
(12) St. Marks National Wildlife Refuge.
(13) St. Vincent National Wildlife Refuge.
(14) Ten Thousand Islands National Wildlife Refuge.
(j) *Georgia.* (1) Banks Lake National Wildlife Refuge.
(2) Blackbeard Island National Wildlife Refuge.
(3) Bond Swamp National Wildlife Refuge.
(4) Eufaula National Wildlife Refuge.
(5) Harris Neck National Wildlife Refuge.
(6) Okefenokee National Wildlife Refuge.
(7) Piedmont National Wildlife Refuge.
(8) Savannah National Wildlife Refuge.
(9) Wassaw National Wildlife Refuge.
(10) Wolf Island National Wildlife Refuge.
(k) *Hawaii.* (1) Hanalei National Wildlife Refuge.
(2) Kakahaia National Wildlife Refuge.
(3) Kilauea Point National Wildlife Refuge.
(l) *Idaho.* (1) Bear Lake National Wildlife Refuge.
(2) Camas National Wildlife Refuge.
(3) Deer Flat National Wildlife Refuge.
(4) Grays Lake National Wildlife Refuge.
(5) Kootenai National Wildlife Refuge.
(6) Minidoka National Wildlife Refuge.
(m) *Illinois.* (1) Chautauqua National Wildlife Refuge.
(2) Crab Orchard National Wildlife Refuge.
(3) Cypress Creek National Wildlife Refuge.
(4) Emiquon National Wildlife Refuge.
(5) Great River National Wildlife Refuge.
(6) Hackmatack National Wildlife Refuge.
(7) Kankakee National Wildlife Refuge.
(8) Meredosia National Wildlife Refuge.
(9) Middle Mississippi River National Wildlife Refuge.
(10) Port Louisa National Wildlife Refuge.
(11) Two Rivers National Wildlife Refuge.
(12) Upper Mississippi River National Wildlife and Fish Refuge.
(n) *Indiana.* (1) Big Oaks National Wildlife Refuge.
(2) Muscatatuck National Wildlife Refuge.
(3) Patoka River National Wildlife Refuge and Management Area
(o) *Iowa.* (1) De Soto National Wildlife Refuge.
(2) Driftless Area National Wildlife Refuge.
(3) Iowa Wetland Management District.
(4) Neal Smith National Wildlife Refuge.
(5) Northern Tallgrass Prairie National Wildlife Refuge.
(6) Port Louisa National Wildlife Refuge.
(7) Union Slough National Wildlife Refuge.
(8) Upper Mississippi River National Wildlife and Fish Refuge.
(p) *Kansas.* (1) Flint Hills National Wildlife Refuge.
(2) Kirwin National Wildlife Refuge.
(3) Marais des Cygnes National Wildlife Refuge.
(4) Quivira National Wildlife Refuge.
(q) *Kentucky.* (1) Clarks River National Wildlife Refuge.
(2) Ohio River Islands National Wildlife Refuge.
(3) Reelfoot National Wildlife Refuge.
(r) *Louisiana.* (1) Atchafalaya National Wildlife Refuge.
(2) Bayou Cocodrie National Wildlife Refuge.
(3) Bayou Sauvage National Wildlife Refuge.
(4) Bayou Teche National Wildlife Refuge.
(5) Big Branch Marsh National Wildlife Refuge.
(6) Black Bayou Lake National Wildlife Refuge.
(7) Bogue Chitto National Wildlife Refuge.
(8) Breton National Wildlife Refuge.
(9) Cameron Prairie National Wildlife Refuge.
(10) Cat Island National Wildlife Refuge.
(11) Catahoula National Wildlife Refuge.
(12) D'Arbonne National Wildlife Refuge.
(13) Delta National Wildlife Refuge.

(14) Grand Cote National Wildlife Refuge.
(15) Lacassine National Wildlife Refuge.
(16) Lake Ophelia National Wildlife Refuge.
(17) Mandalay National Wildlife Refuge.
(18) Red River National Wildlife Refuge.
(19) Sabine National Wildlife Refuge.
(20) Tensas River National Wildlife Refuge.
(21) Upper Ouachita National Wildlife Refuge.
(s) *Maine.* (1) Moosehorn National Wildlife Refuge.
(2) Petit Manan National Wildlife Refuge.
(3) Rachel Carson National Wildlife Refuge.
(4) Sunkhaze Meadows National Wildlife Refuge.
(5) Umbagog National Wildlife Refuge.
(t) *Maryland.* (1) Blackwater National Wildlife Refuge.
(2) Eastern Neck National Wildlife Refuge.
(3) Patuxent Research Refuge.
(u) *Massachusetts.* (1) Assabet River National Wildlife Refuge.
(2) Great Meadows National Wildlife Refuge.
(3) Mashpee National Wildlife Refuge.
(4) Monomoy National Wildlife Refuge.
(5) Nantucket National Wildlife Refuge.
(6) Oxbow National Wildlife Refuge.
(7) Parker River National Wildlife Refuge.
(8) Silvio O. Conte National Fish and Wildlife Refuge.
(v) *Michigan.* (1) Detroit River International Wildlife Refuge.
(2) Harbor Island National Wildlife Refuge.
(3) Kirtland's Warbler Wildlife Management Area.
(4) Michigan Wetland Management District.
(5) Seney National Wildlife Refuge.
(6) Shiawassee National Wildlife Refuge.
(w) *Minnesota.* (1) Agassiz National Wildlife Refuge.
(2) Big Stone National Wildlife Refuge.
(3) Big Stone Wetland Management District.
(4) Crane Meadows National Wildlife Refuge.
(5) Detroit Lakes Wetland Management District.
(6) Fergus Falls Wetland Management District.
(7) Glacial Ridge National Wildlife Refuge.
(8) Hamden Slough National Wildlife Refuge.
(9) Litchfield Wetland Management District.
(10) Minnesota Valley National Wildlife Refuge.
(11) Minnesota Valley Wetland Management District.
(12) Morris Wetland Management District.
(13) Northern Tallgrass Prairie National Wildlife Refuge.
(14) Rice Lake National Wildlife Refuge.
(15) Rydell National Wildlife Refuge.
(16) Sherburne National Wildlife Refuge.
(17) Tamarac National Wildlife Refuge.
(18) Upper Mississippi River National Wildlife and Fish Refuge.
(19) Windom Wetland Management District.
(x) *Mississippi.* (1) Bogue Chitto National Wildlife Refuge.
(2) Coldwater River National Wildlife Refuge.
(3) Dahomey National Wildlife Refuge.
(4) Grand Bay National Wildlife Refuge.
(5) Hillside National Wildlife Refuge.
(6) Holt Collier National Wildlife Refuge.
(7) Mathews Brake National Wildlife Refuge.
(8) Morgan Brake National Wildlife Refuge.
(9) Panther Swamp National Wildlife Refuge.
(10) Sam D. Hamilton Noxubee National Wildlife Refuge.
(11) St. Catherine Creek National Wildlife Refuge.
(12) Tallahatchie National Wildlife Refuge.
(13) Yazoo National Wildlife Refuge.
(y) *Missouri.* (1) Big Muddy National Fish and Wildlife Refuge.
(2) Clarence Cannon National Wildlife Refuge.
(3) Great River National Wildlife Refuge.
(4) Loess Bluffs National Wildlife Refuge.
(5) Middle Mississippi River National Wildlife Refuge.
(6) Mingo National Wildlife Refuge.
(7) Swan Lake National Wildlife Refuge.
(8) Two Rivers National Wildlife Refuge.
(z) *Montana.* (1) Benton Lake National Wildlife Refuge.
(2) Benton Lake Wetland Management District.
(3) Black Coulee National Wildlife Refuge.
(4) Bowdoin National Wildlife Refuge.
(5) Bowdoin Wetland Management District.
(6) Charles M. Russell National Wildlife Refuge.
(7) Charles M. Russell Wetland Management District.
(8) Creedman Coulee National Wildlife Refuge.
(9) Hailstone National Wildlife Refuge.
(10) Hewitt Lake National Wildlife Refuge.
(11) Lake Mason National Wildlife Refuge.
(12) Lake Thibadeau National Wildlife Refuge.
(13) Lamesteer National Wildlife Refuge.
(14) Lee Metcalf National Wildlife Refuge.
(15) Lost Trail National Wildlife Refuge.
(16) Medicine Lake National Wildlife Refuge.
(17) National Bison Range.
(18) Ninepipe National Wildlife Refuge.
(19) Northeast Montana Wetland Management District.
(20) Northwest Montana Wetland Management District.
(21) Pablo National Wildlife Refuge.
(22) Red Rock Lakes National Wildlife Refuge.
(23) Swan River National Wildlife Refuge.
(24) UL Bend National Wildlife Refuge.
(25) War Horse National Wildlife Refuge.
(aa) *Nebraska.* (1) Boyer Chute National Wildlife Refuge.
(2) Crescent Lake National Wildlife Refuge.
(3) Fort Niobrara National Wildlife Refuge.
(4) North Platte National Wildlife Refuge.
(5) Rainwater Basin Wetland Management District.
(6) Valentine National Wildlife Refuge.
(bb) *Nevada.* (1) Ash Meadows National Wildlife Refuge.
(2) Desert National Wildlife Refuge.
(3) Pahranagat National Wildlife Refuge.
(4) Ruby Lake National Wildlife Refuge.
(5) Sheldon National Wildlife Refuge.
(6) Stillwater National Wildlife Refuge.
(cc) *New Hampshire.* (1) Great Bay National Wildlife Refuge.
(2) Silvio O. Conte National Fish and Wildlife Refuge.
(3) Umbagog National Wildlife Refuge.
(dd) *New Jersey.* (1) Cape May National Wildlife Refuge.

(2) Edwin B. Forsythe National Wildlife Refuge.
(3) Great Swamp National Wildlife Refuge.
(4) Supawna Meadows National Wildlife Refuge.
(5) Wallkill River National Wildlife Refuge.
(ee) *New Mexico.* (1) Bitter Lake National Wildlife Refuge.
(2) Bosque del Apache National Wildlife Refuge.
(3) Las Vegas National Wildlife Refuge.
(4) Maxwell National Wildlife Refuge.
(5) San Andres National Wildlife Refuge.
(6) Sevilleta National Wildlife Refuge.
(ff) *New York.* (1) Amagansett National Wildlife Refuge.
(2) Elizabeth A. Morton National Wildlife Refuge.
(3) Iroquois National Wildlife Refuge.
(4) Montezuma National Wildlife Refuge.
(5) Oyster Bay National Wildlife Refuge.
(6) Seatuck National Wildlife Refuge.
(7) Shawangunk Grasslands National Wildlife Refuge.
(8) Target Rock National Wildlife Refuge.
(9) Wallkill National Wildlife Refuge.
(10) Wertheim National Wildlife Refuge.
(gg) *North Carolina.* (1) Alligator River National Wildlife Refuge.
(2) Cedar Island National Wildlife Refuge.
(3) Currituck National Wildlife Refuge.
(4) Great Dismal Swamp National Wildlife Refuge.
(5) Mackay Island National Wildlife Refuge.
(6) Mattamuskeet National Wildlife Refuge.
(7) Pea Island National Wildlife Refuge.
(8) Pee Dee National Wildlife Refuge.
(9) Pocosin Lakes National Wildlife Refuge.
(10) Roanoke River National Wildlife Refuge.
(11) Swanquarter National Wildlife Refuge.
(hh) *North Dakota.* (1) Ardoch National Wildlife Refuge.
(2) Arrowwood National Wildlife Refuge.
(3) Arrowwood Wetland Management District.
(4) Audubon National Wildlife Refuge.
(5) Audubon Wetland Management District.
(6) Chase Lake National Wildlife Refuge.
(7) Chase Lake Wetland Management District.
(8) Crosby Wetland Management District.
(9) Des Lacs National Wildlife Refuge.
(10) Devils Lake Wetland Management District.
(11) J. Clark Salyer National Wildlife Refuge.
(12) J. Clark Salyer Wetland Management District.
(13) Kulm Wetland Management District.
(14) Lake Alice National Wildlife Refuge.
(15) Lake Ilo National Wildlife Refuge.
(16) Lake Nettie National Wildlife Refuge.
(17) Lake Zahl National Wildlife Refuge.
(18) Long Lake National Wildlife Refuge.
(19) Long Lake Wetland Management District.
(20) Lostwood National Wildlife Refuge.
(21) Lostwood Wetland Management District.
(22) Rose Lake National Wildlife Refuge.
(23) Sibley Lake National Wildlife Refuge.
(24) Silver Lake National Wildlife Refuge.
(25) Slade National Wildlife Refuge.
(26) Stewart Lake National Wildlife Refuge.
(27) Tewaukon National Wildlife Refuge.
(28) Tewaukon Wetland Management District.
(29) Upper Souris National Wildlife Refuge.
(ii) *Ohio.* (1) Cedar Point National Wildlife Refuge.
(2) Ottawa National Wildlife Refuge.
(jj) *Oklahoma.* (1) Deep Fork National Wildlife Refuge.
(2) Little River National Wildlife Refuge.
(3) Optima National Wildlife Refuge.
(4) Ozark Plateau National Wildlife Refuge.
(5) Salt Plains National Wildlife Refuge.
(6) Sequoyah National Wildlife Refuge.
(7) Tishomingo National Wildlife Refuge.
(8) Tishomingo Wildlife Management Unit.
(9) Washita National Wildlife Refuge.
(10) Wichita Mountains National Wildlife Refuge.
(kk) *Oregon.* (1) Bandon Marsh National Wildlife Refuge.
(2) Baskett Slough National Wildlife Refuge.
(3) Bear Valley National Wildlife Refuge.
(4) Cold Springs National Wildlife Refuge.
(5) Deer Flat National Wildlife Refuge.
(6) Hart Mountain National Antelope Refuge.
(7) Julia Butler Hansen Refuge for the Columbian White-Tailed Deer.
(8) Klamath Marsh National Wildlife Refuge.
(9) Lewis and Clark National Wildlife Refuge.
(10) Lower Klamath National Wildlife Refuge.
(11) Malheur National Wildlife Refuge.
(12) McKay Creek National Wildlife Refuge.
(13) McNary National Wildlife Refuge.
(14) Nestucca Bay National Wildlife Refuge.
(15) Sheldon National Wildlife Refuge.
(16) Siletz Bay National Wildlife Refuge.
(17) Tualatin River National Wildlife Refuge.
(18) Umatilla National Wildlife Refuge.
(19) Upper Klamath National Wildlife Refuge.
(20) William L. Finley National Wildlife Refuge.
(ll) *Pennsylvania.* (1) Cherry Valley National Wildlife Refuge.
(2) Erie National Wildlife Refuge.
(3) John Heinz National Wildlife Refuge at Tinicum.
(4) Ohio River Islands National Wildlife Refuge.
(mm) *Rhode Island.* (1) Block Island National Wildlife Refuge.
(2) Ninigret National Wildlife Refuge.
(3) Sachuest Point National Wildlife Refuge.
(4) Trustom Pond National Wildlife Refuge.
(nn) *South Carolina.* (1) Cape Romain National Wildlife Refuge.
(2) Carolina Sandhills National Wildlife Refuge.
(3) Ernest F. Hollings ACE Basin National Wildlife Refuge.
(4) Pinckney Island National Wildlife Refuge.
(5) Santee National Wildlife Refuge.
(6) Savannah National Wildlife Refuge.
(7) Waccamaw National Wildlife Refuge.
(oo) *South Dakota.* (1) Huron Wetland Management District.
(2) Lacreek National Wildlife Refuge.
(3) Lake Andes National Wildlife Refuge.
(4) Lake Andes Wetland Management District.
(5) Madison Wetland Management District.
(6) Sand Lake National Wildlife Refuge.
(7) Sand Lake Wetland Management District.

(8) Waubay National Wildlife Refuge.
(9) Waubay Wetland Management District.
(pp) *Tennessee.* (1) Chickasaw National Wildlife Refuge.
(2) Cross Creeks National Wildlife Refuge.
(3) Hatchie National Wildlife Refuge.
(4) Lake Isom National Wildlife Refuge.
(5) Lower Hatchie National Wildlife Refuge.
(6) Reelfoot National Wildlife Refuge.
(7) Tennessee National Wildlife Refuge.
(qq) *Texas.* (1) Anahuac National Wildlife Refuge.
(2) Aransas National Wildlife Refuge.
(3) Balcones Canyonlands National Wildlife Refuge.
(4) Big Boggy National Wildlife Refuge.
(5) Brazoria National Wildlife Refuge.
(6) Buffalo Lake National Wildlife Refuge.
(7) Caddo Lake National Wildlife Refuge.
(8) Hagerman National Wildlife Refuge.
(9) Laguna Atascosa National Wildlife Refuge.
(10) Lower Rio Grande Valley National Wildlife Refuge.
(11) McFaddin National Wildlife Refuge.
(12) San Bernard National Wildlife Refuge.
(13) Texas Point National Wildlife Refuge.
(14) Trinity River National Wildlife Refuge.
(rr) *Utah.* (1) Bear River Migratory Bird Refuge.
(2) Fish Springs National Wildlife Refuge.
(3) Ouray National Wildlife Refuge.
(ss) *Vermont.* (1) Missisquoi National Wildlife Refuge.
(2) Silvio O. Conte National Fish and Wildlife Refuge.
(tt) *Virginia.* (1) Back Bay National Wildlife Refuge.
(2) Chincoteague National Wildlife Refuge.
(3) Eastern Shore of Virginia National Wildlife Refuge.
(4) Elizabeth Hartwell Mason Neck National Wildlife Refuge.
(5) Great Dismal Swamp National Wildlife Refuge.
(6) James River National Wildilfe Refuge.
(7) Mackay Island National Wildlife Refuge.
(8) Occoquan Bay National Wildlife Refuge.
(9) Plum Tree Island National Wildlife Refuge.
(10) Presquile National Wildlife Refuge.
(11) Rappahannock River Valley National Wildlife Refuge.
(12) Wallops Island National Wildlife Refuge.
(uu) *Washington.* (1) Billy Frank Jr. Nisqually National Wildlife Refuge.
(2) Columbia National Wildlife Refuge.
(3) Conboy Lake National Wildlife Refuge.
(4) Dungeness National Wildlife Refuge.
(5) Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge.
(6) Julia Butler Hansen Refuge for the Columbian White-tailed Deer.
(7) Little Pend Oreille National Wildlife Refuge.
(8) McNary National Wildlife Refuge.
(9) Ridgefield National Wildlife Refuge.
(10) San Juan Islands National Wildlife Refuge.
(11) Toppenish National Wildlife Refuge.
(12) Turnbull National Wildlife Refuge.
(13) Umatilla National Wildlife Refuge.
(14) Willapa National Wildlife Refuge.
(vv) *West Virginia.* (1) Canaan Valley National Wildlife Refuge.
(2) Ohio River Islands National Wildlife Refuge.
(ww) *Wisconsin.* (1) Fox River National Wildlife Refuge.
(2) Green Bay National Wildlife Refuge.
(3) Hackmatack National Wildlife Refuge.
(4) Horicon National Wildlife Refuge.
(5) Leopold Wetland Management District.
(6) Necedah National Wildlife Refuge.
(7) St. Croix Wetland Management District.
(8) Trempealeau National Wildlife Refuge.
(9) Upper Mississippi River National Wildlife and Fish Refuge.
(10) Whittlesey Creek National Wildlife Refuge.
(xx) *Wyoming.* (1) Cokeville Meadows National Wildlife Refuge.
(2) Hutton Lake National Wildlife Refuge.
(3) National Elk Refuge.
(4) Pathfinder National Wildlife Refuge.
(5) Seedskadee National Wildlife Refuge.
(yy) *Guam.* (1) Guam National Wildlife Refuge.
(2) [Reserved]

■ 5. Add § 32.9 to read as follows:

§ 32.9 Information collection requirements.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0140. The information is being collected to provide the refuge managers the information needed to decide whether or not to allow the requested use. A response is required in order to obtain a benefit. The Service 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. Direct comments regarding the burden estimate or any other aspect of these information collection requirements to the Service's Information Collection Clearance Officer at the address provided at 50 CFR 2.1(b).

■ 6. Revise subpart B to read as follows:

Subpart B—Refuge-Specific Regulations for Hunting and Fishing

Sec.
32.20 Alabama.
32.21 Alaska.
32.22 Arizona.
32.23 Arkansas.
32.24 California.
32.25 Colorado.
32.26 Connecticut.
32.27 Delaware.
32.28 Florida.
32.29 Georgia.
32.30 Hawaii.
32.31 Idaho.
32.32 Illinois.
32.33 Indiana.
32.34 Iowa.
32.35 Kansas.
32.36 Kentucky.
32.37 Louisiana.
32.38 Maine.
32.39 Maryland.
32.40 Massachusetts.
32.41 Michigan.
32.42 Minnesota.
32.43 Mississippi.
32.44 Missouri.
32.45 Montana.
32.46 Nebraska.
32.47 Nevada.
32.48 New Hampshire.
32.49 New Jersey.
32.50 New Mexico.
32.51 New York.
32.52 North Carolina.
32.53 North Dakota.
32.54 Ohio.
32.55 Oklahoma.
32.56 Oregon.
32.57 Pennsylvania.
32.58 Rhode Island.
32.59 South Carolina.
32.60 South Dakota.
32.61 Tennessee.
32.62 Texas.
32.63 Utah.
32.64 Vermont.
32.65 Virginia.
32.66 Washington.
32.67 West Virginia.
32.68 Wisconsin.

32.69 Wyoming.
32.70 Guam.

§ 32.20 Alabama.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Bon Secour National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following condition: We allow fishing only from legal sunrise to legal sunset.

(b) *Cahaba River National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of quail, squirrel, rabbit, opossum, raccoon, coyote, and bobcat on designated areas of the refuge subject to the following conditions:

(i) We require hunters to hunt as governed by Alabama Department of Conservation and Natural Resources' William R. Ireland, Sr.—Cahaba River Wildlife Management Area hunting permit conditions.

(ii) We require hunters to possess and carry a current and signed Alabama Department of Conservation and Natural Resources' William R. Ireland, Sr.—Cahaba River Wildlife Management Area hunting permit when hunting on the refuge.

(iii) Hunters may hunt with shotguns using only #4 shot or smaller, rifles and handguns using rim-fire ammunition only, or archery equipment that complies with State and Federal regulations.

(iv) We allow the use of dogs when hunting upland game.

(v) Hunters may only hunt during designated days and times.

(vi) Hunters must remove tree stands, blinds, or other personal property from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(3) *Big game hunting.* We allow the hunting of white-tailed deer, feral hog, and wild turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(2)(i), (ii), (v), and (vi) of this section apply.

(ii) We prohibit the use of firearms for hunting deer on the refuge. However, you may archery hunt in the portions of the refuge that are open for deer hunting during the archery, shotgun, and muzzleloader seasons established by the State.

(iii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer. We also prohibit drives for feral hogs.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(c) *Choctaw National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, coyote, beaver, and nutria on designated areas of the refuge subject to the following conditions:

(i) We prohibit leaving unattended personal property, including, but not limited to, boats or vehicles of any type, geocaches, lumber, and cameras, overnight on the refuge (see § 27.93 of this chapter).

(ii) You may only take incidental species (coyote, beaver, nutria, and feral hog) during any other refuge hunt with those weapons legal during those hunts as governed by the State of Alabama.

(iii) You must possess and carry a signed refuge hunt permit (signed brochure) when hunting.

(iv) All persons age 15 or younger, while hunting on the refuge, must be in the presence and under direct supervision of a licensed or exempt hunter age 21 or older. A licensed hunter supervising a youth must hold a valid State license for the species being hunted. One adult may supervise no more than two youth hunters.

(v) We require all hunters to record hours hunted and all harvested game on the Visitor Check-In Permit and Report (FWS Form 3–2405) at the conclusion of each day at one of the refuge check stations.

(vi) We allow the use of dogs when hunting squirrel and rabbit.

(vii) Hunters may only hunt during designated days and times.

(viii) For hunting, you may use only approved nontoxic shot (see § 32.2(k)), .22 caliber rimfire or smaller rifles, or legal archery equipment as governed by State regulations.

(3) *Big game hunting.* We allow archery hunting of white-tailed deer and incidental take of feral hog subject to the following conditions:

(i) The conditions set forth at paragraphs (c)(2)(ii), (iii), (iv), and (viii) of this section apply.

(ii) Deer hunters may place one portable stand or blind on the refuge for use while deer hunting, but only during the open deer season. The stand must be clearly labeled with the hunter's State hunting license number. You may leave the stand or blind on the refuge overnight during the deer season in a non-hunting position at ground level.

(iii) While climbing a tree, installing a tree stand that uses climbing aids, or hunting from a tree stand on the refuge, hunters must use a fall-arrest system (full body harness) that is manufactured to the Tree Stand Manufacturers Association's standards.

(4) *Sport fishing.* We allow fishing in designated areas of the refuge subject to the following conditions:

(i) We allow fishing year-round, except in the waterfowl sanctuary area as depicted within the refuge brochure. The waterfowl sanctuary is closed to fishing from November 15 through March 1.

(ii) The condition set forth at paragraph (c)(2)(iii) of this section applies.

(iii) We allow a rod and reel and pole and line. We prohibit all other methods of fishing, including bow fishing.

(iv) We prohibit the taking of frogs, turtles, and crawfish (see § 27.21 of this chapter).

(v) We prohibit fishing tournaments on all refuge waters.

(d) *Eufaula National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of mourning dove and Eurasian-collared dove, duck, and goose on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a signed refuge hunt permit (signed brochure) when hunting.

(ii) All youth hunters (ages 10 through 15) must remain within sight and normal voice contact of a properly licensed hunting adult age 21 or older. Youth hunters must possess and carry verification of passing a State-approved hunter education course. One adult may supervise no more than two youth hunters.

(iii) All waterfowl hunting opportunities are spaced-blind and assigned by lottery. Hunters wishing to participate in our waterfowl hunt must submit a Waterfowl Lottery Application (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System).

(iv) Hunters must remove all stands/blinds and other personal property at the end of each day's hunt (see § 27.93 of this chapter).

(v) We allow access to the refuge for hunting from 1½ hours before legal sunrise to 1½ hours after legal sunset.

(vi) We prohibit organized drives. We define a ''drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause game to move in the direction of any person(s) who is part of the organized or planned

hunt and known to be waiting for the game.

(vii) We prohibit hunting or observing from an elevated stand without use of a full body harness.

(2) *Upland game hunting.* We allow hunting of squirrel and rabbit on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (d)(1)(i) and (ii) and (v) through (vii) of this section apply.

(ii) We allow only shotguns as the means of take for upland game hunting.

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (d)(1)(i) and (v) through (vii) of this section apply.

(ii) We allow youth gun hunting opportunities that are spaced-blind and assigned by lottery. Hunters wishing to participate in our youth gun hunt must submit a Big/Upland Game Hunt Application (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System).

(iii) All youth hunters must remain within sight and normal voice contact of a properly hunting-licensed adult age 21 or older. Youth hunters must possess and carry verification of passing a State-approved hunter education course. One adult may supervise no more than one youth hunter.

(iv) All big game hunting opportunities, except for youth gun, are archery-only.

(v) We close those portions of the refuge between Bustahatchee and Rood Creeks to archery hunting until November 1.

(4) *Sport fishing.* We allow sport fishing, including bowfishing, in designated areas of the refuge subject to the following conditions:

(i) We allow shoreline access for fishing from 1 hour before legal sunrise to 1 hour after legal sunset.

(ii) We prohibit taking frog or turtle on all refuge lands and waters (see § 27.21 of this chapter).

(iii) We adopt reciprocal license agreements between Alabama and Georgia for fishing in Lake Eufaula. Anglers fishing in waters not directly connected to Lake Eufaula must be properly licensed for the State in which they are fishing.

(e) *Grand Bay National Wildlife Refuge.* Refer to § 32.43(d) for regulations.

(f) *Key Cave National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of mourning and white-winged dove, crow, woodcock, and snipe on designated areas of the refuge subject to the following conditions:

(i) We require hunters to possess and carry a current and signed Key Cave National Wildlife Refuge permit, which is included with the Alabama Department of Conservation and Natural Resources' Seven Mile Island Wildlife Management Area hunting permit, when hunting on the refuge.

(ii) We allow hunting on Monday, Tuesday, Friday, and Saturday.

(iii) We allow the use of dogs when hunting migratory game birds and upland game.

(2) *Upland game hunting.* We allow hunting of quail, Eurasian-collared dove, squirrel, rabbit, raccoon, opossum, starling, coyote, bobcat, and fox on designated portions of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (f)(1)(i) and (iii) of this section apply.

(ii) We allow hunting on designated areas from legal sunrise to legal sunset on Monday, Tuesday, Friday, and Saturday, except that you may hunt opossum and raccoon after legal sunset.

(iii) Hunters may hunt with shotguns using only #4 shot or smaller, rifles and handguns using rim-fire ammunition only, or archery equipment that complies with State regulations.

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated portions of the refuge as governed by State regulations subject to the following conditions:

(i) The conditions set forth at paragraphs (f)(1)(i) and (iii) of this section apply.

(ii) We allow hunting on designated areas from legal sunrise to legal sunset on Monday, Tuesday, Friday, and Saturday.

(iii) We prohibit the use of firearms for hunting deer on the refuge.

(iv) We allow hunters to hunt from portable tree stands. While climbing a tree, installing a tree stand that uses climbing aids, or hunting from a tree stand on the refuge, hunters must use a fall-arrest system (full body harness) that is manufactured to the Tree Stand Manufacturers Association's standards.

(v) We prohibit organized drives. We define a ''drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause game to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the game.

(vi) Hunters may hunt big game species other than deer with shotguns using only approved nontoxic #4 shot or smaller (see § 32.2(k)), rifles and handguns using rim-fire ammunition only, or archery equipment that complies with State regulations.

(4) [Reserved]

(g) *Mountain Longleaf National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of woodcock on designated areas of the refuge subject to the following conditions:

(i) We require hunters to hunt as governed by Alabama Department of Conservation and Natural Resources' Choccolocco Wildlife Management Area hunting permit conditions.

(ii) We require hunters to possess and carry a current and signed Alabama Department of Conservation and Natural Resources' Choccolocco Wildlife Management Area hunting permit when hunting on the refuge.

(iii) Hunters may only hunt during designated days and times.

(iv) Hunters must remove tree stands, blinds, or other personal property from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(2) *Upland game hunting.* We allow hunting of quail, squirrel, rabbit, groundhog, raccoon, opossum, beaver, and fox on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (g)(1)(i) through (iv) of this section apply.

(ii) We prohibit hunting after legal sunset.

(iii) Hunters must use a body safety harness at all times while hunting from a tree.

(iv) We allow the use of dogs when hunting quail, squirrel, and rabbit only.

(3) *Big game hunting.* We allow hunting of white-tailed deer, bobcat, coyote, feral hog, and turkey on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (g)(1)(i) through (iv) and (g)(2)(iii) of this section apply.

(4) [Reserved]

(h) *Sauta Cave National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of quail, squirrel, rabbit, raccoon, and opossum on designated areas of the refuge subject to the following conditions:

(i) We require hunters to hunt as governed by Alabama Department of Conservation and Natural Resources' North Sauty refuge hunting permit.

(ii) We require hunters to possess and carry a current and signed Sauta Cave National Wildlife Refuge permit, which is found on the Alabama Department of Conservation and Natural Resources' Jackson County Waterfowl, Management Areas, refuges and Coon Gulf Tract hunting permit, when hunting.

(iii) Hunters may only hunt during designated days and times.

(iv) Hunters may hunt with shotguns using only #4 shot or smaller, rifles and handguns using rim-fire ammunition only, or archery equipment that complies with State regulations.

(v) We allow the use of dogs when hunting upland game.

(3)–(4) [Reserved]

(i) *Wheeler National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of quail, squirrel, rabbit, raccoon, and opossum on designated areas of the refuge subject to the following conditions:

(i) We require hunters to possess and carry a current and signed hunting permit, found on the Wheeler National Wildlife Refuge hunting brochure, when hunting on the refuge.

(ii) Hunters may hunt with shotguns using only #4 shot or smaller, rifles and handguns using rim-fire ammunition only, or archery equipment that complies with State regulations.

(iii) We allow hunting on designated areas Monday through Saturday. We prohibit hunting on Sunday.

(iv) We allow the use of dogs when hunting upland game.

(v) Hunters must use a body safety harness at all times while hunting from a tree.

(vi) Hunters must remove tree stands, blinds, or other personal property from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(vii) Hunters may only hunt during designated days and times.

(3) *Big game hunting.* We allow the hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (i)(2)(i) and (iii) and (v) through (vii) of this section apply.

(ii) We prohibit organized drives. We define a ''drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause game to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the game.

(iii) Hunters may only hunt with archery equipment that complies with State regulations and flintlocks .40 caliber or larger.

(iv) You may only hunt feral hog during the refuge archery and flintlock deer season.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following condition: We open all refuge waters to fishing year-round unless otherwise posted.

§ 32.21 Alaska.

Alaska refuges are opened to hunting, fishing, and trapping pursuant to the Alaska National Interest Lands Conservation Act (Pub. L. 96–487, 16 U.S.C. 3101 *et seq.*). The regulations set forth at 50 CFR part 36 concern National Wildlife Refuges in Alaska. Information regarding specific refuge rules can be obtained from the Regional Office of the U.S. Fish and Wildlife Service, Anchorage, AK (see 50 CFR 2.2), or by contacting the manager of the respective individual refuge.

§ 32.22 Arizona.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Bill Williams River National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of mourning and white-winged dove on designated areas of the refuge subject to the following conditions:

(i) We allow shotguns, muzzleloaders, pistols, pneumatic guns, and archery equipment for hunting.

(ii) We prohibit hunting within 50 yards (45 meters) of any building, road, or levee open to public use.

(iii) You must remove boats, equipment, cameras, temporary blinds, stands, etc., at the end of each day's activities (see § 27.93 of this chapter).

(2) *Upland game hunting.* We allow hunting of Gambel's quail and cottontail rabbit on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(1)(i) and (iii) of this section apply.

(ii) We allow hunting of cottontail rabbit from September 1 to the close of the State season.

(3) *Big game hunting.* We allow hunting of desert bighorn sheep on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(1)(i) and (iii) of this section apply.

(ii) We allow the possession of rifles for desert bighorn sheep hunting.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following condition: The condition set forth at paragraph (a)(1)(iii) of this section applies.

(b) *Buenos Aires National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, and mourning, white-winged, and Eurasian-collared dove on designated areas of the refuge subject to the following condition: You must remove temporary blinds, boats, and decoys from the refuge following each day's hunt (see § 27.93 of this chapter).

(2) *Upland game hunting.* We allow hunting of black-tailed and antelope jackrabbit, cottontail rabbit, coyote, and hog-nosed, hooded, spotted, and striped skunk on designated areas of the refuge subject to the following condition: You must remove temporary blinds, boats, and decoys from the refuge following each day's hunt (see § 27.93 of this chapter).

(3) *Big game hunting.* We allow hunting of mule and white-tailed deer, javelina, and feral hog on designated areas of the refuge subject to the following condition: You must remove temporary blinds, boats, and decoys from the refuge following each day's hunt (see § 27.93 of this chapter).

(4) [Reserved]

(c) *Cabeza Prieta National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of desert bighorn sheep on designated areas of the refuge subject to the following conditions:

(i) We require hunters to obtain a Barry M. Goldwater Range Entry Permit (Department of Defense form/requirement) from the refuge.

(ii) We require Special Use Permits for all hunters (FWS Form 3–1383–G) and guides (FWS Form 3–1383–C).

(4) [Reserved]

(d) *Cibola National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, moorhen (gallinule), common snipe, and mourning and white-winged dove on designated areas of the refuge subject to the following conditions:

(i) We only allow shotgun, archery, and crossbow.

(ii) Hunters may only hunt during designated days and times.

(iii) You must remove all temporary blinds, boats, and decoys from the refuge following each day's hunt (see § 27.93 of this chapter).

(iv) The Hart Mine Marsh area is open to entry from 10 a.m. to 3 p.m. from October 1 through March 14.

(2) *Upland game hunting.* We allow hunting of Gambel's quail and cottontail rabbit on designated areas of the refuge subject to the following conditions:

(i) For cottontail rabbit, we allow only shotgun, archery, crossbow, handgun, rifle, muzzleloader, and bow and arrow.

(ii) For quail, we allow only shotgun, archery, crossbow, and handgun shooting shot.

(iii) You may hunt cottontail rabbit from September 1 through the last day of the respective State's quail season.

(3) *Big game hunting.* We allow hunting of mule deer on designated

areas of the refuge subject to the following condition: We allow rifle, shotgun, handgun, muzzleloader, crossbow and archery, except for archery only hunts.

(4) *Sport fishing.* We allow sport fishing and frogging subject to the following condition: Cibola Lake is open to fishing and frogging from March 15 through Labor Day.

(e) *Havasu National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of mourning and white-winged dove, duck, coot, moorhen (gallinule), goose, and common snipe on designated areas of the refuge subject to the following conditions:

(i) We allow shotguns, muzzleloaders, pistols, pneumatic guns, and archery equipment for hunting.

(ii) You must remove all boats, equipment, cameras, temporary blinds, stands, etc., at the end of each day's activities (see § 27.93 of this chapter).

(iii) We allow the use of dogs when hunting.

(iv) The following conditions apply to Pintail Slough (all refuge lands north of North Dike):

(A) We prohibit falconry.

(B) We limit the number of persons at each waterfowl hunt blind or field to four. Observers cannot hold shells or guns for hunting unless in possession of a valid State hunting license and stamps.

(C) Waterfowl hunters must possess at least four decoys per designated blind or field.

(D) You may use dead vegetation or materials for making or fixing hunt blinds.

(E) We allow waterfowl hunting on Wednesdays, Saturdays, and Sundays. Waterfowl hunting ends at 2 p.m. MST (Mountain Standard Time). Hunters must be out of the Pintail Slough area by 3 p.m. MST.

(2) *Upland game hunting.* We allow hunting of Gambel's quail and cottontail rabbit on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (e)(1)(i) through (iii) of this section apply.

(ii) We allow hunting of Gambel's quail and cottontail rabbit in Pintail Slough prior to and following the State waterfowl season.

(iii) We allow the incidental take of quail and cottontail rabbit in Pintail Slough during the State waterfowl season by hunters possessing a valid permit at their designated waterfowl hunt blind or field.

(3) *Big game hunting.* We allow hunting of desert bighorn sheep on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (e)(1)(i) through (iii) of this section apply.

(ii) We allow the possession of rifles for desert bighorn sheep hunting.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (e)(1)(ii) of this section applies.

(ii) We prohibit overnight boat mooring and shore anchoring unless actively fishing as governed by State regulations (see § 27.93 of this chapter).

(f) *Imperial National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of mourning and white-winged dove, duck, coot, moorhen (gallinule), goose, and common snipe on designated areas of the refuge subject to the following conditions:

(i) We allow shotgun, archery, and crossbow.

(ii) You must remove temporary blinds, boats, and decoys from the refuge following each day's hunt (see § 27.93 of this chapter).

(2) *Upland game hunting.* We allow hunting of Gambel's quail, cottontail rabbit, coyote, and gray fox on designated areas of the refuge subject to the following conditions:

(i) For hunting quail, we allow shotgun, handgun shooting shot, archery, and crossbow.

(ii) For hunting cottontail rabbit, coyote, and fox, we allow shotgun, rifle, handgun, muzzleloader, archery, and crossbow.

(iii) We allow cottontail rabbit hunting from September 1 to the close of the State quail season.

(iv) We allow coyote and fox hunting only during the State quail season.

(3) *Big game hunting.* We allow hunting of mule deer and desert bighorn sheep on designated areas of the refuge.

(4) *Sport fishing.* We allow fishing and frogging for bullfrog on designated areas of the refuge subject to the following condition: We close posted portions of Martinez Lake and Ferguson Lake to entry from October 1 through the last day of February.

(g) *Kofa National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of Gambel's quail, cottontail rabbit, coyote, and gray fox on designated areas of the refuge subject to the following conditions:

(i) We allow hunting of coyote, fox, and cottontail rabbit during the State quail season only.

(ii) For hunting quail, we allow shotgun, archery, crossbow, and handgun shooting shot.

(iii) For hunting cottontail rabbit, coyote, and fox, we allow shotgun, rifle, muzzleloader, handgun, archery, and crossbow.

(3) *Big game hunting.* We allow hunting of mule deer and desert bighorn sheep on designated areas of the refuge.

(4) [Reserved]

(h) *San Bernardino National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of mourning and white-winged dove on designated areas of the refuge subject to the following condition: We allow the use of dogs while hunting.

(2) *Upland game hunting.* We allow hunting of Gambel's, scaled, and Mearns' quail and cottontail rabbit on designated areas of the refuge subject to the following conditions:

(i) We allow only shotgun.

(ii) We allow the use of dogs while quail hunting.

(iii) Cottontail rabbit season opens on September 1 and closes on the last day of the State quail season.

(3)–(4) [Reserved]

§ 32.23 Arkansas.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Bald Knob National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, snipe, woodcock, and dove on designated areas of the refuge subject to the following conditions:

(i) We require refuge hunting permits (signed brochure). The permits are nontransferable, and anyone on refuge land in possession of hunting equipment must possess a signed permit at all times.

(ii) We prohibit migratory game bird hunting on the refuge during the quota gun deer hunt.

(iii) With the exception of hunting for woodcock, we prohibit migratory game bird hunting after 12 p.m. (noon) during the regular State waterfowl hunting season.

(iv) You may not possess more than 25 shotgun shells while in the field. The field possession limit for shells does not apply to goose hunting during the State Conservation Order.

(v) We prohibit hunting closer than 100 yards (90 meters) to another hunter or hunting party.

(vi) You must remove decoys, blinds, boats, and all other equipment by 1 p.m. (see § 27.93 of this chapter).

(vii) Hunters may enter the refuge beginning at 4 a.m. and must exit by 1 hour after legal shooting time ends.

(viii) Boats displaying valid registration may be left on the refuge from March 1 through October 31. We prohibit the use of boats from 12 a.m. (midnight) to 4 a.m. during duck season.

(ix) We allow the use of dogs when migratory game bird hunting.

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, quail, raccoon, opossum, beaver, muskrat, nutria, armadillo, and coyote on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(1)(i), (vii), and (viii) of this section apply.

(ii) Hunters may use shotguns and rifles chambered for rimfire cartridges.

(iii) We allow squirrel hunting September 1 through February 28, except for season closure of the refuge during the quota gun deer hunt.

(iv) We allow rabbit and quail hunting as governed by the State season, except for season closure of the refuge during the quota gun deer hunt.

(v) We allow the use of dogs when hunting upland game. We require the use of dogs when hunting raccoon and opossum at night, 30 minutes after legal sunset to 30 minutes before legal sunrise.

(vi) Hunters may take beaver, muskrat, nutria, armadillo, and coyote during any refuge hunt with those weapons legal during those hunts, subject to applicable State seasons and regulations.

(vii) We limit hunting after legal sunset to raccoon/opossum hunting.

(3) *Big game hunting.* We allow hunting of deer, feral hog, and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(1)(i), (vii), and (viii) of this section apply.

(ii) We allow archery/crossbow deer hunting as governed by the State season, except for season closure of the refuge during the quota gun deer hunt.

(iii) Muzzleloader hunting season for deer will begin in October and continue for a period of up to 9 days in all hunting units with annual season dates and bag limits provided on the hunt brochure/permit.

(iv) The modern gun hunting season for deer will begin in November and continue for a period of up to 9 days in all hunting units with annual season dates and bag limits provided in the hunt brochure/permit.

(v) We prohibit spring and fall gun hunting for turkey.

(vi) You may use only shotguns with rifled slugs, muzzleloaders, and legal pistols for modern gun deer hunting on the Farm Unit.

(vii) We allow only portable deer stands. You may erect stands 7 days prior to the refuge deer season and must remove them from the waterfowl sanctuaries prior to November 15, except for stands used by quota gun deer hunt permit holders (fee/signature required), which you must remove by the last day of the quota gun deer hunt. You must remove all stands on the remainder of the refuge within 7 days of the closure of archery season (see § 27.93 of this chapter). We prohibit leaving any tree stand, ground blind, or game camera on the refuge without the owner's Arkansas Game and Fish customer identification number clearly written on it in a conspicuous location.

(viii) We prohibit the possession or use of buckshot for hunting on all refuge lands.

(ix) We prohibit hunting from mowed and/or graveled road rights-of-way.

(x) We allow only quota gun deer hunt permit holders on the refuge during the quota gun deer hunt and only for the purposes of deer hunting. We close the refuge to all other entry and public use during the quota gun deer hunt.

(xi) We close waterfowl sanctuaries to all entry and hunting from November 15 to February 28, except for quota gun deer hunt permit holders who may hunt in the sanctuary when the season overlaps with these dates.

(xii) Hunters may enter the refuge at 4 a.m. and remain until 1 hour after legal shooting time.

(xiii) You may take feral hog only during the refuge quota gun and muzzleloader deer hunts and as governed by State Wildlife Management Area (WMA) regulations.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (a)(1)(viii) of this section applies.

(ii) Anglers may enter the refuge beginning ½ hour before legal sunrise and must exit by 1 hour after legal sunset.

(iii) We prohibit the take or possession of turtles and/or mollusks (see § 27.21 of this chapter).

(b) *Big Lake National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, raccoon, nutria, coyote, beaver, and opossum on designated areas of the refuge subject to the following conditions:

(i) We require refuge hunt permits. The permits (found on the front cover of the annual hunt brochure/permit—signature required) are nontransferable, and anyone on refuge land in possession of hunting equipment must sign and carry the permit at all times.

(ii) Hunters may only hunt during designated days and times.

(iii) We allow take of nutria, beaver, and coyote during any refuge hunt with the device allowed for that hunt subject to applicable State seasons and regulations.

(iv) You may take opossum when hunting raccoon.

(v) We require dogs for hunting of raccoon and opossum after legal sunset.

(vi) When hunting, you may only use shotguns and rifles chambered for rimfire cartridges.

(vii) We prohibit hunting from mowed and/or gravel road rights-of-way.

(viii) We limit nighttime use, 30 minutes after legal sunset to 30 minutes before legal sunrise, to fishing, frogging, and/or raccoon/opossum hunting.

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(2)(i), (iii), and (vii) of this section apply.

(ii) Hunters may only hunt during designated days and times.

(iii) Hunters may use only bows or crossbows.

(iv) Hunters may use only biodegradable materials to mark trails.

(v) We allow only portable deer stands. You may erect stands 7 days prior to the refuge deer season and must remove them 7 days after the closure of archery season (see § 27.93 of this chapter). We prohibit leaving any tree stand, ground blind, or game camera on the refuge without the owner's Arkansas Game and Fish customer identification number clearly written on it in a conspicuous location.

(vi) Hunters may enter the refuge no earlier than 4 a.m. and must leave 1 hour after legal sunset.

(4) *Sport fishing.* We allow fishing and frogging on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (b)(2)(viii) of this section applies.

(ii) Anglers may launch boats only in designated areas.

(iii) We allow frogging from the beginning of the State frogging season through October 31.

(iv) We prohibit the take or possession of turtles and/or mollusks (see § 27.21 of this chapter).

(c) *Cache River National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, snipe, woodcock, and dove on designated areas of the refuge subject to the following conditions:

(i) We require refuge hunting permits. These permits (found on the front cover of the annual hunt brochure/permit—signature required) are nontransferable, and anyone on the refuge in possession of hunting equipment must sign and carry the permit at all times.

(ii) With the exception of hunting for woodcock, we prohibit migratory game bird hunting after 12 p.m. (noon) during the regular State waterfowl hunting season.

(iii) You must remove decoys, blinds, boats, and all other equipment by 1 p.m. each day (see § 27.93 of this chapter).

(iv) Waterfowl hunters may enter the refuge at 4 a.m. and hunt until 12 p.m. (noon).

(v) Boats displaying valid registration may be left on the refuge from March 1 through October 31. We prohibit boats on the refuge from 12 a.m. (midnight) to 4 a.m. during duck season.

(vi) We allow the use of dogs when migratory game bird hunting.

(vii) We allow waterfowl hunting on flooded refuge roads.

(viii) We close all other hunts during the quota gun deer hunt.

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, quail, raccoon, opossum, beaver, muskrat, nutria, armadillo, and coyote on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (c)(1)(i), (v), and (viii) of this section apply.

(ii) We allow squirrel hunting September 1 through February 28, except for refuge-wide season closure during the quota gun deer hunt.

(iii) We allow rabbit and quail hunting as governed by the State season, except for season closure of the refuge during the quota gun deer hunt.

(iv) We allow the use of dogs when hunting upland game. We require the use of dogs when hunting raccoon and opossum at night, 30 minutes after legal sunset to 30 minutes before legal sunrise.

(v) You may take beaver, muskrat, nutria, armadillo, and coyote during any refuge hunt with those weapons legal during those hunts subject to applicable State seasons and regulations.

(vi) We prohibit hunting from mowed and/or graveled refuge roads except by waterfowl hunters during flooded conditions.

(vii) You may use only shotguns and rifles chambered for rimfire cartridges when hunting.

(viii) We limit nighttime use, 30 minutes after legal sunset to 30 minutes before legal sunrise, to fishing, frogging, and/or raccoon/opossum hunting.

(3) *Big game hunting.* We allow hunting of deer, feral hog, and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (c)(1)(i) and (viii) and (c)(2)(v) and (vi) of this section apply.

(ii) We allow archery/crossbow deer hunting as governed by the State season, except for season closure of the refuge during the quota gun deer hunt.

(iii) Muzzleloader hunting season for deer will begin in October and will continue for a period of up to 9 days, with annual season dates and bag limits provided on the hunt brochure/permit.

(iv) Modern gun deer hunting will begin in November and continue for a period of up to 11 days, with annual season dates and bag limits provided in the refuge hunt brochure/permit.

(v) Hunters may take feral hog only during the quota gun and muzzleloader deer hunts and as governed by State Wildlife Management Area (WMA) regulations

(vi) Hunters may only use shotguns with rifled slugs, muzzleloaders, or legal pistols for modern gun deer hunting on the Dixie Farm Unit Waterfowl Sanctuary, adjacent waterfowl hunt area, and Plunkett Farm Unit Waterfowl Sanctuary.

(vii) We allow only portable stands. Hunters may erect stands 7 days prior to the refuge deer season and must remove them from the waterfowl sanctuaries prior to November 15, and from the rest of the refuge within 7 days of the closure of archery season (see § 27.93 of this chapter). We prohibit leaving any tree stand, ground blind, or game camera on the refuge without the owner's Arkansas Game and Fish customer identification number clearly written on it in a conspicuous location.

(viii) We prohibit the possession or use of buckshot for hunting on all refuge lands.

(ix) We prohibit hunting from mowed and/or graveled road rights-of-way.

(4) *Sport fishing.* We allow fishing and frogging on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (c)(1)(v) and (c)(2)(viii) of this section apply.

(ii) We close waterfowl sanctuaries to all entry and fishing/frogging from November 15 to February 28. We prohibit refuge-wide entry and fishing during the quota gun deer hunt.

(iii) We prohibit the take or possession of turtles and/or mollusks (see § 27.21 of this chapter).

(d) *Dale Bumpers White River National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck and coot on designated areas of the refuge subject to the following conditions:

(i) We require an annual public use permit (signed brochure) to hunt and fish.

(ii) We allow duck hunting from legal shooting hours until 12 p.m. (noon).

(iii) We allow the use of dogs when migratory game bird hunting.

(iv) You must remove blinds, blind material, and decoys from the refuge by 1 p.m. each day (see § 27.93 of this chapter).

(v) Waterfowl hunters may enter the North Unit no earlier than 8 p.m. the day prior to the hunt. Waterfowl hunters may enter the Jack's Bay Hunt Area and Levee Hunt Area no earlier than 4 a.m.

(vi) We prohibit boating from November 1 through January 31 in the South Unit Waterfowl Hunt Areas, except from 4 a.m. to 1 p.m. on designated waterfowl hunt days.

(vii) We allow duck hunting on outlying-tracts; paragraph (d)(1)(v) of this section applies.

(viii) We only allow all-terrain vehicles (ATVs) for wildlife-dependent hunting and fishing activities. We prohibit the use of ATVs after December 15 each year in designated South Unit areas as shown in refuge user brochure.

(ix) We prohibit the use of decoys that contain moving parts or electrical components, except that you may use manually operated jerk strings to simulate decoy movement.

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, and all furbearers (as governed by State law) on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (d)(1)(i) of this section applies.

(ii) We allow hunting of rabbit and squirrel on the North Unit from September 1 through January 31.

(iii) We allow the use of dogs when hunting rabbit and squirrel from December 1 through January 31 on the North Unit only.

(iv) We allow rabbit and squirrel hunting on the South Unit from September 1 through November 30.

(v) We allow furbearer (as governed by State law) hunting. The annual public use permit (signed brochure) provides season dates and methods.

(vi) We allow the use of dogs for hunting furbearers from legal sunset to legal sunrise. Hunters must tether or pen all dogs used for furbearer hunting from legal sunrise to legal sunset and any time they are not involved in actual hunting.

(3) *Big game hunting.* We allow the hunting of white-tailed deer, feral hog, and turkey on designated areas of the

refuge subject to the following conditions:

(i) The condition set forth at paragraph (d)(1)(i) of this section applies.

(ii) Archery deer seasons on the North Unit are from October 1 through January 31 except during quota muzzleloader and quota gun deer hunts, when the archery season is closed.

(iii) Archery deer seasons on the South Unit are from October 1 through December 31 except during quota muzzleloader and quota gun deer hunts, when the archery season is closed.

(iv) Muzzleloader season for deer will begin in October and will continue for a period of up to 3 days of quota hunting in the North and South Units, and no more than 4 days of non-quota hunting in the North Unit.

(v) The gun deer hunt will begin in November and will continue for a period of no more than 3 days of quota hunting in the North and South Units, and no more than 2 days of non-quota hunting in the North Unit.

(vi) We restrict hunt participants for quota hunts to those drawn for a quota permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System). The permits are nontransferable and nonrefundable.

(vii) We close the refuge to all non-quota hunting during refuge-wide quota muzzleloader and quota gun deer hunts.

(viii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(ix) We prohibit firearm deer hunting from or across roads, ATV trails, levees, and maintained utility rights-of-way.

(x) You may only use portable deer stands. You may erect stands up to 7 days before each hunt, but you must remove them within 7 days after each hunt (see § 27.93 of this chapter). All unattended deer stands on the refuge must have the owner's hunting license number clearly displayed.

(xi) We close the Kansas Lake Area to all entry on December 1 and reopen it on March 1.

(xii) We prohibit the possession of buckshot on the refuge.

(xiii) We prohibit the possession and/or use of toxic shot by hunters using shotguns (see § 32.2(k)) when hunting deer or turkey.

(xiv) Hunters who are hunting deer during a firearm season may kill feral hogs with weapons legal for those seasons. Feral hogs may be taken incidentally with archery equipment from November 1 through December 31.

(4) *Sport fishing.* We allow sport fishing, frogging, and crawfishing on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (d)(1)(i) of this section applies.

(ii) We allow fishing year-round in LaGrue, Essex, Prairie, Scrubgrass and Brooks Bayous, Big Island Chute, Moon, and Belknap Lakes next to Arkansas Highway 1, Indian Bay, the Arkansas Post Canal and adjacent drainage ditches; borrow ditches located adjacent to the west bank of that portion of the White River Levee north of the Graham Burke pumping station; and all waters in the refuge-owned North Unit and scattered tracts. We open all other South Unit refuge waters to sport fishing from March 1 through November 30 unless posted otherwise.

(iii) We allow frogging on all refuge-owned waters open for sport fishing as follows: We allow frogging on the South Unit from the beginning of the State season through November 30; we allow frogging on the North Unit for the entire State season.

(iv) We prohibit all commercial and recreational harvest of turtle on all property administered by Dale Bumpers White River National Wildlife Refuge.

(v) We prohibit take or possession of any freshwater mussel, and we do not open to mussel shelling.

(e) *Felsenthal National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, and coot on designated areas of the refuge subject to the following conditions:

(i) We allow hunting of duck, goose, and coot during the State waterfowl season except during scheduled refuge quota gun deer hunts.

(ii) Hunting of duck, goose, and coot ends at 12 p.m. (noon) each day.

(iii) We allow only portable blinds. You must remove all duck hunting equipment (portable blinds, boats, guns, and decoys) from the hunt area by 1:30 p.m. each day (see § 27.93 of this chapter).

(iv) We close areas of the refuge posted with ''Area Closed'' signs and identify them on the refuge hunt brochure map as a waterfowl sanctuary. We close waterfowl sanctuaries to all public entry and public use during the waterfowl hunting season.

(v) Hunters must possess and carry a signed refuge public use regulations brochure/access permit (signed brochure) while hunting.

(vi) All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, who possesses a valid state hunting license. One adult may supervise no more than two youth hunters.

(vii) We allow only all-terrain vehicles/utility-type vehicles (ATVs/UTVs) for hunting and fishing activities.

(viii) You may use horses and mules on roads and ATV/UTV trails (when open to motor vehicle and ATV/UTV traffic, respectively) as a mode of transportation for hunting and fishing activities on the refuge except during the quota deer hunts.

(ix) We prohibit hunting within 150 feet (45 meters) of roads and trails open to motor vehicle use (including ATV/UTV trails).

(x) You may take beaver, nutria, and coyote during any daytime refuge hunt with weapons and ammunition allowed for that hunt. There is no bag limit.

(xi) We allow the use of dogs when hunting.

(xii) We prohibit leaving any boat on the refuge. You must remove boat(s) at the end of each day's hunt.

(2) *Upland game hunting.* We allow hunting of quail, squirrel, rabbit, and furbearers (as governed by State law) on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (e)(1)(iv) through (ix) and (xi) of this section apply.

(ii) We allow hunting for quail, squirrel, rabbit, and furbearers (as governed by State law) on the refuge during State seasons through January 31. We close upland game hunting during refuge quota gun deer hunts.

(iii) We do not open for spring squirrel hunting season, or summer/early fall raccoon hunting season.

(iv) We allow the use of dogs for squirrel and rabbit hunting from December 1 through January 31 and for quail and raccoon/opossum hunting during the open season on the refuge for these species.

(3) *Big game hunting.* We allow hunting of white-tailed deer, feral hog, and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (e)(1)(v) through (ix) of this section apply.

(ii) We allow archery deer hunting on the refuge from the opening of the State season through January 31.

(iii) We close archery deer hunting during the quota gun deer hunts.

(iv) We allow muzzleloader deer hunting during the October State muzzleloader season for this deer management zone. The refuge will conduct one 4-day quota modern gun

hunt for deer, typically in November. The refuge also may conduct one mobility-impaired hunt for deer typically in early November.

(v) Total deer harvested refuge-wide is two deer (two does, or one buck and one doe, as governed by State law) regardless of method.

(vi) During the deer and turkey hunts, hunters may possess lead ammunition legal for taking deer and turkey. We prohibit buckshot for gun deer hunting.

(vii) You may only use portable deer stands erected no earlier than the opening day of archery season, and you must remove them no later than January 31 each year (see § 27.93 of this chapter).

(viii) We prohibit the use of deer decoy(s).

(ix) We open spring archery turkey hunting during the State spring turkey season. We do not open for fall archery turkey season.

(x) We close spring archery turkey hunting during scheduled turkey quota gun hunts.

(xi) We restrict quota hunt participants to those selected for a quota permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System), except that one nonhunting adult age 21 or older possessing a valid hunting license must accompany the youth hunter age 15 and younger.

(xii) An adult age 21 or older possessing a valid hunting license must accompany and be within sight and normal voice contact of hunters age 15 and younger. One adult may supervise no more than one youth hunter.

(xiii) We authorize the use of tree stands, ground blinds, and game cameras on the refuge if the owner's State hunting license number is clearly written on them in a conspicuous location. You must remove game cameras from the refuge at the end of each day's hunt.

(xiv) We restrict hunt participants for quota hunts to those drawn for a quota permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System). These permits are nontransferable, and the permit fees are nonrefundable.

(xv) The incidental taking of feral hogs will be governed by Arkansas Game and Fish Commission regulations concerning the taking of feral hogs on State Wildlife Management Areas (WMAs). Subject to State regulations, we allow incidental take of feral hogs on State WMAs during daytime refuge hunts (without the use of dogs) with legal hunting equipment and ammunition allowed for that hunt. There is no bag limit. We prohibit transport or possession of live hogs.

(4) *Sport fishing.* We allow sport fishing, frogging, and crawfishing on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (e)(1)(v), (vi), and (xii) of this section apply.

(ii) We prohibit fishing in the waterfowl sanctuary area when the sanctuary is closed, with the exception of the main channel of the Ouachita and Saline Rivers and the borrow pits along Highway 82. We post the waterfowl sanctuary area with ''Area Closed'' signs and identify those areas in refuge hunt brochures.

(iii) We allow fishing only in areas accessible from the Ouachita and Saline Rivers and from Eagle, Jones, and Pereogeethe Lakes during the refuge quota gun deer hunts.

(iv) You must reset trotlines when receding water levels expose them.

(f) *Holla Bend National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, raccoon, opossum, beaver, armadillo, coyote, and bobcat on designated areas of the refuge subject to the following conditions:

(i) We require refuge hunting permits (found on the front cover of the annual hunt brochure/permit—signature required). The permits are nontransferable, and anyone on refuge land in possession of hunting equipment must sign and carry a permit at all times. Your hunt permit will also act as your entrance pass to the refuge.

(ii) During the refuge archery season, you may take only squirrel, rabbit, raccoon, opossum, beaver, armadillo, coyote, or bobcat.

(iii) We allow the use of dogs when gun hunting raccoon and opossum every Friday, Saturday, and Sunday until legal sunrise during the month of February.

(iv) We only allow all-terrain vehicles (ATVs) for hunters and anglers with disabilities. We require a refuge ATV permit (Special Use Permit; FWS Form 3–1383–G) issued by the refuge manager.

(v) We allow the use of nonmotorized boats during the refuge fishing/boating season (March 1 through October 31), but hunters must remove boats at the end of each day's hunt (see § 27.93 of this chapter).

(3) *Big game hunting.* We allow hunting of deer and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (f)(2)(i), (iv), and (v) of this section apply.

(ii) We allow archery/crossbow hunting for white-tailed deer and turkey.

(iii) The refuge will conduct one youth-only (between ages 6 and 15 at the beginning of the gun deer season in Zone 7) quota gun deer hunt. We restrict hunt participants to those selected for a quota permit (electronic form), except that one nonhunting adult must accompany the youth hunter during the youth hunt.

(iv) We open spring archery turkey hunting during the State turkey season.

(v) We close the refuge to all entry and public use during scheduled youth quota gun hunts, except for those allowed to participate in the youth quota gun hunt.

(vi) The refuge will conduct two youth-only (age 6 to 15 at the beginning of the spring turkey season) quota spring gun turkey hunts, each 2 days in length. We restrict hunt participants to those selected for a quota permit, except that one nonhunting adult age 21 or older must accompany the youth hunter during the youth hunt.

(vii) We allow only portable deer stands. You may erect stands 7 days before the start of the season and must remove the stands from the refuge within 7 days after the season ends (see §§ 27.93 and 27.94 of this chapter).

(viii) You must permanently affix the owner's Arkansas Game and Fish customer identification number to all tree stands, ground blinds, and game cameras on the refuge.

(ix) We prohibit organized drives. We define a ''drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause game to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the game.

(x) You must check all game at the refuge check station.

(4) *Sport fishing.* We allow sport fishing and frogging on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (f)(2)(iv) and (f)(3)(v) of this section apply.

(ii) We open the waters of the refuge to fishing only from March 1 through October 31 from legal sunrise to legal sunset.

(iii) Anglers must remove boats from the refuge at the end of each day's fishing activity (see § 27.93 of this chapter).

(iv) We prohibit the take and possession of turtles and/or mollusks (see § 27.21 of this chapter).

(g) *Overflow National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, and coot on designated areas of

the refuge subject to the following conditions:

(i) You must possess and carry a refuge public use regulations brochure/access permit (signed brochure) while hunting.

(ii) Hunting of duck, goose, and coot ends at 12 p.m. (noon) each day.

(iii) We allow only portable blinds. Hunters must remove portable blinds, boats, and decoys from the hunt area by 1:30 p.m. each day (see § 27.93 of this chapter).

(iv) We allow only all-terrain vehicles (ATVs)/utility-type vehicles (UTVs) for hunting activities.

(v) You may use horses on roads and ATV/UTV trails (when open to motor vehicle and ATV/UTV traffic, respectively) as a mode of transportation for hunting activities on the refuge.

(vi) We prohibit hunting within 150 feet (45 meters) of roads and trails open to motor vehicle use (including ATV/UTV trails).

(vii) You may take beaver, nutria, and coyote during any daytime refuge hunt with weapons and ammunition legal for that hunt. There is no bag limit. We prohibit transportation or possession of live hog.

(viii) We allow boats on the refuge between the hours of 4 a.m. and 1:30 p.m. during waterfowl season.

(ix) Hunters may not enter the refuge until 4 a.m., with the exception of designated parking areas.

(2) *Upland game hunting.* We allow hunting of quail, squirrel, rabbit, and furbearers (as governed by State law) on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (g)(1)(iv) through (vii) of this section apply.

(ii) We allow hunting during State seasons for quail, squirrel, rabbit, and furbearers (as governed by State law) through January 31. State regulations governing appropriate zones apply.

(iii) We do not open for the spring squirrel hunting season or the summer/fall raccoon hunting season.

(iv) When upland game hunting, we prohibit possession of lead ammunition except that you may possess rimfire rifle lead ammunition no larger than .22 caliber.

(v) We allow the use of dogs for squirrel and rabbit hunting from December 1 through January 31, and for quail and raccoon/opossum hunting during the open season on the refuge for these species.

(vi) We allow nighttime raccoon and opossum hunting.

(3) *Big game hunting.* We allow hunting of white-tailed deer, feral hog, and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (g)(1)(iv) through (vii) of this section apply.

(ii) We allow muzzleloader deer hunting during the first State muzzleloader season for this zone. State regulations governing appropriate zones apply.

(iii) We prohibit buckshot for gun deer hunting.

(iv) The bag limit for the muzzleloader deer hunt is two deer, with no more than one buck.

(v) You may only use portable deer stands erected no earlier than the opening day of archery season, and you must remove them no later than January 31 each year (see § 27.93 of this chapter). The limit is one deer stand, blind, etc., per person.

(vi) We prohibit the use of deer decoy(s).

(vii) We restrict quota hunt participants on these hunts to those selected for a quota permit (electronic form), except that one nonhunting adult age 21 or older and possessing a valid hunting license must accompany a youth hunter age 15 or younger.

(viii) The incidental taking of feral hogs will be governed by Arkansas Game and Fish Commission regulations concerning the taking of feral hogs on State Wildlife Management Areas (WMAs). Subject to State regulations, we allow incidental take of feral hogs on State WMAs during daytime refuge hunts (without the use of dogs) with legal hunting equipment and ammunition allowed for that hunt. There is no bag limit. We prohibit transport or possession of live hogs.

(4) [Reserved]

(h) *Pond Creek National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, coot, and goose on designated areas of the refuge subject to the following conditions:

(i) We close migratory game bird hunting during scheduled quota refuge gun deer hunts.

(ii) Hunting ends at 12 p.m. (noon) each day.

(iii) We allow only portable blinds. You must remove portable blinds, boats, and decoys from the hunt area by 1:30 p.m. each day (see § 27.93 of this chapter).

(iv) You must possess and carry a refuge public use regulations brochure/access permit (signed brochure) while hunting.

(v) We allow only all-terrain vehicles (ATVs)/utility-type vehicles (UTVs) for hunting and fishing activities.

(vi) You may use horses and mules only on roads and ATV/UTV trails (when open to motor vehicle and ATV/UTV traffic, respectively) as a mode of transportation for on-refuge hunting and fishing activities, except during refuge muzzleloader and quota deer hunts.

(vii) We prohibit hunting within 150 feet (45 meters) of roads and trails open to motor vehicle use (including ATV/UTV trails).

(viii) You may take beaver, nutria, and coyote during any daytime refuge hunt with weapons and ammunition allowed for that hunt. We prohibit the use of dogs to take these species. There is no bag limit.

(ix) We allow the use of dogs when waterfowl hunting.

(x) We authorize the use of tree stands, game cameras, and boats while hunting and fishing on the refuge. The owner's Arkansas Game and Fish customer identification number must be affixed to, or clearly written on, them in a conspicuous manner.

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, and furbearers (as governed by State law) on designated areas of the refuge subject to the following conditions:

(i) We allow hunting on the refuge during State seasons for this zone for squirrel, rabbit, and furbearers through January 31. We list specific hunting season dates annually in the refuge hunt brochure. We close upland game hunting during refuge quota deer hunts.

(ii) We do not open to spring squirrel hunting season, or summer/early fall raccoon hunting season.

(iii) The conditions set forth at paragraphs (h)(1)(iv) through (viii) of this section apply.

(iv) We allow the use of dogs when squirrel, rabbit, raccoon, and opossum hunting from the opening of hunting season through January 31.

(3) *Big game hunting.* We allow hunting of white-tailed deer, feral hog, and turkey on designated areas of the refuge subject to the following conditions:

(i) We allow archery deer hunting on the refuge from the opening of the State season through January 31. State regulations governing appropriate zones apply.

(ii) The conditions set forth at paragraphs (h)(1)(iv) through (viii) of this section apply.

(iii) We close archery deer hunting during the quota gun deer hunts.

(iv) We allow muzzleloader deer hunting for the first 5 days of the early State muzzleloader season for this deer management zone. The bag limit for the refuge muzzleloader hunt is two deer, with no more than one buck.

(v) We prohibit buckshot for gun deer hunting.

(vi) We restrict hunt participants for quota hunts to those drawn for a quota permit. These permits are nontransferable, and permit fees are nonrefundable.

(vii) The quota gun deer hunt bag limit is two deer, with no more than one buck (one buck and one doe). Exception: Youth hunters participating in the refuge youth deer hunt and hunters participating in the refuge mobility-impaired hunt may harvest the legal State bag limit without antler restrictions.

(viii) We do not open for fall archery turkey season.

(ix) We close spring archery turkey hunting during scheduled turkey quota permit gun hunts.

(x) You may use only portable deer stands erected no sooner than 2 days before the opening of the State deer season, and you must remove them no later than January 31 each year (see § 27.93 of this chapter).

(xi) We prohibit the use of deer decoy(s).

(xii) We restrict hunt participants during quota hunts to those selected for a quota permit, except that one nonhunting adult age 21 or older and possessing a valid hunting license must accompany a youth hunter.

(xiii) We allow tree stands, ground blinds, boats, or game cameras on the refuge only if the owner's Arkansas Game and Fish customer identification number is affixed to, or clearly written on, them in a conspicuous location.

(xiv) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(xv) We prohibit all public use, except fishing and access for fishing, during quota hunts.

(xvi) We allow the taking of feral hogs on the refuge only during the muzzleloader and modern gun quota permit deer hunts and with weapons and ammunition allowed for that hunt. There is no bag limit. You may not transport or possess live hogs.

(4) *Sport fishing.* We allow fishing, frogging, and the taking of crawfish on designated areas of the refuge subject to the following conditions:

(i) You must reset trotlines when exposed by receding water levels.

(ii) The conditions set forth at paragraphs (h)(1)(iv) through (viii) and (x) of this section apply.

(iii) We prohibit taking or possessing turtles or mollusks (see § 27.21 of this chapter).

(i) *Wapanocca National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of snow goose on designated areas of the refuge subject to the following conditions:

(i) We require refuge hunting permits. The permits (found on the front cover of the annual hunt brochure/permit—signature required) are nontransferable, and anyone on refuge land in possession of hunting equipment must sign and carry them at all times.

(ii) Hunters may only hunt during designated days and times.

(iii) Hunters may enter the refuge at 4 a.m. and must leave the refuge by 1 hour after legal sunset.

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, raccoon, nutria, beaver, coyote, feral hog, and opossum on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (i)(1)(i) through (iii) of this section apply.

(ii) You may use only shotguns and rifles chambered for rimfire cartridges when hunting.

(iii) We allow the use of dogs when hunting.

(iv) You may take nutria, beaver, and coyote during any refuge hunt with those weapons legal during those hunts, subject to applicable State seasons and regulations.

(v) You may take feral hog only during the refuge quota gun deer hunt and as governed by State Wildlife Management Area (WMA) regulations.

(vi) We limit nighttime hunting to raccoon/opossum hunting.

(vii) We close all other hunts during the quota gun deer hunt. We allow only quota gun deer hunt permit (fee/signature required) holders to enter the refuge during this hunt and only for deer hunting.

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (i)(1)(i) through (iii) and (i)(2)(iv) through (vii) of this section apply.

(ii) We prohibit hunting from mowed and/or graveled road rights-of-way.

(iii) We allow only portable deer stands. You may erect stands 7 days prior to the refuge deer season and must remove them from the waterfowl sanctuaries by December 1. You must remove all stands on the remainder of the refuge within 7 days of the closure of archery season (see § 27.93 of this chapter).

(iv) We prohibit the possession or use of buckshot for hunting on all refuge lands.

(v) We allow tree stands, ground blinds, and game cameras on the refuge only if the owner's Arkansas Game and Fish customer identification number is clearly written on them in a conspicuous location.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing from March 1 through October 31 from ½ hour before legal sunrise to ½ hour after legal sunset.

(ii) We prohibit the possession or use of yo-yos, jugs, or other floating containers; drops or limb lines; trotlines; and commercial fishing tackle.

(iii) We allow bank fishing.

(iv) We prohibit the take or possession of frogs, mollusks, and/or turtles (see § 27.21 of this chapter).

(v) Anglers may launch boats only in designated areas.

(vi) Anglers must remove all boats from the refuge at the end of each day's fishing activity (see § 27.93 of this chapter). We prohibit airboats, personal watercraft, and hovercraft.

§ 32.24 California.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Cibola National Wildlife Refuge.* Refer to § 32.22(d) for regulations.

(b) *Clear Lake National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, moorhen, and snipe on designated areas of the refuge.

(2) [Reserved]

(3) *Big game hunting.* We allow hunting of pronghorn antelope only on the controlled ''U'' Unit of the refuge subject to the following condition: You may hunt only in the unit for 9 consecutive days beginning on the first Saturday following the third Wednesday in August.

(4) [Reserved]

(c) *Colusa National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, moorhen, and snipe on designated areas of the refuge subject to the following conditions:

(i) You must return the State-issued entry permit and vacate the refuge no later than 1½ hours after legal sunset unless participating in an authorized overnight stay.

(ii) All hunters age 15 and younger must remain in the immediate presence of an adult (age 18 or older) at all times while in the field.

(iii) Access to the hunt area is by foot traffic only. We prohibit bicycles and

other conveyances. Mobility-impaired hunters should consult with the refuge manager for allowed conveyances.

(iv) You may enter or exit only at designated locations.

(v) The firearms used for hunting must remain unloaded until you are in designated free-roam areas or assigned pond/blind areas.

(vi) Hunters may use shotguns only. We prohibit shotguns larger than 12 gauge.

(vii) You may not possess more than 25 shot shells while in the field once you have left your assigned parking lot or boat launch.

(viii) You may not possess shot size larger than BB, except steel ''T'' (0.20-inch (0.5-centimeter) diameter).

(2) *Upland game hunting.* We allow hunting of pheasant and wild turkey only in the free-roam areas of the refuge subject to the following conditions:

(i) We allow pheasant hunting in the assigned pond area during a special 1-day-only pheasant hunt on the first Monday after the opening of the State pheasant hunting season.

(ii) We allow turkey hunting during the fall season only.

(iii) The conditions set forth at paragraphs (c)(1)(i) through (viii) of this section apply.

(3)–(4) [Reserved]

(d) *Delevan National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, moorhen, and snipe on designated areas of the refuge subject to the following conditions:

(i) You must return the State-issued entry permit and vacate the refuge no later than 1½ hours after legal sunset unless participating in an authorized overnight stay.

(ii) All hunters age 15 and younger must remain in the immediate presence of an adult (age 18 or older) at all times while in the field.

(iii) Access to the hunt area is by foot traffic only. We prohibit bicycles and other conveyances. Mobility-impaired hunters should consult with the refuge manager for allowed conveyances.

(iv) You may enter or exit only at designated locations.

(v) The firearms used for hunting must remain unloaded until you are in designated free-roam areas or assigned pond/blind areas.

(vi) Hunters may use shotguns only. We prohibit shotguns larger than 12 gauge.

(vii) You may not possess more than 25 shot shells while in the field once you have left your assigned parking lot or boat launch.

(viii) You may not possess shot size larger than BB, except steel ''T'' (0.20-inch (0.5-centimeter) diameter).

(ix) We restrict hunters assigned to the spaced blind area to within 100 feet (30.5 meters) of their assigned hunt site except for when retrieving downed birds, placing decoys, or traveling to and from the area.

(2) *Upland game hunting.* We allow hunting of pheasant and wild turkey on designated areas on the refuge subject to the following conditions:

(i) We allow pheasant hunting in the assigned pond/spaced blind area during a special 1-day-only pheasant hunt on the first Monday after the opening of the State pheasant hunting season.

(ii) The conditions set forth at paragraphs (d)(1)(iii) through (viii) of this section apply.

(3)–(4) [Reserved]

(e) *Don Edwards San Francisco Bay National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge subject to the following conditions:

(i) Hunters may only hunt during designated days and times.

(ii) During the 2 weeks before the opening of the hunt season, you may bring a boat into Ponds AB1, A2E, AB2, A3N, A3W, A5, A7, and A8N, and moor it at a designated site. You may use your boat to access the hunting ponds, and you may leave your boat on the refuge during the hunt season. You must remove your boat within 2 weeks following the close of the hunt season. We allow nonmotorized boats and motorized boats powered by electric, gasoline direct fuel injection 2-stroke, or 4-stroke gasoline motors only.

(iii) You may maintain an existing blind in the ponds open to hunting if you have a refuge permit (name and signature required), but the blind will be open for general use on a first-come, first-served basis.

(iv) You must remove all decoys and other personal property, except personal boats, from the refuge by legal sunset (see § 27.93 of this chapter).

(v) You may enter closed areas of the refuge to retrieve downed birds, provided you leave all weapons in a legal hunting area.

(vi) We allow the use of dogs when hunting.

(vii) You may not possess more than 25 shot shells while in the field once you have left your assigned parking lot or boat launch.

(viii) At the Ravenswood Unit only, we only allow portable blinds or construction of temporary blinds made from natural materials.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We close Mallard Slough to boats from March 1 through August 31, and we close Mowry Slough from March 15 to June 15.

(ii) We open designated fishing areas from legal sunrise to legal sunset each day.

(iii) We prohibit the collection of bait of any type from the refuge except from the Dumbarton Fishing Pier, where it is legal to collect bait for noncommercial purposes.

(iv) We prohibit the use of balloons to float hooks and bait farther than hand casting.

(f) *Havasu National Wildlife Refuge.* Refer to § 32.22(e) for regulations.

(g) *Humboldt Bay National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, common moorhen, and snipe on designated areas of the refuge subject to the following conditions:

(i) All hunters age 15 and younger must remain in the immediate presence of an adult (age 18 or older) at all times while in the field.

(ii) You may only use portable blinds in the free-roam hunting areas (*i.e.,* all hunt areas except Salmon Creek Unit).

(iii) You must remove all blinds, decoys, shell casings, and other personal equipment and refuse from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(iv) We allow the use of dogs when hunting.

(v) On the Salmon Creek Unit, we allow hunting on Tuesdays and Saturdays (except Federal holidays), and hunters must possess and carry a valid daily refuge permit. We issue refuge permits prior to each hunt by random drawing of names conducted at the check station 1½ hours before legal shooting time. Shooting time ends at 3 p.m. Hunters drawn for a blind must completely fill out a Refuge Hunt Permit, which includes a ''Record of Harvest'' section. Each hunter must possess and carry the Refuge Hunt Permit/Record of Harvest (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) document while on the refuge and turn in a complete Record of Harvest at the check station before leaving the hunt area.

(vi) On the Salmon Creek Unit, you may possess shot shells in quantities of 25 or fewer per hunter, per day.

(vii) On the Salmon Creek Unit, we restrict hunters to within 100 feet (30 meters) of the assigned hunt site except for when placing and retrieving decoys, retrieving downed birds, or traveling to and from the parking area.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge

subject to the following condition: We allow fishing from the designated shoreline trail and dock (for nonmotorized boats only) at the Hookton Slough Unit from legal sunrise to legal sunset, only using pole and line or rod and reel.

(h) *Imperial National Wildlife Refuge.* Refer to § 32.22(f) for regulations.

(i) *Kern National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, and moorhen on designated areas of the refuge subject to the following conditions:

(i) Hunters assigned to the spaced blind unit must remain within 100 feet (30.5 meters) of the numbered steel post (blind site) except when pursuing crippled birds, placing decoys, or traveling to and from the parking area.

(ii) You may not possess more than 25 shot shells while in the field once you have left your assigned parking lot or boat launch.

(iii) We allow only nonmotorized boats.

(2) *Upland game hunting.* We allow hunting of pheasant on designated areas of the refuge.

(3)–(4) [Reserved]

(j) *Lower Klamath National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, moorhen, and snipe on designated areas of the refuge subject to the following conditions:

(i) In the controlled waterfowl hunting area, we require a valid Refuge Recreation Pass (available electronically or in person at the refuge office) for all hunters age 16 or older. All hunters age 15 and younger must remain in the immediate presence of an adult (age 18 or older) at all times while in the field.

(ii) We require advance reservations for the first 2 days of the hunting season. Reservations are obtained through the waterfowl lottery each year.

(iii) Hunters may enter the refuge at 4:30 a.m. unless otherwise posted.

(iv) Shooting hours end at 1 p.m. on all California portions of the refuge with the following exceptions:

(A) The refuge manager may designate up to 6 afternoon special youth, ladies, veteran, or disabled hunter waterfowl hunts per season.

(B) The refuge manager may designate up to 3 days per week of afternoon waterfowl hunting for the general public after December 1.

(v) We prohibit the setting of decoys in retrieving zones.

(vi) Pit-style hunting blinds located in the Stearns units and unit 9D are first-come, first-served. We require you to hunt within a 200-foot (61-meter) radius of the blind.

(2) *Upland game hunting.* We allow hunting of pheasant on designated areas of the refuge subject to the following condition: In the controlled pheasant hunting area, we require a valid permit (available electronically or in person at the refuge office) for all hunters age 16 or older. All hunters age 15 and younger must remain in the immediate presence of an adult (age 18 or older) at all times while in the field.

(3)–(4) [Reserved]

(k) *Marin Islands National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing from boats on designated areas of the refuge.

(l) *Merced National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, and moorhen on designated areas of the refuge subject to the following conditions:

(i) You may not possess more than 25 shot shells while in the field once you have left your assigned parking lot or boat launch.

(ii) Each hunter must remain inside his or her assigned blind, except for when placing decoys, retrieving downed birds, and traveling to and from the parking area. We prohibit shooting from outside the blind.

(iii) We restrict hunters in the spaced zone area of the Lonetree Unit to their assigned zone except when they are traveling to and from the parking area, retrieving downed birds, or shooting to retrieve crippled birds.

(iv) We allow the use of dogs when hunting.

(2)–(4) [Reserved]

(m) *Modoc National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, moorhen, and snipe on designated areas of the refuge subject to the following conditions:

(i) On the opening weekend of the hunting season, hunters must possess and carry a refuge permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) issued through random drawing to hunters with advance reservations only.

(ii) After the opening weekend of the hunting season, we only allow hunting on Tuesdays, Thursdays, and Saturdays. Hunters must check-in and out of the refuge by using self-service permits (FWS Form 3–2405, Self-Clearing Check-in/out Permit). Hunters must completely fill out the ''Refuge Hunt Permit'' portion of the permit and deposit it in the drop box prior to hunting. The hunter must possess and carry the ''Record of Kill'' portion of the permit while on the refuge and turn it in prior to exiting the hunting area.

(iii) In the designated spaced blind area, you must remain within the blind assigned to you.

(iv) All hunters age 15 and younger must remain in the immediate presence of an adult (age 18 or older) at all times while in the field.

(v) You may not possess more than 25 shot shells while in the field once you have left your assigned parking lot or boat launch.

(vi) You may only use portable blinds in the free-roam hunting areas.

(vii) You must remove all blinds, decoys, shell casings, other personal equipment, and refuse from the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(viii) Hunters must enter and exit the hunting area from the two designated hunt parking lots, which we open 1½ hours before legal sunrise and close 1 hour after legal sunset each hunt day.

(ix) We only allow access to the hunt area by foot, bicycle, and nonmotorized cart. We prohibit bicycles in the hunt area during the opening weekend of the hunting season.

(2) *Upland game hunting.* We allow hunting of pheasant on designated areas of the refuge subject to the following conditions:

(i) We limit hunting to junior hunters, age 15 or younger, possessing a valid State Junior Hunting License and refuge Junior Pheasant Hunt Permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System).

(ii) All hunters age 15 and younger must remain in the immediate presence of an adult (age 18 or older) at all times while in the field.

(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing only on Dorris Reservoir subject to the following conditions:

(i) We prohibit fishing from February 1 through September 30.

(ii) We allow fishing only from legal sunrise to legal sunset.

(iii) We allow only walk-in access to Dorris Reservoir from February 1 through March 31.

(iv) We allow use of boats for fishing on Dorris Reservoir only from April 1 through September 30.

(n) *Sacramento National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, moorhen, and snipe on designated areas of the refuge subject to the following conditions:

(i) You must return the State-issued entry permit and vacate the refuge no later than 1½ hours after legal sunset unless participating in an authorized overnight stay.

(ii) All hunters age 15 and younger must remain in the immediate presence

of an adult (age 18 or older) at all times while in the field.

(iii) Access to the hunt area is by foot traffic only. We prohibit bicycles and other conveyances. Mobility-impaired hunters should consult with the refuge manager for allowed conveyances.

(iv) You may enter or exit only at designated locations.

(v) The firearms used for hunting must remain unloaded until you are in designated free-roam areas or assigned pond/blind areas.

(vi) Hunters may use shotguns only. We prohibit shotguns larger than 12 gauge.

(vii) You may not possess more than 25 shot shells while in the field once you have left your assigned parking lot or boat launch.

(viii) You may not possess shot size larger than BB, except steel ''T'' (0.20-inch (0.5-centimeter) diameter).

(ix) We restrict hunters assigned to the spaced blind area to within 100 feet (30.5 meters) of their assigned hunt site except for when retrieving downed birds, placing decoys, or traveling to and from the area.

(2) *Upland game hunting.* We allow hunting of pheasant and wild turkey in designated areas on the refuge subject to the following conditions:

(i) We allow pheasant hunting in the assigned pond/spaced blind area during a special 1-day-only pheasant hunt on the first Monday after the opening of the State pheasant hunting season.

(ii) The conditions set forth at paragraphs (n)(1)(iii) through (ix) of this section apply.

(3)–(4) [Reserved]

(o) *Sacramento River National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, moorhen, dove, and snipe on designated areas of the refuge subject to the following conditions:

(i) Access to the hunt area on all units open to public hunting is by boat only, except on designated units, which are accessible by foot traffic or boat. We prohibit bicycles or other conveyances. Mobility-impaired hunters should consult with the refuge manager for allowed conveyances.

(ii) On the Codora Unit, we prohibit hunting except for junior hunters on weekends only. Junior hunters must possess a valid junior hunting license and be accompanied by a nonhunting adult.

(iii) We allow only shotgun hunting.

(iv) We prohibit hunting within 50 feet (15 meters) of any landward boundary adjacent to private property.

(v) We allow the use of dogs only when hunting migratory birds and upland game birds.

(2) *Upland game hunting.* We allow hunting of pheasant, turkey, and quail on designated areas of the refuge subject to the following conditions:

(i) We allow only shotgun and archery hunting.

(ii) The conditions set forth at paragraphs (o)(1)(i), (ii), (iv), and (v) of this section apply.

(3) *Big game hunting.* We allow hunting of black-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (o)(1)(i), (ii), and (iv) and (o)(2)(i) of this section apply.

(ii) You may hunt feral hogs from September 1 through March 15.

(iii) We prohibit the use of dogs while hunting black-tailed deer and feral hogs.

(iv) We allow the use of only shotguns firing single non-lead shotgun slugs, and archery equipment. We prohibit the use or possession of rifles and pistols on the refuge for hunting.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(p) *Salinas River National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, and moorhen on designated areas of the refuge subject to the following conditions:

(i) You may not possess more than 25 shot shells while in the field once you have left your assigned parking lot or boat launch.

(ii) Access to the hunt area is by foot traffic only. We prohibit bicycles and other conveyances. Mobility-impaired hunters should consult with the refuge manager for allowed conveyances.

(iii) We allow the use of dogs when hunting waterfowl.

(iv) You must remove all decoys and other personal property from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(2)–(4) [Reserved]

(q) *San Luis National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, moorhen, and snipe on designated areas of the refuge subject to the following conditions:

(i) You may not possess more than 25 shot shells while in the field once you have left your assigned parking lot or boat launch.

(ii) You must return your permits (state-issued) to the check stations immediately upon completion of your hunt and prior to using any tour routes or leaving the refuge vicinity.

(iii) We restrict hunters in the spaced blind area to their assigned blind except when they are placing decoys, traveling to and from the parking area, retrieving downed birds, or pursuing crippled birds.

(iv) We restrict hunters in the spaced zone area of the East Bear Creek Unit to their assigned zone except when they are traveling to and from the parking area, retrieving downed birds, or pursuing crippled birds.

(v) Access to the Freitas Unit free-roam hunting area is by boat only with a maximum of 5 miles per hour (mph). We prohibit air-thrust and inboard water-thrust boats.

(vi) We require State-issued Type A area permits for access on Wednesdays, Saturdays, and Sundays.

(vii) We prohibit the use of motorized boats in the free-roam units with the exception of the Freitas Unit.

(viii) We prohibit vehicle trailers of any type or size to be in the refuge hunt areas at any time or to be left unattended at any location on the refuge.

(ix) We allow the use of dogs when hunting.

(2) *Upland game hunting.* We allow hunting of pheasant on designated areas of the refuge.

(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We only allow fishing during normal refuge visitation hours in designated areas as posted.

(ii) We only allow the use of pole and line or rod and reel to take fish, and anglers must attend their equipment at all times.

(r) *San Pablo Bay National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge subject to the following conditions:

(i) You may only hunt from a boat. We prohibit walk-in hunting on the refuge.

(ii) We allow the use of dogs when hunting.

(2) *Upland game hunting.* We allow hunting of pheasant only in designated areas of the refuge subject to the following conditions:

(i) You may only hunt on Wednesdays, Saturdays, and Sundays.

(ii) The conditions set forth at paragraphs (r)(1)(ii) and (iii) of this section apply.

(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: We allow fishing only with a pole and line or rod and reel. We prohibit bow fishing and gigging.

(s) *Sonny Bono Salton Sea National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of

goose, duck, coot, and moorhen on designated areas of the refuge subject to the following conditions:

(i) Hunters using the Union Tract must use goose decoys.

(ii) You must hunt from assigned blinds on the Union Tract and within 100 feet (30 meters) of blind sites on the Hazard Tract, except when shooting to retrieve crippled birds.

(iii) You may not possess more than 25 shot shells while in the field once you have left your assigned parking lot or boat launch.

(2)–(3) [Reserved]

(4) *Sport fishing.* We only allow fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing from April 1 through September 30.

(ii) We only allow boat fishing.

(t) *Stone Lakes National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, and moorhen on designated areas of the refuge subject to the following conditions:

(i) We allow hunting on Sun River Unit only on Wednesdays and Saturdays from ½ hour before legal sunrise until 12 p.m. (noon).

(ii) We will select hunters through a random drawing process (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) conducted at the refuge. Hunters should bring a copy of their refuge notification on the day of their hunt. Hunters should contact the refuge manager for additional information.

(iii) All hunters age 15 and younger must remain in the immediate presence of an adult (age 18 or older) at all times while in the field.

(iv) We prohibit bicycles or other conveyances. Mobility-impaired hunters should contact the refuge manager regarding allowed conveyances.

(v) We restrict hunters to their assigned spaced-blind except when they are placing or retrieving decoys, traveling to and from the parking area, retrieving downed birds, or shooting to retrieve crippled birds

(vi) You may not possess more than 25 shot shells while in the field once you have left your assigned parking lot or boat launch.

(vii) We allow only nonmotorized boats to access water blinds.

(viii) You must remove all decoys, personal equipment, shotshell hulls, and refuse from the refuge by 12:30 p.m. (see §§ 27.93 and 27.94 of this chapter).

(ix) We allow the use of dogs when hunting.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit fishing from the bank.

(ii) We prohibit the take of native reptiles and amphibians (see § 27.21 of this chapter).

(u) *Sutter National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, moorhen, and snipe on designated areas of the refuge subject to the following conditions:

(i) You must return the State-issued entry permit and vacate the refuge no later than 1½ hours after legal sunset unless participating in an authorized overnight stay.

(ii) All hunters age 15 and younger must remain in the immediate presence of an adult (age 18 or older) at all times while in the field.

(iii) Access to the hunt area is by foot traffic only. We prohibit bicycles and other conveyances. Mobility-impaired hunters should consult with the refuge manager for allowed conveyances.

(iv) You may enter or exit only at designated locations.

(v) The firearms used for hunting must remain unloaded until you are in designated free-roam areas or assigned pond/blind areas.

(vi) Hunters may use shotguns only. We prohibit shotguns larger than 12 gauge.

(vii) You may not possess more than 25 shot shells while in the field once you have left your assigned parking lot or boat launch.

(viii) You may not possess shot size larger than BB, except steel ''T'' (0.20-inch (0.5-centimeter) diameter).

(2) *Upland game hunting.* We only allow hunting of pheasant and wild turkey on designated areas of the refuge subject to the following conditions:

(i) We allow turkey hunting during the fall season only.

(ii) The conditions set forth at paragraphs (u)(1)(i) through (viii) of this section apply.

(3)–(4) [Reserved]

(v) *Tule Lake National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, moorhen, and snipe on designated areas of the refuge subject to the following conditions:

(i) In the controlled waterfowl hunting area, we require a valid Refuge Recreation Pass (available electronically or in person at the refuge office) for all hunters age 16 or older.

(ii) All hunters age 15 or younger must remain in the immediate presence of an adult (age 18 or older) at all times while in the field.

(iii) We require advance reservations for the first 2 days of the hunting season. You may obtain a reservation through the waterfowl lottery each year.

(iv) Hunters may enter the refuge at 4:30 a.m. unless otherwise posted.

(v) Shooting hours end at 1 p.m. on all portions of the refuge with the following exceptions:

(A) The refuge manager may designate up to 6 afternoon special youth, ladies, veteran, or disabled hunter waterfowl hunts per season.

(B) The refuge manager may designate up to 3 days per week of afternoon waterfowl hunting for the general public after December 1.

(vi) You select blind sites by lottery at the beginning of each hunt day. You may shoot only from within your assigned blind site.

(vii) We prohibit the setting of decoys in retrieving zones.

(viii) We prohibit air-thrust and inboard water-thrust boats while hunting. We prohibit the use of all-terrain amphibious or utility-type vehicles (UTVs) in wetland units.

(2) *Upland game hunting.* We allow hunting of pheasant on designated areas of the refuge subject to the following conditions:

(i) In the controlled pheasant hunting area, we require a valid permit (available electronically or in person at the refuge office) for all hunters age 16 or older.

(ii) All hunters age 15 or younger must remain in the immediate presence of an adult (age 18 or older) at all times while in the field.

(3)–(4) [Reserved]

§ 32.25 Colorado.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Alamosa National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, snipe, Eurasian collared-dove, and mourning dove on designated areas of the refuge subject to the following conditions:

(i) We allow Eurasian collared-dove hunting only during the mourning dove season.

(ii) The only acceptable methods of take are shotguns, hand-held bows, and hawking/falconry.

(2) *Upland game hunting.* We allow hunting of cottontail rabbit, and black-tailed and whitetailed jackrabbit, on designated areas of the refuge subject to the following condition: The condition set forth at paragraph (a)(1)(ii) of this section applies.

(3) *Big game hunting.* We allow hunting of elk on designated areas of the refuge.

(4) [Reserved]

(b) *Arapaho National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, coot, merganser, Canada goose, snipe, Virginia and Sora rail, and mourning dove on designated areas of the refuge subject to the following conditions:

(i) All migratory bird hunting closes annually on December 31.

(ii) We allow access to the refuge 1 hour prior to legal shooting time.

(iii) We allow use of only portable stands and blinds that the hunter must remove following each day's hunt (see § 27.93 of this chapter).

(iv) We prohibit hunting 200 feet (60 meters) from any public use road, designated parking area, or designated public use facility located within the hunt area.

(2) *Upland game hunting.* We allow hunting of jackrabbit, cottontail rabbit, and sage grouse on designated areas of the refuge subject to the following conditions:

(i) All upland game hunting closes annually on December 31.

(ii) The condition set forth at paragraph (b)(1)(ii) of this section applies.

(3) *Big game hunting.* We allow hunting of antelope and elk on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(1)(ii) and (iii) of this section apply.

(ii) Elk hunters:

(A) Must possess a refuge-specific permit (state-issued) to hunt elk; and

(B) Must attend a scheduled pre-hunt information meeting prior to hunting.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit fishing between June 1 and July 31 each year.

(ii) We allow fishing only from legal sunrise to legal sunset.

(iii) We prohibit ice fishing on the refuge.

(iv) We close Unit C to fishing when the refuge is open to big game rifle hunting.

(v) We prohibit lead sinkers and live bait for fishing.

(c) *Baca National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of Eurasian collared-dove and mourning dove on designated areas of the refuge subject to the following conditions:

(i) We allow Eurasian collared-dove hunting only during the mourning dove season.

(ii) The only acceptable methods of take are shotguns, hand-held bows, and hawking/falconry.

(2) *Upland game hunting.* We allow hunting of cottontail rabbit, and black-tailed and white-tailed jackrabbit, on designated areas of the refuge subject to the following condition: Shotguns, rifles firing rimfire cartridges less than .23 caliber, hand-held bows, pellet guns, slingshots, and hawking/falconry are the only acceptable methods of take.

(3) *Big game hunting.* We allow hunting of elk on designated areas of the refuge.

(4) [Reserved]

(d) *Browns Park National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, and mourning dove on designated areas of the refuge.

(2) *Upland game hunting.* We allow hunting of cottontail rabbit on designated areas of the refuge.

(3) *Big game hunting.* We allow hunting of mule deer and elk on designated areas of the refuge.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(e) *Monte Vista National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, snipe, Eurasian collared-dove, and mourning dove on designated areas of the refuge subject to the following conditions:

(i) We allow Eurasian collared-dove hunting only during the mourning dove season.

(ii) The only acceptable methods of take are shotguns, hand-held bows, and hawking/falconry.

(2) *Upland game hunting.* We allow hunting of cottontail rabbit, and black-tailed and white-tailed jackrabbit, on designated areas of the refuge subject to the following condition: The condition set forth at paragraph (e)(1)(ii) of this section applies.

(3) *Big game hunting.* We allow hunting of elk on designated areas of the refuge.

(4) [Reserved]

(f) *Rocky Mountain Arsenal.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing on Tuesdays, Saturdays, and Sundays from legal sunrise to legal sunset.

(ii) We allow fishing from the first Saturday in April through November 30.

(iii) All anglers age 16 and older must possess a signed refuge fishing permit (signed refuge fishing brochure) when fishing.

(iv) You must stop and pay the daily fishing recreation fee for each Colorado State licensed angler age 16 or older. Payments are made at self-service fishing fee stations, and you must display a receipt of payment or an annual pass while fishing. High school and college students can fish for free with a current student identification card.

(v) We allow bank fishing only at Lake Mary and Lake Ladora.

(vi) We allow wade fishing only in Lake Ladora after Memorial Day.

(vii) Each angler may use only one rod and reel or pole and line with one hook per line, except that we allow a second rod and reel or pole and line with one hook per line with a Colorado State-issued second rod stamp.

(viii) We only allow barbless hooks.

(ix) We only allow artificial lures and flies on Lake Ladora. We allow artificial lures and flies and artificial bait, cut bait, and food products only on Lake Mary.

(x) We prohibit the use of live bait on all refuge waters.

(xi) We only allow catch-and-release fishing.

(xii) We prohibit the possession and consumption of alcoholic beverages while fishing.

§ 32.26 Connecticut.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Silvio O. Conte National Fish and Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the refuge subject to the following conditions:

(i) We allow refuge access from ½ hour prior to legal sunrise until ½ hour after legal sunset.

(ii) We allow the use of dogs when hunting waterfowl and upland game species.

(iii) We only allow the use of temporary tree stands and blinds, which must be removed at the end of each hunt day. All tree stands and blinds must have the name and telephone number of the owner clearly printed in an easily readable area.

(2) *Upland game hunting.* We allow hunting of upland game on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (a)(1)(i) and (ii) of this section apply.

(3) *Big game hunting.* We allow hunting of big game on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (a)(1)(i) and (iii) of this section apply.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (a)(1)(i) of this section applies.

(ii) We prohibit launching of motorboats from the refuge.

(iii) We prohibit the use of reptiles and amphibians as bait.

(b) *Stewart B. McKinney National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, coot, and goose on designated areas of the refuge subject to the following conditions:

(i) We require hunters to obtain an annual Special Use Permit (FWS Form 3–1383–G) in advance for permission to hunt in the designated hunting area.

(ii) We will limit hunt days to Tuesdays, Wednesdays, and Saturdays during the waterfowl hunting season as established by the State.

(2)–(4) [Reserved]

§ 32.27 Delaware.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Bombay Hook National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the refuge subject to the following condition:

(i) We require a refuge permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) for waterfowl hunting except on the South Upland Hunting Area.

(ii) We allow the use of dogs when hunting migratory game birds and upland game species.

(2) *Upland game hunting.* We allow hunting of grey squirrel, cottontail rabbit, ring-necked pheasant, bobwhite quail, raccoon, opossum, and red fox on designated areas of the refuge subject to the following condition: The condition set forth at paragraph (a)(1)(ii) of this section applies.

(3) *Big game hunting.* We allow hunting of turkey and deer on designated areas of the refuge subject to the following conditions:

(i) We require a refuge permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) except on the South Upland Hunting Area.

(ii) In the Headquarters Deer Hunt Area, you may hunt only from a designated stand, unless you are actively tracking or retrieving wounded deer.

(4) [Reserved]

(b) *Prime Hook National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow the hunting of waterfowl, coot, mourning dove, snipe, and woodcock on designated areas of the refuge subject to the following conditions:

(i) We require a refuge permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) for waterfowl hunting except in designated walk-in areas. You must obtain a refuge permit from the refuge office or website and have the permit in your possession while hunting.

(ii) You must complete and return a Migratory Bird Hunt Report (FWS Form 3–2361), available at the refuge administration office or on the refuge's website, within 15 days of the close of the season.

(iii) You may access the Lottery Waterfowl Hunt Area by boat.

(iv) We allow hunting of waterfowl in the Disabled Waterfowl Draw Area subject to the following condition: We do not allow assistants to enter a designated disabled hunting area unless they are accompanied by a certified disabled hunter.

(v) We allow the use of dogs when hunting migratory game birds and upland game species.

(2) *Upland game hunting.* We allow hunting of rabbit, quail, pheasant, and red fox on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (b)(1)(v) of this section applies.

(ii) You must obtain a refuge permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) from the refuge office or website and have the permit in your possession while hunting.

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

(i) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(ii) Hunting on the headquarters deer hunt area will be by lottery. You must obtain and possess a refuge permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) from the refuge office or website and have the permit in your possession while hunting.

(4) *Sport fishing.* We allow sport fishing and crabbing on designated areas of the refuge subject to the following conditions:

(i) On Turkle and Fleetwood ponds, we allow boats only with electric trolling motors.

(ii) You must attend all crabbing and fishing gear at all times.

(iii) You must remove all personal property at the end of each day's fishing activity (see §§ 27.93 and 27.94 of this chapter).

§ 32.28 Florida.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Arthur R. Marshall Loxahatchee National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck and coot on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a signed refuge waterfowl hunt permit (signed brochure) while hunting.

(ii) We do not open to hunting on Mondays, Tuesdays, and Christmas Day.

(iii) We allow hunting on the refuge from ½ hour before legal sunrise to 1 p.m. Hunters may enter the refuge no earlier than 4 a.m. and must be off the refuge by 3 p.m.

(iv) Hunters may only enter and leave the refuge at the Headquarters Area (Boynton Beach) and the Hillsboro Area (Boca Raton).

(v) We allow only temporary blinds of native vegetation.

(vi) Hunters must remove decoys and other personal property from the hunting area at the end of each day's hunt (see § 27.93 of this chapter).

(vii) Hunters must complete a Migratory Bird Hunt Report (FWS Form 3–2361) and place it in an entrance fee canister each day prior to exiting the refuge.

(viii) All youth hunters age 15 and younger must be supervised by a licensed and permitted adult age 21 or older, and must remain with the adult while hunting. Youth hunters must have completed a hunter education course.

(2) [Reserved]

(3) *Big game hunting.* We allow hunting of alligator on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a signed refuge alligator hunt permit (signed brochure) while hunting.

(ii) We allow hunting on the refuge 1 hour before sunset on Friday night through 1 hour after sunrise Saturday morning, and 1 hour before sunset on Saturday night through 1 hour after

sunrise Sunday morning. We allow alligator hunting the first 2 weekends during Harvest Period 1 (August) and the first 2 weekends during Harvest Period 2 (September). Following the close of Harvest Period 2, the remaining weekends in October will be open for alligator harvest permittees who possess unused CITES tags (OMB Control No. 1018–0093). We provide specific dates for the alligator hunt on the harvest permit.

(iii) Youth age 17 and younger may not hunt, but may only accompany an adult age 21 or older who possesses an Alligator Trapping Agent License (state-issued).

(iv) Hunters may only enter and leave the refuge at the Hillsboro Area (Loxahatchee Road, Boca Raton).

(v) You may take alligators using hand-held snares, harpoons, gigs, snatch hooks, artificial lures, manually operated spears, spear guns, and crossbows. We prohibit the taking of alligators using baited hooks, baited wooden pegs, or firearms. We allow the use of bang sticks (a hand-held pole with a pistol or shotgun cartridge on the end in a very short barrel) with approved nontoxic ammunition (see § 32.2(k)) only for taking alligators attached to a restraining line. Once an alligator is captured, it must be killed immediately. We prohibit catch-and-release of alligators. Once the alligator is dead, you must lock a CITES tag through the skin of the carcass within 6 inches (15.2 centimeters) of the tip of the tail. The tag must remain attached to the alligator at all times.

(vi) Hunters must remove all personal property from the hunting area at the end of each day's hunt (see § 27.93 of this chapter).

(vii) We allow only one vessel per hunting group or party.

(viii) We allow only temporary blinds of native vegetation.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We only allow the use of rods and reels and poles and lines, and anglers must attend them at all times.

(ii) We prohibit the taking of frogs and turtles (see § 27.21 of this chapter).

(iii) We allow 12 fishing tournaments a year by Special Use Permit only (General Activities—Special Use Permit Application, FWS Form 3–1383–G).

(iv) We prohibit the possession or use of cast nets, seines, trot lines, jugs, gigs, and other fishing devices.

(v) Anglers may only launch boats at the Headquarters Area (Boynton Beach), the Hillsboro Area (Boca Raton), and 20 Mile Bend (West Palm Beach).

(vi) All youth anglers age 15 and younger must be supervised by a licensed and permitted adult age 21 or older, and must remain with the adult while fishing.

(b) *Cedar Keys National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow saltwater sport fishing year-round on designated areas of the refuge subject to the following conditions:

(i) We close a 300-foot (90-meter (m)) buffer zone beginning at mean high tide line and extending into the waters around Snake Key to all public entry from March 1 through June 30 to protect nesting birds.

(ii) We conditionally open to public entry a 300-foot (90-m) buffer zone beginning at mean high tide line and extending into the waters around Seahorse Key from March 1 through June 30. Should birds nest in that area during that timeframe, we will close that area of Seahorse Key to public entry.

(c) *Chassahowitzka National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting in designated areas of the refuge subject to the following conditions:

(i) In Citrus County:

(A) You may take only ducks and coots.

(B) We allow waterfowl hunting on Wednesdays, Saturdays, and Sundays during those seasons established by the State of Florida.

(C) We allow the use of dogs when hunting migratory birds.

(D) We require hunters to possess and carry a signed, refuge hunting permit (signed brochure).

(E) We prohibit hunting within 100 yards (91.4 meters) of any residence or on navigable waterways of Chassahowitzka River, Seven Cabbage Cut-off, and Mason Creek.

(F) We allow temporary blinds and decoys, but you must remove all blinds and decoys from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(ii) In Hernando County:

(A) All hunters in Hernando County must comply with the State of Florida Chassahowitzka Wildlife Management Area regulations.

(B) The conditions set forth at paragraphs (c)(1)(i)(C), (D), and (F) of this section apply.

(C) We allow hunting of geese, duck, and coot only on Wednesdays, Saturdays, and Sundays.

(D) We prohibit hunting within 100 yards (91.4 meters) of any residence.

(2) *Upland game hunting.* In Hernando County, we allow hunting of quail, squirrel, rabbit, feral hog, opossum, armadillo, beaver, coyote, skunk, and nutria as governed by State of Florida Chassahowitzka Wildlife Management Area regulations and subject to the following conditions:

(i) The conditions set forth at paragraphs (c)(1)(i)(C) through (F) and (c)(1)(ii)(D) of this section apply.

(ii) We prohibit the use of traps or snares to take game.

(iii) You may take feral hog, opossum, armadillo, beaver, coyote, skunk, and nutria as incidental species with the equipment legal for use during the season.

(3) *Big game hunting.* In Hernando County, we allow hunting of whitetail deer and turkey, as governed by State of Florida Chassahowitzka Wildlife Management Area regulations and subject to the following condition: The conditions set forth at paragraphs (c)(2)(i) through (iii) of this section apply.

(4) *Sport fishing.* We allow sport fishing in designated areas of the refuge subject to the following conditions:

(i) We allow fishing 24 hours per day, year-round, except in areas posted closed.

(ii) We prohibit harvesting and possession of frogs, horseshoe crabs, turtles, and snakes (see § 27.21 of this chapter).

(iii) We permit commercial activities, including guiding, with a Special Use Permit (Commercial Activities Special Use Permit Application, FWS Form 3–1383–C). You must apply for the permit.

(d) *Egmont Key National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing year-round on designated areas of the refuge subject to the following condition: Anglers may only use two poles per angler and must attend both poles at all times.

(e) *Hobe Sound National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing only from legal sunrise to legal sunset.

(ii) We allow salt-water fishing along the Atlantic Ocean and Indian River Lagoon year-round as governed by State recreational fishing regulations.

(iii) We allow the use of only rods and reels and poles and lines, and anglers must attend them at all times.

(iv) We allow only two poles per angler, and anglers must attend those poles at all times in conjunction with the Martin County, Florida, two-pole ordinance.

(f) *J. N. ''Ding'' Darling National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing and crabbing in designated areas of the refuge subject to the following conditions:

(i) We allow the take of crabs with the use of dip nets only.

(ii) All anglers must exit refuge lands and waters no later than ½ hour after legal sunset.

(iii) We prohibit the possession and use of seines or trot lines.

(iv) We prohibit the use of cast nets from the left (south) side of Wildlife Drive or any water control structure, bridge, boardwalk, or rip rap affixed to Wildlife Drive.

(v) All fish must remain in whole condition until removed from refuge lands and waters, except for fish caught and landed by individuals using the services of the refuge concessionaire at the Tarpon Bay recreation area. Those fish may be cleaned at the designated fish cleaning station in the concession area.

(vi) We prohibit the use of bows and spears from Wildlife Drive or any trail or structure affixed to Wildlife Drive.

(g) *Lake Woodruff National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer, feral hog, and turkey on designated areas of the refuge subject to the following conditions:

(i) We require a valid Lake Woodruff Quota Hunt Permit, which can be purchased through the Florida Fish and Wildlife Conservation Commission, and a valid Lake Woodruff National Wildlife Refuge hunt permit (signed annual hunt brochure), which is free and nontransferable.

(ii) All hunters must be on stands or in blinds during deer hunts.

(iii) We prohibit scouting in the hunt area during the quota hunt.

(iv) Hunters possessing a valid permit may access the refuge 2 hours prior to legal sunrise each hunting day. All hunters must leave the refuge within 2 hours of legal sunset.

(v) We allow stands or blinds to be set up 2 days prior to the permitted hunt, and you must remove them on or before the last day of your permitted hunt. You must clearly mark stands with the hunter's Florida Fish and Wildlife Conservation Commission (FWC) permit number found on your hunting license. No more than one stand or blind per person may be on the refuge at any time, unless a permitted hunter is accompanied by a youth hunter. You must place the stand and/or blind for a youth hunter within sight and normal voice contact of the permitted hunter's stand and mark it with the adult permitted hunter's FWC permit number and the word ''YOUTH.''

(vi) If you use flagging or other trail marking material, you must print your FWC permit number on each piece or marker. You may set up flagging and trail markers 2 days prior to the permitted hunt, and you must remove them on or before the last day of the permitted hunt.

(vii) You must check out any game taken during the hunts at a self-check station.

(viii) You may access the Western Unit only by boat.

(ix) Hunters age 15 and younger do not need a quota permit, but they must be accompanied by an adult age 18 or older. Each adult may supervise one youth hunter and must remain within sight and normal voice contact of the youth hunter; the pair must share a single bag limit unless hunting during a designated family or youth hunt.

(x) We prohibit shotgun loads larger than #2 shot and slugs during turkey hunts.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We only allow use of hook and line. We prohibit cast nets.

(ii) We allow fishing from legal sunrise to legal sunset.

(iii) We prohibit the use of snatch hooks in the refuge impoundments.

(h) *Lower Suwannee National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck and coot on designated areas of the refuge subject to the following conditions:

(i) We require all hunters, age 16 or older, to purchase and possess a general refuge hunting permit through the Florida Fish and Wildlife Conservation Commission to hunt during all refuge hunts, unless otherwise exempt. We do not require youth hunters age 15 and younger to possess a general refuge hunting permit.

(ii) Every hunter must possess a signed refuge hunt brochure (signed brochure) while hunting on the refuge.

(iii) We prohibit hunting from or within 150 feet (45 meters) of all refuge roads open to public vehicle travel.

(iv) An adult (parent or guardian) age 18 or older must supervise and must remain within sight of and in normal voice contact of a youth hunter, age 15 or younger. An adult may not supervise more than two youths. Youth hunters must meet State hunter-education requirements.

(v) Clothes-type pins or clips with reflective or colored markings can be used for the temporary marking of vegetation in order to identify a route of travel to or from a tree stand. You must remove these pins at the end of deer season (see §§ 27.93 and 27.94 of this chapter). Each clothes-type pin or clip must contain the hunting license number of the hunter.

(vi) You may leave a temporary tree stand on refuge property starting 1 week before archery season, but you must remove it by the last day of hog season. All tree stands left on the refuge within the hunt season must display the hunter's hunting license number legibly written on or attached to the stand. You may also use a temporary tree stand during small game season, but you must remove it by the last day of the small game season.

(vii) Hunters must be at their vehicles by 1 hour after legal shooting time.

(viii) We prohibit cleaning of game within 1,000 feet (300 meters) of any developed public recreation area, game check station, or gate.

(2) *Upland game hunting.* We allow hunting of feral hog, gray squirrel, armadillo, opossum, rabbit, raccoon, coyote, and beaver on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (h)(1)(i) through (viii) of this section apply.

(ii) Hunters may only hunt during designated days and times. The refuge prints dates for all the refuge hunting seasons in the annual refuge hunt brochure (signed brochure).

(iii) We allow night hunting for raccoon and opossum from legal sunset until legal sunrise as governed by State regulations.

(3) *Big game hunting.* We allow hunting of big game on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (h)(1)(i) through (viii) of this section apply.

(ii) During the refuge archery season, hunters may only use archery equipment, including crossbows, as governed by State archery regulations.

(iii) During the refuge muzzleloader season, hunters may only use muzzleloading firearms and archery equipment (see § 27.42 of this chapter) as governed by State muzzleloader regulations.

(iv) We prohibit organized drives. We define a ''drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause game to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the game.

(v) We allow hunting of deer (except spotted fawns), feral hog, gray squirrel,

rabbit, armadillo, opossum, raccoon, beaver, and coyote during the archery season.

(vi) Hunters may take feral hog (no size or bag limit), and a maximum of two deer per day, during the family hunt, except only one deer may be antlerless for each day of the family and senior hunts.

(vii) Hunters must fill out a Big Game Harvest Report (FWS Form 3–2359) and check all game harvested during all deer and hog hunts.

(viii) Hunters may take only bearded turkeys and only during the State Zone C youth turkey hunts and spring turkey season.

(ix) Shooting hours for spring turkey begin ½ hour before legal sunrise and end at 1 p.m.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit taking of frogs and turtles (see § 27.21 of this chapter).

(ii) We prohibit the use or possession of alcohol while fishing on the refuge.

(i) *Merritt Island National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, merganser, and coot in designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a current, signed Merritt Island National Wildlife Refuge hunt permit (signed brochure, non-transferable) at all times while hunting waterfowl on the refuge.

(ii) You must carry (or hunt within 30 yards of a hunter who possesses) a valid State-issued Merritt Island Waterfowl Quota Permit, while hunting in areas 1 or 4 from the beginning of the regular waterfowl season through the end of January. The Waterfowl Quota Permit can be used for a single party consisting of the permit holder and up to three guests. The permit holder must be present.

(iii) During the State's waterfowl season, we allow hunting on Wednesdays, Saturdays, Sundays, and the following Federal holidays: Thanksgiving, Christmas, and New Year's Day.

(iv) We prohibit hunters entering the normal or expanded restricted areas of the Kennedy Space Center (KSC).

(v) We allow hunting of waterfowl on refuge-established hunt days from ½ hour before legal sunrise until 12 p.m. (noon). Hunters must remove all equipment and check out at the refuge check station prior to 1 p.m. each day.

(vi) You may enter the refuge no earlier than 4 a.m. for the purpose of waterfowl hunting.

(vii) We require an adult, age 18 or older, to supervise hunters age 15 and younger. The adult must remain within sight and normal voice contact of the youth hunter.

(viii) We prohibit hunting or shooting within 25 feet (7.6 meters), or shooting from any portion, of a dike, dirt road, or railroad grade.

(ix) We prohibit hunting or shooting within 150 yards (135 meters) of SR 402, SR 406, or any paved road right-of-way. We prohibit shooting over any dike or roadway.

(x) You must leave the refuge by 1 p.m. Prior to that, you must stop at a posted refuge waterfowl check station and report statistical hunt information on the Migratory Bird Hunt Report (FWS Form 3–2361) to refuge personnel.

(2) [Reserved]

(3) *Big game hunting.* We allow the hunting of white-tailed deer and feral hog in designated areas of the refuge subject to the following conditions:

(i) We require a State-issued Merritt Island National Wildlife Refuge Big Game Quota Hunt Permit. The Quota Hunt Permit is a limited entry quota permit, is zone-specific, and is nontransferable.

(ii) You must have a valid signed Big Game Hunt Permit (signed annual hunt brochure).

(iii) We prohibit hunters entering the normal or expanded restricted areas of the Kennedy Space Center (KSC).

(iv) We allow hunting during a 3-day weekend within the State's deer season. Legal shooting hours are ½ hour before legal sunrise to ½ hour after legal sunset.

(v) Hunters possessing a valid permit may access the refuge no earlier than 2 hours before legal sunrise and must leave the refuge no later than 2 hours after legal sunset.

(vi) We prohibit hunting from refuge roads or within 100 yards of roads open to public vehicle traffic or within 200 yards of a building or KSC facility.

(vii) Each permitted hunter may have one adult guest and one youth hunter. All guests must remain within sight and normal voice contact. The party must share a single bag limit. Each adult may supervise one youth hunter and must remain within sight and normal voice contact. The pair must share a single bag limit unless hunting during a designated youth or family hunt.

(viii) You may set up stands or blinds up to 2 days prior to the permitted hunt; you must remove them on the last day of your permitted hunt. You must clearly mark stands and blinds with your Florida State customer identification (ID) number found on your hunting license. You may have no more than one stand or blind per person on the refuge at any time. You must place a stand or blind for a youth hunter within sight and normal voice contact of the supervisory hunter's stand and mark it with the supervisory hunter's Florida State customer ID number and the word ''YOUTH.''

(ix) We prohibit all scouting in the hunt area during the quota hunt.

(x) If you use flagging or other trail-marking material, you must print your Florida State customer ID number on each piece or marker. You may set out flagging and trail markers up to 2 days prior to the permitted hunt, and you must remove them on the last day of the permitted hunt.

(xi) We allow hunters possessing a valid permit to scout within their permitted zones up to 7 days prior to their permitted hunts. You must carry your valid Quota Hunt Permit identifying the permitted hunt zone while scouting.

(xii) You must be on your stand or in your blind while hunting.

(xiii) We prohibit stalking or moving through the hunt area while hunting.

(xiv) You must be at your vehicle within 1 hour after legal shooting time. If you wish to track wounded game beyond 1 hour after legal sunset, you must gain consent from a Federal Wildlife Officer to do so.

(xv) We prohibit using dogs for tracking unless authorized by a Federal Wildlife Officer. Dogs must remain on a leash and be equipped with a GPS tracking device.

(xvi) You may field dress game; however, we prohibit cleaning game within 1,000 feet of any public area, road, game-check station, or gate. We prohibit dumping game carcasses on the refuge.

(xvii) Archery hunters must wear at least 500 square inches (3,226 square centimeters) of solid fluorescent-orange color while moving to and from their vehicles, while moving to their stands or hunting spots, and while tracking or dragging out game.

(xviii) There is no bag limit or size limit for the take of feral hogs.

(xix) You must report all hunting activities, including successful and non-successful hunts, at one of the two check stations prior to leaving the refuge.

(4) *Sport fishing.* We allow recreational fishing, crabbing, clamming, and shrimping on designated areas of the refuge subject to the following conditions:

(i) You must possess a current, signed refuge fishing permit (signed brochure) at all times while fishing on the refuge.

(ii) We prohibit anglers entering the normal or expanded restricted areas of the Kennedy Space Center (KSC).

(iii) We prohibit fishing after legal sunset or before legal sunrise, except that we allow fishing at night from a vessel in the open waters of Mosquito Lagoon, Indian River Lagoon, Banana River, and Haulover Canal.

(iv) You may launch boats for night fishing and boating activities only from Bair's Cove, Beacon 42, and Biolab boat ramps.

(v) We prohibit crabbing or fishing from Black Point Wildlife Drive or any side road connected to Black Point Wildlife Drive except from L Pond Road.

(vi) We prohibit launching boats, canoes, or kayaks from Black Point Wildlife Drive or any side road connected to Black Point Wildlife Drive except from L Pond Road.

(vii) Anglers and crabbers must attend their lines at all times.

(viii) We prohibit harvesting and possession of horseshoe crab, frog, turtle, snake, and/or other wildlife (see § 27.21 of this chapter).

(ix) We prohibit use of personal watercraft, kite surfing, kite boarding, wind surfing, sail boarding, use of air-thrust boats, and use of hovercraft on the refuge or in refuge waters.

(x) We prohibit motorized vessels in the Banana River within the posted ''No-Motor Zone,'' including any vessel having an attached motor or a nonattached motor capable of use (including electric trolling motor).

(xi) We allow vessels drafting 12 inches (30 centimeters) or less (measured while vessel is fully stopped) to be propelled only by poling, paddling, drifting, or electric trolling motors in the established Pole & Troll Zone(s), except in the posted running channels.

(xii) We prohibit fish cleaning on refuge property.

(xiii) We prohibit fishing from, or in the immediate vicinity of, the Manatee Viewing Deck on the northeast side of Haulover Canal.

(xiv) When inside the impoundment perimeter ditch, you may use gasoline or diesel motors. Outside the perimeter ditch, you must propel vessels by paddling, push pole, or electric trolling motor.

(j) *Pelican Island National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing year-round.

(ii) We allow bank fishing from spoil islands during daylight hours only.

(k) *Pinellas National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing year-round on designated areas of the refuge subject to the following condition: We allow fishing only from vessels in the waters surrounding Tarpon Key.

(l) *St. Marks National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck and coot on designated areas of the refuge subject to the following conditions:

(i) You must remove blinds at the end of each day's hunt (see § 27.93 of this chapter).

(ii) We allow the use of dogs to recover game.

(iii) Hunters may access the hunt area by boat.

(2) *Upland game hunting.* We allow hunting of grey squirrel, rabbit, and raccoon on designated areas of the refuge subject to the following conditions:

(i) We require refuge permits (signed brochure) for hunting upland game. Each hunter must possess and carry a signed refuge permit while participating in a hunt.

(ii) All hunters must wear 500 square inches (3,250 square centimeters) of fluorescent orange above the waistline while in a designated hunting unit during a refuge hunt.

(iii) You may only use .22 caliber or smaller rim-fire rifles, shotguns (#4 bird shot or smaller) (see § 32.2(k)), or muzzleloaders to harvest squirrel, rabbit, and raccoon. In addition, you may use shotgun slugs, buckshot, archery equipment, or pistols to take feral hogs. We prohibit the use of other weapons.

(iv) We allow the use of leashed dogs for trailing injured or harvested game.

(v) We prohibit hunting from any named or numbered road (with the exception of persons hunting during the mobility-impaired hunt).

(vi) We prohibit cleaning of game within 1,000 feet (300 meters) of any residence, developed public recreation area, or game check station.

(vii) You must check out all game taken at a game check station.

(3) *Big game hunting.* We allow hunting of white-tailed deer, feral hog, and turkey subject to the following conditions:

(i) We require refuge permits (hunters apply through State for license, and the State charges a fee). Permits are nontransferable. Each hunter must possess and carry a signed permit when participating in a hunt. Prior to hunting each day, you must check-in at a hunt check station as specified in the refuge hunt brochure. You must check out at the end of each hunting day.

(ii) The conditions set forth at paragraphs (l)(2)(ii) and (iv) through (vii) of this section apply.

(iii) We allow feral hog to be taken during any refuge hunt. There is no limit on the size or number of feral hogs that hunters may take.

(iv) There is a two deer limit per hunt, as specified at paragraph (l)(3)(vi) of this section, except during the youth hunt, when the limit is as specified at paragraph (l)(3)(vii) of this section. The limit for turkey is one per hunt.

(v) We prohibit the use of deer decoys.

(vi) The bag limit for white-tailed deer is two deer per hunt, either two antlerless deer or one antlerless deer and one antlered deer. State regulations define antlerless deer as deer with no antler or antlers less than 5 inches (12.75 centimeters). Antlered deer must have at least three points, 1 inch (2.5 centimeters) or greater on one antler, to be harvested.

(vii) There is one youth white-tailed deer hunt and one youth turkey hunt for youth ages 12 to 17. During these hunts, only the youth hunter may handle or discharge firearms used for hunting. An adult age 21 or older must accompany and remain in sight and normal voice contact of each youth hunter. There is no limit on the number of hogs a youth hunter may harvest during these hunts.

(A) *Youth white-tailed deer hunt harvest limits.* (*1*) Youth hunters age 12 to 15 may harvest two deer, either two antlerless deer or one antlerless and one antlered. State regulations define antlerless deer as deer with no antler or antlers less than 5 inches (12.75 centimeters). There are no restrictions on antler size for youth hunters age 12 to 15.

(*2*) Youth hunters age 16 or 17 may harvest two deer, either two antlerless or one antlerless and one antlered. State regulations define antlerless deer as deer with no antler or antlers less than 5 inches (12.75 centimeters). Antlered deer must have at least two points, 1 inch (2.5 centimeters) or greater on one antler, to be harvested by youth hunters age 16 or 17.

(B) *Youth turkey hunt harvest limit.* The limit is one bearded turkey per youth hunter.

(viii) Mobility-impaired hunters may have an assistant accompany them. You may transfer permits issued to assistants. We limit those hunt teams to harvesting white-tailed deer and feral hog within the limits provided at paragraph (l)(3)(vi) of this section.

(ix) You may harvest one bearded turkey per hunt. You may only use shotguns or archery equipment to harvest turkey. We prohibit hunting after 1 p.m.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit taking blue crabs from impounded water on the St. Marks Unit.

(ii) We only allow fishing in refuge lakes, ponds, and impoundments from ½ hour before legal sunrise to ½ hour after legal sunset.

(iii) We allow fishing in tidal and coastal waters 24 hours per day year-round.

(iv) We prohibit taking of frogs or turtles (see § 27.21 of this chapter).

(v) We prohibit use of cast nets or traps to take fish from any lake, pond, or impoundment on the refuge.

(vi) You must attend all fishing equipment.

(vii) We prohibit bow fishing on refuge lakes, ponds, and impoundments.

(viii) The interior ponds and lakes on the Panacea Unit are open year-round for bank fishing. We open vehicle access to these areas from March 15 through May 15 each year. Ponds and lakes that anglers access from County Road 372 are open year-round for fishing and boating.

(m) *St. Vincent National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer, sambar deer, raccoon, and feral hog on designated areas of the refuge subject to the following conditions:

(i) We require refuge permits (hunters apply through State for license, and the State charges a fee). The permits are nontransferable, and the hunter must possess them while hunting. Only signed permits are valid. We only allow people with a signed refuge hunt permit or the helpers of mobility-impaired hunters on the island during the hunt periods.

(ii) We authorize three refuge hunts: Sambar deer, white-tailed deer archery, and white-tailed deer muzzleloader. During the sambar deer hunt, only sambar deer, feral hog, and raccoon can be harvested. During the white-tailed deer hunts, only white-tailed deer, feral hog, and raccoon can be harvested.

(iii) We restrict access to St. Vincent Island to the Indian Pass and West Pass campsites. The hunt brochure lists check-in and check-out procedures. We restrict access to the hunt areas to foot or bicycle travel.

(iv) Hunt hours are ½ hour before legal sunrise until 3 p.m. for the sambar deer hunt.

(v) You may set up tree stands only after you check in, and you must remove them from the island at the end of the hunt (see §§ 27.93 and 27.94 of this chapter).

(vi) You may retrieve game from the closed areas only if accompanied by a refuge staff member or a Federal Wildlife Officer.

(vii) We limit weapons to primitive weapons (bow and arrow, and muzzleloader) on the primitive weapons sambar deer hunt and the primitive weapons white-tailed deer hunt. We limit the archery hunt to bow and arrow. We prohibit crossbows during the white-tailed deer archery hunt except with a State disabled persons permit. You may take feral hog and raccoon only with the weapons allowed for that period.

(viii) We allow only stand, still, and stalk hunting. We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(ix) You may only discharge muzzleloaders at the designated discharge area between 5 a.m. and 9 p.m.

(x) Hunters must check out at the check station prior to leaving the refuge at the end of their hunt. A refuge staff member or volunteer must check the campsites before the hunters leave the refuge.

(xi) Bag limits are:

(A) *Muzzleloader weapons sambar deer hunt.* One sambar deer of either sex; no limit on feral hog or raccoon.

(B) *Archery hunt.* One white-tailed deer of either sex. Antlered deer must have at least two points, 1 inch (2.5 centimeters) or more on one antler, to be harvested. State regulations define antlerless deer as deer with no antler or antlers less than 5 inches (12.75 centimeters). Youth age 15 or younger may harvest any deer except spotted fawn. We prohibit harvesting of spotted fawns. There is no limit on feral hog or raccoon.

(C) *Muzzleloader weapons white-tailed deer hunt.* One white-tailed deer. Antlered deer must have at least two points, 1 inch (2.5 centimeters) or more in length on one antler, to be harvested. We issue a limited number of either-sex tags. If you have an either-sex tag, the bag limit is one deer that may be antlerless or antlered with legal antler configuration. State regulations define antlerless deer as deer with no antler or antlers less than 5 inches (12.75 centimeters). Youth age 15 or younger may harvest any deer except spotted fawn. We prohibit harvesting of spotted fawns. There is no limit on feral hog or raccoon.

(xii) We prohibit bringing live game into the check station.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) You may fish from ½ hour before legal sunrise to ½ hour after legal sunset year-round.

(ii) We prohibit the use of live minnows as bait.

(iii) We allow the use of only rods and reels or poles and lines in refuge lakes. Anglers must attend their fishing equipment at all times.

(iv) We prohibit the taking of frog and/or turtle (see § 27.21 of this chapter).

(n) *Ten Thousand Islands National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck and coot on designated areas of the refuge subject to the following conditions:

(i) We allow hunting each day during the early wood duck/teal season.

(ii) We allow hunting only on Wednesdays, Saturdays, Sundays, and Federal holidays that fall within the State's waterfowl season, including Thanksgiving, Christmas, and New Year's Day.

(iii) Hunters must possess and carry a valid, signed refuge permit (signed brochure) at all times while hunting on the refuge.

(iv) We allow hunting from ½ hour before legal sunrise until 12 p.m. (noon). Hunters may enter the refuge no earlier than 4 a.m. and must remove all decoys, guns, blinds, and other related equipment by 1 p.m. each day (see § 27.93 of this chapter).

(v) We prohibit hunting within 100 yards (90 meters) of the south edge of U.S. 41 and the area posted around Marsh Trail extending south from U.S. 41.

(vi) We allow the use of dogs for waterfowl retrieval and prehunt scouting.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing and crabbing on the refuge on designated areas subject to the following conditions:

(i) We allow fishing in the freshwater and brackish marsh area of the refuge year-round from legal sunrise to legal sunset.

(ii) We prohibit the taking of snake, turtle, frog, and other wildlife in the freshwater and brackish marsh area of the refuge (see § 27.21 of this chapter).

(iii) We prohibit the use of trotlines, gigs, spears, bush hooks, and snatch hooks in the freshwater and brackish marsh area of the refuge.

(iv) Anglers and crabbers must attend their lines at all times.

§ 32.29 Georgia.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Banks Lake National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow the use of only pole and line or rod and reel, which the angler must attend at all times.

(ii) We allow sport fishing after legal sunset.

(iii) We permit fishing tournaments by Special Use Permit (General Activities Special Use Permit Application, FWS Form 3–1383–G) issued by the refuge manager.

(b) *Blackbeard Island National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) We require a refuge hunt permit (electronic form) for all hunters age 16 and older. Hunters must sign the permit and carry it with them at all times when hunting.

(ii) Hunters must check-in no more than 1 day in advance of the opening day of each hunt. We prohibit check-in after legal sunset of the second hunt day.

(iii) Each hunter may place one stand on the refuge no earlier than 1 month prior to the opening day of each hunt, but must remove the stand by the end of each hunt (see § 27.93 of this chapter).

(iv) Hunters must check-in at the refuge dock prior to setting up camp. We require personal identification at check-in.

(v) Only hunters may camp at the designated camping area during refuge hunts.

(vi) For hunting, we allow only bows as governed by State regulations.

(vii) Hunters may take five deer (no more than two antlered), and we will issue State bonus tags for two of these. There is no bag limit on feral hog.

(viii) Refuge personnel must check deer harvested during the scheduled hunt before hunters may remove them from the refuge.

(ix) Hunters must be off the island by 12 p.m. (noon) on Sunday.

(x) We allow mooring of boats to the government dock only for loading and unloading purposes.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We allow saltwater fishing year-round in the estuarine waters adjacent to the refuge.

(ii) We allow bank/beach saltwater fishing into estuarine waters only from legal sunrise to legal sunset except during managed hunts.

(c) *Bond Swamp National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of waterfowl on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a signed refuge hunt permit (signed brochure) and an additional refuge quota hunt permit for the quota hunts while hunting.

(ii) We allow the incidental take of feral hog with legal weapons during open season.

(iii) We require hunters to report all harvested game at the check station before leaving the refuge (see hunting brochure).

(iv) We allow access to the hunt area from 2 hours before legal sunrise until 2 hours after legal sunset.

(v) We allow the use of dogs for retrieving downed waterfowl during waterfowl hunts.

(vi) We prohibit hunting within 50 yards (45 meters (m)) of a road open to vehicle travel or within 200 yards (180 m) of a building.

(vii) We prohibit entry into the designated hunt area by nonhunters during all quota deer-gun and waterfowl hunts.

(viii) We prohibit removal of live hogs from the refuge.

(ix) We prohibit organized drives. We define a ''drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause game to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the game.

(x) Youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older possessing a valid hunting license.

(xi) We prohibit all-terrain vehicles (ATVs) on the refuge except by wheelchair-bound hunters with a refuge Special Use Permit (General Activities—Special Use Permit Application, FWS Form 3–1383–G).

(xii) We prohibit leaving vehicles, boats, trailers, or decoys on the refuge overnight (see § 27.93 of this chapter).

(xiii) We prohibit the possession or use of any suppressors or silencers on any firearm.

(xiv) We prohibit the possession or use of any trail or game camera or leaving any other hunting-related electronic device on the refuge.

(xv) We prohibit the possession or use of any night vision or thermal imaging equipment.

(xvi) We prohibit the possession or use of any electronic calls.

(xvii) We prohibit falconry.

(xviii) You may only place temporary blinds, blind material, and/or decoys on the day of the hunt, and you must remove them by 1:00 p.m. on that same day.

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, and quail on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (c)(1)(ii) through (iv), (vi), and (viii) through (xvii) of this section apply.

(ii) We require you to possess and carry a signed refuge hunt permit (signed brochure) while hunting for upland game. The hunt brochure will serve as your hunt permit.

(iii) We require each small game hunter to wear at least 500 square inches (3,250 square centimeters) of hunter orange as an outer garment above the waist during small game hunts.

(iv) We allow the use of dogs when hunting for squirrel, rabbit, and quail.

(v) You may place tree stands and hunting blinds during upland game and big game hunts on the day prior to each upland game and big game hunt. You must remove tree stands and hunting blinds by 11 a.m. on the day after the hunt.

(3) *Big game hunting.* We allow hunting for white-tailed deer, feral hog, and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (c)(1)(i) through (iv), (vi) through (ix), and (xi) through (xvii) and (c)(2)(v) of this section apply.

(ii) We prohibit the use of buckshot.

(iii) We prohibit the use of dogs during deer and feral hog hunts.

(iv) We require each deer and feral hog hunter to wear at least 500 square inches (3,250 square centimeters) of hunter orange as an outer garment above the waist during hunts.

(v) Youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older possessing a valid hunting license. One adult may supervise no more than one youth hunter.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing from March 1 to October 31, except on the Ocmulgee River, which is open to fishing year-round.

(ii) We allow access to the refuge and fishing only from legal sunrise to legal sunset.

(iii) We only allow fishing with pole and line or rod and reel.

(iv) The conditions set forth at paragraphs (c)(1)(xi) and (xii) of this section apply.

(v) We prohibit use or possession of alcoholic beverages while fishing on the refuge.

(vi) We require you to possess and carry a signed refuge fishing permit (signed brochure) while fishing.

(vii) Youth anglers age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older who possesses a valid fishing license.

(d) *Eufaula National Wildlife Refuge.* Refer to § 32.20(d) for regulations.

(e) *Harris Neck National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) We require a refuge hunt permit (electronic form) for all hunters age 16 and older. Hunters must sign the permit and carry it with them at all times when hunting.

(ii) Each hunter may place one stand on the refuge during the week preceding each hunt, but you must remove stands by the end of each hunt (see § 27.93 of this chapter).

(iii) We prohibit hunting within 100 yards (91.4 meters) of Harris Neck Road, the refuge entrance drive, Visitor Contact Station/Office, Barbour River Landing, Barbour River Road, or Gould's Cemetery.

(iv) We require hunters to check-in and check-out each hunt day. We require personal identification to check-in and check-out.

(v) We require hunters to check all harvested game at the check station before leaving the refuge each day.

(vi) Hunters may take five deer (no more than two antlered), and we will issue State bonus tags for two of these. There is no bag limit for feral hog.

(vii) During the gun hunt, we allow only shotguns (20 gauge or larger; slugs only), muzzleloaders, and bows as governed by State regulations.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow saltwater fishing year-round in the estuarine waters adjacent to the refuge.

(ii) We allow bank fishing into estuarine waters only from legal sunrise to legal sunset except during managed hunts.

(iii) We prohibit freshwater fishing.

(f) *Okefenokee National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow the hunting of rabbit, squirrel, and bobwhite quail on designated areas of the refuge subject to the following condition: We allow the use of dogs only to locate, point, and retrieve during quail hunts.

(3) *Big game hunting.* We allow hunting of turkey and white-tailed deer, and feral hog as incidental take, on designated areas subject to the following conditions:

(i) In the Pocket Unit:

(A) We only allow archery hunting and foot traffic.

(B) Hunters must sign in and out each hunt day and record harvest each day.

(ii) In the Suwannee Canal Recreation Area:

(A) We allow only shotguns or muzzleloaders.

(B) We require a refuge permit (Big/Upland Game Hunt Application, FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) obtained through refuge lottery.

(C) Hunters must sign in and out each day and record harvest each day.

(D) You must tag your deer with special refuge tags.

(E) Harvest limit is two deer of either sex per day.

(F) We zone Chesser Island Hunt area to accommodate mobility-impaired and youth hunters. Only mobility-impaired hunters may use all-terrain vehicles (ATVs) and vehicles on firebreaks and unpaved roads.

(iii) In the Cowhouse Unit, State of Georgia's Dixon Memorial Wildlife Management Area rules, regulations, dates, and times apply.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit possession of live bait fish.

(ii) We allow the use of only pole and line or rod and reel as methods of take.

(g) *Piedmont National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of quail, squirrel, rabbit, raccoon, and opossum on designated areas of the refuge subject to the following conditions:

(i) We prohibit upland game hunting during refuge deer or turkey hunts.

(ii) You must possess and carry a signed refuge hunt permit (signed brochure) while hunting.

(iii) We require a signed refuge hunt permit (signed brochure) to hunt on the Hitchiti Experimental Forest.

(iv) We allow access to the hunt area from 2 hours before legal sunrise until 2 hours after legal sunset.

(v) We allow hunting for raccoon and opossum from 6 p.m. to 6 a.m. on the days listed as open in the refuge hunt brochure.

(vi) We only allow .22 caliber or smaller rimfire firearms for raccoon and opossum hunting.

(vii) We allow the use of dogs on designated areas of the refuge for hunting quail, squirrel, rabbit, raccoon, and opossum.

(viii) We prohibit possession or use of any suppressors or silencer on any firearms.

(ix) We prohibit possession or use of trail or game cameras or leaving any other hunting-related electronic device on the refuge.

(x) We prohibit possession or use of any night vision or thermal imaging equipment.

(xi) We prohibit possession or use of any electronic calls.

(xii) We prohibit falconry.

(xiii) Youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older who possesses a valid hunting license.

(3) *Big game hunting.* We allow hunting for white-tailed deer, turkey, and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (g)(2)(iii), (iv), and (viii) through (xi) of this section apply.

(ii) You must possess and carry a signed refuge hunt permit (signed brochure), and possess and carry an additional refuge quota hunt permit (requires contact information only) for the quota hunts, while hunting.

(iii) We prohibit buckshot.

(iv) We prohibit hunting within 50 yards (45 meters (m)) of a road open to vehicle travel or within 200 yards (180 m) of a building.

(v) You must bring any deer, turkey, or hog you harvest to the refuge check station intact, except entrails, the day you kill them and before you leave the refuge. We prohibit possession of dressed deer, turkey, or hog unless you have checked them at the refuge check station.

(vi) We prohibit all-terrain vehicles (ATVs) on the refuge except by wheelchair-bound hunters with a special use permit (General Activities—Special Use Permit Application, FWS Form 3–1383–G).

(vii) We prohibit dogs for hunting big game.

(viii) We prohibit organized drives. We define a ''drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause game to move in the direction of any person(s)

who is part of the organized or planned hunt and known to be waiting for the game.

(ix) Youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older who possesses a valid hunting license. One adult may supervise no more than one youth hunter.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing from March 15 to September 30.

(ii) We allow access to the refuge and fishing from only legal sunrise to legal sunset.

(iii) You may keep the following numbers of fish each day: Bass—5, channel catfish—5, sunfish or bream—15, and crappie—15.

(iv) We allow nonmotorized boats or boats with electric motors on all ponds designated as open to fishing.

(v) We prohibit use or possession of alcoholic beverages while fishing on the refuge.

(vi) We allow fishing only with pole and line or rod and reel.

(vii) We prohibit leaving boats or other personal equipment on the refuge overnight (see § 27.93 of this chapter).

(viii) We prohibit the use of fish for bait and the possession of minnows.

(ix) We prohibit possession or take of grass carp. You must immediately release any grass carp caught.

(x) We require you to possess and carry a signed refuge fishing permit (signed brochure) while fishing.

(xi) Youth anglers age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older who possesses a valid fishing license.

(h) *Savannah National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of waterfowl and mourning dove on designated areas of the refuge subject to the following conditions:

(i) All hunters age 16 and older must possess and carry a signed refuge hunt permit (requires contact information only).

(ii) To participate in the quota youth waterfowl hunt, youth hunters must submit the Waterfowl Lottery Application (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System).

(iii) You may take feral hog and coyote during all refuge hunts (migratory bird, upland, and big game) with weapons authorized and legal for those hunts.

(iv) We allow the use of dogs for retrieving migratory birds.

(2) *Upland game hunting.* We allow hunting of squirrel and rabbit on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (h)(1)(i) and (iii) of this section apply.

(ii) You may not hunt on or within 100 yards (90 meters) of public roads, refuge facilities, roads and trails, and railroad rights-of-way, or in closed areas.

(3) *Big game hunting.* We allow hunting of white-tailed deer, turkey, feral hog, and coyote on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (h)(1)(i) and (iii) of this section apply.

(ii) To participate in the quota gun hunt for wheelchair-dependent hunters, hunters must submit the Quota Deer Hunt Application (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System). To participate in the quota youth turkey hunt and learn weekend, youth hunters must submit the Big/Upland Game Hunt Application (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System).

(iii) You may only use bows, as governed by State regulations, for deer, feral hog, and coyote hunting during the archery hunt for these species.

(iv) You may only use shotguns (20 gauge or larger, slugs only), centerfire rifles, centerfire pistols, muzzleloaders, and bows, as governed by State regulations, for deer, feral hog, and coyote hunting during the firearm hunts for these species.

(v) Hunters may take as many as five deer (no more than two antlered). There is no bag limit on feral hog or coyote.

(vi) We allow only shotguns with approved nontoxic #2 shot or smaller, and bows, as governed by State regulations, for turkey hunting. We prohibit the use of slugs or buckshot for turkey hunting.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) Anglers may fish in refuge impoundments and canals from March 1 through November 30 annually.

(ii) Anglers may fish in Kingfisher Pond and all tidal creeks year-round.

(iii) We allow fishing from legal sunrise to legal sunset.

(iv) Anglers may bank fish year-round throughout the refuge, unless otherwise posted.

(v) Anglers may only use nonmotorized boats and boats with electric motors within impounded waters.

(i) *Wassaw National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) We require a refuge hunt permit for all hunters age 16 and older. Hunters must sign the permit and carry it with them at all times when hunting.

(ii) Refuge personnel must check deer harvested during scheduled hunts before hunters leave the refuge.

(iii) Hunters may take five deer (no more than two antlered), and we will issue State bonus tags for two of these. There is no bag limit on feral hog.

(iv) We prohibit the use of buckshot.

(v) We allow mooring of boats to the government dock only for loading or unloading purposes.

(vi) Hunters must check-in at the refuge dock prior to setting up camp. We require personal identification at check-in.

(vii) We allow only hunters to camp at the designated camping area while participating in refuge hunts.

(viii) Each hunter may place one stand on the refuge no earlier than 1 month prior to the opening day of each hunt, but you must remove all stands by the end of each hunt (see § 27.93 of this chapter).

(ix) Hunters must be off the island by 12 p.m. (noon) the day following the last day of the hunt.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow saltwater fishing year-round in the estuarine waters adjacent to the refuge.

(ii) We allow bank/beach fishing into estuarine waters only from legal sunrise to legal sunset except during managed hunts.

(iii) We prohibit freshwater fishing.

(j) *Wolf Island National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions: We allow saltwater fishing year-round in the estuarine waters adjacent to the refuge.

§ 32.30 Hawaii.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Hanalei National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(b) *Kakahaia National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow saltwater fishing on designated areas of the refuge.

(c) *Kilauea Point National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow saltwater fishing on designated areas of the refuge.

§ 32.31 Idaho.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Bear Lake National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, and snipe on designated areas of the refuge subject to the following conditions:

(i) We allow boats, except air thrust boats, after September 20 within the designated refuge hunting areas, for the purposes of hunting.

(ii) You may only use portable blinds or construct temporary blinds of natural vegetation. Blinds will be available for general use on a first-come, first-served basis. You must remove portable blinds, decoys, boats, and other personal property from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(2) *Upland game hunting.* We allow hunting of pheasant, grouse, partridge, and cottontail rabbit on designated areas of the refuge.

(3) [Reserved]

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following condition: We prohibit use and possession of lead weights or sinkers.

(b) *Camas National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, and snipe on designated areas of the refuge subject to the following conditions:

(i) We allow hunters to access the refuge 1 hour before legal shooting time.

(ii) You may only use portable blinds or construct temporary blinds of natural vegetation. Blinds will be available for general use on a first-come, first-served basis. You must remove portable blinds, decoys, and other personal property at the end of each day's hunt (see § 27.93 of this chapter).

(2) *Upland game hunting.* We allow hunting of pheasant, grouse, and partridge on designated areas of the refuge.

(3)–(4) [Reserved]

(c) *Deer Flat National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, common snipe, and dove on designated areas of the refuge subject to the following conditions:

(i) Hunters in the South Side Recreation Area may use float tubes, nonmotorized boats, or boats equipped with electric motors within 200 yards (180 meters) of the shoreline. We prohibit the use or possession of gas-powered motors.

(ii) You must remove boats, decoys, blinds, other personal property, and any materials brought onto the refuge for blind construction at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(iii) Hunters may enter the refuge 1 hour before official shooting hours (½ hour before legal sunrise), and remain on the refuge until 1 hour after official shooting hours (legal sunset).

(iv) We allow the use of dogs for hunting.

(2) *Upland game hunting.* We allow hunting of pheasant, quail, and partridge on designated areas of the refuge subject to the following condition: The condition set forth at paragraph (c)(1)(iv) of this section applies.

(3) *Big game hunting.* We allow hunting of deer on designated areas of the refuge subject to the following conditions:

(i) You must obtain a refuge-specific hunting permit (signed brochure) to hunt deer on the Lake Lowell Unit. Hunters must sign and carry the permit in the field while hunting.

(ii) Hunters may place up to two portable deer stands in the Lake Lowell Unit. Hunters must place stands/platforms by hand. Hunters may place stands/platforms on the refuge no earlier than the beginning date of the assigned hunt permit and must remove them no later than the ending date of the hunt permit. Each stand must display the hunter's hunting license number so that it is legible from the ground.

(iii) In the Lake Lowell Unit, you may only shoot deer while hunting from an elevated tree stand/platform. We prohibit ground stalking and/or still hunting from the ground. We prohibit shooting a firearm or bow while on the ground, except to kill a downed deer.

(iv) While hunting from a tree stand, you must use a fall-arrest system/full body harness meeting Treestand Manufacturer's Association standards.

(v) Hunters may enter the Lake Lowell Unit no earlier than 2 hours before official shooting hours (½ hour before legal sunrise) and must leave the area within 2 hours after official shooting hours (½ hour after legal sunset). Successful hunters may extend their departure time only as long as is necessary to retrieve dead deer.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) From October 1 through April 14, we only allow ice fishing within 200 yards (180 meters) of the shoreline in front of both the Lower Dam (Fishing Area A) and the Upper Dam (Fishing Area B) on the Lake Lowell Unit, unless otherwise posted by the Bureau of Reclamation.

(ii) We allow fishing from nonmotorized boats in designated areas of the Lake Lowell Unit from October 1 through April 14, from ½ hour before legal sunrise to ½ hour after legal sunset.

(iii) From February 1 through June 30, we prohibit fishing from all islands in the Snake River Islands Unit.

(d) *Grays Lake National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, and snipe on designated areas of the refuge subject to the following conditions:

(i) Blinds will be available for general use on a first-come, first-served basis. You must remove portable blinds, decoys, boats, and other personal property from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(ii) We allow only hunters and dogs to retrieve game in designated hunting areas.

(2)–(4) [Reserved]

(e) *Kootenai National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge subject to the following conditions:

(i) We allow hunting only on Tuesdays, Thursdays, Saturdays, and Sundays.

(ii) We allow the use of dogs when hunting.

(iii) We prohibit the discharge of firearms in posted retrieval zones and areas closed to hunting.

(iv) Hunters may access the waterfowl hunt area no earlier than 3 a.m. and must leave no later than 1 hour after legal sunset.

(2) *Upland game hunting.* We allow hunting of forest grouse and wild turkey on designated areas of the refuge subject to the following conditions:

(i) You may possess only approved nontoxic shot shells (see § 32.2(k)) while in the field.

(ii) We allow the use of dogs when hunting forest grouse and for turkey during the fall hunt.

(3) *Big game hunting.* We allow hunting of deer, elk, black bear, moose, and mountain lion on designated areas of the refuge subject to the following conditions:

(i) We allow hunting of deer at the designated accessible blind for hunters

with disabilities subject to the following conditions:

(A) You must obtain a Special Use Permit (FWS Form 3–1383–G) from the refuge manager to use the accessible blind.

(B) We only allow deer hunting at the accessible blind using the following weapons: Muzzleloader, archery equipment, crossbow, shotgun, or handgun. For shotguns, you may only use slugs. For handguns, you may only use straight-walled cartridges not originally established for rifles.

(ii) You may possess only approved nontoxic ammunition for hunting (see § 32.2(k)).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: We allow bank fishing only.

(f) *Minidoka National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, and snipe on designated areas of the refuge subject to the following conditions:

(i) We allow only hunters and dogs to retrieve game in designated hunting areas.

(ii) You may only use portable blinds or construct temporary blinds of dead natural vegetation. Blinds will be available for general use on a first-come, first-served basis. You must remove portable blinds at the end of each day's hunt (see § 27.93 of this chapter). We prohibit use of rock piles above the high-water mark for blind construction.

(iii) On West Hunting Area (Lake Walcott), we allow hunting on the uplands and over water within 100 yards (90 meters) of the shoreline. We allow use of boats only for retrieval of game.

(iv) On East Hunting Area (Tule Island), we allow boats during the waterfowl hunting season.

(2) *Upland game hunting.* We allow hunting of pheasant, grouse, partridge, and cottontail rabbit on designated areas of the refuge.

(3) *Big game hunting.* We allow hunting of elk (archery only) on designated areas of the refuge subject to the following condition: Elk hunters may enter the hunt area from 1 and ½ hours before legal hunting time to 1 and ½ hours after legal hunting time.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

§ 32.32 Illinois.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Chautauqua National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of waterfowl on designated areas of the refuge subject to the following condition: Hunters must remove boats, decoys, blinds, and blind materials at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow fishing on designated areas of the refuge from legal sunrise to legal sunset subject to the following conditions:

(i) We allow fishing on Lake Chautauqua from February 1 through October 15. We prohibit fishing in the waterfowl hunting area during the waterfowl hunting season.

(ii) We allow bank fishing year-round between the boat ramp and the fishing trail in the North Pool and from Goofy Ridge Public Access to the west gate of the North Pool water control structure.

(b) *Crab Orchard National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, woodcock, dove, snipe, rail, and crow on designated areas of the refuge subject to the following conditions:

(i) We require a signed hunt brochure. You must carry this signed permit when hunting on the refuge.

(ii) We prohibit hunting within 50 yards (45 meters (m)) of all designated public use facilities, including, but not limited to, parking areas, picnic areas, campgrounds, marinas, boat ramps, public roads, and established hiking trails listed in the refuge trails brochure.

(iii) Hunters must remove all boats, decoys, blinds, blind materials, stands, platforms, and other personal equipment brought onto the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(iv) Waterfowl hunting blinds must be a minimum of 200 yards (180 m) apart. Hunters must anchor boat blinds on the shore or anchor them a minimum of 200 yards (180 m) away from any shoreline.

(v) We allow the use of dogs when hunting, provided the dogs are under the immediate control of the hunter at all times.

(2) *Upland game hunting.* We allow hunting of wild turkey, squirrel, rabbit, bobwhite quail, raccoon, opossum, red fox, grey fox, bobcat, woodchuck, striped skunk, pheasant, partridge, and coyote on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(1)(i) through (iii) and (v) of this section apply.

(ii) We prohibit hunters using rifles or handguns with ammunition larger than .22 caliber rimfire, except they may use black powder firearms up to and including .40 caliber.

(iii) We allow the use of .22 and .17 caliber rimfire lead ammunition for the taking of small game and furbearers during open season.

(iv) For hunting, you may possess only approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

(v) We require all deer and turkey hunters using the restricted use area to check-in at the refuge visitor center prior to hunting.

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(1)(i) through (iii) and (b)(2)(ii) and (v) of this section apply.

(ii) We prohibit the use of handguns for the taking of deer in the restricted use area.

(iii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(iv) We only allow archery equipment when hunting deer in the following areas:

(A) In the controlled waterfowl hunting area;

(B) On all refuge lands north of Illinois State Route 13; and

(C) In the area north of the Crab Orchard Lake emergency spillway and west of Crab Orchard Lake.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) On Crab Orchard Lake west of Wolf Creek Road:

(A) Anglers may fish from boats all year.

(B) Anglers must remove all trotlines/jugs from legal sunrise until legal sunset from the Friday immediately prior to Memorial Day through Labor Day.

(ii) On Crab Orchard Lake east of Wolf Creek Road:

(A) Anglers may fish from boats March 15 through September 30.

(B) Anglers may fish all year at the Wolf Creek and Route 148 causeways.

(iii) On A–41, Bluegill, Managers, Honkers, and Visitors Ponds:

(A) Anglers may fish only from legal sunrise to legal sunset from March 15 through September 30.

(B) We prohibit anglers from using boats or flotation devices.

(iv) Trotlines/jugs:

(A) We prohibit the use of trotlines/jugs on all refuge waters outside of Crab Orchard Lake.

(B) We prohibit the use of trotlines/jugs with any flotation device that has previously contained any petroleum-based material or toxic substances.

(C) Anglers must attach a buoyed device that is visible on the water's surface to all trotlines.

(v) Anglers may use all legal noncommercial fishing methods, except they may not use any underwater breathing apparatus.

(vi) Anglers may not submerge any poles or similar objects to take or locate any fish.

(vii) Organizers of all fishing events must possess a Special Use Permit (FWS Form 3–1383–G or FWS Form 3–1383–C).

(viii) We prohibit anglers from fishing within 250 yards (225 m) of an occupied waterfowl hunting blind.

(ix) Specific creel and size limits apply on various refuge waters as listed in the Crab Orchard fishing brochure and the annual Illinois fishing digest.

(c) *Cypress Creek National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, woodcock, rail, dove, crow, and snipe on designated areas of the refuge subject to the following conditions:

(i) You must remove all boats, decoys, blinds, blind materials, stands, and platforms (see §§ 27.93 and 27.94 of this chapter) brought onto the refuge at the end of each day's hunt.

(ii) We prohibit outboard motors larger than 10 horsepower (hp).

(iii) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, bobwhite quail, raccoon, opossum, red fox, gray fox, bobcat, striped skunk, woodchuck, turkey, pheasant, Hungarian partridge, and coyote on designated areas of the refuge subject to the following condition:

(i) The conditions set forth at paragraphs (c)(1)(i) through (iii) of this section apply.

(ii) For hunting, you may use or possess only approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (c)(1)(i) of this section applies.

(ii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (c)(1)(ii) of this section applies.

(ii) Anglers must remove all boats and fishing equipment (see § 27.93 of this chapter) brought onto the refuge at the end of each day's fishing activity.

(iii) We prohibit the use of trotlines, jugs, yo-yos, nets, or any commercial fishing equipment except in areas where State regulations authorize commercial tackle.

(iv) We prohibit the use of more than two poles per angler and more than two hooks or lures per pole.

(v) We prohibit possession of bass smaller than 15 inches (37.5 centimeters) in length from refuge ponds.

(vi) We prohibit possession of more than six channel catfish from refuge ponds.

(d) *Emiquon National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the refuge subject to the following conditions:

(i) Hunters must remove boats, decoys, blinds, and blind materials brought onto the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(ii) We allow access for hunting from 1 hour before legal shooting time (as governed by State regulations for the species in question) until 1 hour after legal sunset.

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the refuge subject to the following condition: The condition set forth at paragraph (d)(1)(ii) of this section applies.

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (d)(1)(ii) of this section applies.

(ii) For hunting, you may use or possess only approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

(4) *Sport fishing.* We allow sport fishing throughout the year on designated areas of the refuge subject to the following conditions:

(i) We allow fishing from legal sunrise to legal sunset.

(ii) We prohibit fishing in the waterfowl hunting area during the waterfowl hunting season.

(e) *Great River National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of waterfowl and coot on designated areas of the refuge subject to the following condition: On the Long Island Division, we allow hunting only from blinds constructed on sites posted by the Illinois Department of Natural Resources.

(2) *Upland game hunting.* We allow hunting of small game, furbearers, and game birds on designated areas of the refuge subject to the following conditions:

(i) We open the refuge divisions for upland game hunting from ½ hour before legal sunrise to ½ hour after legal sunset.

(ii) On the Cherry Box and Hickory Creek Units, we allow hunting with shotgun only during the Statewide upland game season.

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

(i) For wild turkey hunting, you may use or possess only approved nontoxic shot shells while in the field (see § 32.2(k)).

(ii) We allow only portable tree stands from September 1 through January 31 of each year. You must permanently attach your State-generated hunter identification number in a visible location on the stand. We allow only one tree stand per hunter.

(iii) On the Fox Island and Slim Island Divisions, and the Cherry Box and Hickory Creek Units, we only allow archery deer hunting.

(iv) On the Delair Division, we only allow deer hunting during special managed hunts. You must possess and carry a refuge permit (hunt letter) when hunting during special managed hunts.

(v) On the Fox Island Division, Cherry Box Unit, and Hickory Creek Unit, we allow turkey hunting during the State spring season, youth season, and fall archery season.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit the taking of any mussel (clam), crayfish, frog, leech, and turtle species by any method on the refuge (see § 27.21 of this chapter).

(ii) On the Fox Island Division, we only allow bank fishing along any

portion of the Fox River from January 1 through October 15.

(f) *Hackmatack National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the refuge subject to the following condition: You must remove all boats, decoys, blinds, blind materials, stands, and platforms (see §§ 27.93 and 27.94 of this chapter) brought onto the refuge at the end of each day's hunt.

(2) *Upland game hunting.* We allow upland game and turkey hunting on designated areas of the refuge subject to the following conditions:

(i) For hunting, you may use or possess only approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

(ii) You must remove all boats, decoys, blinds, blind materials, stands, and platforms (see §§ 27.93 and 27.94 of this chapter) brought onto the refuge at the end of each day's hunt.

(3) *Big game hunting.* We allow big game hunting on designated areas of the refuge subject to the following condition: You must remove all boats, decoys, blinds, blind materials, stands, and platforms (see §§ 27.93 and 27.94 of this chapter) brought onto the refuge at the end of each day's hunt.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: We prohibit the taking of turtle and frog (see § 27.21 of this chapter).

(g) *Kankakee National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of wild turkey on designated areas of the refuge subject to the following condition: For hunting, you may possess only approved nontoxic shot shells while in the field (see § 32.2(k)).

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge.

(4) [Reserved]

(h) *Meredosia National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow sport fishing on all areas open to public access from legal sunrise to legal sunset from February 1 to October 15.

(ii) We allow access to Meredosia Lake from the boat ramp and allow foot access on refuge land along the east side of the Meredosia Lake in Morgan County from legal sunrise to legal sunset throughout the year.

(i) *Middle Mississippi River National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the refuge subject to the following condition: You must remove boats, blinds, blind materials, stands, decoys, and other hunting equipment from the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, and bobwhite quail on designated areas of the refuge.

(3) *Big game hunting.* We allow hunting of white-tailed deer and wild turkey on designated areas on the refuge subject to the following conditions:

(i) For wild turkey hunting, you may use or possess only approved nontoxic shot shells while in the field (see § 32.2(k)).

(ii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(iii) We prohibit placing temporary tree stands in dead or dying trees.

(iv) We allow only portable tree stands from September 1 through January 31 of each year. You must permanently attach your State-generated hunter identification number in a visible location on the stand. We allow only one tree stand per hunter.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit the taking of any mussel (clam), crayfish, frog, leech, and turtle species by any method on the refuge (see § 27.21 of this chapter).

(ii) We allow fishing only from legal sunrise to legal sunset.

(iii) You must remove all fishing devices at the end of each day's fishing activity (see §§ 27.93 and 27.94 of this chapter).

(j) *Port Louisa National Wildlife Refuge.* Refer to § 32.34(f) for regulations.

(k) *Two Rivers National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the refuge subject to the following condition: Hunters must remove boats, decoys, blinds, and blind materials brought onto the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game hunting for wild turkey, small game, furbearers, and nonmigratory game birds on designated areas of the refuge subject to the following conditions:

(i) We allow hunting from legal sunrise to legal sunset.

(ii) We restrict turkey hunting to archery only in the fall and shotgun or archery in the spring.

(iii) For wild turkey hunting, you may use or possess only approved nontoxic shot shells while in the field (see § 32.2(k)).

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) Hunters must remove all portable hunting stands and blinds from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(ii) We restrict white-tailed deer hunting on the Clarksville Island Division to archery only.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit the taking of turtle or frog (see § 27.21 of this chapter).

(ii) We allow fishing only from legal sunrise to legal sunset.

(iii) Anglers must remove boats and all other fishing devices at the end of each day's fishing activity (see § 27.93 of this chapter).

(l) *Upper Mississippi River National Wildlife and Fish Refuge.* Refer to § 32.42(r) for regulations.

§ 32.33 Indiana.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Big Oaks National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of squirrel on designated areas of the refuge subject to the following conditions:

(i) We require a signed acknowledgment of danger agreement and a refuge hunt permit.

(ii) Hunters must possess a valid daily gate pass at all times.

(iii) We allow the use of dogs for hunting only during the squirrel hunting season in the day use area, provided the dog is under the immediate control of the hunter at all times. You must ensure that all hunting dogs wear a collar displaying the owner's contact information.

(iv) You must hunt only in assigned areas. We prohibit trespass into an unassigned hunt area.

(v) We require that all hunters check all harvested game taken on the refuge at the refuge check station.

(vi) We require all refuge hunters to hunt with a partner. We require hunting

partners to know the location of their partner while hunting. An adult, age 18 or older, must directly supervise youth hunters age 17 and younger.

(vii) Hunters must possess and carry a compass while hunting on the refuge.

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(2)(i), (ii), and (iv) through (vii) of this section apply.

(ii) You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

(iii) We allow the use of portable hunting stands and blinds.

(4) *Sport fishing.* We allow fishing on the Old Timbers Lake subject to the following conditions:

(i) We require a signed acknowledgment of danger agreement and a refuge access permit.

(ii) Anglers must possess a valid daily gate pass at all times.

(iii) We allow fishing only with a rod and reel or pole and line.

(iv) We prohibit the use of trotlines.

(v) We prohibit retaining black bass, largemouth bass, smallmouth bass, and spotted bass between 12 and 15 inches (30 and 37.5 centimeters).

(b) *Muscatatuck National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of quail, squirrel, and rabbit on designated areas of the refuge subject to the following conditions:

(i) We prohibit hunting and the discharge of a firearm within 100 yards (30 meters) of any dwelling or any other building that people, pets, or livestock may occupy.

(ii) We allow the use of dogs for hunting rabbit, quail, and squirrel, provided the dog is under the immediate control of the hunter at all times.

(iii) We allow only shotguns for upland game hunting.

(iv) We require hunters to sign and carry the current hunting brochure while hunting.

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(2)(i) and (iv) of this section apply.

(ii) For wild turkey hunting, you may use or possess only approved nontoxic shot shells while in the field (see § 32.2(k)).

(iii) We prohibit firearms deer hunting during the State firearms season.

(iv) You may take only two deer per day from the refuge, only one of which may be an antlered buck.

(v) We allow only spring turkey hunting on the refuge, and hunters must possess a State-issued hunting permit during the first 6 days of the season.

(vi) We close archery deer hunting during the State muzzleloader season.

(vii) Turkey hunting ends at 1 p.m. each day.

(viii) We prohibit the possession of game trail cameras on the refuge.

(ix) We require you to remove arrows from crossbows during transport in a vehicle.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We allow the use of belly boats or float tubes in all designated fishing areas.

(ii) We allow fishing only with rod and reel or pole and line.

(iii) We prohibit harvest of frog and turtle (see § 27.21 of this chapter).

(iv) We prohibit the use of lead fishing tackle.

(v) We allow only youth age 15 and younger to fish in the Discovery Pond.

(c) *Patoka River National Wildlife Refuge and Management Area*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the refuge and the White River Wildlife Management Area subject to the following conditions:

(i) You must remove all boats, decoys, blinds, and blind materials after each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(ii) We prohibit hunting and the discharge of a weapon within 150 yards (137 meters) of any dwelling or any building that may be occupied by people, pets, or livestock.

(2) *Upland game hunting.* We allow hunting of bobwhite quail, cottontail rabbit, squirrel (gray and fox), red and gray fox, coyote, opossum, and raccoon subject to the following conditions:

(i) We allow the use of dogs for hunting, provided the dog is under the immediate control of the hunter at all times.

(ii) The conditions set forth at paragraphs (c)(1)(i) and (ii) of this section apply.

(3) *Big game hunting.* We allow hunting of white-tailed deer and wild turkey on designated areas of the refuge subject to the following conditions:

(i) You may possess only approved nontoxic shells when hunting wild turkey (see § 32.2(k)).

(ii) On the Columbia Mine Unit, you may only hunt white-tailed deer during the first week (7 days) of the following seasons, as governed by the State: archery, firearms, and muzzleloader.

(iii) On the Columbia Mine Unit, you may leave portable tree stands overnight only when the unit is open to hunting and for a 2-day grace period before and after the special season.

(iv) The conditions set forth at paragraphs (c)(1)(i) and (ii) of this section apply.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing from legal sunrise to legal sunset.

(ii) We allow fishing only with rod and reel, pole and line, bow and arrow, or crossbow.

(iii) The minimum size limit for largemouth bass on Snakey Point Marsh and on the Columbia Mine Unit is 14 inches (35.6 centimeters).

(iv) We prohibit the taking of any turtle, frog, leech, minnow, crayfish, and mussel (clam) species by any method on the refuge (see § 27.21 of this chapter).

(v) You must remove boats at the end of each day's fishing activity (see § 27.93 of this chapter).

§ 32.34 Iowa.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *De Soto National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow youth hunting of ring-necked pheasant on designated areas of the refuge subject to the following condition: The refuge will annually determine hunting seasons, dates, and designated areas, and publish them in the refuge brochure.

(3) *Big game hunting.* We allow hunting of white-tailed deer and wild turkey on designated areas of the refuge subject to the following conditions:

(i) The refuge manager will annually determine and publish hunting seasons and dates, and will include them in the refuge access permit (signed brochure).

(ii) You must possess and carry a refuge access permit (signed brochure) at all times while in the hunting area. Hunters may enter the hunting areas only within the dates listed on the refuge access permit (signed brochure).

(iii) Hunters with a valid Iowa or Nebraska resident hunting permit may access all areas open to hunting. Reciprocity exists, with both States allowing hunters with either resident permit to access refuge hunting land in either State.

(iv) Hunters holding nonresident Nebraska or nonresident Iowa permits may hunt only on the ground that lies within the State that issued the nonresident permit.

(v) We allow hunters in the designated area from 2 hours before legal sunrise until 2 hours after legal sunset.

(vi) We prohibit the use of a crossbow as archery equipment unless the hunter has obtained a State-issued disability crossbow permit.

(vii) All hunters must be in possession of a valid entrance fee permit.

(viii) Hunters must remove hunting blinds or stands and other property by the close of the season (see §§ 27.93 and 27.94 of this chapter).

(ix) We prohibit shooting on or over any refuge road open to vehicle traffic within 30 feet (9 meters (m)) of the centerline.

(x) We prohibit field dressing of any big game within 100 feet (30 m) of the centerline of any refuge road.

(xi) We prohibit organized drives. We define a ''drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause game to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the game.

(xii) We allow two portable tree stands/blinds per hunter within the hunt area. Of those, only one stand/blind can be left on the refuge from 1 week prior to the start of the designated hunt season to 1 week after the end of the designated hunt season.

(xiii) Unattended stands and blinds must be plainly labeled with the full name and/or hunting license number of the owner. Labels must be visible from ground level.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow ice fishing in DeSoto Lake from January 2 through the end of February.

(ii) We allow the use of pole and line or rod and reel fishing in DeSoto Lake from April 15 through October 14.

(iii) We allow the use of archery and spear fishing for nongame fish only from April 15 through October 14.

(iv) When the lake is open to ice fishing, we prohibit motor- or wind-driven conveyances on the lake.

(v) We allow the use of portable ice fishing shelters on a daily basis from January 2 through the end of February.

(vi) Anglers may use no more than two lines and two hooks per line, including ice fishing.

(vii) We prohibit the use of trotlines, float lines, bank lines, or setlines.

(viii) Anglers must adhere to minimum length and creel limits as posted.

(ix) We prohibit anglers leaving any personal property, litter, fish, or fish parts on the banks, in the water, or on the ice (see §§ 27.93 and 27.94 of this chapter).

(x) We prohibit digging or seining for bait.

(xi) We prohibit take or possession of turtle or frog at any time (see §§ 27.21 of this chapter).

(xii) We allow anglers on the refuge from ½ hour before legal sunrise to ½ hour after legal sunset.

(b) *Driftless Area National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of upland game on designated areas of the refuge subject to the following condition: In areas open to hunting, we allow hunting beginning November 1 until the close of State hunting seasons or January 15, whichever occurs first.

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) In areas open to hunting, we allow hunting beginning November 1 until the close of State hunting seasons or January 15, whichever occurs first.

(ii) We allow only archery and muzzleloader hunting.

(iii) We allow deer drives only during lawful party hunting conducted within the refuge, as governed by State regulations. We prohibit driving deer from or through the refuge to any persons hunting outside the refuge boundary.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(c) *Iowa Wetland Management District*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds throughout the district subject to the following conditions:

(i) We prohibit leaving boats, decoys, or other personal property unattended at any time. You must remove all personal property, which includes boats, decoys, and blinds, brought onto the district at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(ii) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(2) *Upland game hunting.* We allow upland game hunting throughout the district subject to the following condition: The conditions set forth at paragraphs (c)(1)(i) and (ii) of this section apply.

(3) *Big game hunting.* We allow big game hunting throughout the district and subject to the following conditions:

(i) For wild turkey hunting, you may possess only approved nontoxic shot shells while in the field (see § 32.2(k)).

(ii) You may leave tree stands in an area for a continuous period of time beginning 7 days prior to the open season for hunting deer and ending 7 days after the final day of that season. You must clearly mark the stand with your Iowa hunting license number.

(4) *Sport fishing.* We allow sport fishing throughout the district subject to the following conditions:

(i) The condition set forth at paragraph (c)(1)(i) of this section applies.

(ii) You must remove all ice fishing shelters and other personal property at the end of each day's fishing (see § 27.93 of this chapter).

(d) *Neal Smith National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow the hunting of duck, goose, and coot on designated areas of the refuge subject to the following conditions:

(i) We prohibit all hunting February 1 through August 31 due to conflicts with existing appropriate and compatible uses.

(ii) We allow entry into the refuge 1 hour before legal sunrise and require hunters to leave the refuge no later than 1 hour after legal sunset.

(iii) We prohibit shooting on or over any refuge road within 50 feet (15 meters) from the centerline.

(iv) You must possess and carry a refuge permit (free brochure available at the refuge visitor center).

(v) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(2) *Upland game hunting.* We allow hunting of ring-necked pheasant, bobwhite quail, pigeon, mourning dove, crow, cottontail rabbit, gray and fox squirrel, and fall wild turkey on designated areas of the subject to the following conditions:

(i) The conditions set forth at paragraphs (d)(1)(i) through (v) of this section apply.

(ii) You may only possess approved nontoxic shot (see § 32.2(k)) when turkey hunting.

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge and subject to the following conditions:

(i) The conditions set forth at paragraphs (d)(1)(i) through (iv) of this section apply.

(ii) We allow the use of portable stands and blinds for hunting, and hunters must remove them at the end of each day (see § 27.93 of this chapter).

(4) [Reserved]

(e) *Northern Tallgrass Prairie National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of

duck, goose, merganser, coot, rail (Virginia and sora only), woodcock, snipe, and dove (mourning and Eurasian collared) on designated areas subject to the following conditions:

(i) For units adjacent to and managed by Neal Smith National Wildlife Refuge, you must follow the refuge-specific regulations provided in this paragraph (e).

(ii) Hunters must remove boats, decoys, portable or temporary blinds, materials brought onto the refuge, and other personal property at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter). Hunters must dismantle hunting blinds, platforms, and ladders made from natural vegetation at the end of each day.

(iii) We allow the use of dogs when hunting, except when hunting furbearers, provided the dog is under the immediate control of the hunter at all times.

(2) *Upland game hunting.* We allow hunting of wild turkey, ring-necked pheasant, bobwhite quail, gray partridge, cottontail rabbit, squirrel (fox and gray), groundhog, raccoon, opossum, fox (red and gray), coyote, badger, striped skunk, and crow on designated areas subject to the following conditions:

(i) Shotgun hunters may possess only approved nontoxic shot when hunting turkey (see § 32.2(k)).

(ii) The conditions set forth at paragraphs (e)(1)(i) through (iii) of this section apply.

(3) *Big game hunting.* We allow the hunting of deer on designated areas of the refuge subject to the following conditions:

(i) We allow the use of temporary stands, blinds, platforms, or ladders.

(ii) The conditions set forth at paragraphs (e)(1)(i) and (ii) of this section apply.

(iii) We prohibit shooting on, from, over, across, or within 30 feet (9 meters) of a roadway open to public vehicle transportation at a big game animal or a decoy of a big game animal.

(iii) For all counties with the exception of Jasper, you may leave tree stands in an area for a continuous period of time beginning 7 days prior to the open season for hunting deer and ending 7 days after the final day of that season. You must clearly mark the stand with your Iowa hunting license number.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (e)(1)(ii) of this section applies.

(ii) We prohibit the taking of any turtle, frog, leech, minnow, crayfish, and mussel (clam) species by any method on the refuge (see § 27.21 of this chapter).

(f) *Port Louisa National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the refuge subject to the following condition: You must remove boats, decoys, and portable blinds at the end of each day (see § 27.93 of this chapter).

(2) *Upland game hunting.* We allow hunting of upland game on designated areas of the refuge subject to the following conditions:

(i) For wild turkey hunting, you may use or possess only approved nontoxic shot shells (see § 32.2(k)). We allow shotgun slug or muzzleloading rifle for hunting coyotes.

(ii) We allow only squirrel hunting on the Keithsburg Division from the beginning of the State season through September 15.

(iii) We allow hunting on the Horseshoe Bend Division from September 1 through September 15, and from December 1 through February 28. We allow spring turkey hunting.

(iv) We allow hunting on the Big Timber Division from September 1 through February 28. We allow spring turkey hunting.

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We allow the use of only portable stands, and you must remove them at the end of each day (see § 27.93 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit the taking of turtle or frog (see § 27.21 of this chapter).

(ii) We allow fishing only from legal sunrise to legal sunset.

(iii) Anglers must remove boats and all other fishing devices at the end of each day's fishing activity (see § 27.93 of this chapter).

(g) *Union Slough National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, rail (Virginia and sora only), woodcock, and snipe on designated areas of the refuge subject to the following conditions:

(i) We allow hunters on the refuge from 1 hour before legal sunrise until 1 hour after legal sunset.

(ii) We allow boats or other floating devices. We allow electric motors only. We prohibit the use of gasoline motors. You may not leave boats unattended.

(iii) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(iv) We prohibit entry into any closed area to retrieve downed game, unless the hunter has received written permission from the refuge manager.

(v) We prohibit hunting on road rights-of-way on any portion of the refuge not open to hunting. The road right-of-way extends to the center of the road.

(2) *Upland game hunting.* We allow hunting of pheasant, gray partridge, cottontail rabbit, squirrel (fox and gray), groundhog, raccoon, opossum, fox, coyote, and crow on designated areas of the refuge subject to the following conditions:

(i) We prohibit possession of shotgun slugs.

(ii) The conditions set forth at paragraphs (g)(1)(i), (iv), and (v) of this section apply.

(3) *Big game hunting.* We allow hunting of deer and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (g)(1)(i), (iv), and (v) of this section apply.

(ii) We allow portable tree stands, portable blinds, and freestanding elevated platforms to be left on the refuge from 7 days prior to the first deer hunting season; you must remove them prior to 7 days following the last deer hunting season (see § 27.93 of this chapter). Turkey hunters must remove blinds and stands each day (see § 27.93 of this chapter).

(iii) You must label portable tree stands, portable blinds, and freestanding elevated platforms that are left unattended with your hunting license number. The label must be legible from the ground.

(iv) You must remove any other personal property brought onto the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(v) We allow deer hunters on the refuge from 1 hour before legal sunrise until 2 hours after legal sunset.

(vi) Deer hunters may possess only shot shells that shoot a single projectile (*i.e.,* slugs).

(vii) For wild turkey hunting, you may use or possess only approved nontoxic shot shells while in the field (see § 32.2(k)).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing from legal sunrise to legal sunset.

(ii) We allow fishing from boats on the Buffalo Creek Bottoms; however, we prohibit the use of gasoline motors.

(iii) We prohibit the use or possession of lead terminal tackle.

(h) *Upper Mississippi River National Wildlife and Fish Refuge.* Refer to § 32.42(r) for regulations.

§ 32.35 Kansas.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Flint Hills National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, dove, rail, woodcock, crow, and common snipe on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a signed refuge hunt permit (signed brochure) when hunting.

(ii) We prohibit shooting from or over roads and parking areas.

(iii) You may leave temporary blinds (other than portable blinds) constructed of natural vegetation found on site overnight (see § 27.93 of this chapter).

(iv) We allow crow hunting on designated areas of the refuge subject to the following conditions:

(A) We prohibit the use of centerfire rifles and pistols for hunting on the refuge.

(B) We close hunting areas on the north side of the Neosho River to all hunting from November 1 through March 1.

(2) *Upland game hunting.* We allow hunting of pheasant, quail, prairie chicken, rabbit, and squirrel on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (a)(1)(i) and (a)(1)(iv)(A) and (B) of this section apply.

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

(i) We only allow shotguns, muzzleloading firearms (see § 27.42 of this chapter), and archery equipment for deer hunting.

(ii) We do not open for deer hunting during the extended white-tailed deer antlerless season in January.

(iii) We require the use of approved nontoxic shot for turkey hunting (see § 32.2(k)).

(iv) The conditions set forth at paragraphs (a)(1)(i) and (a)(1)(iv)(A) of this section apply.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We close areas on the north side of the Neosho River to all fishing from November 1 through March 1, except for the Dove Roost Pond and the Upper Burgess Marsh.

(ii) We prohibit the take of reptiles and amphibians (see § 27.21 of this chapter).

(b) *Kirwin National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, merganser, coot, mourning dove, and snipe on designated areas of the refuge subject to the following conditions:

(i) You may use natural vegetation to construct a temporary blind.

(ii) You may use portable hunting blinds.

(iii) In Bow Creek, we allow waterfowl hunting only by boat. You may not create a wake while in Bow Creek.

(2) *Upland game hunting.* We allow hunting of pheasant, quail, prairie chicken, fox squirrel, cottontail rabbit, and turkey on designated areas of the refuge subject to the following conditions:

(i) You may only possess bow and arrow or shotguns no larger than 10 gauge on the refuge.

(ii) During pheasant season, we allow hunting of only pheasant, fox squirrel, and cottontail rabbit.

(3) *Big game hunting.* We allow hunting of deer and turkey on designated areas of the refuge subject to the following conditions:

(i) We only allow archery hunting of deer.

(ii) You must obtain a refuge-issued permit (FWS Form 3–2405, Self-Clearing Check-in/out Permit) to hunt deer on the refuge.

(iii) You may use natural vegetation to construct a temporary blind.

(iv) We prohibit retrieving deer or turkey from an area closed to deer or turkey hunting.

(4) *Sport fishing.* We allow sport fishing on designated areas on the refuge subject to the following conditions:

(i) We allow access to Kirwin Reservoir by foot for bank or ice fishing.

(ii) We allow noncommercial collection of bait fish as governed by State regulations.

(iii) We prohibit fishing tournaments on the refuge.

(c) *Marais des Cygnes National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, rail, snipe, woodcock, and mourning dove on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a signed refuge hunt permit (signed brochure) when hunting.

(ii) We prohibit discharge of firearms within 150 yards (135 meters) of any residence or occupied building.

(iii) We allow only temporary portable blinds and blinds made from natural vegetation.

(2) *Upland game hunting.* We allow hunting of cottontail rabbit, squirrel, and upland birds on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (c)(1)(i) and (ii) of this section apply.

(ii) We prohibit centerfire and rimfire rifles and pistols.

(iii) You may possess only bow and arrow or shotguns smaller than 10 gauge while hunting upland game.

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (c)(1)(i), (ii), and (iii) and (c)(2)(ii) of this section apply.

(ii) You must possess and carry a refuge access permit to hunt deer and spring turkey.

(iii) You may possess only approved nontoxic shot for turkey hunting (see § 32.2(k)).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(d) *Quivira National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, Virginia and Sora rail, mourning dove, and snipe on designated areas of the refuge subject to the following conditions:

(i) We open refuge hunting areas from September 1 through February 28.

(ii) The refuge is open from 1½ hours before legal sunrise to 1½ hours after legal sunset. Hunters must remove all decoys within 1 hour following the end of legal shooting time (legal sunset).

(iii) We prohibit the retrieval of game from areas closed to hunting.

(2) *Upland game hunting.* We allow hunting of pheasant, quail, squirrel, and rabbit on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (d)(1)(i) and (ii) of this section apply.

(ii) We only allow shotguns for hunting on the refuge.

(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on all waters on the refuge subject to the following conditions:

(i) We prohibit taking of frog, snake, or any other wildlife (see § 27.21 of this chapter).

(ii) We prohibit the use of trotlines and setlines.

(iii) We prohibit the use of seines for taking bait.

(iv) We prohibit fishing from water control structures and bridges.

(v) We restrict fishing in the designated ''Kid's Pond,'' approximately ¼ mile (.4 kilometers) west-southwest of headquarters, to youth age 14 and younger, and to a parent and/or guardian age 18 or older accompanying a youth.

(vi) The bag limit for the Kid's Pond is one fish per day.

(vii) The condition set forth at paragraph (d)(1)(ii) of this section applies.

§ 32.36 Kentucky.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Clarks River National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of mourning dove, woodcock, common snipe, Canada and snow goose, coot, crow, and waterfowl listed at 50 CFR 10.13(c)(1) under DUCK on designated areas of the refuge subject to the following conditions:

(i) Except for raccoon, opossum, and bullfrog hunting, access to the refuge is from 2 hours before legal sunrise to 2 hours after legal sunset.

(ii) You must possess and carry a signed refuge hunting/fishing permit (signed brochure) while hunting and/or fishing on the refuge.

(iii) We prohibit discharge of firearms on or within 200 feet (90 meters) of any home, the abandoned railroad tracks, graveled roads, and hiking trails.

(iv) We allow trail cameras. Trail cameras must have the owner's State hunting license number clearly displayed or we may confiscate them.

(v) An adult age 21 or older must supervise all youth hunters age 15 and younger. Youth hunters must remain in sight of and normal voice contact with the adult. On small game hunts, the adult may supervise no more than two youths; on big game hunts, the adult may supervise no more than one youth.

(vi) All persons born after January 1, 1975, must possess a valid hunter education card while hunting.

(vii) We allow the use of dogs for waterfowl, small game, and fall turkey hunting. Dog owners/handlers must have a collar on each dog with the owner's contact information.

(viii) We allow waterfowl hunting from legal shooting time until 12 p.m. (noon).

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, quail, raccoon, opossum, and coyote on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (a)(1)(i) through (vii) of this section apply.

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(1)(i) through (vii) of this section apply.

(ii) We close squirrel, rabbit, crow, woodcock, snipe, dove, and quail seasons during muzzleloader and modern gun deer hunts.

(iii) We allow the use of only portable and climbing stands. You may place stands in the field no earlier than 2 weeks prior to the opening of deer season, and you must remove them from the field within 1 week after the season closes (see §§ 27.93 and 27.94 of this chapter). The hunter's State hunting license number must appear on all stands left in the field.

(iv) You must use safety belts at all times when occupying the tree stands.

(v) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(vi) Ground blinds used for the purpose of hunting any species during the deer modern gun, muzzleloader, and youth firearms seasons must display 1 square foot (144 square inches) of solid, unbroken, hunter orange visible from all sides. You must remove ground blinds when not in use.

(4) *Sport fishing.* We allow fishing and frogging on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(1)(i) and (ii) of this section apply.

(ii) The following conditions apply to the Environmental Education and Recreation Area (EERA):

(A) The EERA is a day-use area only.

(B) We only allow one rod and reel or pole and line for fishing per person.

(C) We prohibit the use of live fish for bait.

(D) We allow the taking of largemouth bass, channel catfish, and bluegill in accordance with posted limits.

(E) We prohibit the hunting or harvesting of frog.

(b) *Ohio River Islands National Wildlife Refuge.* Refer to § 32.67(b) for regulations.

(c) *Reelfoot National Wildlife Refuge.* Refer to § 32.61(f) for regulations.

§ 32.37 Louisiana.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Atchafalaya National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the refuge subject to the following conditions:

(i) You may hunt only as governed by State-issued Sherburne Wildlife Management Area regulations.

(ii) Feral hogs are incidental take species. You may take feral hog during any open hunting season, only with the weapon allowed for that season, and only if you are a hunter with proper licenses and State permits for that season. There is no bag limit on feral hog.

(2) *Upland game hunting.* We allow hunting of upland game on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (a)(1)(i) and (ii) of this section apply.

(3) *Big game hunting.* We allow hunting of feral hog, white-tailed deer, and turkey on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (a)(1)(i) and (ii) of this section apply.

(4) *Sport fishing.* We allow recreational finfishing and shellfishing year-round as governed by Sherburne Wildlife Management Area regulations.

(b) *Bayou Cocodrie National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, and woodcock on designated areas of the refuge subject to the following conditions:

(i) We require that all hunters and anglers age 16 and older purchase an annual public use permit (electronic form). You must sign the permit, certifying that you understand and will comply with all regulations. You must carry this permit at all times while on the refuge.

(ii) We allow migratory game bird hunting on Wednesdays, Saturdays, and Sundays until 12 p.m. (noon) during the State season. We do not open for the special teal season or the State youth waterfowl hunt.

(iii) We prohibit hunting within 150 feet (45 meters) of the maintained rights-of-way of roads, refuge roads or designated trails, buildings, residences, or designated public facilities.

(iv) You must remove harvested waterfowl, temporary blinds, and decoys used for duck hunting by 1 p.m. each day (see § 27.93 of this chapter).

(v) We allow the use of dogs to locate, point, and retrieve.

(vi) We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly or indirectly for services rendered to any other person or persons hunting on the refuge, regardless of whether the payment is for guiding, outfitting, lodging, or club membership.

(vii) We prohibit use or possession of any type of trail-marking material.

(viii) We allow the incidental take of raccoon, feral hog, beaver, nutria, and coyote when hunting migratory birds, upland game, or big game species with firearms and archery equipment authorized for use.

(ix) We allow all-terrain vehicles (ATVs) and utility vehicles as governed by State Wildlife Management Area (WMA) regulations and size specifications on designated trails (see § 27.31 of this chapter) from scouting season until February 28.

(x) You may enter the refuge no earlier than 4 a.m. and must exit the refuge by 2 hours after legal sunset, except that raccoon and opossum hunters during the month of February may use the refuge at night.

(2) *Upland game hunting.* We allow hunting of squirrel and rabbit on designated areas of the refuge subject to the following conditions:

(i) Hunters may only hunt upland game during designated refuge seasons.

(ii) The conditions set forth at paragraphs (b)(1)(i), (iii), and (vi) through (x) of this section apply.

(iii) We allow the use of dogs to hunt squirrel and rabbit during that portion of the season designated as small game with dogs.

(iv) While engaged in upland game hunting, we prohibit possession of hunting firearms (see § 27.42 of this chapter) larger than .22 caliber rimfire, shotgun slugs, or buckshot.

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(1)(i), (iii), and (vi) through (x) of this section apply.

(ii) The bag limit is one deer per day. The State tagging regulations apply.

(iii) You may possess only approved nontoxic shot while hunting deer on the refuge (see § 32.2(k)). The requirement in this paragraph (b)(3)(iii) only applies to the use of shotgun ammunition.

(iv) You must wear a minimum of 500 square inches (3,226 square centimeters) of unbroken hunter orange as the outermost layer of clothing on the chest and back, and a hat or cap of unbroken hunter orange. You must wear the solid-hunter-orange items while in the field.

(v) You may place stands up to 2 days prior to established hunting season dates. You must remove stands by 2 days after the hunting season closes (see § 27.93 of this chapter). You must mark your State license number on your stand. You are allowed one portable stand or blind on the refuge.

(vi) You must check all deer taken on the refuge before leaving the refuge at one of the self-clearing check stations indicated on the map in the refuge hunting and fishing regulations brochure.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (b)(1)(x) of this section applies.

(ii) We prohibit the taking of alligator snapping turtle (see § 27.21 of this chapter).

(iii) We allow fishing only during daylight hours.

(iv) The refuge boat ramp is open for daylight use only, except during specified hunting seasons when the ramp is open from 4 a.m. until 2 hours after legal sunset.

(v) We prohibit wire traps, slat traps, wire nets, hoop nets, trotlines, yo-yos, and jug lines on the refuge.

(c) *Bayou Sauvage National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, and coot on designated areas of the refuge subject to the following conditions:

(i) We allow only youth to hunt waterfowl and coot. An adult age 21 or older must supervise youth hunters during hunts. Youth hunter age and hunter education requirements are governed by State regulations. The youth must be capable of and must actively participate in such hunt by the possession and/or firing of a legal weapon during such hunt for the express purpose of harvesting game.

(ii) Each adult may supervise no more than two youths, and no more than one adult may supervise each youth during the course of any hunt. Youth must remain within normal voice contact of the adult who is supervising them. Adults accompanying youth on refuge hunts may participate by hunting but may not harvest more than their own daily bag limit. Youth must harvest their own bag limits.

(iii) We allow waterfowl hunting on Wednesdays, Thursdays, Saturdays, and Sundays from 30 minutes before legal sunrise until 12 p.m. (noon). We will close the refuge to waterfowl and coot hunting during any segment of goose season that extends beyond the regular duck season.

(iv) Hunters may not enter the refuge prior to 4 a.m. on the day of the hunt and must exit the refuge with all equipment and materials (see § 27.93 of this chapter) no later than 1 p.m.

(v) Hunters must possess and carry a valid refuge hunt permit (signed brochure).

(vi) When hunting migratory game birds, you may only use dogs to locate, point, and retrieve game.

(vii) We prohibit hunting within 500 feet (150 meters (m)) of any residence or structure adjacent to the refuge, and we prohibit hunting within 200 feet (60 m) of any road, railroad, levee, water control structure, designated public use trail, designated parking area, or other designated public use facility.

(viii) Hunters may use air-cooled propulsion engines to traverse the refuge through the Intracoastal Waterway and the Irish Bayou Straight Canal.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow finfishing and shellfishing on designated areas of the refuge subject to the following conditions:

(i) We allow sport fishing and shellfishing year-round on designated areas of the refuge and only after 12 p.m. on portions of the refuge outside of the Hurricane Protection Levee from November 1 through January 31 and during the State teal season. We close the remainder of the refuge from November 1 through January 31.

(ii) We only allow sport fishing with hand-held rod and reel or hand-held rod and line. You may take bait shrimp with cast nets 8 feet (2.4 m) in diameter or less. You may take crawfish (up to 100 pounds (45 kilograms) per person) with wire nets up to 20 inches (50 centimeters) in diameter. We allow recreational crabbing with a limit of 12 dozen per person. You must attend all fishing, crabbing, and crawfishing equipment at all times.

(iii) We prohibit the use of trotlines, limblines, slat traps, gar sets, nets, and alligator lines on the refuge.

(iv) The condition set forth at paragraph (c)(1)(viii) of this section applies.

(d) *Bayou Teche National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds and waterfowl on designated areas of the refuge subject to the following conditions:

(i) All hunters must possess and carry a signed hunt permit (signed brochure) while hunting on the refuge.

(ii) We prohibit hunting or discharge of firearm (see § 27.42 of this chapter) within 150 feet (45 meters (m)) of any residence or structure adjacent to the

refuge, from the centerline of any road, railroad, designated public use maintained trail, designated parking area, or other designated public use facility.

(iii) An adult age 18 or older must supervise youth hunters during all hunts. Youth hunter age and hunter education requirements are governed by State regulations. One adult may supervise two youths during small game and migratory game bird hunts but may supervise only one youth during big game hunts. Youth(s) must remain within normal voice contact of the adult who is supervising them. Adult guardians are responsible for ensuring that youth hunters do not violate refuge rules.

(iv) We require waterfowl hunters to remove all portable blinds, boats, decoys, and other personal equipment from the refuge by 1 p.m. each day (see §§ 27.93 and 27.94 of this chapter).

(v) All hunters must check-in prior to hunting and check out after hunting at a refuge self-clearing check station. You must report all game taken on the refuge when checking out by using the check card.

(vi) We allow hunting until 12 p.m. (noon). Hunters may only enter the refuge after 4 a.m.

(vii) When hunting migratory game birds, you may only use dogs to locate, point, and retrieve game.

(viii) We allow the use of reflective tacks.

(2) *Upland game hunting.* We allow hunting of squirrel and rabbit on designated areas of the refuge subject to the following conditions:

(i) We only allow hunting from the start of the State squirrel and rabbit seasons until the last day of State waterfowl season in the Coastal Zone, except that the Centerville Unit will be open until the last day of the State waterfowl season in the East Zone.

(ii) We prohibit upland game hunting on days corresponding with refuge deer gun hunts.

(iii) Hunters may enter the refuge at 4 a.m. Hunters must leave the refuge no later than 1 hour after legal sunset.

(iv) The conditions set forth at paragraphs (d)(1)(i) through (iii), (v), and (viii) of this section apply.

(3) *Big game hunting.* We allow the hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) We allow hunting of deer only with firearms (see § 27.42 of this chapter) during 5 specific days during October and November. A youth gun hunt will occur during the last weekend of October. The general gun hunt will occur during the final full weekend in November. The youth gun hunt includes both Saturday and Sunday. The general gun hunt includes the Friday immediately before the weekend.

(ii) We allow archery deer hunting from the start of the State archery season until January 31, except the Centerville Unit is open until February 15. Hunters may take deer of either sex as governed by State-approved archery equipment and regulations. We close refuge archery hunting on those days that the refuge deer gun hunts occur.

(iii) We do not allow hunting within 500 feet (152.4 meters) of the Garden City parking area and boardwalk.

(iv) We allow each hunter to possess only one deer per day; the deer may be a buck or a doe. State season limits apply.

(v) You may take feral hogs only as incidental take with archery equipment while participating in the refuge deer archery hunt.

(vi) Hunters may use only portable deer stands. Hunters may erect deer stands 1 day before the deer archery season and must remove them from the refuge within 1 day after the season closes (see § 27.93 of this chapter). Hunters may place only one deer stand on the refuge. Deer stands must have the owner's State hunting license number clearly printed on the stand. Hunters must place stands in a nonhunting position when not in use.

(vii) The conditions set forth at paragraphs (d)(1)(i) through (iii), (v), and (viii) and (d)(2)(ii) of this section apply.

(viii) We prohibit the use of deer decoys.

(ix) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(4) *Sport fishing.* We allow sport fishing in all refuge waters subject to the following condition: We prohibit the use of unattended nets, traps, or lines (trot, jug, bush, etc.).

(e) *Big Branch Marsh National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, coot, goose, snipe, rail, gallinule, and woodcock on designated areas of the refuge subject to the following conditions:

(i) We allow waterfowl hunting on Wednesdays, Thursdays, Saturdays, and Sundays from ½ hour before legal sunrise until 12 p.m. (noon), including during the State special teal season and State youth waterfowl hunt.

(ii) We prohibit goose hunting for that part of the season that extends beyond the regular duck season.

(iii) We allow only temporary blinds, and hunters must remove blinds and decoys by 1 p.m. each day (see § 27.93 of this chapter).

(iv) Hunters must possess and carry a valid refuge hunt permit (signed brochure).

(v) An adult age 18 or older must supervise youth hunters age 17 and younger during all hunts. Youth hunter age and hunter education requirements are governed by State regulations. One adult may supervise two youths during small game hunts and migratory bird hunts, but is only allowed to supervise one youth during big game hunts. Youths must remain within normal voice contact of the adult who is supervising them. Adult guardians are responsible for ensuring that youth hunters do not violate refuge rules.

(vi) We prohibit hunting or discharge of firearm (see § 27.42 of this chapter) within 150 feet (45 meters (m)) of any residence or structure adjacent to the refuge, and from the centerline of any road, railroad, designated public use maintained trail, designated parking area, or other designated public use facility.

(vii) Hunters may enter the refuge at 4 a.m. and must exit the refuge no later than 2 hours after legal sunset.

(viii) You may use only reflective tacks as trail markers on the refuge.

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, and quail on designated areas of the refuge subject to the following conditions:

(i) When hunting, you must possess only shot size 4 or smaller, or 0.22 caliber rim-fire rifles or smaller.

(ii) When hunting squirrel and rabbit, we allow the use of dogs only after the close of the State archery deer season. When hunting quail, you may only use dogs to locate, point, and retrieve.

(iii) The conditions set forth at paragraphs (e)(1)(iv) through (vii) of this section apply.

(iv) During the dog season for squirrel and rabbit, all hunters, including archers (while on the ground), except waterfowl hunters, must wear a minimum of a cap or hat that is hunter orange, blaze pink, or other such color as governed by State regulations.

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) We are open only during the State season for archery hunting of deer.

(ii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue,

drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(iii) We allow placement of temporary deer stands 48 hours prior to the start of deer archery season. Hunters must remove all deer stands within 48 hours after the archery deer season closes (see § 27.93 of this chapter). We allow only one deer stand per hunter on the refuge. Deer stands must have the owner's State license/sportsmen's identification number clearly printed on the stand. We prohibit hunting stands on trees painted with white bands.

(iv) We allow take of feral hogs only as incidental take with archery equipment while participating in the refuge deer archery hunt.

(v) The conditions set forth at paragraphs (e)(1)(iv) through (vii) of this section apply.

(vi) We prohibit the use of deer decoys.

(4) *Sport fishing.* We allow recreational fishing and crabbing on designated areas of the refuge subject to the following conditions:

(i) You may fish only from ½ hour before legal sunrise until ½ hour after legal sunset, except we allow night fishing from the bank and pier on Lake Road.

(ii) You must only use rod and reel or pole and line while fishing.

(iii) You must attend to any fishing, crabbing, and crawfishing equipment at all times.

(f) *Black Bayou Lake National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, coot, and woodcock on designated areas of the refuge subject to the following conditions:

(i) You must carry a signed refuge hunt permit (signed public use regulations brochure) and must carry and fill out daily a Visitor Check-In Permit and Report (FWS Form 3–2405).

(ii) We allow waterfowl hunting until 12 p.m. (noon) during the State season.

(iii) Hunters may enter the refuge no earlier than 4 a.m. and must leave the refuge by 1:30 p.m.

(iv) We prohibit hunting within 100 feet (30 meters (m)) of the maintained right-of-way of roads and from or across all-terrain vehicle (ATV) trails. We prohibit hunting within 50 feet (15 m) of, or trespassing on, aboveground oil, gas, or electrical transmission facilities.

(v) Hunters must remove boats, blinds, and decoys from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(vi) When hunting migratory game birds, you may only use dogs to locate, point, and retrieve game.

(vii) We only allow ATVs on trails designated for their use and marked by signs (see § 27.31 of this chapter). ATV trails are closed March 1 through August 31.

(2) *Upland game hunting.* We allow hunting of quail, squirrel, rabbit, raccoon, and opossum on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (f)(1)(i), (iv), and (vii) of this section apply.

(ii) Hunters may only hunt upland game during designated refuge seasons.

(iii) We prohibit taking small game with firearms larger than .22 caliber rimfire, shotgun slugs, and buckshot.

(iv) You may enter the refuge no earlier than 4 a.m. and must exit no later than 1 hour after legal shooting hours end.

(3) *Big game hunting.* We allow archery hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (f)(1)(i), (iv), and (vii) and (f)(2)(iv) of this section apply.

(ii) Hunters may only hunt big game during designated refuge seasons.

(iii) We prohibit gun deer hunting.

(iv) An adult age 21 or older must supervise a youth hunter age 15 or younger during hunts. One adult may supervise only one youth during big game hunts. The youth hunter must remain within normal voice contact of the supervising adult.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit trotlines, limb lines, yo-yos, traps, and nets.

(ii) We prohibit take of frog, turtle, and mollusk (see § 27.21 of this chapter).

(g) *Bogue Chitto National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, and woodcock on designated areas of the refuge subject to the following conditions:

(i) We allow hunting from ½ hour before legal sunrise until 12 p.m. (noon), including during the State special teal season and State youth waterfowl hunt.

(ii) You must remove blinds and decoys by 1 p.m. each day (see § 27.93 of this chapter).

(iii) We prohibit goose hunting for that part of the season that extends beyond the regular duck season.

(iv) When hunting migratory game birds, you may only use dogs to locate, point, and retrieve game.

(v) Hunters must possess and carry a valid refuge hunt permit (signed refuge brochure).

(vi) An adult age 18 or older must supervise youth hunters age 17 and younger during all hunts. Youth hunter age and hunter education requirements are governed by State regulations. One adult may supervise two youths during small game hunts and migratory bird hunts but is only allowed to supervise one youth during big game hunts. Youths must remain within normal voice contact of the adult who is supervising them. Adult guardians are responsible for ensuring that youth hunters do not violate refuge rules.

(vii) We prohibit hunting or discharge of firearms (see § 27.42 of this chapter) within 150 feet (45.7 meters (m)) from the centerline of any public road, refuge road, designated or maintained trail, building, residence, designated camping area, or designated public facility, or from or across aboveground oil, gas, or electric facilities.

(viii) For the purpose of hunting, we prohibit possession of slugs, buckshot, rifle, and pistol ammunition, except during the deer gun and primitive firearm seasons (see § 32.2(k)).

(ix) You may use only reflective tacks as trail markers on the refuge.

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, raccoon, and opossum on designated areas of the refuge subject to the following conditions:

(i) We allow the use of dogs for rabbit, squirrel, raccoon, and opossum hunting on specific dates listed in the refuge hunt brochure.

(ii) We prohibit the take of feral hog during any upland game hunts.

(iii) During any open deer firearm or primitive firearm season on the refuge, all hunters, except waterfowl hunters and nighttime raccoon and opossum hunters, must wear hunter orange, blaze pink, or other such color as governed by State regulations.

(iv) The conditions set forth at paragraphs (g)(1)(v) through (ix) of this section apply.

(3) *Big game hunting.* We allow hunting of white-tailed deer, turkey, and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (g)(1)(v) through (vii) and (g)(2)(ii) and (iii) of this section apply.

(ii) Hunters may erect deer stands 48 hours before the deer archery season and must remove them from the refuge within 48 hours after this season closes (see § 27.93 of this chapter). We allow only one deer stand per hunter on the refuge. Deer stands must have the

owner's State license/sportsmen's identification number clearly printed on the stand.

(iii) We allow take of feral hog as incidental game while participating in the refuge archery, primitive weapon, and general gun deer hunts, and where otherwise specified using legal methods of take for the hunt.

(iv) We hold a special dog hog hunt in February. During this hunt, the following conditions apply, in addition to other applicable conditions in this paragraph (g)(3):

(A) You must use trained hog-hunting dogs to aid in the take of hog.

(B) We allow take of hog from ½ hour before legal sunrise until ½ hour after legal sunset.

(C) You must possess only approved nontoxic shot or pistol or rifle ammunition not larger than .22 caliber rim-fire to take the hog after it has been caught by dogs.

(D) The condition set forth at paragraph (g)(1)(viii) of this section applies during the special dog hog hunt.

(v) You must kill all hogs prior to removal from the refuge.

(vi) We prohibit the use of deer and turkey gobbler decoys.

(4) *Sport fishing.* We allow recreational fishing year-round on designated areas of the refuge subject to the following conditions:

(i) We only allow cotton limb lines.

(ii) We close the fishing ponds at the Pearl River Turnaround to fishing from April through the first full week of June and to boating during the months of April, May, June, and July.

(iii) When the Pearl River Turnaround area is open, we allow boats that do not have gasoline-powered engines attached in the fishing ponds at the Pearl River Turnaround. Anglers must hand-launch these boats into the ponds. When open, we only allow hook and line as a legal method of take in the fishing ponds at the Pearl River Turnaround.

(iv) The Pearl River Turnaround area, when open to fishing, is open ½ hour before legal sunrise to ½ hour after legal sunset.

(h) *Breton National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport finfishing and shellfishing on designated areas of the refuge subject to the following conditions:

(i) Crabbers must tend crabbing equipment at all times.

(ii) We prohibit trotlines, slat traps, and nets.

(i) *Cameron Prairie National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, gallinule, snipe, and dove on designated areas of the refuge subject to the following conditions:

(i) Hunters may only hunt during designated days and times.

(ii) We prohibit entrance to the waterfowl hunting area earlier than 4 a.m. Shooting hours for waterfowl hunts end at 2 p.m. each day.

(iii) We require every hunter to possess and carry a valid, signed refuge hunt permit and regulations brochure.

(iv) Every hunter must complete and turn in a Migratory Bird Hunt Report (FWS Form 3–2361) available from a self-clearing check station after each hunt.

(v) We prohibit hunting within 50 yards (45 meters) of any public road, refuge road, trail, building, resident, or designated public facility.

(vi) When migratory bird hunting, you may only use dogs for the purpose of locating, pointing, and retrieving.

(vii) Hunters must remove all hunting-related equipment from the refuge immediately following each day's hunt (see § 27.93 of this chapter).

(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) We allow only portable deer stands. Hunters may place deer stands on the refuge 1 day before the white-tail deer archery season and must remove them from the refuge within 1 day after the season closes (see § 27.93 of this chapter). Hunters may place only one deer stand on the refuge, and deer stands must have the owner's State hunting license number clearly printed on the stand. Hunters must place stands in a nonhunting position at ground level when not in use.

(ii) The conditions set forth at paragraphs (i)(1)(iii), (v), and (vii) of this section apply.

(iii) Each hunter must complete and turn in a Big Game Harvest Report (FWS Form 3–2359) available from a self-clearing check station after each hunt.

(iv) We prohibit entrance to the hunting area earlier than 4 a.m. Hunters must leave no later than 1 hour after legal sunset.

(4) *Sport fishing.* We allow sport fishing, crabbing, and cast netting on designated areas of the refuge subject to the following conditions:

(i) We allow fishing with a rod and reel or a pole and line. We prohibit possession of any other type of fishing gear, including limb lines, gill nets, jug lines, yo-yos, or trotlines.

(ii) We allow recreational fishing, crabbing, or cast netting in the East Cove Unit year-round from legal sunrise to legal sunset, except during the Louisiana west zone waterfowl season or when the Grand Bayou Boat Bay is closed.

(iii) We allow sport fishing, crabbing, and cast netting in the Gibbstown Unit's Outfall Canal from March 15 through October 15.

(iv) We allow only recreational crabbing with cotton hand lines or drop nets up to 24 inches (60 centimeters) outside diameter. We prohibit using floats on crab lines.

(v) Anglers must attend all lines, nets, and bait, and must remove same from the refuge at the end of each day's fishing activity (see § 27.93 of this chapter).

(vi) The daily limit of crabs is 5 dozen (60) per boat or vehicle, regardless of the number of people thereon.

(vii) The daily shrimp limit during the Louisiana inshore shrimp season is 5 gallons (19 liters (L)) of heads-on shrimp per day, per vehicle or boat.

(viii) We allow cast netting for bait on both the East Cove Unit and the Gibbstown Unit when the units are open for public fishing only. Anglers must empty cast nets directly into the container from the net. The daily bait shrimp limit is one gallon (3.8 L) per day, per boat, outside the Louisiana inshore shrimp season.

(ix) Shrimp must remain in your actual custody while on the refuge.

(x) We prohibit the taking of turtle (see § 27.21 of this chapter).

(j) *Cat Island National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, and woodcock on designated areas of the refuge subject to the following conditions:

(i) We require that all hunters and anglers age 16 and older purchase an annual public use permit (electronic form). The refuge user is required to sign, certifying that you understand and will comply with all regulations, and carry this permit at all times while on the refuge.

(ii) You may enter the refuge no earlier than 4 a.m. and must exit the refuge by 2 hours after legal sunset.

(iii) We allow take of beaver, feral hog, nutria, raccoon, and coyote incidental to any refuge hunt with weapons legal for that hunt until you take the daily bag limit of game.

(iv) We allow all-terrain vehicles (ATVs) and utility-type vehicle (UTVs) as governed by State Wildlife Management Area regulations and size specifications on designated trails (see § 27.31 of this chapter) from scouting season until February 28.

(v) We prohibit hunting within 150 feet (45 meters) of any public road, refuge road, trail or ATV trail, building, residence, or designated public facility.

(vi) We prohibit all other hunting during refuge lottery deer hunts.

(vii) We allow waterfowl hunting on Wednesdays, Saturdays, and Sundays until 12 p.m. (noon) during the designated State duck season.

(viii) You must remove harvested waterfowl, temporary blinds, and decoys used for duck hunting by 1 p.m. each day (see § 27.93 of this chapter).

(ix) When hunting migratory game birds, you may only use dogs to locate, point, and retrieve.

(x) We prohibit accessing refuge property by boat from the Mississippi River.

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, beaver, nutria, raccoon, and coyote on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (j)(1)(i) through (vi) of this section apply.

(ii) While upland game hunting, we prohibit the possession of hunting firearms larger than 0.22 caliber rimfire, shotgun slugs, and buckshot (see § 27.42 of this chapter).

(iii) We allow the use of dogs during designated small game with dog seasons. We require the owner's contact information on the collars of all dogs. We allow up to two dogs per hunting party for squirrel hunting.

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (j)(1)(i) through (vi) of this section apply.

(ii) We allow archery-only deer hunting on the refuge during the State archery deer season.

(iii) You must check all deer (name only) taken prior to leaving the refuge at one of the self-clearing check stations indicated on the map in the refuge public use brochure.

(iv) You may place stands up to 2 days prior to established hunting season dates, and you must remove them no more than 2 days after the hunting season closes (see § 27.93 of this chapter). You must mark your State license identification number on your stand. You are allowed one portable stand or blind on the refuge.

(v) You may only take one deer of either sex per day during the deer season. State season limits apply.

(vi) You must wear a minimum of 500 square inches (3,226 square centimeters) of unbroken-hunter orange as the outermost layer of clothing on the chest and back, and a hat or cap of unbroken-hunter orange.

(vii) We prohibit organized drives. We define a ''drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause game to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the game.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (j)(1)(i), (ii), (iv) (on the open portions of Wood Duck ATV trail for wildlife-dependent activities throughout the year), and (vi) of this section apply.

(ii) We prohibit slat traps or hoop nets on the refuge.

(iii) We prohibit possession of cleaned or processed fish on the refuge.

(iv) Anglers may only crawfish during designated days and times. The harvest limit is 50 pounds (22.5 kilograms) per permit per day.

(v) You must attend all crawfish traps and nets at all times. We allow up to, and no more than, 20 traps per angler on the refuge.

(vi) We prohibit harvest of frog or turtle on the refuge (see § 27.21 of this chapter).

(k) *Catahoula National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, and coot on designated areas of the refuge subject to the following conditions:

(i) We allow migratory hunting of duck, goose, and coot on Tuesdays, Thursdays, Saturdays, and Sundays from ½ hour before legal sunrise until 12 p.m. (noon) during the State season.

(ii) We prohibit migratory game bird hunting during deer modern and primitive firearms hunts.

(iii) When hunting migratory game birds, you may only use dogs to locate, point, and retrieve game.

(iv) We allow the use of only shotguns for hunting migratory birds.

(v) Hunters must check-in and check out as governed by refuge-specific terms.

(vi) We require hunters age 16 and older to purchase and carry a signed special refuge recreational activity permit (name/address/phone only).

(vii) Hunters may enter the refuge no earlier than 4 a.m. and must exit no later than 2 hours after legal sunset for that day. Hunters must remove all decoys, blinds, and boats from the hunting area by 1 p.m. (see § 27.93 of this chapter).

(viii) We prohibit hunting or discharge of firearms within 150 feet (45 meters (m)) from the edge of areas maintained for roads, trails, and utility rights-of-way.

(ix) We prohibit parking, walking, or hunting within 150 feet (45 m) of any active oil and gas facility or equipment.

(x) We allow the use of bright eyes or reflective tape for flagging or trail markers.

(xi) We restrict the use of all-terrain vehicles (ATVs) to designated trails. ATVs are allowed from September 1 through the last day of February. We allow ATVs only for hunting, fishing, and other wildlife-related activities.

(xii) We allow the incidental take of feral hog, raccoon, beaver, nutria, and coyote while hunting with firearms or archery equipment authorized for that hunt.

(2) *Upland game hunting.* We allow hunting of squirrel, raccoon, beaver, nutria, coyote, and rabbit on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (k)(1)(v) through (xii) of this section apply.

(ii) We prohibit squirrel and rabbit hunting during deer modern and primitive firearms hunts.

(iii) At the Bushley Unit, we allow the use of dogs to hunt squirrels and rabbits only after the last primitive firearms season for deer on the refuge. Hunters must place their contact information on the collars of all their dogs.

(iv) We require hunters participating in the dog season for rabbits to wear a hunter-orange cap.

(v) We only allow the use of shotguns and rifles that are .22 magnum caliber rim fire or less for upland game hunting.

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (k)(1)(v) through (xii) of this section apply.

(ii) We allow deer-modern hunting on the area south of the French Fork of the Little River for 2 days in December with these dates being set annually.

(iii) We allow hunting of deer with primitive firearms during the first segment of the State season for area 1, weekdays only (Monday through Friday) and 2 days in December with these dates set annually. We allow either-sex, deer gun hunting for the Friday, Saturday, and Sunday immediately following Thanksgiving Day and for 2 days in December with these dates to be set annually.

(iv) We allow the use of portable deer stands. Hunters may place deer stands on the refuge 1 day before the deer archery season and must remove them from the refuge within 1 day after this season closes (see § 27.93 of this chapter). Hunters may place only one stand on the refuge. Deer stands must have the owner's State hunting license number clearly printed on the stand.

Hunters must place stands in a nonhunting position when not in use.

(v) We allow the use and possession of lead shotgun slugs during deer modern and primitive firearm hunts. We prohibit the use and possession of toxic and nontoxic shot shells during these hunts.

(vi) All hunters must wear and display 400 square inches (2,581 square centimeters) of hunter orange and a hunter orange cap during deer modern and primitive firearm hunts.

(vii) You may take only one deer per day during modern and primitive firearm deer hunts.

(viii) We prohibit organized drives. We define a ''drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause game to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the game.

(ix) We prohibit the use of dogs to hunt and trail wounded deer.

(x) We prohibit use of deer decoys.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (k)(1)(ix) through (xi) of this section apply.

(ii) We require anglers age 16 and older to possess and carry a signed special refuge recreational activity permit (name/address/phone only).

(iii) We allow fishing from ½ hour before legal sunrise to legal sunset.

(iv) At the Headquarters Unit, we allow year-round fishing on Cowpen Bayou and the Highway 28 borrow pits. We allow fishing on Duck Lake and its tail-waters, Muddy Bayou, Willow Lake, and the Highway 84 borrow pits from March 1 through October 31. We only allow use of a rod and reel or pole with a hook and line attached for fishing in these waters. We prohibit snagging.

(v) At the Bushley Bayou Unit, we allow fishing year-round. We allow trotlines, but anglers must tend them at least once every 24 hours and reset them when receding water levels expose them. Anglers must attach lines with a length of cotton line that extends into the water. We allow the use of yo-yos, but you must attend and only use them from 1 hour before legal sunrise until ½ hour after legal sunset. We prohibit the use of nets and traps.

(vi) At the Headquarters Unit, we allow the launching of only trailered boats at designated boat ramps. Anglers may launch small hand-carried boats from the bank in other areas. We prohibit dragging of boats or driving onto road shoulders to launch boats.

(vii) We prohibit bank fishing on Bushley Creek and fishing in Black Lake, Dempsey Lake, Long Lake, Rhinehart Lake, and Round Lake during deer modern and primitive firearms hunts.

(viii) We prohibit fishing in Black Lake, Dempsey Lake, Long Lake, Round Lake, and Rhinehart Lake during waterfowl hunts.

(ix) We prohibit taking or possessing frogs and turtles (see § 27.21 of this chapter).

(x) We prohibit the possession of cleaned or processed fish on the refuge.

(l) *D'Arbonne National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, and woodcock on designated areas of the refuge subject to the following conditions:

(i) You must carry a signed refuge hunt permit (signed public use regulations brochure) and must carry and fill out daily a Visitor Check-In Permit and Report (FWS Form 3–2405).

(ii) We allow waterfowl hunting until 12 p.m. (noon) during the State season.

(iii) Hunters may enter the refuge no earlier than 4 a.m. and must exit no later than 1:30 p.m.

(iv) We prohibit hunting within 100 feet (30 meters (m)) of the maintained rights-of-way of roads. We prohibit hunting within 50 feet (15 m) or trespassing on aboveground oil, gas, or electrical transmission facilities.

(v) Hunters must remove boats, blinds, and decoys from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(vi) When hunting migratory game birds, you may only use dogs to locate, point, and retrieve game.

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, raccoon, and opossum on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (l)(1)(i) and (iv) of this section apply.

(ii) You may enter the refuge no earlier than 4 a.m. and must exit no later than 2 hours after legal shooting hours.

(iii) When hunting upland game, you may only use dogs to locate, point, and retrieve game.

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge as indicated subject to the following conditions:

(i) The conditions set forth at paragraphs (l)(1)(i) and (iv) and (l)(2)(ii) of this section apply.

(ii) You must check all deer taken during general gun deer hunts at a refuge check station on the same day taken.

(iii) We prohibit hunters from placing or hunting from stands on pine trees with white-painted bands or rings.

(4) *Sport fishing.* We allow sport fishing on the refuge subject to the following conditions:

(i) For recreational fishing using commercial gear (slat traps, etc.), we require you to carry a Special Use Permit (FWS Form 3–1383–G), which is available at the refuge office.

(ii) We prohibit the taking of turtle (see § 27.21 of this chapter).

(m) *Delta National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, and coot on designated areas of the refuge subject to the following conditions:

(i) We allow waterfowl hunting on Wednesdays, Thursdays, Saturdays, and Sundays from ½ hour before legal sunrise until 12 p.m. (noon), including during the State special teal season, State youth waterfowl season, and State light goose special conservation season.

(ii) We only allow temporary blinds. You must remove both blinds and decoys by 1 p.m. each day (see § 27.93 of this chapter).

(iii) When hunting migratory game birds, you may only use dogs to locate, point, and retrieve game.

(iv) Hunters must possess and carry a valid refuge hunt permit (signed brochure).

(v) We prohibit discharge of firearms (see § 27.42 of this chapter) within 250 yards (225 meters) of buildings or worksites, such as oil or gas production facilities.

(vi) An adult age 18 or older must supervise youth hunters age 17 and younger during all hunts. Youth hunter age and hunter education requirements are governed by State regulations. One adult may supervise two youths during small game and migratory game bird hunts but must supervise only one youth during big game hunts. Youth(s) must remain within normal voice contact of the adult who is supervising them.

(vii) Hunters may enter the refuge at 4 a.m. and must exit the refuge no later than 2 hours after legal sunset.

(2) *Upland game hunting.* We allow hunting of rabbit on designated areas of the refuge subject to the following conditions:

(i) The refuge rabbit season opens the day after the State duck season closes and continues through the remainder of the State rabbit season.

(ii) We restrict hunting to shotgun only.

(iii) We allow the use of dogs when rabbit hunting.

(iv) The conditions set forth at paragraphs (m)(1)(iv) through (vii) of this section apply.

(3) *Big game hunting.* We only allow archery hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (m)(1)(iv) through (vii) of this section apply.

(ii) We allow archery deer hunting, bucks only, from October 1 through 15. We allow either-sex archery deer hunting from October 16 through 31 and from the day after the close of the State duck season through the end of the State deer archery season.

(iii) We allow placement of temporary deer stands 48 hours prior to the start of deer archery season. Hunters must remove all deer stands within 48 hours after the archery deer season closes (see § 27.93 of this chapter). We allow only one deer stand per hunter on the refuge. Deer stands must have the owner's State license/sportsmen's identification number clearly printed on the stand.

(iv) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(v) We allow the take of hog(s) only with archery equipment during the archery deer season.

(vi) We prohibit the use of deer decoys.

(4) *Sport fishing.* We allow recreational fishing and crabbing on designated areas of the refuge subject to the following conditions:

(i) We only allow recreational fishing and crabbing from ½ hour before legal sunrise until ½ hour after legal sunset. During State waterfowl hunting seasons, however, we only allow recreational fishing and crabbing from after 12 p.m. (noon) until ½ hour after legal sunset.

(ii) We prohibit the use of trotlines, limblines, slat traps, jug lines, nets, or alligator lines.

(iii) We prohibit the taking of turtle (see § 27.21 of this chapter).

(n) *Grand Cote National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, and woodcock on designated areas of the refuge subject to the following conditions:

(i) We allow waterfowl (duck, goose, coot) hunting on Wednesdays and Saturdays from ½ hour before legal sunrise until 12 p.m. (noon) during the State season.

(ii) We prohibit teal hunting during the State September season.

(iii) Hunters selected for lottery waterfowl hunts must be present and in possession of written documentation confirming their selection on the day of the hunt.

(iv) We allow no more than three persons to hunt in each of the lottery waterfowl blinds, and hunters must confine all hunting activity to the direct vicinity of the blinds.

(v) When hunting migratory game birds, you may only use dogs to locate, point, and retrieve.

(vi) Hunters may enter the refuge no earlier than 4 a.m. and must exit no later than 2 hours after legal sunset for that day.

(vii) We allow the incidental take of raccoon, feral hog, beaver, nutria, and coyote only when hunting for migratory bird, upland game, and big game species with firearms or archery equipment authorized for use.

(viii) We require hunters age 16 and older to purchase and carry a signed refuge special recreational activity permit (electronic form).

(ix) We prohibit hunting or the discharge of firearms within 150 feet (45 meters) from the edge of areas maintained for roads, trails, and utility rights-of-way.

(x) Hunters must check-in and check out as governed by refuge-specific terms (see refuge hunting brochure for details).

(xi) Refuge users must enter and exit the refuge only at designated parking areas occurring on the refuge. We prohibit accessing adjacent lands from refuge parking areas or any other part of the refuge.

(xii) We restrict the use of all-terrain vehicles (ATVs) to designated ATV trails. ATVs are allowed from September 1 through the last day of February. We allow ATVs only for hunting, fishing, and other wildlife-related activities.

(xiii) Hunters must remove all decoys, blinds, and boats from the hunt area by 1 p.m. (see § 27.93 of this chapter).

(xiv) We allow the use of bright eyes or reflective tape for flagging or trail markers.

(2) *Upland game hunting.* We allow hunting of rabbit, raccoon, beaver, nutria, and coyote on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (n)(1)(vi) through (xiv) of this section apply.

(ii) We allow the use of only shotguns and rifles that are .22 magnum caliber rimfire or less for upland game hunting

(iii) We allow the use of dogs when hunting rabbit only after the close of the State deer rifle season. Dog owners must place their contact information on the collars of all their dogs.

(iv) We require hunters participating in the special dog season for rabbits to wear a hunter-orange cap.

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (n)(1)(vi) through (xiv) of this section apply.

(ii) We only allow the use of archery equipment for big game hunting.

(iii) You may use only portable deer stands. Hunters must place deer stands on the refuge 1 day before the deer archery season and must remove them from the refuge within 1 day after the season closes (see § 27.93 of this chapter). Hunters may place only one deer stand on the refuge, and deer stands must have the owner's State hunting license/sportsmen's identification number clearly printed on the stand. Hunters must place the stand in a nonhunting position and at ground level when not in use.

(iv) We prohibit the use of deer decoys.

(v) We prohibit the use of dogs to trail wounded deer.

(vi) We prohibit organized drives. We define a ''drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause game to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the game.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (n)(1)(xi) through (xiv) of this section apply.

(ii) We allow fishing within the Coulee Des Grues Bayou only from the bank adjacent to Little California Road and only from legal sunrise to legal sunset.

(iii) Except as provided under paragraph (n)(4)(ii) of this section, we allow fishing from ½ hour before legal sunrise to legal sunset. Anglers may enter the refuge no earlier than 4 a.m. and must exit no later than 2 hours after legal sunset for that day.

(iv) We require anglers age 16 and older to purchase and carry a signed refuge special recreational activity permit.

(v) We prohibit the use of nets, traps, set lines, and trot lines. Anglers may only use a rod and reel or pole with a hook and line attached to fish.

(vi) We prohibit the possession of cleaned or processed fish on the refuge.

(vii) We prohibit the harvest of frog, turtle, snake, or mollusk (see § 27.21 of this chapter).

(viii) We prohibit crawfishing.

(o) *Lacassine National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, gallinule, and coot on designated areas of the refuge subject to the following conditions:

(i) Hunters may only hunt migratory game birds during designated refuge seasons.

(ii) We require every hunter to possess and carry a valid signed refuge hunt permit (signed brochure) and regulations brochure.

(iii) Hunters may enter the refuge at 4 a.m. Shooting hours end at 2 p.m. each day.

(iv) Each hunter must complete and turn in a Migratory Bird Hunt Report (FWS Form 3–2361), available from a self-clearing check station, after each hunt.

(v) We prohibit hunting within 50 yards (45 meters (m)) of refuge canals; waterways; public roads; buildings; aboveground oil, gas, or electrical transmission facilities; or designated public facilities. Hunting parties must remain a distance of no fewer than 150 yards (135 m) away from another hunter.

(vi) You must remove all hunting-related equipment from the refuge immediately following each day's hunt (see § 27.93 of this chapter).

(vii) When migratory bird hunting, you may only use dogs for the purpose of locating, pointing, and retrieving.

(2) [Reserved]

(3) *Big game hunting.* We allow hunting for white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) Hunters may only hunt big game during designated refuge seasons with archery equipment.

(ii) We allow only portable deer stands. Hunters may place deer stands on the refuge 1 day before the deer archery season and must remove them from the refuge within 1 day after the season closes (see § 27.93 of this chapter). Hunters may place only one deer stand on the refuge, and deer stands must have the owner's State hunting license number clearly printed on the stand. Hunters must place stands in a nonhunting position at ground level when not in use.

(iii) The conditions set forth at paragraphs (o)(1)(ii), (v), and (vi) of this section apply.

(iv) Hunters may enter the refuge at 4 a.m. Hunters must leave no later than 1 hour after legal sunset.

(v) Each hunter must complete and turn in a Big Game Harvest Report (FWS Form 3–2359) available from a self-clearing check station, after each hunt.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing from March 15 through October 15.

(ii) We prohibit fishing activities before legal sunrise and after legal sunset.

(iii) Anglers may enter the refuge 1 hour before legal sunrise, and you must leave 1 hour after legal sunset.

(iv) Anglers can travel the refuge by boat from 1 hour before legal sunrise until 1 hour after legal sunset in order to access fishing areas.

(v) We prohibit bank fishing from the Lacassine Pool Wildlife Drive.

(vi) We prohibit boat and bank fishing in Lacassine Pool Unit D and refuge waters from October 16 through March 14.

(vii) We allow fishing only with rod and reel or pole and line in refuge waters. We prohibit possession of any other type of fishing gear, including limb lines, gill nets, jug lines, yo-yos, or trotlines.

(viii) We prohibit the taking of turtle (see § 27.21 of this chapter).

(p) *Lake Ophelia National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, and woodcock on designated areas of the refuge subject to the following conditions:

(i) We allow waterfowl (duck, goose, coot) hunting on Tuesdays, Thursdays, and Saturdays from ½ hour before legal sunrise until 12 p.m. (noon) during the Statewide duck season.

(ii) When hunting migratory game birds, you may only use dogs to locate, point, and retrieve.

(iii) Hunters may enter the refuge no earlier than 4 a.m. and must exit no later than 2 hours after legal sunset for that day. Hunters must remove all decoys, blinds, and boats from the hunt area by 1 p.m. (see § 27.93 of this chapter).

(iv) We prohibit migratory game bird hunting during refuge deer primitive firearm hunts.

(v) Except as restricted under paragraph (p)(3)(ix) of this section, we allow the incidental take of raccoon, feral hog, beaver, nutria, and coyote when hunting for migratory bird, upland game, and big game species with firearms and archery equipment authorized for use.

(vi) We restrict the use of all-terrain vehicles (ATVs) to designated ATV trails. ATVs are allowed from September 1 to the last day of the spring turkey season. We allow ATVs only for hunting, fishing, and other wildlife-related activities.

(vii) We restrict the use of the ATV trails that are designated for physically challenged persons to individuals who possess a State-issued physically challenged program hunter permit or are age 60 or older. Individuals that qualify must obtain a Special Use Permit (FWS Form 3–1383–G) from the refuge office to use these trails.

(viii) We require hunters age 16 and older to purchase and carry a signed refuge special recreational activity permit (electronic form).

(ix) We prohibit hunting or the discharge of firearms within 150 feet (45 meters) from the edge of areas maintained for roads, trails, and utility rights-of-way.

(x) Hunters must check-in and check out as governed by refuge-specific terms (see refuge hunting brochure for details).

(xi) Hunters and anglers must enter and exit the refuge only at designated parking areas occurring on the refuge. We prohibit accessing adjacent lands from refuge parking areas or any other part of the refuge.

(xii) We allow the use of bright eyes or reflective tape for flagging or trail markers.

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, raccoon, beaver, nutria, and coyote on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (p)(1)(v) through (xii) of this section apply.

(ii) Hunters may enter the refuge no earlier than 4 a.m. and must exit no later than 2 hours after legal sunset for that day.

(iii) We only allow the use of shotguns and rifles that are .22 magnum caliber rimfire or less for upland game hunting.

(iv) We prohibit upland game hunting during refuge deer primitive firearm hunts.

(v) We allow the use of dogs when squirrel and rabbit hunting only after the close of the State deer rifle season. Dog owners must place their contact information on the collars of all their dogs.

(vi) We require hunters participating in the special dog season for rabbits to wear a hunter-orange cap.

(3) *Big game hunting.* We allow hunting of white-tailed deer, turkey, and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (p)(1)(v) through (xii) and (p)(2)(ii) of this section apply.

(ii) You may harvest only one antlered and one antlerless deer during each of the lottery primitive firearm hunts.

(iii) You may use only portable deer stands. Hunters may place deer stands

on the refuge 1 day before the deer archery season and must remove them from the refuge within 1 day after the season closes (see § 27.93 of this chapter). Hunters may place only one deer stand on the refuge, and deer stands must have the owner's State hunting license number clearly printed on the stand. Hunters must place stands in a nonhunting position and at ground level when not in use.

(iv) All deer gun hunters must wear and display 400 square inches (2,600 square centimeters) of hunter orange and a hunter-orange cap during the deer gun seasons and lottery deer hunts.

(v) Only hunters that have been selected for lottery primitive firearm deer hunts may be present during these hunts.

(vi) We allow the use and possession of lead shotgun slugs during lottery primitive firearm deer hunts. We prohibit the use and possession of toxic and nontoxic shot shells during these hunts.

(vii) We prohibit all other hunting during refuge deer primitive firearm hunts as described in the refuge hunting brochure.

(viii) We prohibit the use of deer or turkey gobbler decoys.

(ix) We allow turkey hunting only during the first 16 days of the State season until 12 p.m. (noon). We prohibit incidental hunting of feral hog while turkey hunting.

(x) We prohibit the use of dogs to trail wounded deer.

(xi) We prohibit organized drives. We define a ''drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause game to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the game.

(4) *Sport fishing.* We allow sport fishing in designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (p)(1)(xi) and (xii) of this section apply.

(ii) We require anglers age 16 and older to purchase and carry a signed refuge special recreational activity permit (name/address/phone number only).

(iii) We allow fishing from March 1 through October 15 from ½ hour before legal sunrise to legal sunset.

(iv) We allow anglers to operate ATVs on the designated trails to the Duck Lake, Westcut Lake, and Possum Bayou boat ramps.

(v) We prohibit the use of nets, traps, set lines, and trot lines. Anglers may only use a rod and reel or pole with a hook and line attached to fish.

(vi) We prohibit the possession of cleaned or processed fish on the refuge.

(vii) We prohibit the harvest of frog, turtle, snake, or mollusk (see § 27.21 of this chapter).

(viii) We prohibit crawfishing.

(q) *Mandalay National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, moorhen, gallinule, and coot on designated areas of the refuge subject to the following conditions:

(i) We allow hunting of migratory game birds on Wednesdays and Saturdays until 12 p.m. (noon). Hunters may only enter the refuge after 4 a.m. and must exit the refuge no later than 1 p.m.

(ii) Prior to hunting, we must assign a refuge hunt unit and issue a refuge lottery waterfowl permit (signed brochure) to any person entering, using, or occupying the refuge for hunting migratory game birds. You may only hunt in your assigned unit.

(iii) When hunting migratory game birds, you may only use dogs to locate, point, and retrieve.

(iv) An adult age 18 or older must supervise youth hunters during all hunts. Youth hunter age and hunter education requirements are governed by State regulations. One adult may supervise two youths during small game and migratory game bird hunts. An adult may supervise only one youth during big game hunts. Youth must remain within normal voice contact of the adult who is supervising them. Parents or adult guardians are responsible for ensuring that hunters age 16 and younger do not violate refuge rules.

(v) All hunters must possess and carry a signed hunt brochure (signed brochure) while hunting on refuge.

(vi) Only one adult may occupy a unit with up to two youths during a designated lottery youth waterfowl hunt. We allow no more than three hunters to hunt from a single blind within a unit at one time during any waterfowl hunt.

(2) [Reserved]

(3) *Big game hunting.* We allow the hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) We open the refuge to hunting of deer and hog only during the State archery season, except that prior to 12 p.m. (noon) on Wednesdays and Saturdays during State waterfowl seasons, we close areas north of the Intracoastal Waterway to big game hunting.

(ii) Hunters may only enter the refuge after 4 a.m. and must exit by 1 hour after legal sunset.

(iii) You may take big game with archery equipment and as governed by State law. From October 1 through 15, State bucks-only regulations apply. From October 16 through February 15, you may take only one deer of either sex per day, and hunters may possess only one deer. The State season limits on deer apply. There is no daily or possession limit on feral hogs.

(iv) We prohibit the use of deer decoys.

(v) We only allow portable stands. Hunters may erect temporary deer stands 1 day prior to the start of deer archery season. Hunters must remove all deer stands within 1 day after the archery deer season closes (see § 27.93 of this chapter). Hunters may place only one deer stand on the refuge. Deer stands must have the owner's State hunting license number clearly printed on the stand. Hunters must place stands in a nonhunting position when not in use.

(vi) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(vii) The conditions set forth at paragraphs (q)(1)(iv) and (v) of this section apply.

(4) *Sport fishing.* We allow sport fishing in all refuge waters subject to the following conditions:

(i) We prohibit the use of unattended nets, traps, or lines (trot, jog, bush, etc.).

(ii) We allow fishing in the refuge year-round.

(iii) The refuge is open from legal sunrise until legal sunset.

(iv) We prohibit the taking of turtle (see § 27.21 of this chapter).

(r) *Red River National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, woodcock, and dove on designated areas of the refuge subject to the following conditions:

(i) Hunters must possess and carry a signed refuge permit (signed refuge brochure).

(ii) We allow waterfowl hunting until 12 p.m. (noon) during the State season.

(iii) We allow dove hunting only during the first 3 days of the State season on all refuge lands as indicated in the refuge brochure.

(iv) Hunters may enter the refuge no earlier than 4 a.m. and must exit the refuge no later than 1:30 p.m.

(v) Hunters may only hunt during designated times and seasons as listed in refuge brochure (signed brochure).

(vi) We prohibit hunting within 100 feet (30 meters) of any public road,

refuge road, trail or ATV trail, residence, building, aboveground oil or gas or electrical transmission facility, or designated public facility.

(vii) When hunting migratory game birds, you may only use dogs to locate, point, and retrieve.

(2) *Upland game hunting.* We allow hunting of quail, squirrel, rabbit, raccoon, and opossum on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (r)(1)(i), (v), and (vi) of this section apply.

(ii) We allow hunting of raccoon and opossum during the daylight hours of rabbit and squirrel season. We allow night hunting during December and January, and you may use dogs for night hunting.

(iii) We allow the use of dogs to hunt squirrel and rabbit after December 31.

(iv) Hunters may enter the refuge no earlier than 4 a.m. and must exit the refuge no later than 1 hour after legal shooting hours.

(3) *Big game hunting.* We allow hunting of white-tailed deer, turkey, and feral hog on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (r)(1)(i), (v), and (vi) and (r)(2)(iv) of this section apply.

(4) *Sport Fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow use of only electric trolling motors on all refuge waters while fishing.

(ii) Recreational fishing using commercial gear (slat traps, etc.) requires a special refuge permit (Special Use Permit (FWS Form 3–1383–G)), which is available at the refuge office. You must possess and carry the special refuge permit while fishing using commercial gear.

(iii) We prohibit the taking of alligator snapping turtle (see § 27.21 of this chapter).

(s) *Sabine National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, gallinule, and coot on designated areas of the refuge subject to the following conditions:

(i) Hunters may only hunt migratory game birds during designated refuge seasons.

(ii) We require all hunters to possess and carry a valid signed refuge hunt permit (signed brochure) and regulations brochure.

(iii) We prohibit entrance to the waterfowl hunting area earlier than 4 a.m. Shooting hours end at 2 p.m. each day.

(iv) Each hunter must complete and turn in a Migratory Bird Hunt Report (FWS Form 3–2361) from a self-clearing check station after each hunt.

(v) We allow only portable blinds and those made of native vegetation. Hunters must remove portable blinds, decoys, spent shells, and all other personal equipment after each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(vi) We prohibit hunting within 50 yards (45 meters (m)) of refuge canals; waterways; public roads; buildings; aboveground oil, gas, or electrical transmission facilities; or designated public facilities. Hunting parties must maintain a distance of no less than 150 yards (135 m) away from another hunter.

(vii) When migratory bird hunting, you may only use dogs for the purpose of locating, pointing, and retrieving.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing, crabbing, and cast netting on designated areas of the refuge subject to the following conditions:

(i) Bank and wharf access for fishing are available year-round at the public use areas along State Highway 27. Anglers may access the refuge for fishing by boat only during the March 15 to October 15 open period. You may launch boats at designated boat ramps only.

(ii) We allow fishing with a rod and reel, pole and line, or jug and line. We prohibit possession of any other type of fishing gear, including limb lines, gill nets, or trot lines. Jug line limit is up to 10 per boat, and you must attend them at all times. The angler must mark all jugs with their fishing license number (State requirement) and remove the jugs from the refuge at the end of each day (see § 27.93 of this chapter).

(iii) We prohibit fishing from October 16 through March 14 in Units 1A and 1B.

(iv) Anglers can travel the refuge by boat from 1 hour before legal sunrise until 1 hour after legal sunset in order to access fishing areas; however, we prohibit fishing activities before legal sunrise and after legal sunset.

(v) We allow recreational crabbing on designated areas of the refuge subject to the following conditions:

(A) We allow only recreational crabbing with cotton hand lines or drop nets up to 24 inches (60 centimeters) outside diameter. We prohibit using floats on crab lines.

(B) Anglers must remove all hand lines, drop nets, and bait from the refuge upon leaving (see § 27.93 of this chapter).

(C) We allow a daily limit of 5 dozen (60) crabs per vehicle or boat.

(vi) We allow recreational cast netting in designated areas of the refuge subject to the following conditions:

(A) We allow recreational cast netting from boats only from legal sunrise to legal sunset during the Louisiana inshore shrimp season.

(B) Anglers must immediately return all incidental take (bycatch) to the water before continuing to cast.

(C) The daily shrimp limit during the Louisiana inshore shrimp season is 5 gallons (19 liters (L)) of heads-on shrimp per day, per vehicle or boat.

(D) The daily bait shrimp limit is 1 gallon (3.8 L) per day, per boat, outside the Louisiana inshore shrimp season.

(E) Shrimp must remain in your actual custody while on the refuge.

(vii) We prohibit the taking of turtle (see § 27.21 of this chapter).

(t) *Tensas River National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, coot, woodcock, and snipe on designated areas of the refuge subject to the following conditions:

(i) We allow hunting of duck and coot on Tuesdays, Thursdays, Saturdays, and Sundays until 2 p.m. during the State season. We prohibit migratory bird hunting during refuge gun hunts for deer.

(ii) We allow refuge hunters to enter the refuge no earlier than 4 a.m., and they must leave no later than 2 hours after legal sunset unless they are participating in the refuge nighttime raccoon hunt.

(iii) We allow all-terrain vehicle (ATV) travel on designated trails for access typically from October 1 to the last day of the refuge squirrel season.

(iv) We prohibit field dressing of game within 150 feet (45 meters) of parking areas, maintained roads, and trails.

(v) An adult age 18 or older must supervise youth hunters age 17 and younger during all hunts. One adult may supervise two youths during small game and migratory bird hunts but may supervise only one youth during big game hunts. Youth must remain within normal voice contact of the adult who is supervising them.

(2) *Upland game hunting.* We allow hunting of raccoon, squirrel, and rabbit on designated areas of the refuge subject to the following conditions:

(i) We allow nighttime raccoon hunting beginning the third Saturday in December and ending January 31. We allow raccoon hunters to hunt from legal sunset to legal sunrise with the aid of dogs, horses, and mules, and with use of lights. We allow such use of lights on the refuge only at the point of kill. We prohibit all other use of lights for

hunting on the refuge. Hunters must attempt to take treed raccoons.

(ii) We allow the use of dogs when squirrel and rabbit hunting subject to the following conditions:

(A) We allow hunting without dogs from the beginning of the State season to December 31; during this time period, we do not require hunters to wear hunter orange.

(B) We allow squirrel and rabbit hunting with or without dogs from January 1 to the last day of February.

(C) We allow no more than three dogs per hunting party.

(iii) We close squirrel and rabbit hunting during the following gun hunts for deer: Refuge-wide youth hunt, primitive firearms hunt, and modern firearms hunt.

(iv) The conditions set forth at paragraphs (t)(1)(ii) through (v) of this section apply.

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

(i) Deer archery season will begin the first Saturday in November and will conclude on January 31. We prohibit archery hunting during the following refuge-wide deer hunts: Youth gun hunt and modern firearms hunts.

(ii) The deer primitive firearms season will occur between November 1 and January 31. We allow all legal primitive firearms as governed by State regulations.

(iii) During the deer primitive firearms season, hunters may fit any legal primitive firearms with magnified scopes. We allow hunters using primitive weapons to hunt reforested areas. We prohibit youth hunters from using modern firearms during the primitive weapon hunt.

(iv) During modern firearm hunts, all firearm hunting, even hunting with primitive weapons or muzzleloaders, is governed by applicable Federal and State regulations. We require a quota hunt permit for these hunts. We prohibit hunting in reforested areas. We prohibit hunting and/or shooting into or across any reforested area during the quota hunt for deer.

(v) For the guided quota youth hunts, we consider youth to be ages 8 through 15.

(vi) We will conduct a refuge-wide youth deer hunt. Hunt dates will be available at refuge headquarters typically in July. An adult age 18 or older must supervise a youth hunter age 15 or younger during the hunt. One adult may supervise only one youth during the deer hunt. A youth hunter must remain within normal voice contact of the supervising adult.

(vii) Hunters may take only one deer (one buck or one doe) per day during refuge deer hunts except during guided youth and wheelchair-bound hunts when the limit will be one antlerless and one antlered deer per day.

(viii) We designate refuge turkey hunt dates in the refuge hunting brochure (signed brochure).

(ix) The conditions set forth at paragraphs (t)(1)(ii) through (iv) of this section apply.

(x) We allow muzzleloader hunters to discharge their primitive firearms at the end of each hunt safely into the ground at least 150 feet (135 meters (m)) from any designated public road, maintained road, trail, fire break, dwelling, or aboveground oil and gas production facility. We define a ''maintained road or trail'' as one that has been mowed, disked, or plowed, or one that is free of trees.

(xi) We prohibit deer hunters leaving deer stands unattended before the opening day of the refuge archery season. Hunters must remove stands by the end of the last day of the refuge archery season (see § 27.93 of this chapter). Hunters must clearly mark stands left unattended on the refuge with the stand owner's State hunting license number. Hunters must remove portable stands from trees each day and place freestanding stands in a nonhunting position when unattended.

(xii) We allow hunting with slugs, rifle, or pistol ammunition larger than .22 caliber rimfire only during the quota hunts for deer. We prohibit use of buckshot when hunting.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow anglers to enter the refuge no earlier than 4 a.m., and they must depart no later than 2 hours after legal sunset.

(ii) We prohibit the taking of turtle (see § 27.21 of this chapter).

(iii) We prohibit fish cleaning within 150 feet (45 m) of parking areas, maintained roads, and trails.

(u) *Upper Ouachita National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, dove, and woodcock on designated areas of the refuge subject to the following conditions:

(i) You must carry a signed refuge hunt permit (signed public use regulations brochure) and must carry and fill out daily a Visitor Check-In Permit and Report (FWS Form 3–2405).

(ii) Hunters may only hunt during designated refuge seasons as listed in the signed refuge hunt permit.

(iii) We allow waterfowl hunting until 12 p.m. (noon) during the State season.

(iv) Hunters may enter the refuge no earlier than 4 a.m. and must exit the refuge no later than 1:30 p.m.

(v) We prohibit hunting within 100 feet (30 meters (m)) of the maintained rights-of-way of roads and from or across all-terrain vehicle (ATV) trails. We prohibit hunting within 50 feet (15 m) of, or trespassing on, aboveground oil, gas, or electrical transmission facilities.

(vi) When hunting migratory game birds, you may only use dogs to locate, point, and retrieve.

(vii) We allow ATVs only on trails designated for their use and marked by signs (see § 27.31 of this chapter). ATV trails are closed March 1 through August 31.

(2) *Upland game hunting.* We allow hunting of quail, squirrel, rabbit, raccoon, and opossum on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (u)(1)(i), (ii), (v), and (vii) of this section apply.

(ii) You may enter the refuge no earlier than 4 a.m. and must exit no later than 2 hours after legal shooting hours.

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (u)(1)(i), (ii), (v), and (vii) and (u)(2)(ii) of this section apply.

(ii) Deer hunters must wear hunter orange as governed by State deer hunting regulations in wildlife management areas.

(iii) We prohibit hunters from placing stands or hunting from stands on pine trees with white-painted bands and/or rings.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit leaving boats and other personal property on the refuge overnight (see § 27.93 of this chapter).

(ii) You must tend trotlines daily. You must attach ends of trotlines by a length of cotton line that extends into the water.

(iii) Recreational fishing using commercial gear (slat traps, etc.) requires a special refuge permit (Special Use Permit (FWS Form 3–1383–G)), which is available at the refuge office. You must possess and carry the special refuge permit while fishing using commercial gear.

(iv) We prohibit the taking of turtle (see § 27.21 of this chapter).

§ 32.38 Maine.

The following refuge units are open for hunting and/or fishing as governed

by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Moosehorn National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, American woodcock, and snipe on designated areas of the refuge subject to the following conditions:

(i) We require every hunter to possess and carry a personally signed Migratory Bird Hunt Application (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System).

(ii) We allow hunters to enter the refuge 2 hours before legal shooting hours, and they must exit the refuge by 1 hour past legal shooting hours.

(iii) We only allow portable or temporary blinds and decoys that must be removed from the refuge following each day's hunt (see § 27.93 of this chapter).

(iv) We allow the use of dogs to assist in the location and retrieval of game species during State hunt seasons for migratory birds.

(2) *Upland game hunting.* We allow hunting of ruffed grouse, snowshoe hare, red fox, gray and red squirrel, raccoon, skunk, and woodchuck on designated areas of the refuge subject to the following conditions:

(i) We require every hunter to possess and carry a personally signed Big/Upland Game Hunt Application (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System).

(ii) We allow hunters to enter the refuge 2 hours before legal shooting hours, and they must exit the refuge by 1 hour past legal shooting hours, except for hunters pursuing raccoons at night.

(iii) We prohibit hunting of upland game species on refuge lands between April 1 and September 30.

(iv) We allow the use of dogs when hunting raccoon or red fox. We allow the use of dogs to assist in the location and retrieval of game species during State hunting seasons for upland game.

(3) *Big game hunting.* We allow hunting of black bear, bobcat, eastern coyote, moose, and white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (a)(2)(i) of this section applies.

(ii) We allow hunters to enter the refuge 2 hours before legal shooting hours, and they must exit the refuge by 1 hour past legal shooting hours, except for hunters pursuing eastern coyotes at night.

(iii) The hunter must retrieve all species, including coyotes, harvested on the refuge.

(iv) We allow eastern coyote hunting from October 1 to March 31.

(v) We allow portable tree stands, blinds, and ladders. You must clearly label any tree stand, blind, or ladder left on the refuge overnight with your hunting license number. You must remove your tree stand(s), blind(s), and/or ladder(s) from the refuge on the last day of the muzzleloader deer season (see § 27.93 of this chapter).

(vi) You may hunt black bear, eastern coyote, and white-tailed deer during the State archery and firearms deer seasons on that part of the Baring Division that lies east of State Route 191.

(vii) We prohibit use of firearms to hunt bear and coyote during the archery deer season on that part of the Baring Division that lies east of Route 191. We prohibit the use of firearms, other than a muzzleloader, to hunt coyote during the deer muzzleloader season on that part of the Baring Division that lies east of Route 191.

(viii) We allow the use of dogs when hunting black bear, bobcat, and eastern coyote. We allow the use of dogs to assist in the location and retrieval of game species during State hunting seasons for big game.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We only allow fishing from ½ hour before legal sunrise to ½ hour after legal sunset.

(ii) We prohibit trapping fish for use as bait on the refuge.

(b) *Petit Manan National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, woodcock, rail, and snipe on designated areas of the refuge subject to the following condition: We allow the use of dogs for retrieving migratory game birds.

(2) *Upland game hunting.* We allow hunting of upland game on designated areas of the refuge subject to the following conditions:

(i) We allow the use of dogs for hunting ruffed grouse.

(ii) You may hunt coyotes from November 1 to March 31.

(iii) Hunters must retrieve all species, including coyotes, harvested on the refuge.

(iv) We prohibit night hunting from ½ hour after legal sunset until ½ hour before legal sunrise the following day.

(3) *Big game hunting.* We allow hunting of white-tailed deer and black bear on designated areas of the refuge subject to the following conditions:

(i) Petit Manan Point is open only during the State-prescribed muzzleloader deer season.

(ii) We allow black bear hunting during the firearm season for white-tailed deer.

(iii) We allow hunters to enter the refuge 1 hour prior to legal sunrise and remain on the refuge 1 hour after legal sunset.

(4) [Reserved]

(c) *Rachel Carson National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, woodcock, and snipe on designated areas of the refuge subject to the following conditions:

(i) Prior to entering designated refuge hunting areas, you must obtain a Migratory Bird Hunt Application (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) and sign and carry the permit at all times.

(ii) We open designated youth hunting areas to hunters age 15 and younger who possess and carry a refuge hunting permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System). Youth hunters must be accompanied by an adult age 18 or older. The accompanying adult must possess and carry a refuge hunting permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) and may also hunt.

(iii) We allow the use of dogs when hunting migratory game birds and upland game species.

(iv) You may use seasonal blinds with a Special Use Permit (FWS Form 3–1383–G). A permitted seasonal blind is available to permitted hunters on a first-come, first-served basis. The permit holder for the blind is responsible for the removal of the blind at the end of the season and compliance with all conditions of the Special Use Permit.

(2) *Upland game hunting.* We allow hunting of pheasant, quail, grouse, fox, and coyote on designated areas of the refuge subject to the following conditions:

(i) Prior to entering designated refuge hunting areas, you must obtain a Big/Upland Game Hunt Application (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) and sign and carry the permit at all times

(ii) We allow take of pheasant, quail, and grouse by falconry on the refuge during State seasons.

(iii) The condition set forth at paragraph (c)(1)(iii) of this section applies.

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

(i) The condition as set forth at paragraph (c)(2)(i) of this section applies.

(ii) We allow hunting with shotgun and archery only. We prohibit rifles and muzzleloading firearms for hunting.

(iii) We allow turkey hunting during the fall season only, as designated by the State.

(iv) We allow only archery on those areas of the Little River division open to hunting.

(v) During the State firearm deer season, we only allow hunting of fox and coyote with archery or shotgun as incidental take with a refuge big game permit.

(vi) We allow hunting from ½ hour before legal sunrise to ½ hour after legal sunset.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing from legal sunrise to legal sunset.

(ii) We prohibit lead jigs and sinkers.

(iii) We prohibit trapping fish for use as bait on the refuge.

(d) *Sunkhaze Meadows National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the refuge subject to the following condition: We allow the use of dogs to assist in the location and retrieval of game species during State hunting seasons for migratory bird game hunting.

(2) *Upland game hunting.* We allow hunting of upland game on designated areas of the refuge subject to the following conditions:

(i) We allow eastern coyote hunting from October 1 to March 31.

(ii) We allow hunters to enter the refuge 1 hour before legal shooting hours, and they must exit the refuge by 1 hour past legal shooting hours, except for hunters pursuing raccoons and coyotes at night.

(iii) The hunter must retrieve all species, including coyotes, harvested on the refuge.

(iv) We allow the use of dogs to assist in the location and retrieval of game species during State hunting seasons for upland game.

(3) *Big game hunting.* We allow hunting of black bear, bobcat, moose, and white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) We allow hunters to enter the refuge 1 hour before legal shooting hours, and they must exit the refuge by 1 hour past legal shooting hours.

(ii) We allow portable tree stands, blinds, and ladders. You must clearly label any tree stand, blind, or ladder left on the refuge overnight with your name and hunting license number. You must remove your tree stand(s), blind(s), and/or ladder(s) from the refuge on the last day of the muzzleloader deer season (see § 27.93 of this chapter).

(iii) We allow the use of dogs to assist in the location of game species during State hunting seasons for big game.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: We prohibit trapping fish for use as bait on the refuge.

(e) *Umbagog National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, snipe, coot, crow, and woodcock on designated areas of the refuge subject to the following conditions:

(i) Hunters must remove temporary blinds, boats, and decoys from the refuge following each day's hunt (see § 27.93 of this chapter).

(ii) We allow the use of dogs to assist in the location and retrieval of game species.

(2) *Upland game hunting.* We allow hunting of fox, raccoon, woodchuck, squirrel, porcupine, skunk, snowshoe hare, ring-necked pheasant, and ruffed grouse on designated areas of the refuge subject to the following conditions:

(i) We prohibit night hunting from ½ hour after legal sunset until ½ hour before legal sunrise the following day.

(ii) The condition set forth at paragraph (e)(1)(ii) of this section applies.

(3) *Big game hunting.* We allow hunting of bear, white-tailed deer, coyote, wild turkey, and moose on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (e)(1)(ii) and (e)(2)(i) of this section apply.

(ii) Hunters must retrieve all species, including coyotes, harvested on the refuge.

(iii) We allow temporary blinds and tree stands that are clearly marked with the owner's State hunting license number. You may erect temporary blinds and tree stands no earlier than 14 days prior to the hunting season, and you must remove them within 14 days after the hunting season (see § 27.93 of this chapter).

(4) [Reserved]

§ 32.39 Maryland.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Blackwater National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose and duck on designated areas of the refuge subject to the following conditions:

(i) You must obtain and possess while hunting a refuge waterfowl hunting permit (signed brochure) by signing the corresponding season's refuge waterfowl hunting brochure in ink.

(ii) Up to three additional hunters may accompany you on your reserved unit.

(2) [Reserved]

(3) *Big game hunting.* We allow the hunting of white-tailed and sika deer and turkey on designated areas of the refuge subject to the following conditions:

(i) *General hunt regulations for this paragraph (a)(3).* (A) You must obtain, and possess while hunting, a turkey or deer hunting permit (Big/Upland Game or Quota Deer Hunt Application, FWS Form 3–2439, Hunt Application—National Wildlife Refuge System).

(B) We prohibit organized deer drives unless authorized by the refuge manager. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(C) We prohibit shooting a projectile from a firearm, muzzleloader, bow, or crossbow from, down, or across any refuge road. A refuge road is any road that is traveled by vehicular traffic.

(D) You must check all deer harvested at the refuge-sponsored check station during hunt days when the refuge-sponsored check station is open. If you fail to check deer during operation hours of the check station, you must notify the hunt coordinator by 12 p.m. (noon) on the day after your kill.

(E) We prohibit the use of rimfire or centerfire rifles and all handguns, including muzzleloading pistols, for hunting.

(ii) *Archery deer hunt.* We do not allow archery hunters to hunt within areas designated for the youth hunt on designated days.

(iii) *Turkey hunt.* We allow turkey hunt permit holders to have an assistant, who must remain within sight and normal voice contact and abide by the rules set forth in the Blackwater turkey brochure (signed brochure).

(iv) *Youth deer and turkey hunt.* We allow youth hunters to hunt on designated areas on designated days (youth hunt) if they meet the criteria of a ''youth hunter'' as governed by State law and possess a signed refuge hunt brochure (signed brochure).

(v) *Designated disabled hunt.* (A) We require disabled hunters to have their America the Beautiful Access pass (OMB Control 1024–0252) in their

possession while hunting in disabled areas.

(B) Disabled hunters may have an assistant, age 18 or older, who must remain within sight and normal voice contact while hunting. Assistants must possess a valid refuge hunt brochure (permit), signed in ink, and a valid government-issued photo identification.

(4) *Sport fishing.* We allow sport fishing and crabbing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing and crabbing only from April 1 through September 30 from legal sunrise to legal sunset in refuge waters, unless otherwise authorized by the refuge manager.

(ii) We allow fishing and crabbing by boat in the Big Blackwater and the Little Blackwater River.

(b) *Eastern Neck National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

(i) *General hunt regulations for this paragraph (b)(3).* (A) You must obtain, and possess while hunting, a deer or turkey hunting permit (Big/Upland Game Hunt Application, FWS Form 3–2439, Hunt Application—National Wildlife Refuge System).

(B) We prohibit shooting a projectile from a firearm, muzzleloader, bow, or crossbow from, down, or across any refuge road. A refuge road is any road that is traveled by vehicular traffic.

(C) We prohibit the use of rimfire or centerfire rifles and all handguns, including muzzleloading pistols, for hunting.

(ii) *Youth deer hunt.* We allow youth hunters to hunt on designated areas on designated days (youth hunt) if they meet the criteria of a ''youth hunter'' as governed by State law and possess a signed refuge hunt brochure (signed brochure).

(iii) *Designated disabled hunt.* (A) We require disabled hunters to have their America the Beautiful Access pass (OMB Control 1024–0252) in their possession while hunting in disabled areas.

(B) Disabled hunters may have an assistant who must be age 18 or older and remain within sight and normal voice contact. Assistants must possess a valid refuge hunt brochure (permit), signed in ink, and a valid government-issued photo identification.

(4) *Sport fishing.* We allow sport fishing and crabbing in designated areas of the refuge subject to the following conditions:

(i) We allow fishing and crabbing from designated shoreline areas located at the Ingleside Recreation Area from legal sunrise to legal sunset, April 1 through September 30.

(ii) We allow fishing from designated shoreline areas located at the Chester River end of Boxes Point and Duck Inn Trails from legal sunrise to legal sunset.

(c) *Patuxent Research Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, and dove on designated areas of the refuge subject to the following conditions:

(i) We require a Refuge Hunt Application (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System), and a signed Statement of Hunter Ethics (FWS Form 3–2516).

(ii) We prohibit hunting and scouting on Sundays and Federal holidays. No hunt-related activities may take place unless the Hunting Control Station is open.

(iii) We allow the use of dogs to retrieve migratory game birds.

(iv) We prohibit wading in all impounded waters except for when placing and retrieving decoys.

(2) *Upland game hunting.* We allow hunting of gray squirrel, eastern cottontail rabbit, and woodchuck on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (c)(1)(i) and (ii) of this section apply.

(3) *Big game hunting.* We allow hunting of turkey and white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (c)(1)(i) and (ii) of this section apply.

(ii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(iii) We allow the use of portable tree stands and blinds as governed by State regulations. You must remove your tree stand(s) and/or blind(s) from the refuge at the end of each day (see § 27.93 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit the use and/or possession of lead sinkers.

(ii) We allow the use of earthworms as the only source of live bait. We prohibit the use of bloodworms, fish, or other animals or parts of animals as bait.

§ 32.40 Massachusetts.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Assabet River National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of woodcock on designated areas of the refuge subject to the following conditions:

(i) Hunters must obtain and possess a refuge-specific hunting permit (electronic form) to hunt on the refuge.

(ii) You may begin scouting hunting areas 4 weeks prior to the opening day of your permitted season. We require possession of a valid refuge hunting permit while scouting.

(iii) We allow the use of dogs to retrieve game.

(2) *Upland game hunting.* We allow hunting of ruffed grouse, gray squirrel, and cottontail rabbit on designated areas of the refuge subject to the following conditions:

(i) We allow only shotgun hunting for ruffed grouse, cottontail rabbit, and gray squirrel within those portions of the refuge located north of Hudson Road, except those areas north of Hudson Road designated as ''archery only'' hunting.

(ii) The conditions set forth at paragraphs (a)(1)(i) and (iii) of this section apply.

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

(i) We allow shotgun and muzzleloader hunting of white-tailed deer, as well as shotgun hunting of turkey, within the portions of the refuge located north of Hudson Road, except those areas north of Hudson Road that are designated as ''archery only'' hunting.

(ii) We allow archery deer and archery turkey hunting within all portions of the refuge during the hunting seasons for these species.

(iii) The conditions set forth at paragraphs (a)(1)(i) and (ii) of this section apply.

(iv) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(v) One nonhunting companion may accompany each permitted hunter. We prohibit nonhunting companions from hunting, but they may assist in other means. All companions must carry identification and stay with the hunter.

(vi) Hunters may use temporary tree stands and/or ground blinds while engaged in hunting deer during the

applicable archery, shotgun, or muzzleloader deer seasons or while hunting turkey. We allow hunters to keep one tree stand or ground blind on the refuge during the permitted season. Hunters must mark ground blinds with their permit number. Hunters must mark tree stands with their permit number so that all numbers are visible from the ground. Hunters must remove all temporary tree stands and ground blinds by 15 days after the end of the permitted season (see § 27.93 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow catch-and-release fishing only.

(ii) We allow the use of live bait with the exception of any amphibians or reptiles (frogs, salamanders, etc.).

(b) *Great Meadows National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck and goose on designated areas of the refuge subject to the following condition: We allow the use of dogs to retrieve game.

(2) [Reserved]

(3) *Big game hunting.* We allow archery hunting of whitetail deer on designated areas of the refuge subject to the following conditions:

(i) Hunters must obtain and possess a valid refuge hunting permit (electronic form) to hunt deer on the refuge.

(ii) We allow archery hunting of deer only. We prohibit the use of firearms for hunting deer on the refuge.

(iii) Hunters may begin scouting hunting areas beginning 4 weeks prior to the opening day of their permitted season. We require possession of a valid refuge hunting permit (electronic form) while scouting.

(iv) We allow one nonhunting companion to accompany each permitted hunter. We prohibit nonhunting companions from hunting, but they can assist in other means. All companions must carry identification and stay with the hunter.

(v) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(vi) You may use temporary tree stands and/or ground blinds while engaged in hunting deer during the applicable archery season. We allow hunters to keep one tree stand or ground blind on each refuge during the permitted season. Hunters must mark ground blinds with their permit number. Hunters must mark tree stands with their permit number so that all numbers are visible from the ground. Hunters must remove all temporary tree stands and ground blinds by 15 days after the end of the permitted deer season (see § 27.93 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(c) *Mashpee National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the refuge subject to the following conditions:

(i) Hunters may enter the refuge no earlier than ½ hour before legal sunrise and must leave the refuge no later than ½ hour after legal sunset.

(ii) We allow the use of dogs to retrieve game.

(2) *Upland game hunting.* We allow hunting of coyote, fox, raccoon, opossum, gray squirrel, quail, pheasant, crow, and ruffed grouse on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (c)(1)(i) and (ii) of this section apply.

(3) *Big game hunting.* We allow hunting of white-tailed deer and wild turkey on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (c)(1)(i) of this section applies.

(ii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(4) [Reserved]

(d) *Monomoy National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of waterfowl (duck, goose, and coot) on designated areas of the refuge by boat only subject to the following condition: We allow the use of dogs for retrieving game.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing on the portions of the Monomoy Islands that we do not post as closed to public use from legal sunrise to legal sunset.

(ii) We allow surf fishing from the Morris Island shore 24 hours a day.

(e) *Nantucket National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(f) *Oxbow National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of waterfowl, woodcock, and Wilson's snipe on designated areas of the refuge subject to the following conditions:

(i) Hunters must obtain and possess a refuge-specific hunting permit to hunt on the refuge.

(ii) Hunters may begin scouting hunting areas 4 weeks prior to the opening day of your permitted season. We require possession of a valid refuge hunting permit (electronic form) while scouting.

(iii) We allow the use of dogs to retrieve game.

(iv) One nonhunting companion may accompany each permitted hunter. We prohibit nonhunting companions from hunting, but they can assist in other means. All companions must carry identification and stay with the hunter.

(2) *Upland game hunting.* We allow hunting of ruffed grouse, gray squirrel, and eastern cottontail rabbit on designated areas of the refuge subject to the following condition: The condition set forth at paragraph (f)(1)(i) of this section applies.

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

(i) We allow shotgun, archery, and muzzleloader hunting of white-tailed deer, as well as shotgun and archery hunting of turkey, within the portions of the refuge located south of Massachusetts Route 2 and west of the B&M railroad tracks.

(ii) We allow archery deer and archery turkey hunting within the portions of the refuge located south of Massachusetts Route 2 and east of the B&M railroad tracks, and within the portions of the refuge along the easterly side of the Nashua River located north of the commuter rail tracks in Ayer, Massachusetts.

(iii) We allow archery deer hunting as well as shotgun and archery turkey hunting within the portions of the refuge located north of Massachusetts Route 2 and south of Hospital Road, and within the portions of the refuge along the westerly side of the Nashua River located north of the commuter rail tracks in Shirley, Massachusetts.

(iv) The conditions set forth at paragraphs (f)(1)(i) and (iv) of this section apply.

(v) Hunters may begin scouting hunting areas 4 weeks prior to the opening day of your permitted season. We require possession of a valid refuge hunting permit (electronic form) while scouting.

(vi) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue,

drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(vii) Hunters may use temporary tree stands and/or ground blinds while engaged in hunting deer during the applicable archery, shotgun, or muzzleloader deer seasons or while hunting turkey. We allow hunters to keep one tree stand or ground blind on the refuge during the permitted season. Hunters must mark ground blinds with their permit number. Hunters must mark tree stands with their permit number so that all numbers are visible from the ground. Hunters must remove all temporary tree stands and ground blinds by 15 days after the end of the permitted season (see § 27.93 of this chapter).

(4) *Sport fishing.* We allow sport fishing in designated areas of the refuge.

(g) *Parker River National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the refuge subject to the following conditions:

(i) We allow hunting ½ hour before legal sunrise to ½ hour after legal sunset.

(ii) We prohibit the use of centerfire rifles and handguns to hunt any species.

(iii) We prohibit shooting across refuge roads, across boundaries, and within or into administratively closed zones.

(iv) We allow the use of dogs for retrieving game, but prohibit the use of dogs to hunt furbearers.

(v) We prohibit launching motorized boats for scouting purposes prior to hunting.

(vi) We allow crow hunting only from September 1 through February 28.

(2) *Upland game hunting.* We allow hunting of upland game on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (g)(1)(i) through (v) of this section apply.

(3) *Big game hunting.* We allow hunting of white-tailed deer and wild turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (g)(1)(i) through (v) of this section apply.

(ii) We only allow hunting of white-tailed deer on Plum Island subject to the following conditions:

(A) We allow archery, primitive firearms, shotgun, and crossbow (by MassWildlife permit only, for certain disabled persons) hunting during a designated 2-day hunt on the first Wednesday and Thursday of the State shotgun deer season.

(B) You must have a lottery-issued hunt permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) to hunt during this 2-day time period.

(C) We allow deer hunt permittees to scout from Thursday through Sunday prior to their hunt and require hunters to possess their refuge permit while scouting.

(D) You must register harvested deer (Big Game Harvest Report, FWS Form 3–2359) at the refuge check station, if operational.

(E) Hunters must check-in and out with refuge personnel prior to entering and exiting the refuge.

(iii) We allow hunting of deer and wild turkey in Areas A, B, C, and D subject to the following condition: You may take deer using archery equipment only.

(4) *Sport fishing.* We allow saltwater fishing on designated areas of the refuge subject to the following conditions:

(i) We allow saltwater fishing on the ocean beach from legal sunrise to legal sunset without a refuge permit.

(ii) Stage Island is open to fishing from legal sunrise to legal sunset.

(iii) Nelson Island is open to fishing from legal sunrise to legal sunset.

(iv) We allow walk-on night fishing after legal sunset with a valid refuge permit (FWS Form 3–2358; vehicle sticker issued by the refuge office).

(v) We allow anglers to use over-the-sand, surf-fishing vehicles, or off-road vehicles (ORVs) with a valid refuge permit and permit fee, as determined in an annual lottery.

(h) *Silvio O. Conte National Fish and Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas subject to the following conditions:

(i) We allow refuge access from ½ hour prior to legal sunrise until ½ hour after legal sunset.

(ii) We prohibit access to Third Island between January 1 and June 30.

(iii) We allow the use of dogs when hunting waterfowl and upland game species.

(iv) We only allow the use of temporary tree stands and blinds, which must be removed at the end of each hunt day. All tree stands and blinds must have the name and telephone number of the owner clearly printed in an easily readable area.

(2) *Upland game hunting.* We allow hunting of upland game on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (h)(1)(i) through (iii) of this section apply.

(3) *Big game hunting.* We allow hunting of big game on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (h)(1)(i) and (iv) of this section apply.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (h)(1)(i) and (ii) of this section apply.

(ii) We prohibit launching of motorboats from the refuge.

(iii) We prohibit the use of reptiles and amphibians as bait.

§ 32.41 Michigan.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Detroit River International Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, rail, gallinule, coot, woodcock, and snipe on designated areas of the refuge subject to the following conditions:

(i) You must remove all of your blinds, boats, and decoys from the refuge each day (see § 27.93 of this chapter).

(ii) We allow refuge access from 1½ hours prior to legal sunrise until 1 hour after legal sunset.

(iii) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(iv) We allow hunting of waterfowl only on the Plum Creek Bay Unit of the refuge and only through boat access.

(v) We allow hunting of waterfowl only on the Brancheau Unit of the refuge as governed by Pointe Mouillee State Game Area special hunt regulations and subject to the following conditions:

(A) You must obtain and possess a State-issued permit for this unit by entering the Michigan Department of Natural Resources' daily drawing at the Pointe Mouillee State Game Area.

(B) You must remain with 75 feet (22.5 meters) of your assigned blind or numbered post. We allow an exception for unarmed (hunting weapons) retrieval of waterfowl.

(C) We allow only nonmotorized boats.

(D) We prohibit shot size larger than BBB.

(2) *Upland game hunting.* We allow hunting of pheasant, squirrel, rabbit, fox, raccoon, and coyote on designated areas of the refuge and subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(1)(i) through (iii) of this section apply.

(ii) You may possess only approved nontoxic shot (see § 32.2(k)) while in the field with the following exception: While hunting fox, coyotes, and raccoons in units where we allow it, you may use single projectile shot such as bullets, slugs, or muzzleloader bullets containing lead. We prohibit the use of buckshot for any hunting on the refuge.

(iii) On the Humbug Island Unit, you may only hunt with shotgun shells or archery equipment.

(3) *Big game hunting.* We allow hunting of deer and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(1)(i) and (ii) of this section apply.

(ii) For wild turkey hunting, you may possess only approved nontoxic shot (see § 32.2(k)) while in the field.

(iii) For deer hunting, you may possess only single projectile shot. We prohibit the use of buckshot for any hunting on the refuge.

(iv) We allow portable tree stands for deer hunting. We allow only one tree stand per hunter per refuge unit.

(v) For Humbug Marsh Mainland only:

(A) You must obtain and possess a State-issued permit for this unit by entering the Michigan Department of Natural Resources' annual drawing.

(B) You must obtain and possess a state access permit (issued by the refuge) for the date on which you are hunting in the Humbug Marsh Unit.

(C) You must hunt from a provided fixed hunting platform and/or blind.

(vi) The Humbug Island Unit is closed to firearm deer hunting. We allow only archery deer hunting on Humbug Island.

(vii) The Fix Unit is closed to firearm deer hunting. We allow only archery deer hunting in the Fix Unit.

(4) [Reserved]

(b) *Harbor Island National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer and black bear subject to the following condition: We prohibit the use of dogs when hunting.

(4) [Reserved]

(c) *Kirtland's Warbler Wildlife Management Area*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting.

(2) *Upland game hunting.* We allow upland game hunting.

(3) *Big game hunting.* We allow big game hunting.

(4) [Reserved]

(d) *Michigan Wetland Management District*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds subject to the following conditions:

(i) Hunters must remove boats, decoys, blinds, and blind materials at the end of each day (see § 27.93 of this chapter).

(ii) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(2) *Upland game hunting.* We allow hunting of upland game subject to the following condition: The conditions set forth at paragraphs (d)(1)(i) and (ii) of this section apply.

(3) *Big game hunting.* We allow the hunting of big game.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(e) *Seney National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of woodcock and snipe on designated areas of the refuge subject to the following condition: We allow the use of dogs when hunting migratory birds, provided the dog is under the immediate control of the hunter at all times.

(2) *Upland game hunting.* We allow hunting of ruffed grouse and snowshoe hare on designated areas of the refuge subject to the following condition: We allow the use of dogs when hunting upland game, provided the dog is under the immediate control of the hunter at all times.

(3) *Big game hunting.* We allow the hunting of deer and bear on designated areas of the refuge subject to the following condition: We prohibit the use of dogs while deer or bear hunting.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit the use of fishing weights or lures containing lead.

(ii) We allow ice fishing from January 1 through the end of February.

(iii) Anglers must remove ice fishing shelters and all other personal property from the refuge each day (see § 27.93 of this chapter).

(iv) We allow fishing on designated refuge pools from May 15 through September 30.

(v) We allow fishing only from legal sunrise to legal sunset.

(f) *Shiawassee National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of waterfowl (duck and goose), American coot, common gallinule, sora, Virginia rail, and Wilson's snipe on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a refuge check-in card.

(ii) We allow waterfowl hunting on Saturdays, Sundays, Tuesdays, and Thursdays during the regular goose season after September 30.

(iii) We allow hunter access to the refuge 1½ hours before legal shooting time.

(iv) You may possess no more than 25 shotgun shells while hunting in the field.

(v) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(vi) We allow the take of feral hogs incidental to other lawful hunting using legal methods of take.

(2) *Upland game hunting.* We allow hunting of turkey, small game (eastern fox squirrel, eastern cottontail, ring-necked pheasant, American woodcock, and American crow), and furbearers (raccoon, coyote, and red fox) on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (f)(1)(vi) of this section applies.

(ii) You may only hunt turkey during the spring season.

(iii) We allow hunter access for the spring wild turkey season from 1½ hours before legal shooting time to ½ hour after legal shooting time.

(iv) We allow hunter access for small game hunting from ½ hour before legal shooting time to ½ hour after legal shooting time.

(v) We allow hunter access for furbearer hunting from ½ hour before legal sunrise to ½ hour after legal sunset.

(vi) We allow dogs for hunting. Raccoon hunting dogs must wear global positioning system (GPS) or radio collars.

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (f)(1)(vi) of this section applies.

(ii) You must possess and carry a refuge permit (State-issued permit).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing by boat in navigable waterways but not within any managed refuge units.

(ii) We allow bank fishing from legal sunrise to legal sunset only at designated sites along the Tittabawassee and Cass Rivers.

§ 32.42 Minnesota.

The following refuge units are open for hunting and/or fishing as governed

by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Agassiz National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow youth waterfowl hunting on designated areas of the refuge subject to the following conditions:

(i) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(ii) Hunters must dismantle hunting blinds, platforms, and ladders made from natural vegetation at the end of each day.

(iii) You must remove all boats, decoys, blind materials, stands, platforms, cameras, and other personal property brought onto the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(iv) We close the refuge from 7 p.m. to 5:30 a.m.

(v) We allow the use of motorless boats for hunting.

(vi) We only allow waterfowl hunting during the State's youth waterfowl season.

(2) *Upland game hunting.* We allow hunting of ruffed grouse and sharp-tailed grouse on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(1)(i) through (v) of this section apply.

(ii) We only allow hunting from the opening of the State's deer firearms season to the close of the State's ruffed grouse and sharp-tailed grouse seasons, respectively.

(3) *Big game hunting.* We allow hunting of white-tailed deer and moose on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(1)(ii) through (v) of this section apply.

(ii) We prohibit shooting on, from, over, across, or within 30 feet (9 meters) of a roadway open to motorized public vehicle transportation at a big game animal or a decoy of a big game animal.

(iii) We only allow archery hunting from the start of the State's deer firearms season, and close as governed by the State's archery deer season.

(4) [Reserved]

(b) *Big Stone National Wildlife Refuge*—(1) *Migratory game bird hunting.* We prohibit the hunting of migratory game birds. We allow the unarmed retrieval of waterfowl, legally taken outside the refuge, up to 100 yards (90 meters) inside the refuge boundary.

(2) *Upland game hunting.* We allow hunting of ring-necked pheasant, bobwhite quail, pigeon, mourning dove, crow, cottontail rabbit, gray and fox squirrel, and wild turkey on designated areas of the refuge subject to the following conditions:

(i) For wild turkey hunting, you may use or possess only approved nontoxic shot shells (see § 32.2(k)) while in the field.

(ii) We allow the use of dogs for upland game bird hunting only, provided the dog is under the immediate control of the hunter at all times.

(iii) Hunters must dismantle hunting blinds, platforms, and ladders made from natural vegetation at the end of each day.

(iv) You must remove all boats, decoys, blind materials, stands, platforms, and other personal property brought onto the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(v) You may only hunt fox and raccoon from ½ hour before legal sunrise until legal sunset from the beginning of the State season through the last day of February.

(vi) You may only hunt striped skunk from ½ hour before legal sunrise until legal sunset from September 1 through the last day of February.

(3) *Big game hunting.* We allow hunting of deer on designated areas of the refuge subject to the following conditions:

(i) We prohibit shooting on, from, over, across, or within 30 feet (9 meters) of a roadway open to public vehicle transportation at a big game animal or a decoy of a big game animal.

(ii) The conditions set forth at paragraphs (b)(2)(iii) and (iv) of this section apply.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow only bank fishing on all refuge pools and open marshes.

(ii) We prohibit the taking of any turtle, frog, leech, minnow, crayfish, and mussel (clam) species by any method on the refuge (see § 27.21 of this chapter).

(c) *Big Stone Wetland Management District*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds throughout the district subject to the following conditions:

(i) We allow the use of dogs for hunting, provided the dog is under the immediate control of the hunter at all times.

(ii) Hunters must dismantle hunting blinds, platforms, and ladders made from natural vegetation at the end of each day.

(iii) You must remove all boats, decoys, blind materials, stands, platforms, and other personal property brought onto the district at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game hunting throughout the district subject to the following conditions:

(i) The conditions set forth at paragraphs (c)(1)(i) through (iii) of this section apply.

(ii) You may use or possess only approved nontoxic shot shells (see § 32.2(k)) in the field while hunting turkey.

(3) *Big game hunting.* We allow hunting of white-tailed deer throughout the district subject to the following condition: The conditions set forth at paragraphs (c)(1)(ii) and (iii) of this section apply.

(4) *Sport fishing.* We allow fishing throughout the district subject to the following condition: The condition set forth at paragraph (c)(1)(iii) of this section applies.

(d) *Crane Meadows National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow the hunting of goose, duck, merganser, coot, woodcock, common moorhen, mourning dove, Sora/Virginia rail, crow, and common snipe on designated areas of the refuge subject to the following conditions:

(i) We require a signed hunt brochure. You must carry this signed brochure when hunting on the refuge.

(ii) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(iii) Hunters must dismantle hunting blinds, platforms, and ladders made from natural vegetation at the end of each day.

(iv) You must remove all boats, decoys, blind materials, stands, platforms, and other personal property brought onto the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(v) We prohibit entry onto the refuge earlier than 2 hours before legal shooting time, and we require hunters to leave the refuge no later than 2 hours after legal shooting time.

(2) *Upland game hunting.* We allow hunting of ruffed grouse; ring-necked pheasant; red, gray, and fox squirrel; cottontail rabbit; jackrabbit; snowshoe hare; red and gray fox; raccoon; badger; bobcat; coyote; striped skunk; opossum; long and short tailed weasel; and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (d)(1)(ii) through (v) of this section apply.

(ii) You may use or possess only approved nontoxic shot shells (see § 32.2(k)) in the field while hunting turkey.

(iii) We allow the use of dogs when hunting, except when hunting furbearers, provided the dog is under the immediate control of the hunter at all times.

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (d)(1)(i), (iii), and (iv) of this section apply.

(ii) We prohibit shooting on, from, over, across, or within 30 feet (9 meters) of a roadway open to public vehicle transportation at a big game animal or a decoy of a big game animal.

(iii) We prohibit the possession of hunting firearms or archery equipment on areas closed to deer hunting.

(4) [Reserved]

(e) *Detroit Lakes Wetland Management District*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds throughout the district, except that we prohibit hunting on the Headquarters waterfowl production area (WPA) in Becker County, the Hitterdal WPA in Clay County, and the McIntosh WPA in Polk County. The following conditions apply:

(i) We allow the use of dogs for hunting, provided the dog is under the immediate control of the hunter at all times.

(ii) Hunters must dismantle hunting blinds, platforms, and ladders made from natural vegetation at the end of each day.

(iii) You must remove all boats, decoys, blind materials, stands, platforms, and other personal property brought onto the district at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game hunting throughout the district, except that we prohibit hunting on the Headquarters WPA in Becker County, the Hitterdal WPA in Clay County, and the McIntosh WPA in Polk County. The following conditions apply:

(i) The conditions set forth at paragraphs (e)(1)(i) through (iii) of this section apply.

(ii) You may use or possess only approved nontoxic shot shells (see § 32.2(k)) in the field while hunting turkey.

(3) *Big game hunting.* We allow big game hunting throughout the district, except that we prohibit hunting on the Headquarters WPA in Becker County, the Hitterdal WPA in Clay County, and the McIntosh WPA in Polk County. The following conditions apply:

(i) The conditions set forth at paragraphs (e)(1)(ii) and (iii) of this section apply.

(ii) Hunters may use portable stands.

(4) *Sport fishing.* We allow sport fishing throughout the district subject to the following condition: The condition set forth at paragraph (e)(1)(iii) of this section applies.

(f) *Fergus Falls Wetland Management District*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds throughout the district, except that we prohibit hunting on the Townsend, Mavis, and Gilmore waterfowl production areas (WPAs) and the building and administrative area of Knollwood WPA in Otter Tail County, and on the Larson WPA in Douglas County. The following conditions apply:

(i) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(ii) Hunters must dismantle hunting blinds, platforms, and ladders made from natural vegetation at the end of each day.

(iii) You must remove all boats, decoys, blind materials, stands, platforms, and other personal property brought onto the district at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game hunting throughout the district, except that we prohibit hunting on the Townsend, Mavis, and Gilmore WPAs and in designated portions of Knollwood WPA in Otter Tail County, and on the Larson WPA in Douglas County. The following conditions apply:

(i) The conditions set forth at paragraphs (f)(1)(i) through (iii) of this section apply.

(ii) You may use and possess only approved nontoxic shot shells (see § 32.2(k)) in the field while hunting turkey.

(3) *Big game hunting.* We allow big game hunting throughout the district, except that we prohibit hunting on the Townsend, Mavis, and Gilmore WPAs and the building and administrative area of Knollwood WPA in Otter Tail County, and on the Larson WPA in Douglas County. The following condition applies: The conditions set forth at paragraphs (f)(1)(ii) and (iii) of this section apply.

(4) *Sport fishing.* We allow sport fishing throughout the district, except that we prohibit hunting on the Townsend, Mavis, and Gilmore WPAs and the building and administrative area of Knollwood WPA in Otter Tail County, and on the Larson WPA in Douglas County. The following condition applies: The condition set forth at paragraph (f)(1)(iii) of this section applies.

(g) *Glacial Ridge National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, woodcock, snipe, rail, and mourning dove on designated areas of the refuge subject to the following conditions:

(i) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(ii) Hunters must dismantle hunting blinds, platforms, and ladders made from natural vegetation at the end of each day.

(iii) You must remove all boats, decoys, blind materials, stands, platforms, and other personal property brought onto the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(iv) We allow nonmotorized boats in areas open to migratory bird hunting during the migratory bird hunting seasons.

(v) We prohibit hunting during the Spring Light Goose Conservation Order.

(vi) We allow hunting during special State-administered youth seasons.

(vii) We allow the use of wheeled, nonmotorized conveyance devices (*e.g.,* bikes, game carts).

(viii) We prohibit entry onto the refuge earlier than 2 hours before legal shooting time, and we require hunters to leave the refuge no later than 2 hours after legal shooting time.

(2) *Upland game hunting.* We allow hunting of prairie chicken, sharp-tailed grouse, ring-necked pheasant, gray (Hungarian) partridge, ruffed grouse, rabbit (cottontail and jack), snowshoe hare, squirrel (fox and gray), and wild turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (g)(1)(i) through (iii) and (vi) through (viii) of this section apply.

(ii) You may use or possess only approved nontoxic shot shells (see § 32.2(k)) in the field while hunting turkey.

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (g)(1)(ii) through (iii) and (vi) through (viii) of this section apply.

(ii) We prohibit shooting on, from, over, across, or within 30 feet (9 meters) of a roadway open to public vehicle transportation at a big game animal or a decoy of a big game animal.

(4) [Reserved]

(h) *Hamden Slough National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of waterfowl on designated areas of the refuge subject to the following conditions:

(i) We only allow youth waterfowl hunting on the State's youth waterfowl day.

(ii) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(iii) Hunters must dismantle hunting blinds, platforms, and ladders made from natural vegetation at the end of each day.

(iv) You must remove all boats, decoys, blind materials, stands, platforms, and other personal property brought onto the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(v) We prohibit entry to hunting areas earlier than 2 hours before legal shooting hours.

(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) We only allow hunting during the State's muzzleloader season with muzzleloaders.

(ii) The conditions set forth at paragraphs (h)(1)(iii) and (iv) of this section apply.

(4) [Reserved]

(i) *Litchfield Wetland Management District*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds throughout the district, except we prohibit hunting on that part of the Phare Lake waterfowl production area (WPA) in Renville County that lies within the Phare Lake State Game Refuge. The following conditions apply:

(i) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(ii) Hunters must dismantle hunting blinds, platforms, and ladders made from natural vegetation at the end of each day.

(iii) You must remove all boats, decoys, blind materials, stands, platforms, and other personal property brought onto the district at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game hunting throughout the district, except we prohibit hunting on that part of the Phare Lake WPA in Renville County. The following conditions apply:

(i) The conditions set forth at paragraphs (i)(1)(i) through (iii) of this section apply.

(ii) You may use and possess only approved nontoxic shot shells (see § 32.2(k)) in the field while hunting turkey.

(3) *Big game hunting.* We allow big game hunting throughout the district, except we prohibit hunting on that part of the Phare Lake WPA in Renville County that lies within the Phare Lake State Game Refuge. The following condition applies: The conditions set forth at paragraph (i)(1)(ii) and (iii) of this section apply.

(4) *Sport fishing.* We allow sport fishing throughout the district subject to the following condition: The condition set forth at paragraph (i)(1)(iii) of this section applies.

(j) *Minnesota Valley National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow the hunting of goose, duck, merganser, moorhen, coot, rail, woodcock, common snipe, and mourning dove on designated areas of the refuge subject to the following conditions:

(i) We require a special use permit (FWS Form 3–1383–G) for refuge-specific special hunts and refuge-specific population management hunts.

(ii) We prohibit the discharge of a weapon on, from, across, or within 100 feet (30 meters) of any service road, parking area, or designated hiking trail.

(iii) Hunters must dismantle hunting blinds, platforms, and ladders made from natural vegetation at the end of each day.

(iv) You must remove all boats, decoys, blind materials, stands, platforms, and other personal property brought onto the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(v) We prohibit entry into the refuge earlier than 2 hours before legal shooting time.

(vi) We allow the use of dogs while hunting migratory birds, provided the dog is under the immediate control of the hunter at all times.

(vii) We prohibit hunting during the State spring goose hunt.

(2) *Upland game hunting.* We allow hunting of ruffed grouse, gray partridge, ring-necked pheasant, American crow, squirrel (gray, fox, and red), snowshoe hare, cottontail rabbit, jackrabbit, raccoon, fox (red and gray), striped skunk, coyote, opossum, and wild turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (j)(1)(i) through (v) of this section apply.

(ii) We prohibit single projectile ammunition for hunting upland game and furbearers, except that we allow hunters to use small-caliber rimfire rifles and handguns (.22 caliber and smaller) on designated areas of the refuge.

(iii) We prohibit the use of dogs for hunting furbearers. We allow the use of dogs while hunting upland game birds.

(iv) You may use or possess only approved nontoxic shot shells (see § 32.2(k)) in the field while hunting turkey.

(v) You may only hunt fox, opossum, and raccoon from ½ hour before legal sunrise until legal sunset, from the beginning of the State season through the last day of February, on designated areas of the refuge.

(vi) You may only hunt coyotes and skunks from ½ hour before legal sunrise until legal sunset, from September 1 through the last day of February, on designated areas of the refuge.

(vii) You may only hunt crows during the State-designated crow seasons, which occur between September 1 and the last day of February, on designated areas of the refuge.

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (j)(1)(i) through (v) of this section apply.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge during daylight hours subject to the following conditions:

(i) The condition set forth at paragraph (j)(1)(iv) of this section applies.

(ii) We prohibit the taking of any turtle, frog, leech, minnow, crayfish, and mussel (clam) species by any method on the refuge (see § 27.21 of this chapter).

(k) *Minnesota Valley Wetland Management District*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds throughout the district subject to the following conditions:

(i) Hunters must dismantle hunting blinds, platforms, and ladders made from natural vegetation at the end of each day.

(ii) You must remove all boats, decoys, blind materials, stands, platforms, and other personal property brought onto the district at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(iii) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(2) *Upland game hunting.* We allow upland game hunting throughout the district subject to the following conditions:

(i) The conditions set forth at paragraphs (k)(1)(i) through (iii) of this section apply.

(ii) We prohibit the possession of single projectile ammunition for hunting on the Soberg waterfowl production area (WPA).

(iii) You may use or possess only approved nontoxic shot shells (see § 32.2(k)) in the field while hunting turkey.

(3) *Big game hunting.* We allow big game hunting throughout the district subject to the following conditions:

(i) The conditions set forth at paragraphs (k)(1)(i) through (iii) of this section apply.

(ii) We prohibit firearms deer hunting on Soberg WPA.

(4) *Sport fishing.* We allow sport fishing throughout the district subject to the following conditions: The condition set forth at paragraph (k)(1)(ii) of this section applies.

(l) *Morris Wetland Management District*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds throughout the district, except that we prohibit hunting on the designated portions of the Edward-Long Lake waterfowl production area (WPA) in Stevens County. The following conditions apply:

(i) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(ii) Hunters must dismantle hunting blinds, platforms, and ladders, including those made from natural vegetation at the end of each day.

(iii) All boats, decoys, blind materials, stands, platforms, and other personal property (see 27.93 and 27.94 of this chapter) brought onto the WPA, must be removed at the end of each day.

(2) *Upland game hunting.* We allow hunting of upland game, except that we prohibit hunting on the designated portions of the Edward-Long Lake WPA in Stevens County. The following conditions apply:

(i) The conditions set forth at paragraphs (l)(1)(i) through (iii) of this section apply.

(ii) You may use and possess only approved nontoxic shot shells (see § 32.2(k)) in the field while hunting turkey.

(3) *Big game hunting.* We allow hunting of deer throughout the district, except that we prohibit hunting on the designated portions of the Edward-Long Lake WPA in Stevens County. The following condition applies: The conditions set forth at paragraphs (l)(1)(ii) and (iii) of this section apply.

(4) *Sport fishing.* We allow fishing throughout the district, except that we prohibit fishing on the designated portions of the Edward-Long WPA in Stevens County. The following condition applies: The condition set forth at paragraph (l)(1)(iii) of this section applies.

(m) *Northern Tallgrass Prairie National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, merganser, moorhen, coot, rail (Virginia and sora only), woodcock, common snipe, mourning dove, and sandhill crane subject to the following conditions:

(i) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(ii) Hunters must dismantle hunting blinds, platforms, and ladders made from natural vegetation at the end of each day.

(iii) You must remove all boats, decoys, blind materials, stands, platforms, and other personal property brought onto the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(iv) We allow hunting on the unit located within the Hiawatha Game Refuge in Pipestone County, as governed by applicable State regulations.

(v) We allow migratory game bird hunting on the Spieker tract in Clay County, as governed by applicable State regulations.

(2) *Upland game hunting.* We allow hunting of wild turkey, ring-necked pheasant, Hungarian partridge, prairie chicken, spruce grouse, ruffed grouse, sharp-tailed grouse, rabbit (cottontail and jack), snowshoe hare, squirrel (fox and gray), raccoon, opossum, fox (red and gray), badger, coyote, bobcat, striped skunk, and crow on designated areas subject to the following conditions:

(i) The conditions set forth at paragraphs (m)(1)(ii) through (iv) of this section apply.

(ii) We prohibit the use of dogs for hunting furbearers. For all other upland game, we allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(iii) You may use or possess only approved nontoxic shells (see § 32.2(k)) in the field while hunting turkey.

(3) *Big game hunting.* We allow hunting of deer, elk, and black bear on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (m)(1)(ii) through (iv) of this section apply.

(ii) We prohibit shooting on, from, over, across, or within 30 feet (9 meters) of a roadway open to public vehicle transportation at a big game animal or a decoy of a big game animal.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit the taking of any turtle, frog, leech, minnow, crayfish, and mussel (clam) species by any method on the refuge (see § 27.21 of this chapter).

(ii) The condition set forth at paragraph (m)(1)(iii) of this section applies.

(n) *Rice Lake National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of woodcock and common snipe on designated areas of the refuge subject to the following conditions:

(i) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(ii) Hunters must dismantle hunting blinds, platforms, and ladders made from natural vegetation at the end of each day.

(iii) You must remove all boats, decoys, blind materials, stands, platforms, and other personal property brought onto the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow hunting of ruffed grouse, spruce grouse, gray and fox squirrel, cottontail rabbit, and snowshoe hare on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (n)(1)(i) through (iii) of this section apply.

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) We require a State-issued permit for firearms hunting.

(ii) The conditions set forth at paragraphs (n)(1)(ii) and (iii) of this section apply.

(iii) We prohibit shooting on, from, over, across, or within 30 feet (9 meters) of a roadway open to public vehicle transportation at a big game animal or a decoy of a big game animal.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We only allow fishing from nonmotorized boats or boats powered by electric motors in designated areas.

(ii) The condition set forth at paragraph (n)(1)(iii) of this section applies.

(iii) We prohibit the taking of any turtle, frog, leech, minnow, crayfish, and mussel (clam) species by any method on the refuge (see § 27.21 of this chapter).

(o) *Rydell National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) Hunters must dismantle hunting blinds, platforms, and ladders made from natural vegetation at the end of each day.

(ii) You must remove all blind materials, stands, platforms, and other personal property brought onto the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(iii) We prohibit shooting on, from, over, across, or within 30 feet (9 meters) of a roadway open to public vehicle transportation at a big game animal or a decoy of a big game animal.

(iv) We require a State-issued permit to hunt white-tailed deer in the Special Permit Area of the refuge.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit the taking of any turtle, frog, leech, minnow, crayfish, and mussel (clam) species by any method on the refuge (see § 27.21 of this chapter).

(ii) We allow fishing from May 1 through November 1.

(p) *Sherburne National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, rail, woodcock, and snipe on designated areas of the refuge subject to the following conditions:

(i) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(ii) Hunters must dismantle hunting blinds, platforms, and ladders made from natural vegetation at the end of each day.

(iii) You must remove all boats, decoys, blind materials, stands, platforms, and other personal property brought onto the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(iv) We prohibit entry onto the refuge earlier than 2 hours before legal shooting time, and we require hunters to leave the refuge no later than 2 hours after legal shooting time.

(v) We prohibit hunting from March 1 through August 31.

(vi) We allow only nonmotorized boats, and they must be launched at designated access sites.

(2) *Upland game hunting.* We allow hunting of ruffed grouse, ring-necked pheasant, gray and fox squirrel, snowshoe hare, cottontail rabbit, jackrabbit, and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (p)(1)(i) through (v) of this section apply.

(ii) We close the refuge to turkey hunting, except we allow a turkey hunt for youth hunters and persons with disabilities by special use permit (FWS Form 3–1383–G).

(iii) You may use or possess only approved nontoxic shot shells (see § 32.2(k)) in the field while hunting turkey.

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (p)(1)(ii) through (vi) of this section apply.

(ii) We prohibit shooting on, from, over, across, or within 30 feet (9 meters) of a roadway open to public vehicle transportation at a big game animal or a decoy of a big game animal.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit the taking of any turtle, frog, leech, minnow, crayfish, and mussel (clam) species by any method on the refuge (see § 27.21 of this chapter).

(ii) From March 1 through August 31 (the refuge wildlife sanctuary period), we allow fishing only from nonmotorized boats on the designated canoe route and on banks within 100 yards (91.44 meters) both upstream and downstream of designated access points.

(q) *Tamarac National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow the hunting of goose, duck, coot, woodcock, snipe, rail (Virginia and Sora), mourning dove, and American crow on designated areas of the refuge subject to the following conditions:

(i) Hunting by tribal members is governed by White Earth Reservation regulations on those portions of the Reservation that are a part of the refuge.

(ii) You must remove all boats, decoys, blind materials, stands, platforms, and other personal property brought onto the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(iii) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(iv) You may hunt American crow from September 1 through the end of February within all migratory bird hunting areas, and from March 1 through the end of season in areas open to migratory bird hunting south of County Highway 26.

(v) Hunters must dismantle hunting blinds, platforms, and ladders made from natural vegetation at the end of each day.

(2) *Upland game hunting.* We allow hunting of wild turkey; bobcat; ruffed grouse; red, gray, and fox squirrel; cottontail rabbit; jackrabbit; snowshoe hare; red fox; raccoon; and striped skunk on designated areas of the refuge subject to the following conditions:

(i) You may only hunt fox and raccoon from ½ hour before legal sunrise until legal sunset from the beginning of the State season through the last day of February within all upland game hunting areas, and from March 1 through the end of the season in areas open to upland game hunting south of County Highway 26.

(ii) You may only hunt striped skunk from ½ hour before legal sunrise until legal sunset from September 1 through the last day of February.

(iii) During the fall season, you may hunt wild turkey as governed by State and Tribal seasons and regulations throughout the refuge. During the spring seasons, you may only hunt wild turkey south of County Highway 26, minus the areas east of County Highway 29, north of Pine Lake, and west of Chippewa Water Control Structure Road.

(iv) You may possess only approved nontoxic shells (see 32.2(k)) when hunting wild turkey.

(v) We allow the use of dogs when hunting, except when hunting furbearers, provided the dog is under the immediate control of the hunter at all times.

(vi) The conditions set forth at paragraphs (q)(1)(ii), (iii), and (v) of this section apply.

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) We prohibit shooting on, from, over, across, or within 30 feet (9 meters) of a road edge open to public vehicle transportation at a big game animal or a decoy of a big game animal.

(ii) The conditions set forth at paragraphs (q)(1)(i), (ii), and (v) of this section apply.

(4) *Sport Fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing in North Tamarac Lake, Wauboose Lake, and Two Island Lake year-round as governed by State and/or White Earth Reservation regulations.

(ii) We allow fishing in Blackbird Lake and Lost Lake from the first day of the State walleye season through Labor Day as governed by State and/or White Earth Reservation regulations.

(iii) We allow fishing in Pine Lake from December 1 until March 31.

(iv) We prohibit the taking of any turtle, frog, leech, minnow, crayfish, or mussel (clam) species by any method on the refuge (see § 27.21 of this chapter).

(v) The condition set forth at paragraph (q)(1)(ii) of this section applies.

(r) *Upper Mississippi River National Wildlife and Fish Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the refuge subject to the following conditions:

(i) We prohibit migratory bird hunting from March 16 through August 31 each year.

(ii) You cannot reserve hunting areas, except at Potter's Marsh Managed Hunt Area, Pool 13, near Thomson, Illinois.

(iii) In areas posted and shown on maps as ''Closed to All Access,'' we prohibit public entry, to include hunting and fishing, at all times. This area is named and located as follows: Crooked Slough Backwater, Pool 13, Illinois, 2,453 acres.

(iv) In areas posted and shown on maps as ''No Entry—Sanctuary,'' we prohibit hunting at all times and all public entry except as specified. These areas are named and located as follows:

(A) Pool Slough, Pool 9, Minnesota/Iowa, 1,126 acres.

(B) Bertom Island, Pool 11, Wisconsin, 31 acres.

(C) Guttenberg Ponds, Pool 11, Iowa, 252 acres.

(D) Spring Lake, Pool 13, Illinois, 3,697 acres.

(v) In areas posted and shown on maps as ''Area Closed'' and ''Area Closed—No Motors,'' we prohibit migratory bird hunting at all times. We ask that you practice voluntary avoidance of these areas by any means or for any purpose from October 15 to the end of the respective State duck season. In areas also marked ''no motors,'' we prohibit the use of motors on watercraft from October 15 to the end of the respective State duck season.

(A) The areas posted and marked on maps as ''Area Closed'' are named and located as follows:

(*1*) Big Lake, Pool 4, Wisconsin, 2,210 acres.

(*2*) Weaver Bottoms/Lost Island, Pool 5, Minnesota/Wisconsin, 3,508 acres.

(*3*) Polander Lake, Pool 5A, Minnesota/Wisconsin, 1,873 acres.

(*4*) Lake Onalaska, Pool 7, Wisconsin, 7,366 acres (voluntary avoidance on 3,365 acres until mid-November).

(*5*) Wisconsin Islands, Pool 8, Minnesota/Wisconsin, 6,538 acres.

(*6*) Harpers Slough, Pool 9, Iowa/Wisconsin, 5,209 acres.

(*7*) Wisconsin River Delta, Pool 10, Wisconsin, 1,414 acres (closed November 1 to end of duck season).

(*8*) 12-Mile Island, Pool 11, Iowa, 1,139 acres.

(*9*) Bertom-McCartney, Pool 11, Wisconsin, 2,384 acres (no voluntary avoidance provision).

(*10*) Pleasant Creek, Pool 13, Iowa, 2,191 acres.

(*11*) Elk River, Pool 13, Iowa, 1,248 acres.

(B) The areas posted and marked on maps as ''Area Closed—No Motors'' are named and located as follows:

(*1*) Peterson Lake, Pool 4, Wisconsin 572 acres.

(*2*) Rieck's Lake, Pool 4, Wisconsin, 499 acres.

(*3*) Spring Lake, Pool 5, Wisconsin, 254 acres.

(*4*) Sturgeon Slough, Pool 10, Wisconsin, 340 acres.

(*5*) 12-Mile Island, Pool 10, Iowa, 540 acres.

(*6*) John Deere Marsh, Pool 11, Iowa, 439 acres.

(*7*) Kehough Slough, Pool 12, Illinois, 333 acres.

(*8*) Beaver Island, Pool 14, Iowa, 864 acres.

(vi) In areas posted and shown on maps as ''No Hunting Zone'' or ''No Hunting or Trapping Zone,'' we prohibit hunting at all times. These areas are named and located as follows:

(A) Buffalo River, Pool 4, Wisconsin, 219 acres.

(B) Fountain City Bay, Pool 5A, Wisconsin, 24 acres.

(C) Upper Halfway Creek Marsh, Pool 7, Wisconsin, 143 acres.

(D) Brice Prairie Tract, Pool 7, Wisconsin, 186 acres.

(E) Hunter's Point, Pool 8, Wisconsin, 82 acres.

(F) Goose Island, Pool 8, Wisconsin, 984 acres (also no motors and voluntary avoidance).

(G) Sturgeon Slough, Pool 10, Wisconsin, 66 acres.

(H) Goetz Island Trail, Pool 11, Iowa, 31 acres.

(I) Crooked Slough Proper, Pool 13, Illinois, 270 acres.

(J) Frog Pond, Pool 13, Illinois, 64 acres.

(K) Ingersoll Wetlands Learning Center, Pool 13, Illinois, 41 acres.

(L) Amann Tract, Pool 7, Wisconsin, 0.21 acre.

(M) Lost Mound Unit Office and River Road, Pool 13, Illinois, 175 acres.

(vii) In the area posted and shown on maps as ''Mesquaki Lake No Hunting Zone,'' Pool 13, Illinois, we prohibit hunting migratory birds from April 1 through September 30.

(viii) You may not engage in open-water waterfowl hunting in Pool 11, approximate river miles 586–592, Grant County, Wisconsin, as marked with signs and as shown on refuge maps. Open-water hunting regulations and definitions that apply for Wisconsin outside of Grant County also apply in this area.

(ix) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(x) We allow working a dog in refuge waters by tossing a retrieval dummy or other object for out-and-back exercise.

(xi) You may use natural material for temporary blinds, with restrictions. You may hunt from a boat blind or pop-up blind, or you may construct a temporary blind of natural materials. You may gather grasses and marsh vegetation (*e.g.,* willow, cattail, bulrush, lotus, and/or arrowhead) from the refuge for blind-building materials. However, you may not gather, bring onto the refuge, or use for blind building any tree(s) or other plant parts, including dead wood on the ground, greater than 2 inches (5 centimeters (cm)) in diameter.

(xii) We require a 200-yard (182.9-meter) spacing distance between hunting parties on the Illinois portions of the refuge in Pools 12, 13, and 14.

(xiii) You may set up hunting equipment the day of the hunt, but you must remove it at the end of each day (see § 27.93 of this chapter). You may place and leave hunting equipment and decoys on the refuge only from 1 hour before the start of legal shooting hours until ½ hour after the close of legal shooting hours.

(2) *Upland game hunting.* We allow hunting of upland game on designated areas of the refuge subject to the following conditions:

(i) We prohibit upland game hunting from March 16 through August 31 each year, except for spring wild turkey hunting and squirrel hunting on the Illinois portion of the refuge.

(ii) The conditions set forth at paragraphs (r)(1)(ii) through (iv), (vi), (ix), (xi), and (xiii) of this section apply

(iii) In areas posted and shown on maps as ''Area Closed'' and ''Area Closed—No Motors,'' we allow upland game hunting beginning the day after the respective State duck hunting season until upland game season closure or March 15, whichever comes first, except we allow spring turkey hunting during State seasons. In areas also marked ''Area Closed—No Motors,'' we prohibit the use of motors on watercraft from October 15 to the end of the respective State duck season.

(iv) In the area posted and shown on maps as ''Mesquaki Lake No Hunting Zone,'' Pool 13, Illinois, we prohibit

hunting upland game from April 1 to September 30.

(v) For hunting, you may use or possess only approved nontoxic shot shells (see § 32.2(k)) while in the field, including shot shells used for hunting wild turkey.

(3) *Big game hunting.* We allow hunting of big game on designated areas of the refuge subject to the following conditions:

(i) We prohibit big game hunting from March 16 through August 31 each year.

(ii) In areas closed to public access on the Lost Mound Unit of Savanna District, Illinois, we allow firearm deer hunts as established by the refuge manager.

(iii) The conditions set forth at paragraphs (r)(1)(ii) through (iv), (vi), (ix), (xi), and (xiii) and (r)(2)(v) of this section apply.

(iv) In areas posted and shown on maps as ''No Entry—Sanctuary'' we allow big game hunting beginning the day after the respective State duck hunting season until big game season closure or March 15, whichever comes first. We describe these areas more fully at paragraph (r)(1)(iv) of this section.

(v) In areas posted and shown on maps as ''Area Closed'' and ''Area Closed—No Motors,'' we allow big game hunting beginning the day after the respective State duck hunting season until big game season closure or March 15, whichever comes first. In areas also marked ''Area Closed—No Motors,'' we prohibit the use of motors on watercraft from October 15 to the end of the respective State duck season.

(vi) In the area posted and shown on maps as ''Mesquaki Lake No Hunting Zone,'' Pool 13, Illinois, we prohibit big game hunting from April 1 to September 30.

(vii) On refuge-managed lands in Illinois, we prohibit organized drives for deer. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (r)(1)(iii) and (xi) of this section apply.

(ii) In areas also marked ''Area Closed—No Motors,'' we prohibit the use of motors on watercraft from October 15 to the end of the respective State duck season.

(iii) Commercial fishing in Spring Lake, Pool 13, Illinois, requires a Special Use Permit (FWS Form 3–1383–C) issued by the refuge or district manager (see § 31.13 of this chapter).

(s) *Windom Wetland Management District*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the district, except that we prohibit hunting on the Worthington waterfowl production area (WPA) in Nobles County and on designated portions of the Wolf Lake WPA in Cottonwood County. The following conditions apply:

(i) You must remove all boats, decoys, blind materials, stands, platforms, and other personal property brought onto the district at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(ii) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(2) *Upland game hunting.* We allow hunting of upland game on designated areas of the district, except that we prohibit hunting on the Worthington WPA in Nobles County and on designated portions of the Wolf Lake WPA in Cottonwood County. The following condition applies: The conditions set forth at paragraphs (s)(1)(i) and (ii) of this section apply.

(3) *Big game hunting.* We allow hunting of big game on designated areas of the district, except that we prohibit hunting on the Worthington WPA in Nobles County and on designated portions of the Wolf Lake WPA in Cottonwood County. The following conditions apply:

(i) We allow the use of portable stands.

(ii) The condition set forth at paragraph (s)(1)(i) of this section applies.

(4) *Sport fishing.* We allow fishing throughout the district subject to the following condition: The condition set forth at paragraph (s)(1)(i) of this section applies.

§ 32.43 Mississippi.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Bogue Chitto National Wildlife Refuge.* Refer to § 32.37(g) for regulations.

(b) *Coldwater River National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory waterfowl, coot, snipe, and woodcock on designated areas of the refuge subject to the following conditions:

(i) All hunters age 16 and older must possess and carry a valid, signed refuge hunting permit (Visitor Check-In Permit and Report, FWS Form 3–2405). While hunting on the refuge, all persons age 16 and younger (''youth hunter'') must be in the presence and under the direct supervision of a licensed or exempt hunter age 21 or older (''licensed hunter''). A hunter supervising a youth hunter must hold all required licenses and permits.

(ii) Hunters may enter the refuge at 4 a.m. and must exit the refuge no later than 2 hours after legal sunset except during raccoon and frog hunts.

(iii) We allow hunting of migratory game birds, including under the Light Goose Conservation Order, only on Wednesdays, Saturdays, and Sundays ending at 12 p.m. (noon).

(iv) Each hunter must obtain a daily Migratory Bird Hunt Report (FWS Form 3–2361). You must display the card in plain view on the dashboard of your vehicle so that the personal information is readable. Prior to leaving the refuge, you must complete the reverse side of the card and deposit it at one of the refuge information stations. Include all game harvested, and if you harvest no game, report ''0.'' We prohibit hunters possessing more than one Big Game Harvest Report at a time.

(v) It is unlawful to hunt from or shoot into the 100-foot (30.5-meter) zone along either side of designated roads and parking lots.

(vi) The refuge has requirements for certain hunters and other persons on the refuge to wear fluorescent orange.

(A) We do not require waterfowl hunters or nighttime raccoon hunters to wear any fluorescent orange.

(B) All hunters or persons on the refuge for any reason during the refuge deer firearm season (including primitive weapons and youth gun hunt) must wear, in full view, a minimum of 500 square inches (3,226 square centimeters (cm)) of solid, unbroken, fluorescent orange.

(C) Deer archery hunters on the refuge must wear in full view a minimum of 500 square inches (3,226 square cm) of solid, unbroken, fluorescent orange when there is a State gun season on private land.

(D) When hunting quail or rabbit on the refuge outside the refuge's general gun and primitive weapon season, hunters must wear only a fluorescent orange vest or cap.

(vii) We allow the use of dogs on the refuge when hunting.

(viii) You must remove decoys, blinds, boats, other personal property, and litter from the hunting area following each morning's hunt (see §§ 27.93 and 27.94 of this chapter).

(ix) We allow no more than 25 shotshells per person in the field.

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, nutria, and raccoon on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(1)(i), (ii), (iv) (substitute Upland/Small Game/Furbearer Report [FWS Form 3–2362] for Migratory Bird Hunt Report [FWS Form 3–2361]), (vi), and (vii) of this section apply.

(ii) Hunters may enter the refuge no earlier than 2 hours before legal sunrise and must leave the refuge no later than 2 hours after legal sunset. We may make exceptions for raccoon hunters possessing a Special Use Permit (FWS Form 3–1383–G).

(iii) When hunting, we allow only shotguns, .17 or .22-caliber rimfire rifles, or archery equipment without broadheads.

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(1)(i), (ii), (iv) (substitute Big Game Harvest Report [FWS Form 3–2359] for Migratory Bird Hunt Report [FWS Form 3–2361]), and (vi) of this section apply.

(ii) We prohibit dogs while hunting deer. We allow the use of dogs to hunt feral hog during designated hog seasons.

(iii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(iv) We prohibit hunting or shooting across any open, fallow, or planted field from ground level or on or across any public road, public highway, railroad, or their rights-of-way during all general gun and primitive weapon hunts.

(v) Hunters may erect portable deer stands 2 weeks prior to the opening of archery season on the refuge and must remove them (see § 27.93 of this chapter) by January 31.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) All anglers must carry a valid refuge permit (Visitor Check-In Permit and Report, FWS Form 3–2405), certifying that they understand and will comply with all regulations.

(ii) We prohibit possession or use of jugs, seines, nets, hand-grab baskets, slat traps/baskets, or any other similar devices.

(iii) We allow trotlines, yo-yos, limb lines, crawfish traps, or any other similar devices for recreational use only, and you must tag or mark them with waterproof ink, legibly inscribed or legibly stamped on the tag with your State fishing license number. You must attend these devices a minimum of once daily. If you are not going to attend these devices, you must remove them from the refuge (see § 27.93 of this chapter).

(iv) We allow crawfishing.

(v) We allow take of frog only with a Special Use Permit (FWS Form 3–1383–G).

(c) *Dahomey National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory waterfowl, coot, snipe, and woodcock on designated areas of the refuge subject to the following conditions:

(i) All hunters age 16 and older must carry a valid, signed refuge hunting permit (Visitor Check-In Permit and Report, FWS Form 3–2405). While hunting on the refuge, all persons age 16 and younger (''youth hunter'') must be in the presence and under the direct supervision of a licensed or exempt hunter at age 21 or older (''licensed hunter''). A hunter supervising a youth hunter must hold all required licenses and permits.

(ii) Hunters may enter the refuge at 4 a.m. and must exit the refuge no later than 2 hours after legal sunset except during raccoon and frog hunts.

(iii) We allow hunting of migratory game birds, including under the Light Goose Conservation Order, only on Wednesdays, Saturdays, and Sundays ending at 12 p.m. (noon).

(iv) Each hunter must obtain a daily Migratory Bird Hunt Report (FWS Form 3–2361). You must display the card in plain view on the dashboard of your vehicle so that the personal information is readable. Prior to leaving the refuge, you must complete the card and deposit it at one of the refuge information stations. Include all game harvested, and if you harvest no game, report ''0.''

(v) We allow the use of dogs on the refuge when hunting.

(vi) You must remove decoys, blinds, boats, other personal property, and litter from the hunting area following each morning's hunt (see §§ 27.93 and 27.94 of this chapter).

(vii) We allow no more than 25 shotshells per person in the field.

(2) *Upland game hunting.* We allow hunting of quail, squirrel, rabbit, and raccoon on designated areas of the refuge subject to the following conditions:

(i) You must possess a valid general Special Use Permit (FWS Form 3–1383–G) to hunt raccoon on the refuge.

(ii) Each hunter must obtain a daily Upland/Small Game/Furbearer Report (FWS Form 3–2362). You must display the card in plain view on the dashboard of your vehicle so that the personal information is readable. Prior to leaving the refuge, you must complete the card and deposit it at one of the refuge information stations. Include all game harvested, and if you harvest no game, report ''0.''

(iii) The conditions set forth at paragraphs (c)(1)(i), (ii), and (v) of this section apply.

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) Each hunter must obtain a daily Big Game Harvest Report (FWS Form 3–2359). You must display the card in plain view on the dashboard of your vehicle so that the personal information is readable. Prior to leaving the refuge, you must complete the card and deposit it at one of the refuge information stations. Include all game harvested, and if you harvest no game, report ''0.'' We prohibit hunters possessing more than one Big Game Harvest Report (FWS Form 3–2359) at a time.

(ii) The conditions set forth at paragraphs (c)(1)(i) and (ii) of this section apply.

(iii) We prohibit dogs for any big game hunt.

(iv) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(v) We prohibit hunting or shooting across any open, fallow, or planted field from ground level.

(vi) We allow valid permit holders to possess and hunt from one portable stand or blind on the refuge. You must clearly label your stand or blind with your State license/sportsmen's identification number. Stands left in the area do not reserve the hunting locations. You may place stands up to 2 days prior to the hunt, and you must remove them no more than 2 days after the refuge's deer season closes (see § 27.93 of this chapter).

(vii) Hunters using a climbing tree stand must use a fall-arrest system manufactured to Treestand Manufacturers Association standards.

(viii) We prohibit the use of buckshot on the refuge.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit the use or possession of alcoholic beverages while fishing.

(ii) All anglers must carry a valid refuge permit (Visitor Check-In Permit and Report, FWS Form 3–2405), certifying that they understand and will comply with all regulations.

(iii) We prohibit possession or use of jugs, seines, nets, hand-grab baskets, slat traps/baskets, or any other similar devices and commercial fishing of any kind.

(iv) We allow trotlines, yo-yos, limb lines, crawfish traps, or any other similar devices for recreational use only. You must tag or mark these devices with your State fishing license number, written with waterproof ink, legibly inscribed or legibly stamped on the tag. You must attend these devices a minimum of once a day. If you do not attend these devices, you must remove them from the refuge (see § 27.93 of this chapter).

(v) We allow crawfishing.

(vi) We allow take of frog only by Special Use Permit (FWS Form 3–1383–G).

(d) *Grand Bay National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, and mourning dove on designated areas of the refuge subject to the following conditions:

(i) Hunters must remove all decoys, blind material, and harvested waterfowl from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(ii) You must only use portable or temporary blinds.

(iii) We only allow the use of dogs when waterfowl hunting. We require all dogs to wear a collar displaying the owner's contact information.

(iv) Each hunter must possess and carry a valid, signed copy of the refuge hunting brochure (signed brochure) while participating in refuge hunts.

(2) *Upland game hunting.* We allow hunting of squirrel on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (d)(1)(iv) of this section applies.

(ii) We only allow .22 caliber rimfire.

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (d)(1)(iv) of this section applies.

(ii) We only allow hunting with bow and arrow. We prohibit firearms.

(iii) We allow portable and climbing tree stands. Hunters must remove tree stands from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(iv) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(4) [Reserved]

(e) *Hillside National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, merganser, coot, and dove on designated areas of the refuge subject to the following conditions:

(i) Each person age 16 or older hunting or fishing must possess a valid Theodore Roosevelt Complex Annual Public Use Permit (electronic form).

(ii) All youth hunters age 15 and younger must be in the presence and direct supervision of a Mississippi licensed or exempt hunter, age 21 or older. One adult may supervise no more than one youth hunter.

(iii) Before hunting or fishing, all participants must display their Daily Visitor Information/Harvest Report Card (Big Game Harvest Report, FWS Form 3–2359) in plain view in their vehicle so that the required information is readable. You must return all cards upon completion of the activity and before leaving the refuge.

(iv) We prohibit all other public use on the refuge during the muzzleloader deer hunt.

(v) Valid permit holders may incidentally take opossum, coyote, beaver, bobcat, nutria, and feral hog in any refuge hunt season with weapons legal for that hunt.

(vi) We prohibit hunting or shooting into a 100-foot (30.5-meter) zone along either side of pipelines, power line rights-of-way, designated roads, and trails, and around parking lots. It is considered hunting if you have a loaded weapon, if you have a nocked arrow while bow hunting, or if you are in an elevated tree stand or ground blind with a means to take, within these areas.

(vii) Hunters must remove all decoys, blind material, and harvested waterfowl from the area no later than 1 p.m. each day (see § 27.93 of this chapter).

(viii) We allow the use of dogs for retrieving migratory birds.

(ix) We allow goose, duck, merganser, and coot hunting beginning ½ hour before legal sunrise until 12 p.m. (noon).

(x) We do not open for early teal season.

(xi) We limit waterfowl hunters to 25 shotshells per person in the field.

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, quail, raccoon, opossum, coyote, beaver, bobcat, and nutria on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (e)(1)(i) through (vi) of this section apply.

(ii) We allow only shotguns and .22 and .17 caliber rimfire rifles for small game hunting.

(iii) We allow the use of dogs for hunting squirrel and quail, and for the February rabbit hunt.

(iv) Beginning the first day after the deer muzzleloader hunt, we prohibit entry into the Turkey Point area until March 1.

(3) *Big game hunting.* We allow hunting of white-tailed deer, turkey, and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (e)(1)(i) through (vi) and (e)(2)(iv) of this section apply.

(ii) We prohibit organized drives. We define a ''drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause game to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the game.

(iii) Hunting or shooting within or adjacent to open fields and tree plantations less than 5 feet (1.5 meters (m)) in height must be from a stand a minimum of 10 feet (3 m) above the ground.

(iv) Prior to leaving the refuge, you must check all harvested deer at the nearest self-service check station following the posted instructions.

(v) Hunters may possess and hunt from only one stand or blind. Hunters may place a deer stand or blind 48 hours prior to a hunt and must remove it within 48 hours after each designated hunt (see § 27.93 of this chapter), with the exception of closed areas where special regulations apply.

(vi) During designated muzzleloader hunts, we allow archery equipment and muzzleloaders loaded with a single ball; we prohibit breech-loading firearms of any type.

(vii) Turkey hunting opportunities will consist of three limited draw hunts within the State season time frame. These hunts require a Limited Hunt Permit (Big/Upland Game Hunt Application, FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) assigned by random computer drawing. At the end of the hunt, you must return the permit with information concerning your hunt (Big Game Harvest Report (FWS 3–2359)). If you fail to return this permit, you will not be eligible for any limited hunts the next year.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (e)(1)(i) and (iii) of this section apply.

(ii) We prohibit trotlines, limb lines, jugs, seines, and traps.

(iii) We allow frogging during the State bullfrog season.

(iv) We allow fishing in the borrow ponds along the north levee (see refuge brochure map) throughout the year except during the muzzleloader deer hunt.

(v) We open all other refuge waters to fishing March 1 through November 15.

(vi) We prohibit fishing from bridges.

(f) *Holt Collier National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of rabbit, opossum, coyote, beaver, bobcat, and nutria on designated areas of the refuge subject to the following conditions:

(i) Each person age 16 or older hunting or fishing must possess a valid Theodore Roosevelt Complex Annual Public Use Permit (electronic form).

(ii) All youth hunters age 15 and younger must be in the presence and direct supervision of a Mississippi licensed or exempt hunter, age 21 or older. One adult may supervise no more than one youth hunter.

(iii) Before hunting or fishing, all participants must display their Daily Visitor Information/Harvest Report Card (Big Game Harvest Report, FWS Form 3–2359) in plain view in their vehicle so that the required information is readable. You must return all cards upon completion of the activity and before leaving the refuge.

(iv) We prohibit all other public use on the refuge during all limited draw hunts.

(v) Valid permit holders may incidentally take opossum, coyote, beaver, bobcat, and nutria in any refuge hunt season with weapons legal for that hunt. Valid permit holders may incidentally take feral hog during deer or turkey hunts only.

(vi) We allow the use of dogs when rabbit hunting in February.

(vii) During the rabbit hunt, any hunter or person accompanying a hunter must wear at least 500 square inches (3,226 square centimeters (cm)) of unbroken, fluorescent-orange material visible above the waistline as an outer garment.

(viii) We prohibit all other public use on the refuge during muzzleloader deer hunts.

(ix) We prohibit hunting or shooting into a 100-foot (30.5-meter (m)) zone along either side of pipelines, power line rights-of-way, designated roads, and trails, and around parking lots. It is considered hunting if you have a loaded weapon, if you have a nocked arrow while bow hunting, or if you are in an elevated tree stand or ground blind with a means to take, within these areas.

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (f)(2)(i) through (iii), (v), (viii), and (ix) of this section apply.

(ii) We prohibit organized drives. We define a ''drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause game to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the game.

(iii) Hunting or shooting within or adjacent to open fields or tree plantations less than 5 feet (1.5 m) in height must be from a stand a minimum of 10 feet (3 m) above the ground.

(iv) Hunters may possess and hunt from only one stand or blind. Hunters may place a deer stand or blind 48 hours prior to a hunt and must remove it within 48 hours after each designated hunt (see § 27.93 of this chapter), with the exception of closed areas where special regulations apply.

(v) During designated muzzleloader hunts, we allow archery equipment and muzzleloaders loaded with a single ball; we prohibit breech-loading firearms of any type.

(4) [Reserved]

(g) *Mathews Brake National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, merganser, and coot on designated areas of the refuge subject to the following conditions:

(i) Each person age 16 or older hunting or fishing must possess a valid Theodore Roosevelt Complex Annual Public Use Permit (electronic form).

(ii) All youth hunters age 15 and younger must be in the presence and direct supervision of a Mississippi licensed or exempt hunter, age 21 or older. One adult may supervise no more than one youth hunter.

(iii) Before hunting or fishing, all participants must display their Daily Visitor Information/Harvest Report Card (Big Game Harvest Report, FWS Form 3–2359) in plain view in their vehicle so that the required information is readable. You must return all cards upon completion of the activity and before leaving the refuge.

(iv) Valid permit holders may incidentally take opossum, coyote, beaver, bobcat, and nutria in any refuge hunt season with weapons legal for that hunt. Valid permit holders may incidentally take feral hog during deer or turkey hunts only.

(v) We prohibit hunting or shooting into a 100-foot (30.5 meter (m)) zone along either side of pipelines, power line rights-of-way, designated roads, and trails, and around parking lots. It is considered hunting if you have a loaded weapon, if you have a nocked arrow while bow hunting, or if you are in an elevated tree stand or ground blind with a means to take, within these areas.

(vi) Hunters must remove all decoys, blind material, boats, and harvested waterfowl from the area no later than 1 p.m. each day (see § 27.93 of this chapter).

(vii) We allow the use of dogs for retrieving migratory birds.

(viii) We allow goose, duck, merganser, and coot hunting beginning ½ hour before legal sunrise until 12 p.m. (noon).

(ix) We do not open for early teal season.

(x) We allow hunting during open State seasons. The first 2 days of the season and all weekends, with the exception of youth weekends, are limited draw hunts. These hunts require a Limited Hunt Permit (electronic form) assigned by random computer drawing. At the end of the hunt, you must return the permit with information concerning your hunt. If you fail to return this permit, you will not be eligible for any limited hunts the next year.

(xi) We limit waterfowl hunters to 25 shotshells per person in the field.

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, raccoon, opossum, coyote, beaver, bobcat, and nutria on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (g)(1)(i) through (v) of this section apply.

(ii) We allow only shotguns and .22 and .17 caliber rimfire rifles for small game hunting.

(iii) We allow the use of dogs for hunting squirrel and for the February rabbit hunt.

(iv) Beginning the day before waterfowl season, we restrict hunting to the waterfowl hunt area.

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (g)(1)(i) through (v) and (g)(2)(iv) of this section apply.

(ii) We prohibit organized drives. We define a ''drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause game to

move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the game.

(iii) Hunting or shooting within or adjacent to open fields or tree plantations less than 5 feet (1.5 m) in height must be from a stand a minimum of 10 feet (3 m) above the ground.

(iv) The refuge brochure provides deer check station dates, locations, and requirements. Prior to leaving the refuge, you must check all harvested deer at the nearest self-service check station following the posted instructions.

(v) Hunters may possess and hunt from only one stand or blind. A hunter may place a deer stand or blind 48 hours prior to a hunt and must remove it within 48 hours after each designated hunt (see § 27.93 of this chapter), with the exception of closed areas where special regulations apply.

(vi) We allow archery hunting October 1 through January 31.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (g)(1)(i) and (iii) of this section apply.

(ii) We prohibit trotlines, limb lines, jugs, seines, and traps.

(iii) We allow frogging during the State bullfrog season.

(iv) We allow fishing in all refuge waters throughout the year, except in the waterfowl sanctuary, which we close to fishing from the first day of duck season through March 1 (see refuge brochure map).

(h) *Morgan Brake National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, merganser, and coot on designated areas of the refuge subject to the following conditions:

(i) Each person age 16 or older hunting or fishing must possess a valid Theodore Roosevelt Complex Annual Public Use Permit (electronic form).

(ii) All youth hunters age 15 and younger must be in the presence and direct supervision of a Mississippi licensed or exempt hunter, age 21 or older. One adult may supervise no more than one youth hunter.

(iii) Before hunting or fishing, all participants must display their Daily Visitor Information/Harvest Report Card (Big Game Harvest Report, FWS Form 3–2359) in plain view in their vehicle so that the required information is readable. You must return all cards upon completion of the activity and before leaving the refuge.

(iv) We prohibit all other public use on the refuge during the muzzleloader deer hunt.

(v) Valid permit holders may incidentally take opossum, coyote, beaver, bobcat, and nutria in any refuge hunt season with weapons legal for that hunt. Valid permit holders may incidentally take feral hog during deer or turkey hunts only.

(vi) We prohibit hunting or shooting into a 100-foot (30.5-meter (m)) zone along either side of pipelines, power line rights-of-way, designated roads, and trails, and around parking lots. It is considered hunting if you have a loaded weapon, if you have a nocked arrow while bow hunting, or if you are in an elevated tree stand or ground blind with a means to take, within these areas.

(vii) Hunters must remove all decoys, blind material, and harvested waterfowl from the area no later than 1 p.m. each day (see § 27.93 of this chapter).

(viii) We allow the use of dogs for retrieving migratory birds.

(ix) We allow goose, duck, merganser, and coot hunting beginning ½ hour before legal sunrise until 12 p.m. (noon).

(x) We do not open for early teal season.

(xi) We limit waterfowl hunters to 25 shotshells per person in the field.

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, quail, raccoon, opossum, coyote, beaver, bobcat, and nutria on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (h)(1)(i) through (vi) of this section apply.

(ii) We allow only shotguns and .22 and .17 caliber rimfire rifles for small game hunting.

(iii) We allow the use of dogs for hunting squirrel and for the February rabbit hunt.

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (h)(1)(i) through (vi) of this section apply.

(ii) We prohibit organized drives. We define a ''drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause game to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the game.

(iii) Hunting or shooting within or adjacent to open fields or tree plantations less than 5 feet (1.5 m) in height must be from a stand a minimum of 10 feet (3 m) above the ground.

(iv) The refuge brochure provides deer check station dates, locations, and requirements. Prior to leaving the refuge, you must check all harvested deer at the nearest self-service check station following the posted instructions.

(v) Hunters may possess and hunt from only one stand or blind. Hunters may place a deer stand or blind 48 hours prior to a hunt and must remove it within 48 hours after each designated hunt (see § 27.93 of this chapter), with the exception of closed areas where special regulations apply.

(vi) During designated muzzleloader hunts, we allow archery equipment and muzzleloaders loaded with a single ball; we prohibit breech-loading firearms of any type.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (h)(1)(i) and (iii) of this section apply.

(ii) We prohibit trotlines, limb lines, jugs, seines, and traps.

(iii) We allow frogging during the State bullfrog season.

(iv) We open refuge waters to fishing March 1 through November 15, except Providence Ponds, which are closed 1 day prior to the beginning of waterfowl season until March 1.

(i) *Panther Swamp National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, merganser, coot, and dove on designated areas of the refuge subject to the following regulations:

(i) Each person age 16 or older hunting or fishing must possess a valid Theodore Roosevelt Complex Annual Public Use Permit (electronic form).

(ii) All youth hunters age 15 and younger must be in the presence and direct supervision of a Mississippi licensed or exempt hunter, age 21 or older. One adult may supervise no more than one youth hunter.

(iii) Before hunting or fishing, all participants must display their Daily Visitor Information/Harvest Report Card (Big Game Harvest Report, FWS Form 3–2359) in plain view in their vehicle so that the required information is readable. You must return all cards upon completion of the activity and before leaving the refuge.

(iv) We prohibit all other public use on the refuge during all limited draw hunts.

(v) Valid Theodore Roosevelt Complex Annual Public Use Permit (electronic form) holders may incidentally take opossum, coyote, beaver, bobcat, and nutria in any refuge hunt season with weapons legal for that hunt. Valid permit holders may

incidentally take feral hog during deer or turkey hunts only.

(vi) We prohibit hunting or shooting into a 100-foot (30-meter (m)) zone along either side of pipelines, power line rights-of-way, designated roads, and trails, and around parking lots. It is considered hunting if you have a loaded weapon, if you have a nocked arrow while bow hunting, or if you are in an elevated tree stand or ground blind with a means to take, within these areas.

(vii) Hunters must remove all decoys, blind material, and harvested waterfowl from the area no later than 1 p.m. each day (see § 27.93 of this chapter).

(viii) We allow the use of dogs for retrieving migratory birds.

(ix) We allow goose, duck, merganser, and coot hunting beginning ½ hour before legal sunrise until 12 p.m. (noon).

(x) Beginning December 15 through March 1, we prohibit all entry into the Lower Twist and Carter Ponds area.

(xi) During the State waterfowl season (except early teal season), waterfowl hunting in Unit 1 will be on Mondays, Tuesdays, and Wednesdays. Waterfowl hunting in Unit 2 will be on Fridays, Saturdays, and Sundays (see refuge brochure for details).

(xii) We limit waterfowl hunters to 25 shotshells per person in the field.

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, quail, raccoon, opossum, coyote, beaver, bobcat, and nutria on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (i)(1)(i) through (vi) and (x) of this section apply.

(ii) We allow only shotguns and .22 and .17 caliber rimfire rifles for small game hunting.

(iii) We allow the use of dogs for hunting squirrel and raccoon, and for the February rabbit hunt.

(3) *Big game hunting.* We allow hunting of white-tailed deer, turkey, and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (i)(1)(i) through (vi) and (x) of this section apply.

(ii) We prohibit organized drives. We define a ''drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause game to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the game.

(iii) Hunting or shooting within or adjacent to open fields or tree plantations less than 5 feet (1.5 m) in height must be from a stand a minimum of 10 feet (3 m) above the ground.

(iv) The refuge brochure provides deer check station dates, locations, and requirements. Prior to leaving the refuge, you must check all harvested deer at the nearest self-service check station following the posted instructions.

(v) Hunters may possess and hunt from only one stand or blind. Hunters may place a deer stand or blind 48 hours prior to a hunt and must remove it within 48 hours after each designated hunt (see § 27.93 of this chapter), with the exception of closed areas where special regulations apply.

(vi) During designated muzzleloader hunts, we allow archery equipment and muzzleloaders loaded with a single ball; we prohibit breech-loading firearms of any type.

(vii) We allow only shotguns with approved nontoxic shot (see § 32.2(k)) and archery equipment for turkey hunting.

(viii) Limited draw hunts require a Limited Hunt Permit (electronic form) assigned by random computer drawing. At the end of the hunt, you must return the permit with information concerning that hunt to the refuge. Failure to return this permit will disqualify the hunter for any limited hunts the next year.

(ix) We hold limited draw hunts for persons with disabilities in November, December, and/or January. We will make hunt dates and permit application procedures (electronic form) available at the Theodore Roosevelt Complex headquarters.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (i)(1)(i), (iii), and (x) of this section apply.

(ii) We prohibit trotlines, limb lines, jugs, seines, and traps.

(iii) We allow frogging during the State bullfrog season.

(j) *Sam D. Hamilton Noxubee National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, woodcock, and coot on designated areas of the refuge subject to the following conditions:

(i) You must purchase a refuge waterfowl permit (Waterfowl Lottery Application; FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) for waterfowl hunting. No more than two companions may accompany each permitted hunter, and we do not require these companions to purchase permits. Permits are nontransferable and only issued to hunters ages 16 and older. Permit holders can hunt as standby hunters for any date for which waterfowl hunting is open. Youth hunters age 15 and younger are not required to obtain a refuge waterfowl permit and can obtain a free permit from the refuge's office.

(ii) You must remove all decoys, blind material, and harvested game from the refuge by 1 p.m. each day (see §§ 27.93 and 27.94 of this chapter).

(iii) All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older. One adult may supervise not more than two youth hunters.

(iv) All waterfowl hunters must check-in before the day's hunt, and check-out at the end of the day's hunt (no later than 1 p.m.), at the refuge's duck check station.

(v) We limit waterfowl hunters to 25 shotshells per person.

(vi) Hunters must remove all personal property at the end of each day's hunt from the Noxubee Wilderness Area (see §§ 27.93 and 27.94 of this chapter). Outside the Noxubee Wilderness Area, hunters may leave tree stands labeled with the hunter's State hunting license number used for deer hunting.

(vii) During the deer firearm (primitive or modern gun) hunts, any person hunting species other than waterfowl, accompanying another person hunting species other than waterfowl, or walking off-trail within areas open to deer hunting must wear at least 500 square inches (3,226 square centimeters (cm)) of unbroken fluorescent-orange material visible above the waistline as an outer garment at all times. When occupied, ground blinds must display a minimum of 400 square inches (2,581 square cm) of unbroken fluorescent-orange material.

(viii) We allow the use of dogs for retrieval of migratory and upland game only.

(ix) We require all hunters and anglers to record hours active and game harvested using the Visitor Check-In Permit and Report (FWS Form 3–2405).

(x) We require all users to possess and display a valid Entrance Pass. You may use a current Federal Recreational Lands Pass or valid Federal Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) as the Entrance Pass.

(xi) Waterfowl hunters must stay within 100 feet (30.5 meters (m)) of the assigned hunt location. You may exceed 100 feet (30.5 m) when retrieving downed birds.

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, quail, opossum, raccoon, coyote, beaver, and nutria on designated areas of the refuge subject to the following conditions:

(i) When waterfowl hunting is actively taking place, we prohibit all public use other than waterfowl hunting

within the designated areas for waterfowl hunting.

(ii) We allow raccoon and opossum hunting between the hours of legal sunset and legal sunrise.

(iii) The conditions set forth at paragraphs (j)(1)(iii) and (vi) through (x) of this section apply.

(iv) You may take incidental species (coyote, beaver, nutria, and feral hog) during any hunt with those weapons legal during those hunts.

(v) We require bobwhite quail and rabbit hunters to wear at least a solid hunter orange vest or cap.

(3) *Big game hunting.* We allow hunting of white-tailed deer, turkey, and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (j)(1)(iii) and (vi) through (x) and (j)(2)(i) and (iv) of this section apply.

(ii) You must purchase a refuge quota deer permit (Quota Deer Hunt Application; FWS Form 3- 2439, Hunt Application—National Wildlife Refuge System). Permits are nontransferable. Youth hunters age 15 and younger are not required to a purchase a refuge quota deer permit and can obtain a free permit from the refuge's office.

(iii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(iv) You may place one portable tree stand or ground blind for deer hunting on the refuge only during the open deer season. You must clearly label the stand or blind with your State hunting license number. When not in use and left on the refuge, you must place stands in a non-hunting position at ground level.

(v) While climbing a tree, installing a tree stand that uses climbing aids, or hunting from a tree stand on the refuge, you must use a fall-arrest system (full body harness) that is manufactured to the Treestand Manufacturer's Association standards.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) The general sport fishing, boating, and bow fishing season extends from March 1 through October 31, except that we open the shoreline of Bluff Lake from the Bluff Lake Boardwalk to the visitor center, the entire Noxubee River, and all borrow pit areas along Highway 25 to fishing year-round.

(ii) The conditions set forth at paragraphs (j)(1)(ix) and (x) and (j)(2)(i) of this section apply.

(iii) Anglers must keep boat travel at idle speed, and they must not create a wake when moving.

(iv) We prohibit limb lines, jug fishing, trotlines, snag lines, and hand grappling in Ross Branch, Bluff, and Loakfoma Lakes, as well as in areas within 100 yards of refuge water and transportation structures.

(v) When left unattended, anglers must tag fishing gear with their State fishing license number. Anglers must check all gear within 24 hours each day or remove these devices (see § 27.93 of this chapter).

(vi) We allow trotlining on the refuge subject to the following conditions:

(A) Anglers must label each end of the trotline floats with the owner's State fishing license number.

(B) We limit trotlines to one line per person, and we allow no more than two trotlines per boat.

(C) Anglers must tend all trotlines every 24 hours, and must remove them when not in use (see § 27.93 of this chapter).

(D) Trotlines must possess at least 6-inch (15.2-cm) cotton string leads.

(vii) We allow jug fishing on the refuge subject to the following conditions:

(A) Anglers must label each jug with their State fishing license number.

(B) Anglers must check all jugs every 24 hours, and must remove them when not in use (see § 27.93 of this chapter).

(viii) We prohibit bow fishing after legal sunset.

(ix) We prohibit fishing tournaments on all refuge waters.

(x) We prohibit the taking of frogs, turtles, and crawfish (see § 27.21 of this chapter).

(xi) We prohibit using nets of any type to capture free-roaming fish or wildlife. You may use a fishing net to recover fish caught by hook and line.

(xii) Outside the Noxubee Wilderness Area, anglers may leave trotlines and jugs used for fishing overnight if they are labled with the angler's State fishing license number.

(k) *St. Catherine Creek National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, and woodcock on designated areas of the refuge subject to the following conditions:

(i) We allow hunting on Butler Lake, Salt Lake, and Gillard Lake from ½ hour before legal sunrise until 12 p.m. (noon) on Wednesdays, Saturdays, and Sundays.

(ii) We require that all hunters and anglers age 16 and older purchase an Annual Public Use Permit (electronic form). We require the refuge user to sign, certifying that you understand and will comply with all regulations, and carry this permit at all times while on the refuge.

(iii) Hunters must remove harvested waterfowl, temporary blinds, and decoys used for duck hunting by 1 p.m. each day (see § 27.93 of this chapter).

(iv) We allow only portable blinds.

(v) Hunters only may enter the refuge no earlier than 4 a.m. and must exit the refuge by 2 hours after legal sunset.

(vi) We allow no more than 25 shotshells per person in the field.

(vii) We prohibit hunting within 150 feet (45 meters) of any petroleum facility or equipment, or refuge residences and buildings.

(viii) We prohibit the use of handguns for hunting on the refuge.

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, raccoon, opossum, beaver, nutria, and coyote in designated areas of the refuge subject to the following conditions:

(i) We only allow hunting shotguns, .22 caliber rimfire rifles or smaller, and muzzle-loading rifles under .38 caliber shooting patched round balls. We prohibit the possession of hunting with slugs, buckshot, or rifle hunting ammunition larger than .22 rimfire.

(ii) You must wear a hunter-orange hat and upper garment when hunting in open fields or reforested areas.

(iii) We allow raccoon hunting only during the month of February from legal sunset to legal sunrise with the following conditions:

(A) We require the use of dogs.

(B) You may use only .22 caliber rimfire rifles for hunting.

(iv) We allow the incidental take of raccoon, feral hog, beaver, nutria, and coyote when hunting migratory birds, upland game, big game species with firearms and archery equipment authorized for use.

(v) The conditions set forth at paragraphs (k)(1)(ii) and (iv) through (vii) of this section apply.

(3) *Big game hunting.* We allow hunting of deer, lottery youth turkey, and feral hog on designated areas of the refuge subject to the following conditions:

(i) We allow only still hunting.

(ii) Hunters may take only one deer per day.

(iii) You must wear a minimum of 500 square inches (3,226 square centimeters) of unbroken hunter orange as the outermost layer of clothing on the chest and back, and a hat or cap of unbroken hunter orange. You must wear the solid-hunter-orange items while in the field.

(iv) While hunting, all persons age 16 and younger must be in the presence

and under direct supervision of a licensed or exempt hunter age 21 or older.

(v) Youth gun hunts (ages 10 to 15) for deer and waterfowl will coincide with designated State youth hunts each year. Youth deer hunters may use any weapon deemed legal by the State except for buckshot, which we prohibit.

(vi) You may place stands up to 2 days prior to established hunting season dates, and you must remove them no more than 2 days after the hunting season closes (see § 27.93 of this chapter). You must mark your stand with your State hunting license identification number. We allow each hunter one portable stand or blind on the refuge.

(vii) Refuge users must check all deer (name) taken prior to leaving the refuge at one of the self-clearing check stations indicated on the map in the refuge public use brochure.

(viii) The conditions set forth at paragraphs (k)(1)(ii) and (iv) through (vii) and (k)(2)(iv) of this section apply.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow sport fishing from February 1 through November 15. On those days, you may fish from 30 minutes before legal sunrise to 30 minutes after legal sunset only.

(ii) On the Sibley Unit, we prohibit motorized boats north of the Ring Levee. Anglers may hand-launch boats in Swamp Lake during nonflood conditions.

(iii) An adult age 21 or older must supervise youth age 15 and younger who may fish in the Kid's Pond. We prohibit adults from fishing in this pond.

(iv) We allow bow fishing.

(v) We prohibit taking alligator gar.

(vi) We prohibit crawfishing.

(vii) We prohibit commercial fishing.

(viii) We prohibit possession of trotline equipment, including limb lines, nets, traps, yo-yos, and/or jugs.

(ix) The condition set forth at paragraph (k)(1)(ii) of this section applies.

(l) *Tallahatchie National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory waterfowl, coot, snipe, and woodcock on designated areas of the refuge subject to the following conditions:

(i) All hunters age 16 and older must possess and carry a signed North Mississippi NWR hunting permit (code 606, available from the Mississippi Department of Wildlife, Fisheries, and Parks). While hunting on the refuge, all persons age 16 and younger (''youth hunter'') must be in the presence and under the direct supervision of a licensed or exempt hunter age 21 or older (''licensed hunter''). A licensed hunter supervising a youth hunter must hold all required licenses and permits.

(ii) Hunters may enter the refuge at 4 a.m. and must exit the refuge no later than 2 hours after legal sunset, except during raccoon and frog hunts.

(iii) We allow hunting of migratory game birds, including under the Light Goose Conservation Order, only on Wednesdays, Saturdays, and Sundays ending at 12 p.m. (noon).

(iv) Each hunter must obtain a daily Migratory Bird Hunt Report (FWS Form 3–2361). You must display the card in plain view on the dashboard of your vehicle so that the personal information is readable. Prior to leaving the refuge, you must complete the card and deposit it at one of the refuge information stations. Include all game harvested, and if you harvest no game, report ''0.''

(v) It is unlawful to hunt from or shoot into the 100-foot (30.5-meter) zone along either side of designated roads and parking lots.

(vi) We allow the use of dogs on the refuge when hunting migratory game birds and upland game. We prohibit the use of dogs during big game hunts.

(vii) You must remove decoys, blinds, boats, other personal property, and litter from the hunting area following each morning's hunt (see §§ 27.93 and 27.94 of this chapter).

(viii) You are allowed no more than 25 shotshells per person in the field.

(2) *Upland game hunting.* We allow hunting of quail, squirrel, rabbit, and raccoon on designated areas of the refuge subject to the following conditions:

(i) You must possess a valid general Special Use Permit (FWS Form 3–1383–G) to hunt raccoon on the refuge.

(ii) Each hunter must obtain a daily Upland/Small Game/Furbearer Report (FWS Form 3–2362). You must display the card in plain view on the dashboard of your vehicle so that the personal information is readable. Prior to leaving the refuge, you must complete the card and deposit it at one of the refuge information stations. Include all game harvested, and if you harvest no game, report ''0.''

(iii) The conditions set forth at paragraphs (l)(1)(i), (ii), and (v) through (vii) of this section apply.

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) Each hunter must obtain a daily Big Game Harvest Report (FWS Form 3–2359). You must display the card in plain view on the dashboard of your vehicle so that the personal information is readable. Prior to leaving the refuge, you must complete the card and deposit it at one of the refuge information stations. Include all game harvested, and if you harvest no game, report ''0.'' We prohibit hunters possessing more than one Big Game Harvest Report (FWS Form 3–2359) at a time.

(ii) The conditions set forth at paragraphs (l)(1)(i), (ii), and (v) through (vii) of this section apply.

(iii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(iv) We prohibit hunting or shooting across any open, fallow, or planted field from ground level.

(v) We allow valid permit holders to possess and hunt from one portable stand or blind on the refuge. You must permanently and legibly write your State hunting license number on all stands on the refuge. Stands left on the area do not reserve the hunting locations. You may place stands up to 2 days prior to the hunt, and you must remove them no more than 2 days after the refuge's deer season closes (see § 27.93 of this chapter). Ground blinds must display a minimum 400 square inches (2,581 square centimeters) of fluorescent orange that is visible from all sides.

(vi) Hunters using a climbing tree stand must use a fall-arrest system manufactured to Treestand Manufacturer's Association standards.

(vii) We prohibit the use of buckshot on the refuge.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit the use or possession of alcoholic beverages while fishing.

(ii) All anglers must carry a valid refuge permit (Visitor Check-In Permit and Report, FWS Form 3–2405), certifying that they understand and will comply with all regulations.

(iii) We prohibit possession or use of jugs, seines, nets, hand-grab baskets, slat traps/baskets, or any other similar devices.

(iv) We prohibit commercial fishing of any kind.

(v) We only allow trotlines, yo-yos, limb lines, crawfish traps, or any other similar devices for recreational use. You must tag or mark them with the angler's State fishing license number written with waterproof ink, legibly inscribed or legibly stamped on the tag, and you must attend the devices a minimum of

once every 24 hours. When not attended, you must remove these devices from the refuge (see § 27.93 of this chapter).

(vi) We prohibit snagging or attempting to snag fish.

(vii) We allow crawfishing.

(viii) We allow take of frog only with a Special Use Permit (FWS Form 3–1383–G).

(m) *Yazoo National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, merganser, coot, and dove on designated areas of the refuge subject to the following conditions:

(i) Each person age 16 or older hunting or fishing must possess a valid Theodore Roosevelt National Wildlife Refuge Complex Annual Public Use Permit (electronic form).

(ii) All youth hunters age 15 and younger must be in the presence and direct supervision of a Mississippi licensed or exempt hunter, age 21 or older. One adult may supervise no more than one youth hunter.

(iii) Before hunting or fishing, all participants must display their Daily Visitor Information/Harvest Report Card (Big Game Harvest Report, FWS Form 3–2359) in plain view in their vehicle so that the required information is readable. You must return all cards upon completion of the activity and before leaving the refuge.

(iv) We prohibit all other public use on the refuge during all limited draw hunts.

(v) Valid Theodore Roosevelt National Wildlife Refuge Complex Annual Public Use Permit (electronic form) holders may incidentally take opossum, coyote, beaver, bobcat, and nutria in any refuge hunt season with weapons legal for that hunt. Valid permit holders may incidentally take feral hog during deer or turkey hunts only.

(vi) We prohibit hunting or shooting into a 100-foot (30.5-meter (m)) zone along either side of pipelines, power line rights-of-way, designated roads, and trails, and around parking lots. It is considered hunting if you have a loaded weapon, if you have a nocked arrow while bow hunting, or if you are in an elevated tree stand or ground blind with a means to take, within these areas.

(vii) Hunters must remove all decoys, blind material, and harvested waterfowl from the area no later than 1 p.m. each day (see § 27.93 of this chapter).

(viii) We allow the use of dogs for retrieving migratory birds.

(ix) We allow goose, duck, merganser, and coot hunting beginning ½ hour before legal sunrise until 12 p.m. (noon).

(x) We limit waterfowl hunters to 25 shotshells per person in the field.

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, raccoon, opossum, coyote, beaver, bobcat, and nutria on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (m)(1)(i) through (vi) of this section apply.

(ii) We allow only shotguns .22 and .17 caliber rimfire rifles for small game hunting.

(iii) We allow the use of dogs for hunting squirrel and raccoon, and for the February rabbit hunt.

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (m)(1)(i) through (vi) of this section apply.

(ii) We prohibit organized drives. We define a ''drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause game to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the game.

(iii) Hunting or shooting within or adjacent to open fields or tree plantations less than 5 feet (1.5 m) in height must be from a stand a minimum of 10 feet (3 m) above the ground.

(iv) The refuge brochure provides deer check station dates, locations, and requirements. Prior to leaving the refuge, you must check all harvested deer at the nearest self-service check station following the posted instructions.

(v) Hunters may possess and hunt from only one stand or blind. Hunters may place a deer stand or blind 48 hours prior to a hunt, and must remove it within 48 hours after each designated hunt (see § 27.93 of this chapter), with the exception of closed areas where special regulations apply.

(vi) During designated muzzleloader hunts, we allow archery equipment and muzzleloaders loaded with a single ball; we prohibit breech-loading firearms of any type.

(vii) Limited draw hunts require a Limited Hunt Permit (electronic form) assigned by random computer drawing. At the end of the hunt, you must return the permit (Big Game Harvest Report, FWS Form 3–2359) with information concerning that hunt to the refuge. Failure to return this permit will disqualify the hunter for any limited hunts the next year.

(4) [Reserved]

§ 32.44 Missouri.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Big Muddy National Fish and Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the refuge subject to the following condition: You must remove all your blinds, boats, and decoys from the refuge each day (see § 27.93 of this chapter), except for blinds made entirely of marsh vegetation.

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the refuge subject to the following condition: On the 131-acre mainland unit of Boone's Crossing, we allow upland game hunting with archery methods only. On Johnson Island, we allow hunting of game animals during Statewide seasons using archery methods or shotguns using shot no larger than BB.

(3) *Big game hunting.* We allow hunting of deer and turkey on designated areas of the refuge subject to the following conditions:

(i) We allow only portable tree stands from September 1 through January 31. Hunters must place their State Conservation number on their stands.

(ii) On the Boone's Crossing Unit, including Johnson Island, we allow deer and turkey hunters with archery methods only.

(iii) On the Cora Island Unit, we allow deer hunting with archery methods only. We restrict hunting for other game on this unit to shotgun only with shot no larger than BB.

(iv) For wild turkey hunting, you may use or possess only approved nontoxic shot shells (see § 32.2(k)) while in the field.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following condition: You must operate all motorized boats at no-wake speed.

(b) *Clarence Cannon National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) You must register at the hunter sign-in/out station and record the sex and age of deer harvested on the Big Game Harvest Report (FWS Form 3–2359).

(ii) We prohibit shooting at deer that are on any portion of the main perimeter levee.

(iii) If you are assigned a specific blind location, you may hunt only from that location.

(iv) We allow use of portable stands, but hunters must remove them at the end of each day (see § 27.93 of this chapter).

(v) You must remove all boats, blinds, blind materials, stands, platforms, scaffolds, and other hunting equipment from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(4) *Sport fishing.* We allow fishing subject to the following conditions:

(i) We prohibit the taking of turtle or frog (see § 27.21 of this chapter).

(ii) We allow only boat fishing, except that we allow bank fishing during managed refuge special events.

(iii) Anglers must remove all boats and fishing equipment at the end of each day (see § 27.93 of this chapter).

(c) *Great River National Wildlife Refuge.* Refer to § 32.32(e) for regulations.

(d) *Loess Bluffs National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of light goose on designated areas of the refuge subject to the following conditions:

(i) We allow hunting of light geese only during the spring conservation order season.

(ii) We require hunters to have a Special Use Permit (FWS Form 3–1383–C), and all hunters must hunt with a guide.

(iii) We allow the guide and hunters into the hunt boundary up to 2 hours prior to legal shooting time.

(iv) Hunting ends at 1 p.m.

(v) We allow dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(vi) We allow portable blinds and decoys at the discretion of the guide.

(vii) We prohibit pit blinds.

(viii) We prohibit retrieving crippled geese outside of the hunt boundary, including adjacent private land. This includes retrieval by dogs.

(2) [Reserved]

(3) *Big game hunting.* We allow hunting of deer on designated areas of the refuge subject to the following conditions:

(i) We require a valid State-managed hunt unit permit to hunt deer on the refuge.

(ii) We allow only muzzleloader hunting.

(iii) We require hunters to check in and out of the refuge.

(iv) You must remove your stand(s) from the refuge at the end of the managed deer hunt (see § 27.93 of this chapter).

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following condition: You may take fish, amphibians, reptiles, and crustaceans only with a hand-held pole and line or rod and reel.

(e) *Middle Mississippi River National Wildlife Refuge.* Refer to § 32.32(i) for regulations.

(f) *Mingo National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow waterfowl hunting in Pool 7 and Pool 8 subject to the following conditions:

(i) We allow the use of dogs for waterfowl hunting, provided the dogs are under the immediate control of the hunter at all times.

(ii) We allow waterfowl hunting from ½ hour before legal sunrise until 1 p.m.

(iii) You must remove boats, decoys, blinds, and blind materials brought onto the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(iv) We require hunters to go through the Missouri Department of Conservation daily draw process at Duck Creek Conservation Area to hunt in Pool 7 and Pool 8.

(v) We require hunters to read our refuge hunting brochure that contains a hunting permit (signed brochure). We require hunters to sign and carry the permit/brochure while hunting.

(vi) We allow the take of feral hog at any time, and bobcat when in season, while legally hunting others species on the refuge.

(2) *Upland game hunting.* We allow hunting of squirrel, raccoon, and bobcat in designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (f)(1)(v) and (vi) of this section apply.

(ii) We allow hunter access from 1½ hours before legal shooting time until 1½ hours after legal shooting time.

(iii) We require that all hunters register at the hunter sign-in stations and complete an Upland Game Hunt Report (FWS Form 3–2362) located at the exit kiosks prior to exiting the refuge.

(iv) We allow squirrel hunting from the State opening day until the day before the State opening of archery deer season.

(v) Archery hunters may take squirrel, raccoon, and bobcat while in season and feral hog anytime while archery deer hunting.

(vi) We allow raccoon hunting by special use permit during the Statewide raccoon season.

(3) *Big game hunting.* We allow big game hunting in designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (f)(1)(iii), (v), and (vi) and (f)(2)(ii) of this section apply.

(ii) We require that all hunters register at the hunter sign-in stations and complete the Big Game Harvest Report (FWS Form 3–2359) located at the exit kiosks prior to exiting the refuge.

(iii) We allow archery hunting for deer and turkey during the fall season.

(iv) We allow spring turkey hunting. You may only use or possess approved nontoxic shot shells (see § 32.2(k)) while in the field, including shot shells used for hunting wild turkey.

(v) We allow archery hunting in the Expanded General Hunt Area through October 31.

(vi) We allow portable tree stands. You may place a portable tree stand no earlier than 2 weeks before the State archery deer season, and you must remove it no later than 2 weeks after the State archery deer season (see § 27.93 of this chapter), except that in the Expanded General Hunt Area, you must remove all personal property at the end of each day (see § 27.93 of this chapter). A tree stand left on the refuge must be labeled with hunter's conservation identification number.

(vii) We allow only one tree stand per deer hunter.

(viii) Hunters may use boats to access the hunt area.

(ix) We require hunters to apply for managed deer hunts through the Missouri Department of Conservation internet draw.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) Except as provided under paragraph (f)(4)(ii) of this section, we allow fishing from March 1 through September 30, from ½ hour before legal sunrise until ½ hour after legal sunset, on all refuge waters.

(ii) We allow fishing year-round from ½ hour before legal sunrise to ½ hour after legal sunset on Red Mill Pond, Mingo River (south of Ditch 6 Road), Stanley Creed, May Pond, Fox Pond, and Ditches 1, 2, 3, 6, 10, and 11.

(iii) We allow the use of electric trolling motors outside the Mingo Wilderness.

(iv) We require the removal of watercraft from the refuge at the end of each day's fishing activity (see § 27.93 of this chapter).

(v) We allow anglers to take nongame fish by nets and seines for personal use only from March 1 through September 30.

(vi) Anglers must attend trammel and gill nets at all times and plainly label them with the angler's conservation identification (ID) number.

(vii) We only allow the use of trotlines, throwlines, limb lines, bank lines, and jug lines from ½ hour before

legal sunrise until ½ hour after legal sunset. Anglers must mark each line with their conservation ID number.

(viii) We allow the take of common snapping turtle and soft-shelled turtle using only pole and line. We require all anglers to immediately release all alligator snapping turtles.

(g) *Swan Lake National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of waterfowl, dove, rail, snipe, and woodcock on the refuge subject to the following conditions:

(i) We require the Missouri Department of Conservation ''Green Card'' while hunting waterfowl.

(ii) We require Missouri Department of Conservation ''White Cards'' while dove hunting.

(iii) You must follow designated check-in and check-out procedures.

(iv) We only allow waterfowl hunting during designated days of the waterfowl seasons, late goose season, and Spring Conservation Order season.

(v) We restrict hunting hours to designated times on designated units. You must remove all equipment (see § 27.93 of this chapter) and exit units by 1 p.m.

(vi) During the Spring Conservation Order season, you may leave decoys and blinds overnight in your assigned unit.

(vii) You may hunt only in your assigned designated area. We assign designated areas to hunters at the check station.

(viii) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(ix) We restrict hunting units to parties no larger than four, unless otherwise designated.

(x) We allow hand-pulled carts.

(xi) You must park vehicles in designated parking areas.

(xii) We prohibit hunting or shooting on, across, or within 100 feet (30.5 meters) of a service road, parking lot, or designated trail.

(2) *Upland game hunting.* We allow hunting of upland game on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (g)(1)(xii) of this section applies.

(ii) We allow shotguns, handguns, and rimfire .22 caliber rifles.

(iii) You may not access the refuge from neighboring private or public lands.

(iv) We restrict hunting use hours on designated hunting units.

(3) *Big game hunting.* We allow hunting of deer and wild turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (g)(1)(iii) and (g)(2)(iii) of this section apply.

(ii) For wild turkey hunting, you may use or possess only approved nontoxic shot shells (see § 32.2(k)) while in the field.

(iii) On the refuge, we allow hunting of white-tailed deer subject to the following conditions:

(A) We require a Missouri Department of Conservation Permit, along with Missouri Department of Conservation hunter identification tags and parking permits (name/address/phone number), to hunt during the managed deer hunt.

(B) You must participate in a pre-hunt orientation for managed deer hunts.

(C) You must hunt in designated areas during designated times.

(D) We allow entry onto the refuge 1 hour prior to shooting hours during managed deer hunts. You must be off the refuge 1 hour after shooting hours, unless the refuge manager or designee has given you permission to stay on the refuge until a later time.

(E) We prohibit shooting from, across, or within 100 feet (30.5 meters (m)) of a service road, public road, parking lot, or designated trail unless authorized by the refuge manager.

(F) We allow use of portable tree stands and blinds during managed deer hunts, and you must remove them at designated times (see § 27.93 of this chapter). You must attach your conservation identification number to all stands and blinds. During managed firearms hunts, you must mark enclosed hunting blinds and stands with hunter orange visible from all sides.

(G) During special hunts, one nonhunting assistant may accompany youth or hunters with disabilities.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing on the refuge only during refuge open hours.

(ii) The Taylor Point area of Elk Creek is open to fishing year-round during daylight hours. Anglers may access this area by a refuge road (FHWA Route 100) off of State Highway E.

(iii) We allow only nonmotorized boats on refuge waters, except that anglers may use motor boats on the Silver Lake impoundment. No wake applies to all waters on the refuge.

(iv) Anglers must remove all boats from the refuge at the end of each day (see § 27.93 of this chapter).

(h) *Two Rivers National Wildlife Refuge.* Refer to § 32.32(k) for regulations.

§ 32.45 Montana.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Benton Lake National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, swan, and coot in designated areas of the refuge subject to the following conditions:

(i) We allow hunters to enter and remain in open hunting areas 2 hours before legal sunrise until 2 hours after legal sunset.

(ii) Hunters with a documented mobility disability may reserve an accessible blind in advance by contacting the refuge office.

(2) *Upland game hunting.* We allow hunting of pheasant, sharp-tailed grouse, and gray partridge in designated areas of the refuge subject to the following condition: The condition set forth at paragraph (a)(1)(i) of this section applies.

(3) [Reserved]

(4) *Sport fishing.* We allow fishing on designated areas of the refuge.

(b) *Benton Lake Wetland Management District*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the district.

(2) *Upland game hunting.* We allow the hunting of coyote, skunk, red fox, raccoon, hare, rabbit, and tree squirrel on designated areas of the district.

(3) *Big game hunting.* We allow big game hunting on designated areas of the district.

(4) *Sport fishing.* We allow sport fishing on designated areas of the district.

(c) *Black Coulee National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, swan, sandhill crane, and mourning dove on designated areas of the refuge subject to the following condition: You must remove all boats, decoys, portable blinds, other personal property, and any materials brought onto the refuge for blind construction by legal sunset each day (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow hunting of pheasant, sharp-tailed grouse, sage grouse, gray partridge, fox, and coyote on designated areas of the refuge subject to the following condition: Fox and coyote hunters may only use centerfire rifles, rimfire rifles, or shotguns with approved nontoxic shot (see § 32.2(k)).

(3) *Big game hunting.* We allow big game hunting on designated portions of the refuge subject to the following conditions:

(i) We allow hunters to leave portable tree stands, portable blinds, and freestanding elevated platforms on the refuge from August 15 through December 15.

(ii) You must visibly mark portable tree stands, portable blinds, and freestanding elevated platforms with your automated licensing system (ALS) number.

(4) [Reserved]

(d) *Bowdoin National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, swan, sandhill crane, and mourning dove on designated areas of the refuge.

(2) *Upland game hunting.* We allow hunting of pheasant, sharp-tailed grouse, sage grouse, gray partridge, fox, and coyote on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a refuge Special Use Permit (FWS Form 3–1383–G) to hunt fox and coyotes.

(ii) Fox and coyote hunters may only use centerfire rifles, rimfire rifles, or shotguns with approved nontoxic shot (see § 32.2(k)).

(iii) Any person hunting or accompanying a hunter must wear a minimum of 400 square inches (2,581 square centimeters) of hunter orange (fluorescent) material above the waist, visible at all times.

(3)–(4) [Reserved]

(e) *Bowdoin Wetland Management District*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the district.

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the district.

(3) *Big game hunting.* We allow big game hunting on designated areas of the district subject to the following conditions:

(i) You may leave portable tree stands, portable blinds, and freestanding elevated platforms on waterfowl production areas (WPAs) from August 15 through December 15.

(ii) You must label portable tree stands, portable blinds, and freestanding elevated platforms with your automated licensing system (ALS) number. The label must be legible from the ground.

(iii) We only allow the use of archery, muzzleloader (as governed by State regulations), or shotgun on the McNeil Slough WPA and Hammond WPA.

(4) *Sport fishing.* We allow sport fishing on designated areas of the district.

(f) *Charles M. Russell National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the refuge.

(2) *Upland game hunting.* We allow hunting of upland game birds, turkey, and coyote on designated areas of the refuge subject to the following condition: We allow coyote hunting from the first day of antelope rifle season through March 1 annually.

(3) *Big game hunting.* We allow hunting of big game on designated areas of the refuge subject to the following conditions:

(i) We allow the use of portable blinds and stands.

(ii) We limit each hunter to three stands or blinds. The hunter must have their automated licensing system (ALS) number visibly marked on the stand(s) or blind(s).

(iii) You may install portable stands and blinds no sooner than August 1, and you must remove them by December 15 of each year (see § 27.93 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(g) *Charles M. Russell Wetland Management District*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the district subject to the following condition: You must remove all watercraft and personal equipment following each day of hunting (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game bird hunting on designated areas of the district.

(3) *Big game hunting.* We allow big game hunting on designated areas of the district subject to the following condition: You must remove your tree stand(s) from the refuge after each day's hunt (see § 27.93 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the district subject to the following condition: Anglers must remove all motor boats and other personal equipment at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(h) *Creedman Coulee National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, swan, sandhill crane, and mourning dove on designated areas of the refuge.

(2) *Upland game hunting.* We allow hunting of pheasant, sharp-tailed grouse, sage grouse, gray partridge, fox, and coyote on designated areas of the refuge.

(3) *Big game hunting.* We allow big game hunting on designated areas of the refuge.

(4) [Reserved]

(i) *Hailstone National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the refuge.

(2) *Upland game hunting.* We allow only upland game bird hunting on designated areas of the refuge.

(3)–(4) [Reserved]

(j) *Hewitt Lake National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, swan, sandhill crane, and mourning dove on designated areas of the refuge subject to the following condition: You must remove all boats, decoys, portable blinds, other personal property, and any materials brought onto the refuge for blind construction by legal sunset each day (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow hunting of pheasant, sharp-tailed grouse, sage grouse, gray partridge, fox, and coyote on designated portions of the refuge subject to the following condition: Fox and coyote hunters may use only centerfire rifles, rim-fire rifles, or shotguns with approved nontoxic shot (see § 32.2(k)).

(3) *Big game hunting.* We allow big game hunting on designated areas of the refuge subject to the following conditions:

(i) We allow hunters to leave portable tree stands, portable blinds, and freestanding elevated platforms on the refuge from August 15 through December 15.

(ii) You must visibly mark portable tree stands, portable blinds, and freestanding elevated platforms with your automated licensing system (ALS) number.

(4) [Reserved]

(k) *Lake Mason National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the refuge.

(2) *Upland game hunting.* We allow hunting of upland game on designated areas of the refuge.

(3) *Big game hunting.* We allow hunting of big game on designated areas of the refuge.

(4) [Reserved]

(l) *Lake Thibadeau National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, swan, sandhill crane, and mourning dove on designated areas of the refuge.

(2) *Upland game hunting.* We allow hunting of pheasant, sharp-tailed grouse, sage grouse, gray partridge, fox, and coyote on designated areas of the refuge.

(3) *Big game hunting.* We allow big game hunting on designated areas of the refuge.

(4) [Reserved]

(m) *Lamesteer National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory birds on designated areas of the refuge subject to the following condition: Hunters must obtain landowner permission before hunting on the refuge.

(2) *Upland game hunting.* We allow hunting of upland game on designated areas of the refuge subject to the following condition: Hunters must obtain landowner permission before hunting on the refuge.

(3) *Big game hunting.* We allow hunting of big game on designated areas of the refuge subject to the following condition: Hunters must obtain landowner permission before hunting on the refuge.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: Anglers must obtain landowner permission before fishing on the refuge.

(n) *Lee Metcalf National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, and coot on designated areas of the refuge subject to the following conditions:

(i) You must hunt from an established blind.

(ii) Legal entry time into the hunting area is no earlier than 2 hours before legal shooting hours. All hunters must exit the hunting area no later than 2 hours after legal shooting hours.

(iii) We prohibit wildlife observation, scouting, and loitering during waterfowl hunting season at the waterfowl hunting area parking lot and on the refuge road leading to the waterfowl hunting area parking lot.

(iv) We close the waterfowl hunting area to waterfowl hunting on Mondays and Thursdays.

(v) Each hunter must complete the Migratory Bird Hunt Report (FWS Form 3–2361), must set the appropriate blind selector (metal flip tag) before and after hunting, and must record hunting data (hours hunted and birds harvested) on FWS Form 3–2361 before departing the hunting area.

(vi) We prohibit attempting to ''reserve'' a blind for use later in the day by depositing a vehicle or other equipment on the refuge. A hunter must be physically present in the hunting area in order to use a blind. The exceptions are blinds 2 and 7, which may be reserved for hunters with disabilities.

(vii) No more than four hunters or individuals may use a blind at one time.

(viii) You must conduct all hunting from within the hunting blind.

(ix) All hunters must have a visible means of retrieving waterfowl such as a float tube, waders, or a dog capable of retrieving.

(x) We prohibit falconry hunting.

(xi) We allow the use of a portable ground blind within the immediate mowed area around field blind #13.

(2) [Reserved]

(3) *Big game hunting.* We allow archery hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) We prohibit wildlife observation, scouting, and loitering at access points and parking areas.

(ii) Hunters may only enter the hunt area 2 hours prior to legal hunting hours and must exit no later than 2 hours after legal hunting hours.

(iii) We allow archery hunting in the waterfowl hunting area in September, except during the youth waterfowl hunt weekend. We will allow archery hunting on Mondays and Thursdays in the waterfowl hunting area during waterfowl hunting season.

(iv) Each hunter must complete the Big Game Harvest Report (FWS Form 3–2359) before departing the hunting area.

(v) We allow the use of portable tree stands or ground blinds. You must attach a tag displaying the owner's automated licensing system (ALS) number to each tree stand and/or ground blind you place on the refuge.

(vi) Hunters may not enter or retrieve deer from closed areas of the refuge without the consent of an authorized official.

(vii) Hunters with a documented mobility disability may access designated locations in the hunting area to hunt from ground blinds. To access these areas, hunters must contact the refuge manager in advance to obtain a Special Use Permit (FWS Form 3–1383–G).

(viii) We prohibit organized drives. We define a ''drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause game to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the game.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(o) *Lost Trail National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of turkey and mountain grouse on designated areas of the refuge subject to the following conditions:

(i) We allow use of riding or pack stock on designated access routes through the refuge to access off-refuge lands as identified in the public use leaflet.

(ii) We prohibit retrieval of game in areas closed to hunting without a refuge retrieval permit.

(iii) We allow portable or temporary blinds and tree stands.

(3) *Big game hunting.* We allow hunting of elk, white-tailed deer, and mule deer on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (o)(2)(i) through (iii) of this section apply.

(ii) The first week of the archery elk and deer hunting season and the first week of the general elk and deer hunting season are open only to youth hunters (ages 12 to 15). A nonhunting adult age 18 or older must accompany the youth hunter in the field.

(iii) Persons assisting disabled hunters must not be afield with a hunting firearm, bow, or other hunting device.

(4) [Reserved]

(p) *Medicine Lake National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of coot, duck, goose, sandhill crane, tundra swan, snipe, and dove on designated areas of the refuge.

(2) *Upland game hunting.* We allow hunting of pheasant, partridge, sharp-tailed grouse, coyote, red fox, and white-tailed jackrabbit on designated areas of the refuge subject to the following condition: We allow hunting of coyote, red fox, and white-tailed jackrabbit during daylight hours from November 15 through March 31.

(3) *Big game hunting.* We allow hunting of deer and antelope on designated areas of the refuge.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(q) *National Bison Range.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the National Bison Range as governed by joint State and Confederated Salish and Kootenai Tribal regulations for non-members and Confederated Salish and Kootenai Tribal regulations for members of the Confederated Salish and Kootenai Tribe subject to the following condition: We prohibit the use of lead or lead-based lures or sinkers.

(r) *Ninepipe National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge as governed by joint State and Confederated Salish and Kootenai Tribal regulations for non-members and Confederated Salish and Kootenai Tribal regulations for members of the Confederated Salish and Kootenai Tribe subject to the following condition: We

prohibit the use of lead or lead-based tackle.

(s) *Northeast Montana Wetland Management District*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the district subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the district.

(3) *Big game hunting.* We allow big game hunting on designated areas of the district subject to the following conditions:

(i) We allow hunters to leave portable tree stands and freestanding elevated platforms on waterfowl production areas (WPAs) from August 25 through February 15.

(ii) You must label portable tree stands and freestanding elevated platforms with your automated licensing system (ALS) number so that the number is legible from the ground.

(4) [Reserved]

(t) *Northwest Montana Wetland Management District*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the district as governed by State law (Flathead County waterfowl production areas (WPAs)) and joint State and Confederated Salish and Kootenai Tribal regulations for non-members and Confederated Salish and Kootenai Tribal regulations for members of the Confederated Salish and Kootenai Tribe (Lake County WPAs), subject to the following conditions:

(i) Hunters must remove all boats, decoys, portable blinds (including those made of native materials), boat blinds, and all other personal property at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(ii) We allow the use of hunting dogs when hunting.

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the district as governed by State law (Flathead County WPAs) and joint State and Confederated Salish and Kootenai Tribal regulations for non-members and Confederated Salish and Kootenai Tribal regulations for members of the Confederated Salish and Kootenai Tribe (Lake County WPAs), subject to the following conditions:

(i) We prohibit hunting with a shotgun capable of holding more than three shells.

(ii) The conditions set forth at paragraphs (t)(1)(i) and (ii) of this section apply.

(3) *Big game hunting.* We allow big game hunting on designated areas of the district as follows:

(i) We allow big game hunting on Flathead County WPAs as governed by State law and subject to the following conditions:

(A) The conditions set forth at paragraphs (t)(1)(i) and (t)(2)(i) of this section apply.

(B) We restrict hunting on Flathead, Blasdel, and Batavia WPAs to hunting with archery equipment, shotgun, traditional handgun, muzzleloader, or crossbow only.

(ii) We allow big game hunting on Lake County WPAs as governed by joint State and Confederated Salish and Kootenai Tribal regulations for non-members and Confederated Salish and Kootenai Tribal regulations for members of the Confederated Salish and Kootenai Tribe.

(4) *Sport fishing.* We allow sport fishing on all WPAs throughout the district as governed by State law (Flathead County WPAs) and joint State and Confederated Salish and Kootenai Tribal regulations for non-members and Confederated Salish and Kootenai Tribal regulations for members of the Confederated Salish and Kootenai Tribe (Lake County WPAs).

(u) *Pablo National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge as governed by joint State and Confederated Salish and Kootenai Tribal regulations for non-members and Confederated Salish and Kootenai Tribal regulations for members of the Confederated Salish and Kootenai Tribe subject to the following condition: We prohibit the use of lead or lead-based lures or sinkers.

(v) *Red Rock Lakes National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge subject to the following conditions:

(i) Hunters must remove all blinds, decoys, shell casings, and other personal equipment from the refuge each day (see §§ 27.93 and 27.94 of this chapter).

(ii) We prohibit the use of motorized decoys.

(2) [Reserved]

(3) *Big game hunting.* We allow hunting of deer, elk, moose, and pronghorn antelope on designated areas of the refuge subject to the following conditions:

(i) We limit the number of hunters per day during the general big game season for the area north of South Valley Road, south of Red Rock River Mash, and west of Upper Red Rock Lake to the west refuge boundary. We close this area to hunting by other big game hunters during the general big game season. We select the hunters per day by annual lottery.

(ii) You may hire outfitters or ranchers for the retrieval of big game only.

(iii) We prohibit use of wheeled game carts or other mechanical transportation devices for game retrieval on portions of the refuge designated as Wilderness Area.

(iv) We prohibit horses north of South Valley Road except for the retrieval of big game. We only allow horses for back-country access to the Centennial Mountains south of South Valley Road. We require the use of certified weed-free hay or pellets in refuge parking lots and on refuge roads or trails.

(v) We prohibit hunting and/or shooting from or onto refuge lands from within 50 yards (45 meters) of the centerline of any public road open to motorized vehicles.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) You may only use pole and line or rod and reel to fish on the refuge.

(ii) We prohibit the use of felt-soled wading boots on all refuge waters.

(iii) We prohibit the use or possession of lead sinkers or any lead fishing product while fishing.

(w) *Swan River National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge.

(2) [Reserved]

(3) *Big game hunting.* We allow archery hunting of elk, white-tailed deer, and mule deer on designated areas of the refuge subject to the following conditions:

(i) We allow the use of portable blinds and stands.

(ii) We limit each hunter to one stand or blind. The hunter must have their automated licensing system (ALS) number visibly marked on the stand or blind.

(iii) You may install portable stands and blinds no sooner than the first day of the hunting season, and you must remove them by the last day of the hunting season (see § 27.93 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(x) *UL Bend National Wildlife Refuge*—(1) *Migratory game bird*

hunting. We allow hunting of migratory game birds on designated areas of the refuge.

(2) *Upland game hunting.* We allow hunting of upland game birds and coyote on designated areas of the refuge subject to the following condition: We allow coyote hunting from the first day of antelope rifle season through March 1 annually.

(3) *Big game hunting.* We allow hunting of big game on designated areas of the refuge subject to the following conditions:

(i) We allow the use of portable blinds and stands.

(ii) We limit each hunter to three stands or blinds. The hunter must have their automated licensing system (ALS) number visibly marked on the stand(s) or blind(s).

(iii) You may install portable stands and blinds no sooner than August 1, and you must remove them by December 15 of each year (see § 27.93 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(y) *War Horse National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the refuge.

(2) *Upland game hunting.* We allow hunting of upland game birds on designated areas of the refuge.

(3) *Big game hunting.* We allow hunting of big game on designated areas of the refuge.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

§ 32.46 Nebraska.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Boyer Chute National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, and coot on designated areas of the refuge subject to the following conditions:

(i) Hunters may access the refuge from 2 hours before legal sunrise until 2 hours after legal sunset along the immediate shoreline and including the high bank of the Missouri River. You may access the hunting area by water or, if by land, only within the public use area of the Island Unit.

(ii) You must remove all blinds and decoys at the conclusion of each day's hunt (see § 27.93 of this chapter).

(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer and wild turkey on designated areas of the refuge subject to the following conditions:

(i) The refuge manager will annually determine and publish hunting season dates and include them in the refuge access permit (signed brochure).

(ii) You must possess and carry a refuge access permit (signed brochure) at all times while in the hunting area.

(iii) We allow hunters in the designated areas from 2 hours before legal sunrise until 2 hours after legal sunset.

(iv) We allow two portable tree stands/blinds per hunter within the hunt area. Of those, only one stand/blind can be left on the refuge from 1 week prior to the start of the designated hunt season to 1 week after the end of the designated hunt season.

(v) You must plainly label unattended stands and blinds with the full name and/or hunting license number of the owner. Labels must be visible from ground level.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We allow personally attended hook and line fishing and archery fishing (rough fish only) from ½ hour before legal sunrise to ½ hour after legal sunset.

(ii) We prohibit the use of trotlines, float lines, bank lines, or setlines.

(iii) We prohibit digging or seining for bait.

(iv) We prohibit the take or possession of turtles or frogs (see § 27.21 of this chapter).

(v) Anglers may use no more than two lines and two hooks per line.

(b) *Crescent Lake National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of waterfowl and coot on designated areas of the refuge subject to the following conditions:

(i) Hunters may enter the designated hunting area 2 hours before legal sunrise and must be back to their vehicle in the process of leaving the refuge 2 hours after legal sunset. Official shooting hours are from ½ hour before legal sunrise until ½ hour after legal sunset for deer, coyote, and furbearer hunters; and from ½ hour before legal sunrise until legal sunset for all other hunters.

(ii) When hunting migratory game birds and upland game, you may only use dogs to locate, point, and retrieve.

(iii) We open the refuge to hunting from September 1 through January 31.

(iv) We prohibit publicly organized hunts unless authorized under a Special Use Permit (FWS Form 3–1383–C).

(v) We only allow floating blinds on Island Lake.

(2) *Upland game hunting.* We allow hunting of cottontail rabbit, jack rabbit, furbearer, coyote, ring-necked pheasant, and prairie grouse on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(1)(i) through (iv) of this section apply.

(ii) We allow electronic calls for coyote and furbearer hunting.

(iii) Coyotes and all furbearers or their parts, if left in the field, must be left at least 50 yards away from any road, trail, or building. Otherwise, hunters must remove them from the refuge (see §§ 27.93 and 27.94 of this chapter).

(3) *Big game hunting.* We allow hunting of white-tailed deer and mule deer on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (b)(1)(i) and (iv) of this section apply.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) Anglers may enter the refuge 1 hour before legal sunrise and remain until 1 hour after legal sunset.

(ii) We open Island Lake to fishing year-round and open Smith and Crane Lakes to fishing seasonally from November 1 through February 15. We close all other refuge lakes to fishing.

(iii) We prohibit leaving temporary shelters used for fishing overnight on the refuge.

(c) *Fort Niobrara National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of deer and elk on designated areas of the refuge subject to the following conditions:

(i) We require the submission of a Big/Upland Game Hunt Application (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System). You must possess and carry a signed refuge hunt permit (signed brochure) when hunting. We require hunters to complete a Big Game Harvest Report (FWS Form 3–2359) and return it to the refuge at the conclusion of the hunting season.

(ii) We allow hunting with muzzleloader and archery equipment. We prohibit hunting with firearms capable of firing cartridge ammunition.

(iii) We allow hunter access from 2 hours before legal sunrise until 2 hours after legal sunset.

(iv) We allow horses within the wilderness area. We limit horse use to three groups at a time and no more than five horses per group. We limit horse access to the wilderness area via the wilderness overlook or the refuge corrals and buffalo bridge.

(v) We prohibit leaving tree stands and ground blinds in the same location for more than 7 consecutive days. You may put up tree stands, elevated

platforms, and ground blinds, but no earlier than opening day of deer season; you must remove them by the last day of deer season (see § 27.93 of this chapter).

(vi) We prohibit hunting during the Nebraska November Firearm Deer Season.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit the use of limb or set lines.

(ii) We prohibit the take of baitfish, reptiles, and amphibians (see § 27.21 of this chapter).

(iii) We prohibit use or possession of alcoholic beverages while fishing on refuge lands and waters.

(d) *North Platte National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, pheasant, furbearers (as governed by State definitions), and coyote on designated areas of the refuge subject to the following conditions:

(i) We close the Lake Alice Unit to all public entry from October 15 through January 14.

(ii) Hunters must be 15 years of age or younger (''youth hunters''). A licensed hunter 19 years of age or older (''adult guide'') must accompany youth hunters. Adult guides must not hunt or carry firearms.

(iii) We close the refuge to public use from legal sunset to legal sunrise. However, youth hunters and their adult guides may enter the designated hunting area 1 hour prior to legal sunrise.

(iv) We only allow the use of dogs for pheasant hunting on the refuge.

(3) *Big game hunting.* We allow archery hunting of mule deer and white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (d)(2)(i) of this section applies.

(ii) We close the refuge to public use from legal sunset to legal sunrise. However, archery deer hunters may enter the designated hunting area 1 hour prior to legal sunrise and remain until 1 hour after legal sunset.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(e) *Rainwater Basin Wetland Management District*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the district subject to the following conditions:

(i) We allow the use of dogs when hunting, except that we prohibit hunting with dogs from May 1 to July 31.

(ii) We prohibit exercising, running, or training dogs from May 1 to July 31.

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the district subject to the following condition: The conditions set forth at paragraphs (e)(1)(i) and (ii) of this section apply.

(3) *Big game hunting.* We allow big game hunting on designated areas of the district subject to the following condition: The conditions set forth at paragraphs (e)(1)(i) and (ii) of this section apply.

(4) *Sport fishing.* We allow sport fishing on designated areas of the district.

(f) *Valentine National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of waterfowl and coot on designated areas of the refuge subject to the following conditions:

(i) We allow hunter access from 2 hours before legal sunrise to 2 hours after legal sunset.

(ii) When hunting migratory game birds, you may only use dogs to locate, point, and retrieve.

(2) *Upland game hunting.* We allow hunting of sharp-tailed grouse, prairie chicken, ring-necked pheasant, dove, and coyote on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (f)(1)(i) of this section applies.

(ii) We allow coyote hunting from September 1 to March 31. Shooting hours are ½ hour before legal sunrise to ½ hour after legal sunset.

(iii) When hunting upland game, you may only use dogs to locate, point, and retrieve, except that we prohibit the use of dogs to hunt coyotes.

(iv) We prohibit the use of bait to hunt coyotes.

(3) *Big game hunting.* We allow hunting of white-tailed and mule deer on designated areas of the refuge subject to the following condition: The condition set forth at paragraph (f)(1)(i) of this section applies.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) Anglers may enter the refuge 1 hour before legal sunrise and remain 1½ hours after legal sunset.

(ii) We prohibit the take of reptiles, amphibians, and minnows (see § 27.21 of this chapter), with the exception that you may take bullfrogs on refuge lakes open to fishing.

§ 32.47 Nevada.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Ash Meadows National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, moorhen, snipe, and dove on designated areas of the refuge subject to the following conditions:

(i) We only allow motorless boats or boats with electric motors on the refuge hunting area during the migratory waterfowl hunting season.

(ii) We open the refuge to the public from 1 hour before legal sunrise until 1 hour after legal sunset.

(2) *Upland game hunting.* We allow hunting of quail and rabbit on designated areas of the refuge subject to the following condition: The condition set forth at paragraph (a)(1)(ii) of this section applies.

(3)–(4) [Reserved]

(b) *Desert National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of bighorn sheep on designated areas of the refuge subject to the following condition: We require bighorn sheep guides to obtain a Special Use Permit (FWS Form 3–1383–C) prior to taking clients onto the refuge.

(4) [Reserved]

(c) *Pahranagat National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, moorhen, snipe, and dove on designated areas of the refuge subject to the following conditions:

(i) We allow hunting on designated days.

(ii) We only allow motorless boats or boats with electric motors on the refuge hunting area during the migratory waterfowl hunting season.

(iii) From October 1 to February 1, you may only possess shotshells in quantities of 25 or fewer when in the field once you have left your assigned parking lot or boat launch.

(2) *Upland game hunting.* We allow hunting of quail and rabbit on designated areas of the refuge subject to the following conditions:

(i) We allow hunting on designated days.

(ii) We allow hunting of jackrabbits only during the State cottontail season.

(iii) You may not possess more than 25 shot shells while in the field once you have left your assigned parking lot or boat launch.

(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: We allow fishing year-round, except that we close the North Marsh to all fishing from October 1 through February 1.

(d) *Ruby Lake National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of dark goose, duck, coot, moorhen, and common snipe on designated areas of the refuge subject to the following conditions:

(i) Hunters may access the refuge from 1 hour before legal sunrise until 2 hours after legal sunset.

(ii) Hunters must remove all blind materials and decoys following each day's hunt.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) Anglers may access the refuge from 1 hour before legal sunrise until 2 hours after legal sunset.

(ii) We allow fishing by wading and from personal flotation devices (float tubes) and bank fishing in designated areas.

(iii) You may use only artificial lures in the Collection Ditch and adjoining spring ponds.

(iv) We prohibit the possession of live or dead bait fish, any amphibians (including frogs), and crayfish on the refuge.

(e) *Sheldon National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge subject to the following condition: We allow only portable blinds and temporary blinds constructed of synthetic material.

(2) *Upland game hunting.* We allow hunting of quail, grouse, and chukar on designated areas of the refuge.

(3) *Big game hunting.* We allow hunting of deer, antelope, and bighorn sheep on designated areas of the refuge subject to the following conditions:

(i) We allow ground blinds, and you must not construct them earlier than 1 week prior to the opening day of the legal season for which you have a valid State-issued hunting permit.

(ii) You must remove blinds within 24 hours of harvesting an animal or at the end of the permittee's legal season (see § 27.93 of this chapter).

(iii) You must label blinds with your State hunting license and permit numbers.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(f) *Stillwater National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the refuge.

(2) *Upland game hunting.* We allow hunting of upland game species on designated areas of the refuge subject to the following condition: We prohibit hunting after legal sunset.

(3) *Big game hunting.* We allow hunting of mule deer on designated areas of the refuge subject to the following condition: Hunters must only use shotguns, muzzleloading weapons, or bow and arrow for hunting deer.

(4) [Reserved]

§ 32.48 New Hampshire.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Great Bay National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of waterfowl on designated areas of the refuge subject to the following conditions:

(i) You must access waterfowl hunting areas by boat launched from off-refuge sites only. We prohibit overland access through the refuge.

(ii) We allow the use of dogs for retrieving migratory game birds.

(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer and wild turkey on designated areas of the refuge subject to the following conditions:

(i) We prohibit hunters from discharging a bow and arrow within 15 feet (4.5 meters), or a firearm within 200 feet (61 meters), of the traveled portion of, or across, any refuge roads or trails.

(ii) We allow hunting for deer during a 2-day hunt during the first weekend of the State's firearms season subject to the following conditions:

(A) We require hunters to have a lottery-issued refuge firearms deer hunt permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) and to possess it at all times while scouting and hunting on the refuge.

(B) We allow scouting during the week prior to the first day of the firearms deer hunt.

(C) Hunters must check-in with refuge personnel prior to entering the refuge, and must check out with refuge personnel when exiting the refuge.

(D) Hunters must register harvested deer at the refuge check station, if a refuge check station is offered.

(E) Hunters must wear a minimum of 400 square inches (2,581 square centimeters) of solid-colored, blaze-orange clothing or material, in a visible manner on the head, chest, and back.

(iii) We allow archery deer and archery turkey hunting during the fall season subject to the following conditions:

(A) We require hunters to have a lottery-issued refuge hunt permit (Big/Upland Game Hunt Application, FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) and to possess it at all times while scouting and hunting on the refuge.

(B) We allow scouting during the week prior to the season opening.

(C) We prohibit archery hunting during the 2-day deer firearms hunt, unless the hunter possesses the appropriate firearms deer hunt permit.

(iv) We allow turkey hunting during the spring season subject to the following conditions: The conditions set forth at paragraphs (a)(3)(iii)(A) and (B) of this section apply.

(4) [Reserved]

(b) *Silvio O. Conte National Fish and Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, common snipe, and American woodcock on designated areas of the refuge.

(2) *Upland game hunting.* We allow hunting of coyote, fox, raccoon, woodchuck, red squirrel, eastern gray squirrel, porcupine, skunk, American crow, snowshoe hare, ring-necked pheasant, and ruffed grouse on designated areas of the refuge.

(3) *Big game hunting.* We allow hunting of white-tailed deer, moose, black bear, and wild turkey on designated areas of the refuge subject to the following conditions:

(i) We allow portable tree stands and blinds.

(ii) You must label your portable tree stands and/or blinds with your name and State hunting license number. The label must be clearly visible on the stands or blinds.

(iii) You must remove your tree stands or blinds by the end of the season (see § 27.93 of this chapter).

(4) [Reserved]

(c) *Umbagog National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, snipe, coot, crow, and woodcock on designated areas of the refuge subject to the following conditions:

(i) Hunters must remove temporary blinds, boats, and decoys from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(ii) We allow the use of dogs to assist in the location and retrieval of game species.

(2) *Upland game hunting.* We allow hunting of fox, raccoon, woodchuck, squirrel, porcupine, skunk, snowshoe hare, ring-necked pheasant, and ruffed grouse on designated areas of the refuge subject to the following conditions:

(i) We prohibit night hunting from ½ hour after legal sunset until ½ hour before legal sunrise the following day.

(ii) The condition set forth at paragraph (c)(1)(ii) of this section applies.

(3) *Big game hunting.* We allow hunting of bear, white-tailed deer, coyote, wild turkey, and moose on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (c)(1)(ii) and (c)(2)(i) of this section apply.

(ii) Hunters must retrieve all species, including coyotes, harvested on the refuge.

(iii) We allow temporary blinds and tree stands that are clearly marked with the owner's name and State hunting license number. You may erect temporary blinds and tree stands no earlier than 14 days prior to the hunting season, and you must remove them within 14 days after the hunting season (see § 27.93 of this chapter).

(4) [Reserved]

§ 32.49 New Jersey.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Cape May National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of waterfowl, coot, moorhen, rail, snipe, and woodcock on designated areas of the refuge subject to the following conditions:

(i) The snipe season on the refuge begins with the start of the State early woodcock south zone season and continues through the end of the State snipe season.

(ii) We allow the use of dogs when hunting migratory game birds.

(iii) We prohibit falconry.

(2) *Upland game hunting.* We allow hunting of rabbit and squirrel on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (a)(1)(iii) of this section applies.

(ii) We allow rabbit and squirrel hunting following the end of the State's 6-day firearm season for white-tailed deer, until the close of the regular rabbit and squirrel season.

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

(i) You must mark tree stands with the owner's New Jersey Conservation Identification Number.

(ii) You must remove all tree stands, blinds, and hunting materials at the end of the State deer hunting season (see § 27.93 of this chapter).

(4) *Sport fishing.* We allow saltwater sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing from 1 hour before legal sunrise to 1 hour after legal sunset.

(ii) We close the Atlantic Ocean beach annually to all access, including fishing, between April 1 and September 30.

(iii) We prohibit fishing for, or possession of, shellfish on refuge lands.

(b) *Edwin B. Forsythe National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of waterfowl, coot, moorhen, and rail on designated areas of the refuge subject to the following conditions:

(i) We require hunters to possess a signed refuge hunt permit (Migratory Bird Hunt Application (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System)) at all times while scouting and hunting on the refuge.

(ii) We allow the use of dogs for retrieving migratory game birds.

(2) *Upland game hunting.* We allow hunting of squirrel on designated areas of the refuge subject to the following condition: We require hunters to possess a signed refuge hunt permit (Big/Upland Game Hunt Application (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System)) at all times while scouting and hunting on the refuge.

(3) *Big game hunting.* We allow hunting of white-tailed deer and wild turkey on designated areas of the refuge subject to the following conditions:

(i) We require hunters to possess a signed refuge hunt permit (Big/Upland Game Hunt Application (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System)) at all times while scouting and hunting deer and turkey on the refuge.

(ii) You must mark deer stands with the hunter's New Jersey Conservation Identification Number. You must remove deer stands from the refuge at the end of the last day of the hunting season (see §§ 27.93 and 27.94 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(c) *Great Swamp National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of deer on designated areas of the refuge subject to the following conditions:

(i) Hunters must obtain a refuge hunt permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System), and possess the signed refuge permit at all times while hunting or scouting on the refuge.

(ii) On scouting days, hunters must access the refuge between legal sunrise and legal sunset. On hunting days, hunters may enter the refuge 2 hours before legal shooting time and must leave no later than 2 hours after legal shooting time.

(iii) Hunters may put up tree stands beginning on the first scouting day, except on the day of the refuge's youth hunt. Hunters must retrieve their stands by 12 p.m. (noon) on the Sunday after the last day of the hunt (see § 27.93 of this chapter). All hunters must put their last name and Conservation Identification Number on their stand, and they may have only one stand in the field at any one time.

(iv) We allow hunters to use sleds to retrieve deer in the Wilderness Area east of Long Hill/New Vernon Road. We prohibit wheeled game carriers.

(v) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(4) [Reserved]

(d) *Supawna Meadows National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose and duck on designated areas of the refuge.

(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We allow only bow hunting on the refuge.

(4) *Sport fishing.* We allow sport fishing and crabbing on the refuge in designated areas subject to the following conditions:

(i) We prohibit the taking of frogs and turtles from all nontidal waters and refuge lands (see § 27.21 of this chapter).

(ii) We prohibit fishing in designated nontidal waters from legal sunset to legal sunrise.

(iii) We prohibit bow fishing in nontidal waters.

(e) *Wallkill River National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory birds on designated areas of the refuge subject to the following conditions:

(i) Hunters must obtain a refuge hunt permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System). We require hunters to possess a signed refuge hunt permit at all times while scouting and hunting on the refuge.

(ii) Hunters may enter the refuge 2 hours before legal shooting time and must leave no later than 2 hours after legal shooting time.

(2) *Upland game hunting.* We allow hunting of coyote, fox, crow, ruffed grouse, opossum, raccoon, pheasant, chukar, rabbit/hare/jackrabbit, squirrel, and woodchuck on designated areas of the refuge subject to the following conditions:

(i) Hunters must obtain a refuge hunt permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System). We require hunters to possess a signed refuge hunt permit at all times while scouting and hunting on the refuge.

(ii) The condition set forth at paragraph (e)(1)(ii) of this section applies.

(iii) We allow hunting from legal sunrise to legal sunset.

(iv) We prohibit the use of rifles.

(3) *Big game hunting.* We allow hunting of white-tailed deer, bear, and wild turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (e)(1)(ii) and (e)(2)(i) of this section apply.

(ii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(iii) The Armstrong tract is archery only for deer and bear.

(4) *Sport fishing.* We allow sport fishing on the refuge subject to the following conditions:

(i) We open Owens Station Crossing for catch-and-release fishing only.

(ii) We allow fishing from ½ hour before legal sunrise to ½ hour after legal sunset.

(iii) We prohibit the taking of amphibians and reptiles (see § 27.21 of this chapter).

(iv) We prohibit minnow/bait trapping.

§ 32.50 New Mexico.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Bitter Lake National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose; duck; coot; mourning and white-winged dove; and sandhill crane on designated areas of the refuge subject to the following conditions:

(i) We restrict hunting in the Middle Tract to the following times:

(A) You may hunt only on Tuesdays, Thursdays, and Saturdays during the period when the State seasons that apply to the Middle Tract area are open simultaneously for hunting all of the species allowed.

(B) You may hunt only until 1 p.m. on each hunt day.

(ii) On the South Tract, we allow hunting only during special hunts (hunters with disabilities and/or youth hunters age 17 and younger).

(iii) You must remove all waterfowl decoys and all temporary blinds/stands after each day's hunt (see § 27.93 of this chapter).

(iv) We allow the use of dogs when hunting.

(2) *Upland game hunting.* We allow hunting of pheasant, quail (scaled, Gambel's, bobwhite, and Montezuma), Eurasian-collared dove, cottontail, and jack rabbit on designated areas of the refuge subject to the following conditions:

(i) We allow rabbit hunting on the North Tract only during the season that is concurrently open for quail hunting within the State.

(ii) The conditions set forth at paragraphs (a)(1)(i) and (ii) of this section apply.

(3) *Big game hunting.* We allow hunting of mule deer, white-tailed deer, and feral hog on designated areas of the refuge subject to the following conditions:

(i) Hunters may take feral hog (no bag limit) only while legally hunting deer and only with the weapon legal for deer on that day in that area.

(ii) You must remove all temporary blinds/stands after each day's hunt (see § 27.93 of this chapter).

(4) [Reserved]

(b) *Bosque del Apache National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of mourning and white-winged dove and light goose on designated areas of the refuge subject to the following conditions:

(i) We allow hunting of light goose on dates to be determined by refuge staff. Hunters must possess a permit available through a lottery drawing (Waterfowl Lottery Application, FWS Form 3–2439, Hunt Application—National Wildlife Refuge System).

(ii) You must remove all waterfowl decoys, spent shells, all temporary blinds/stands, and all other personal equipment at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(iii) We allow the use of dogs when hunting.

(iv) We prohibit falconry on the refuge.

(2) *Upland game hunting.* We allow hunting of scaled, Gambel's, bobwhite, and Montezuma quail and cottontail rabbit on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (b)(1)(ii) through (iv) of this section apply.

(3) *Big game hunting.* We allow hunting of mule deer, oryx, and bearded Rio Grande turkey on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (b)(1)(ii) of this section applies.

(ii) You may hunt on the east side of the Rio Grande only by foot, horseback, or bicycle. Bicycles must stay on designated roads.

(iii) We allow hunting of bearded Rio Grande turkey for youth hunters on weekends April through May. All hunters must fill out FWS Form 3–2439 (Hunt Application—National Wildlife Refuge System) and pay a fee. The permit is available through a lottery drawing. If selected, you must carry your refuge hunt permit (FWS Form 3–2349) at all times during the hunt.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing from April 1 through September 30.

(ii) We allow fishing from ½ hour before legal sunrise until ½ hour after legal sunset.

(iii) We prohibit trotlines, bow fishing, seining, dip netting, and traps.

(iv) We allow frogging for bullfrog on the refuge in areas that are open to fishing. We allow the use of hook and line, spears, gigs, and archery equipment to take bullfrog.

(c) *Las Vegas National Wildlife Refuge*—(1) *Migratory Game Bird Hunting.* We allow hunting of mourning dove and goose on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a refuge hunt permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System).

(ii) We allow the use of dogs when hunting.

(iii) We allow hunting of goose on dates to be determined by refuge staff. Hunters must possess a permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System).

(iv) Shooting hours for geese are from ½ hour before legal sunrise to 1 p.m. local time.

(v) We assign a bag limit for both light goose and Canada goose.

(2)—(4) [Reserved]

(d) *Maxwell National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing from noon March 1 through October 31.

(ii) We allow boats on Lake 13 only during the fishing season; boats must travel at trolling speed only.

(e) *San Andres National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of oryx or gemsbok (*Oryx gazella*) and desert bighorn sheep (*Ovis canadensis mexicana*) on designated areas of the refuge as governed by White Sands Missile Range (WSMR) regulations subject to the following conditions:

(i) Hunters using livestock (*i.e.,* horses or mules) must provide only certified weed-free feed to their animals while on the refuge. You must feed livestock weed-free feed exclusively for 3 days prior to arrival on the refuge.

(ii) We allow all-terrain vehicle (ATV) use by hunters or members of their hunting party, for game retrieval only. ATVs must remain on designated roads. All vehicles, including trailers and ATVs, must be cleaned of mud, vegetation, and other debris prior to use on the refuge.

(4) [Reserved]

(f) *Sevilleta National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of mourning dove, white-winged dove, goose, duck, and coot on designated areas of the refuge subject to the following conditions:

(i) In Units A and B, legal hunting hours begin from ½ hour before legal sunrise and will not extend past 1 p.m. on each hunt day. Hunters may access Units A and B from 1 hour before legal sunrise until 1 hour after legal sunset.

(ii) In Unit B, we allow waterfowl hunting from designated blinds only.

(iii) We allow the use of dogs when hunting.

(iv) At Unit A, in the Cornerstone Marsh Unit, we give priority use to disabled hunters (per Mobility-Impaired Certification in the State Hunting Rules and Information pamphlet).

(2) *Upland game hunting.* We allow hunting of Gambel's quail and Eurasian collared-dove on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (f)(1)(iii) and (iv) of this section apply.

(ii) In the Rio Puerco Unit, legal hunting hours will run from ½ hour before legal sunrise to legal sunset.

(iii) We allow falcons to hunt dove in the Rio Puerco Unit only.

(iv) We open to Eurasian collared-dove hunting only during the State South Zone mourning and white-winged dove season.

(3)–(4) [Reserved]

§ 32.51 New York.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Amagansett National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: We seasonally close the refuge to sport fishing from April 1 to August 31.

(b) *Elizabeth A. Morton National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(c) *Iroquois National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, rail, coot, gallinule, woodcock, and snipe on designated areas of the refuge subject to the following conditions:

(i) For hunting of duck, goose, and coot:

(A) We allow hunting on Saturday of the New York State Youth Days.

(B) We allow hunting Tuesdays, Thursdays, and Saturdays from opening day of regular waterfowl season until the end of the first split.

(C) We require proof of successful completion of the New York State waterfowl identification course, the Iroquois nonresident waterfowl identification course, or a suitable nonresident State waterfowl identification course. All hunters must show proof of successful course completion each time they hunt, in addition to showing their valid hunting license and signed Federal Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp).

(D) We require a refuge hunt permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System).

(E) We only allow hunting from legal starting time until 12 p.m. (noon). We require hunters to check out no later than 1 p.m., and return a completed Migratory Bird Hunt Report (FWS Form 3–2361).

(F) We require hunters to stay in designated hunting areas, unless actively pursuing downed or crippled birds.

(ii) For hunting of rail, gallinule, snipe, and woodcock, we only allow hunting east of Sour Springs Road from October 1 until the opening of regular waterfowl season.

(2) *Upland game hunting.* We allow hunting of ruffed grouse, gray squirrel, cottontail rabbit, pheasant, coyote, fox, raccoon, skunk, and opossum on designated areas of the refuge subject to the following conditions:

(i) For small game hunting:

(A) We allow hunting from October 1 until the last day of February.

(B) We prohibit the use of raptors to take small game.

(ii) For furbearer hunting, we prohibit hunting from legal sunset to legal sunrise.

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following condition: We require a refuge permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) for spring turkey hunting.

(4) *Sport fishing.* We allow sport fishing and frogging on designated areas of the refuge subject to the following conditions:

(i) We allow fishing and frogging from legal sunrise to legal sunset.

(ii) We prohibit collecting fish for use as bait.

(d) *Montezuma National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of waterfowl, Canada goose, and snow goose on designated areas of the refuge subject to the following conditions:

(i) For the regular waterfowl season:

(A) We require daily refuge permits (Migratory Bird Hunt Report, FWS Form 3–2361) and reservations; we issue permits to hunters with a reservation for that hunt day. We require you to complete and return your permit by the end of the hunt day.

(B) We allow hunting only on Tuesdays, Thursdays, and Saturdays during the established refuge season set within the State western zone season. We allow a youth waterfowl hunt during New York State's established youth waterfowl hunt each year.

(C) All hunters with reservations and their hunting companions must check-in at the Route 89 Hunter Check Station area at least 1 hour before legal shooting time or forfeit their reservation.

(D) We allow motorless boats to hunt waterfowl. We limit hunters to one boat per reservation and one motor vehicle in the hunt area per reservation.

(E) We prohibit shooting from any dike or within 50 feet (15.2 meters (m)) of any dike or road, or from within 500 feet (152.4 m) of the Tschache Pool observation tower.

(F) We require proof of successful completion of the New York State waterfowl identification course, the Montezuma nonresident waterfowl

identification course, or a suitable nonresident State waterfowl identification course. All hunters must show proof of successful course completion each time they hunt, in addition to showing their valid State-issued hunting license and signed Federal Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp).

(ii) For Canada goose and snow goose hunting:

(A) We allow hunting of Canada goose during the New York State September (or ''early'') season and of snow goose during portions of the New York State snow goose season and portions of the period covered by the Light Goose Conservation Order.

(B) You must possess a valid daily hunt permit card (Migratory Bird Hunt Report, FWS Form 3–2361). We require you to complete and return the daily hunt permit card by the end of the hunt day.

(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer and wild turkey on designated areas of the refuge subject to the following conditions:

(i) We close Esker Brook and South Spring Pool Trails to hunting before November 1 each year. We close Wildlife Drive to hunting before December 1 each year. We open Seneca Trail and the Refuge Headquarters area during New York State's late archery/muzzleloader season only. We allow a youth white-tailed deer hunt during the State's established youth white-tailed deer hunt each year.

(ii) You must possess a valid daily Big/Upland Game Hunt permit card (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System). We require you to complete and return the daily hunt permit card by the end of the hunt day.

(iii) We allow white-tailed deer hunters to be on the refuge during the period that begins 2 hours before legal sunrise and ends 2 hours after legal sunset.

(iv) We only allow turkey hunting during the State fall and youth turkey seasons.

(4) *Sport fishing.* We allow access for fishing from designated areas of the refuge.

(e) *Oyster Bay National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: Anglers may fish from the refuge shoreline at Mill Pond from legal sunrise to legal sunset.

(f) *Seatuck National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: Anglers may fish in refuge-controlled waters of the Great South Bay from boats only.

(g) *Shawangunk Grasslands National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) Hunters must purchase a refuge hunt permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System). We require hunters to possess a signed refuge hunt permit at all times while scouting and hunting on the refuge.

(ii) You may take deer using archery equipment only.

(iii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(iv) Hunters may enter the refuge 2 hours before legal shooting time and leave no later than 2 hours after legal shooting time.

(4) [Reserved]

(h) *Target Rock National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: We allow sport fishing in Huntington Bay from the refuge shoreline when the refuge is open to visitors.

(i) *Wallkill River National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory birds on designated areas of the refuge subject to the following conditions:

(i) Hunters must obtain a refuge hunt permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System). We require hunters to possess a signed refuge hunt permit at all times while scouting and hunting on the refuge.

(ii) Hunters may enter the refuge 2 hours before legal shooting time and leave no later than 2 hours after legal shooting time.

(2) *Upland game hunting.* We allow hunting of rabbit/hare, gray/black/fox squirrel, pheasant, bobwhite quail, ruffed grouse, crow, red/gray fox, coyote, bobcat, raccoon, skunk, mink, weasel, and opossum on designated areas of the refuge subject to the following conditions:

(i) Hunters must obtain a refuge hunt permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System). We require hunters to possess a signed refuge hunt permit at all times while scouting and hunting on the refuge.

(ii) The condition set forth at paragraph (i)(1)(ii) of this section applies.

(iii) We allow hunting from legal sunrise to legal sunset.

(iv) We prohibit the use of rifles.

(3) *Big game hunting.* We allow hunting of white-tailed deer, bear, and wild turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (i)(1)(ii) and (i)(2)(i) and (iii) of this section apply.

(ii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We open Owens Station Crossing for catch-and-release fishing only.

(ii) We allow fishing from ½ hour before legal sunrise to ½ hour after legal sunset.

(iii) We prohibit the taking of amphibians and reptiles (see § 27.21 of this chapter).

(iv) We prohibit minnow/bait trapping.

(j) *Wertheim National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer within designated areas of the refuge subject to the following conditions:

(i) We allow archery and shotgun hunting of white-tailed deer within portions of the refuge during specific days between October 1 and January 31.

(ii) We require a permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) for deer hunting on the refuge.

(iii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(iv) Hunters assigned to Unit 5 must hunt from portable tree stands and must direct aim away from a public road and/or dwelling.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We allow shore and boat fishing on the portion of the Carmans River

between Sunrise and Montauk Highways.

(ii) We allow only boat fishing from Montauk Highway south to the mouth of the Carmans River.

(iii) We prohibit spearfishing.

(iv) We prohibit the taking of baitfish and frogs (see § 27.21 of this chapter).

§ 32.52 North Carolina.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Alligator River National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, tundra swan, coot, mourning dove, snipe and woodcock on designated areas of the refuge subject to the following conditions:

(i) We require all hunters to possess and carry a signed, self-service refuge hunting regulations and permit (signed brochure) while hunting on the refuge.

(ii) We allow the use of dogs when hunting in designated areas.

(iii) We allow hunters to enter and remain in open hunting areas from 1 hour before legal shooting time until 1 hour after legal shooting time.

(2) *Upland game hunting.* We allow hunting of quail, rabbit, squirrel, opossum, and raccoon on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(1)(i) through (iii) of this section apply.

(ii) We only allow dog training during the corresponding hunt season.

(iii) We require a Special Use Permit (FWS Form 3–1383–G) to hunt raccoon or opossum from ½ hour after legal sunset until ½ hour before legal sunrise.

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(1)(i) through (iii) and (a)(2)(ii) of this section apply.

(ii) Unarmed hunters may walk to retrieve stray dogs from closed areas and ''no dog hunting'' areas.

(4) *Sport fishing.* We allow sport fishing and frogging on designated areas of the refuge subject to the following conditions:

(i) We allow only fishing from legal sunrise to legal sunset.

(ii) We only allow pole and line, rod and reel, or cast net.

(iii) We require a Special Use Permit (FWS Form 3–1383–G) for fishing or frogging between legal sunset and legal sunrise.

(iv) You must only take frogs by use of frog gigs.

(b) *Cedar Island National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of tundra swan, Canada and snow goose, brant, duck, teal, and coot on designated areas of the refuge subject to the following conditions:

(i) We allow portable blinds. Hunters must remove blinds, decoys, and other personal property from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(ii) Hunters/hunt parties must not hunt closer than 150 yards (135 meters) apart.

(iii) We allow hunters to enter and remain in open hunting areas from 1 hour before legal shooting time until 1 hour after legal shooting time.

(2)–(4) [Reserved]

(c) *Currituck National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of swan, goose, duck, and coot on designated areas of the refuge subject to the following conditions:

(i) We require a North Carolina Waterfowl Hunt Permit or a refuge hunt permit (signed brochure). You must carry a permit while hunting on the refuge.

(ii) You must hunt from your assigned blind location.

(iii) We allow hunting from ½ hour before legal sunrise to 4:20 p.m. (as governed by County regulations).

(iv) We allow hunters to access the refuge 1½ hours before legal shooting time until 1 hour after legal shooting time.

(2) [Reserved]

(3) *Big game hunting.* We allow hunting of deer and feral hog on limited dates on designated areas of the refuge subject to the following conditions:

(i) We require a refuge hunting permit (signed brochure) that hunters must sign and carry while hunting on the refuge.

(ii) We allow the use of shotguns, muzzleloading rifles/shotguns, and bows in designated units. We prohibit the use of all other rifles and crossbows.

(iii) We allow hunters on the refuge from 1 hour before legal sunrise to 1 hour after legal sunset.

(iv) We allow the use of portable tree stands, but hunters must remove them from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(v) Hunters may access the refuge by foot, boat, and/or vehicle, but we prohibit hunting from a boat or vehicle.

(vi) Each youth hunter, age 15 and younger, must have successfully completed a State-approved hunter safety course, and must possess and carry proof of certification. While hunting, each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. An adult may directly supervise up to two youth hunters.

(4) [Reserved]

(d) *Great Dismal Swamp National Wildlife Refuge.* Refer to § 32.65(e) for regulations.

(e) *Mackay Island National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of deer on designated areas of the refuge subject to the following conditions:

(i) We require a refuge deer hunting permit (signed brochure) that hunters must sign and carry while hunting on the refuge.

(ii) We allow the use of shotguns, muzzleloading rifles/shotguns, pistols, crossbows, and bows. We prohibit the use of all other rifles.

(iii) We allow access to hunting areas from 5 a.m. until 8 p.m.

(iv) We prohibit carrying a loaded firearm on or within 50 feet (15 meters) of gravel roads.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing only from legal sunrise to legal sunset from March 15 through October 15, except that we allow fishing along the Marsh Causeway year-round. The 0.3 Mile Loop Trail and the terminus of the canal immediately adjacent to the Visitor Center are open year-round, but we close them during the refuge permit deer hunts.

(ii) Anglers must attend all fishing lines.

(f) *Mattamuskeet National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow the hunting of tundra swan, goose, duck, and coot on designated areas of the refuge subject to the following conditions:

(i) We require refuge-issued permits (name and address) that you must validate at the refuge headquarters, sign, and possess while hunting.

(ii) Refuge personnel will assign you to a hunting blind. You must hunt from your assigned blind.

(iii) Hunters may only shoot crippled waterfowl from outside the assigned blind.

(iv) Hunters may use decoys, but you must remove them from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(v) All waterfowl hunters must check out at the assigned station prior to leaving the refuge.

(vi) Shooting hours are from ½ hour before legal sunrise until 12 p.m. (noon). Hunting hours on the first day of the youth hunt are from 1 p.m. until legal sunset.

(vii) We allow the use of dogs when hunting.

(viii) We allow the taking of only Canada goose during the State September Canada goose season subject to the following conditions:

(A) We allow hunting Monday through Saturday during the State season.

(B) The hunter must possess and carry a validated refuge permit (name and address) while hunting.

(2) [Reserved]

(3) *Big game hunting.* We allow the hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) The hunter must possess and carry a signed, validated refuge permit (name and address) and a State-issued lottery permit while hunting.

(ii) Hunters may take one antlered deer and one antlerless deer per day, or two antlerless deer per day.

(iii) Hunters may take deer with shotgun, bow and arrow, crossbow, or muzzleloading rifle/shotgun.

(iv) We allow hunters on the refuge from 1 hour before legal shooting time until 1 hour after legal shooting time.

(v) Hunters can use boats to access hunt areas, but we prohibit hunting from a boat.

(vi) We allow the use of only portable blinds and deer stands. Blinds must display hunter orange that is visible from all directions. Hunters with a valid permit (name and address) may erect one portable blind or stand the day before the start of their hunt and must remove it at the end of the second day of that 2-day hunt (see § 27.93 of this chapter). Any stands or blinds left overnight on the refuge must have a tag with the hunter's State hunting license number.

(vii) Hunters must wear a minimum of 500 square inches (3,250 square centimeters) of hunter-orange material above the waist that is visible from all directions.

(viii) An adult may only supervise one youth hunter. The youth hunter must be within sight and normal voice contact of the adult.

(ix) We allow the use of only biodegradable-type flagging.

(4) *Sport fishing.* We allow sport fishing and crabbing on designated areas of the refuge subject to the following conditions:

(i) We are open to sport fishing, bow fishing, and crabbing from March 1 through October 31, from ½ hour before legal sunrise to ½ hour after legal sunset, except that we allow bank fishing and crabbing year-round from:

(A) State Route 94 (24 hours a day);

(B) The north bridge and south of the north bridge at Lake Landing;

(C) The Outfall Canal water control structure;

(D) The Central Canal bridge on Wildlife Drive; and

(E) Along the west main and east main canal between the Entrance Road metal bridge and Number One East Canal as posted.

(ii) We prohibit herring dipping.

(iii) We allow crabbing subject to the following conditions:

(A) We allow only five handlines and hand-activated traps per person. Owners must be in attendance, and must remove all handlines and traps daily (see §§ 27.93 and 27.94 of this chapter).

(B) We prohibit crab pots.

(C) You may only take or possess 12 crabs per person per day.

(g) *Pea Island National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing and crabbing on designated areas of the refuge subject to the following condition: We require all recreational nighttime surf anglers to possess and carry a signed, self-service refuge nighttime surf fishing permit (signed brochure) while fishing on the refuge between ½ hour after legal sunset and ½ hour before legal sunrise.

(h) *Pee Dee National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of dove on designated dates and areas of the refuge subject to the following conditions:

(i) We require all hunters to possess and carry a signed refuge general hunt permit (signed brochure) and government-issued picture identification while in the field.

(ii) Validly licensed adults, age 21 or older, holding applicable permits must accompany and supervise, remaining in sight and voice contact at all times, any youth hunters (age 18 and younger). Each adult may supervise no more than two youth hunters. Youth hunters must possess and carry evidence of successful completion of a State-approved hunter education course.

(iii) We prohibit hunting on Sundays.

(2) *Upland game hunting.* We allow hunting of quail, rabbit, squirrel, raccoon, and opossum on designated dates and areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (h)(1)(i) through (iii) of this section apply (with the following exception to the condition at paragraph (h)(1)(ii): Each adult may supervise no more than one youth hunter).

(ii) We require the use of dogs on raccoon/opossum hunts. All dogs must wear a collar displaying the owner's contact information.

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated dates and areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (h)(1)(i) through (iii) of this section apply (with the following exception to the condition at paragraph (h)(1)(ii): Each adult may supervise no more than one youth hunter).

(ii) We require each person participating in a muzzleloader or firearms quota hunt to possess a nontransferable refuge quota hunt permit. You may apply for quota hunt permits by submitting a completed hunt application (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) available at the refuge office.

(iii) During big game hunts, we prohibit hunters from entering the refuge earlier than 4 a.m., and they must leave the refuge no later than 2 hours after legal sunset.

(iv) Youth quota hunts are for hunters ages 10 through 17.

(v) During refuge firearms deer hunts, all participants must wear at least 500 square inches (3,250 square centimeters) of unbroken, fluorescent-orange material above the waist as an outer garment while hunting and while en route to and from hunting areas.

(vi) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(vii) We prohibit placing a tree stand on the refuge more than 4 days prior to the opening day of the deer hunt in which hunters will be participating, except for participants of the youth deer hunt, who may place tree stands no more than 7 days prior to the hunt day. Archery hunters must remove their tree stands by the last day of that hunt (see § 27.93 of this chapter). Muzzleloader and firearms hunters must remove their tree stands by the day after the last day of that hunt (see § 27.93 of this chapter).

(viii) You must check all deer taken on the refuge at the refuge check station on the date of take prior to removing the animal from the refuge.

(ix) During refuge muzzleloader and firearms deer hunts, we prohibit all other public use in refuge hunting areas.

(x) We prohibit big game hunting within 100 feet (30 meters) of any vehicle or road open to vehicle traffic.

(4) *Sport fishing.* We allow sport fishing on designated dates and areas of the refuge subject to the following conditions:

(i) We require all anglers to possess and carry a signed refuge sport fishing permit (signed brochure) and

government-issued picture identification while fishing in refuge waters.

(ii) We prohibit possession or use of trotlines, set hooks, gigs, jug lines, limblines, snagging devices, nets, seines, fish traps, or other special devices.

(i) *Pocosin Lakes National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, swan, dove, woodcock, rail, and snipe on designated areas of the refuge subject to the following conditions:

(i) We require consent from refuge personnel to enter and retrieve legally taken game animals from closed areas, including ''No Hunting Zones.''

(ii) We require all hunters and anglers to possess and carry a signed, self-service refuge hunting/fishing permit (signed brochure) while hunting and fishing on the refuge. We require all hunters age 16 and older to purchase and carry a special refuge recreational activity permit (name/address/phone number).

(iii) We allow hunters to enter and remain in hunting areas from 2 hours before legal sunrise until 2 hours after legal sunset when we allow hunting in those areas.

(iv) We allow the use of all-terrain vehicles (ATVs) only on designated ATV roads (see § 27.31 of this chapter) and only to transport hunters and their equipment to hunt and scout. We allow hunting from ATVs while on these designated ATV roads when they are stationary and the engine is turned off. We allow ATV use only on the ATV roads at the following times:

(A) When we open the ATV road and surrounding area to hunting;

(B) One week prior to the ATV road and surrounding area opening to hunting; and

(C) On Sundays, when we open the ATV road and surrounding area for hunting the following Monday.

(v) We allow the use of biodegradable-type flagging.

(vi) We allow the use of only portable blinds and temporary blinds constructed of natural materials. You must remove portable blinds at the end of each day (see § 27.93 of this chapter).

(vii) We allow the use of dogs to point and retrieve migratory game birds.

(2) *Upland game hunting.* We allow hunting of quail, squirrel, raccoon, opossum, rabbit, beaver, nutria, and fox on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (i)(1)(i) through (iv) of this section apply.

(ii) We only allow the taking of beaver and nutria with firearms and only during those times when the area is open to hunting of other game animals with firearms.

(iii) We prohibit the hunting of raccoon and opossum during, 5 days before, and 5 days after the State bear seasons. Outside of these periods, we allow the hunting of raccoon and opossum at night but only while possessing a General Special Use Application and Permit (FWS Form 3–1383–G).

(iv) We prohibit the use of rifles, other than .22-caliber rimfire rifles for hunting, and we prohibit the use of pistols for hunting.

(v) We allow the use of dogs for pointing and retrieving upland game and for chasing rabbit (but not fox). We prohibit possession of buckshot or slugs while hunting with dogs.

(3) *Big game hunting.* We allow hunting of deer, turkey, and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (i)(1)(i) through (iv) of this section apply.

(ii) You may hunt turkey only if you carry a valid permit (General Activities Special Use Permit Application, FWS Form 3–1383–G). These permits are valid only for the dates and areas shown on the permit. You may possess only approved nontoxic shot (see § 32.2(k)) while hunting turkeys west of Evans Road and on the Pungo Unit.

(iii) We prohibit the use of rifles and pistols.

(iv) We allow deer hunting on the Pungo Unit only through the end of October each season, except that we allow deer hunting with archery equipment on the Pungo Unit through the end of November.

(v) We allow hunters to take feral hogs in any area that is open to hunting deer using only those weapons authorized for taking deer. On the Frying Pan tracts, we also allow hunters to take feral hogs, using only those weapons authorized for taking deer, whenever we open those tracts to hunting any game species with firearms.

(vi) We allow the use of only portable deer stands (tree climbers, ladders, tripods, etc.).We require that you remove all stands, blinds, and other personal property at the end of each day (see § 27.93 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing in Pungo Lake and New Lake only from March 1 through October 31, except that we close Pungo Lake and the entire Pungo Unit to fishing during the limited big game hunts.

(ii) We allow fishing only from ½ hour before legal sunrise until ½ hour after legal sunset.

(j) *Roanoke River National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck and coot on designated areas of the refuge.

(2) *Upland game hunting.* We allow hunting of squirrel, raccoon, and opossum on designated areas of the refuge.

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge.

(4) [Reserved]

(k) *Swanquarter National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow the hunting of tundra swan, goose, brant, duck, teal, and coot on designated areas of the refuge subject to the following conditions:

(i) We allow portable blinds. You must remove blinds, decoys, and other personal property at the end of each day's hunt (see § 27.93 of this chapter).

(ii) We prohibit hunters/hunt parties from hunting closer than 150 yards (135 meters) apart.

(iii) We allow hunters to enter and remain in open hunting areas from 1 hour before legal shooting time until 1 hour after legal shooting time.

(2)–(4) [Reserved]

§ 32.53 North Dakota.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Ardoch National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow shore fishing and ice fishing on designated areas of the refuge subject to the following condition: We allow vehicles and fish houses on the ice as conditions allow.

(b) *Arrowwood National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of pheasant, sharp-tailed grouse, partridge, cottontail rabbit, and fox on designated areas of the refuge subject to the following conditions:

(i) We allow hunting of upland game birds on the day following the close of the State firearm deer season through the end of the regular upland bird season.

(ii) We allow hunting of cottontail rabbit and fox on the day following the close of the State firearm deer season through March 31.

(3) *Big game hunting.* We allow deer hunting on designated areas of the refuge subject to the following conditions:

(i) We prohibit entering the refuge before legal shooting hours on the opening day of firearms deer season. We require all hunters to be off the refuge 1½ hours after legal sunset.

(ii) We allow deer hunting on the refuge during the State youth deer season.

(iii) After harvesting a deer, firearm deer hunters must wear blaze orange on the refuge.

(iv) We allow access by foot travel only. You may use a vehicle on designated refuge roads and trails to retrieve deer during the following times only: 9:30 to 10 a.m.; 1:30 to 2 p.m.; and ½ hour after legal sunset for 1 hour.

(v) We allow temporary tree stands, blinds, and game cameras for daily use; you must remove them by the end of each day's hunt (see § 27.93 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow boats at idle speed only on Arrowwood Lake and Jim Lake from May 1 to September 30 of each year.

(ii) We allow ice fishing and dark house spearfishing. We allow snowmobiles, all-terrain vehicles (ATVs), utility terrain vehicles (UTVs), motor vehicles, and fish houses on the ice as conditions allow.

(iii) You may use and leave fish houses on the ice overnight until March 15.

(c) *Arrowwood Wetland Management District*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the district subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the district.

(3) *Big game hunting.* We allow big game hunting on designated areas of the district.

(4) *Sport fishing.* We allow sport fishing on designated areas of the district subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by legal sunset (see §§ 27.93 and 27.94 of this chapter).

(d) *Audubon National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of ring-necked pheasant, gray partridge, and sharp-tailed grouse on designated areas of the refuge subject to the following conditions:

(i) We open to upland game hunting annually on the day following the close of the regular deer gun season, and we close as governed by the State season.

(ii) We allow game retrieval without a firearm up to 100 yards (90 meters) inside the refuge boundary fence and closed areas of the refuge. Retrieval time may not exceed 10 minutes. You may use dogs to assist in retrieval.

(3) *Big game hunting.* We allow hunting of white-tailed and mule deer on designated areas of the refuge subject to the following conditions:

(i) We close the refuge to hunting during the State's special youth deer hunting season.

(ii) Hunters may use designated refuge roads to retrieve downed deer.

(iii) We allow only portable tree stands. You must remove all tree stands at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(4) *Sport fishing.* We allow ice fishing on designated areas of the refuge.

(e) *Audubon Wetland Management District*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the district subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the district.

(3) *Big game hunting.* We allow big game hunting on designated areas of the district.

(4) *Sport fishing.* We allow sport fishing on designated areas of the district subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day's fishing activity (see §§ 27.93 and 27.94 of this chapter).

(f) *Chase Lake National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow deer hunting on designated areas of the refuge.

(4) [Reserved]

(g) *Chase Lake Wetland Management District*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the district subject to the following conditions: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the district.

(3) *Big game hunting.* We allow big game hunting on designated areas of the district.

(4) *Sport fishing.* We allow sport fishing on designated areas of the district subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day's fishing activity (see §§ 27.93 and 27.94 of this chapter).

(h) *Crosby Wetland Management District*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the district subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the district.

(3) *Big game hunting.* We allow big game hunting on designated areas of the district.

(4) *Sport fishing.* We allow sport fishing on designated areas of the district subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day's fishing activity (see §§ 27.93 and 27.94 of this chapter).

(i) *Des Lacs National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of sharp-tailed grouse, Hungarian partridge, turkey, and ring-necked pheasant on designated areas of the refuge subject to the following conditions:

(i) We open for upland game bird hunting on the day following the close of the regular deer gun season through the end of the State season.

(ii) We allow the use of hunting dogs for retrieval of upland game.

(iii) We allow fox hunting from the day following the regular firearm deer season until March 31.

(iv) We prohibit accessing refuge lands from refuge waters.

(3) *Big game hunting.* We allow deer and moose hunting on designated areas of the refuge subject to the following conditions:

(i) We only allow the use of portable tree stands and ground blinds. We prohibit leaving stands and blinds overnight on the refuge (see § 27.93 of this chapter).

(ii) We prohibit entry to the refuge before 12 p.m. (noon) on the first day of the respective bow, gun, or muzzleloader deer hunting seasons.

(iii) The condition set forth at paragraph (i)(2)(iv) of this section applies.

(4) [Reserved]

(j) *Devils Lake Wetland Management District*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the district subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the district subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(3) *Big game hunting.* We allow big game hunting on designated areas of the district subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the district subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day's fishing activity (see §§ 27.93 and 27.94 of this chapter).

(k) *J. Clark Salyer National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge subject to the following condition: We allow the use of dogs for hunting and retrieving game birds.

(2) *Upland game hunting.* We allow hunting of ruffed and sharp-tailed grouse, Hungarian partridge, turkey, ring-necked pheasant, and fox on designated areas of the refuge subject to the following conditions:

(i) We open to hunting for sharp-tailed grouse, Hungarian partridge, and ring-necked pheasant north of the Willow-Upham road on the day following the close of the regular firearm deer season.

(ii) We open the refuge to fox hunting on the day following the close of the regular firearm deer season. Fox hunting on the refuge closes March 31.

(iii) Hunters may possess only approved nontoxic shot (see § 32.2(k)) for all upland game hunting, including turkey.

(3) *Big game hunting.* We allow hunting of deer and moose on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a refuge permit to hunt antlered deer on the refuge outside the nine public hunting areas during the regular firearms season.

(ii) We prohibit entry to the refuge before 12 p.m. (noon) on the first day of the respective bow, gun, or muzzleloader deer hunting seasons. You may access refuge roads open to the public before 12 p.m. (noon).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow boat fishing from May 1 through September 30.

(ii) We allow ice fishing and dark house spearfishing. We allow snowmobiles, all-terrain vehicles (ATVs), utility terrain vehicles (UTVs), motor vehicles, and fish houses on the ice as conditions allow.

(l) *J. Clark Salyer Wetland Management District*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the district subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the district.

(3) *Big game hunting.* We allow big game hunting on designated areas of the district.

(4) *Sport fishing.* We allow sport fishing on designated areas of the district subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day's fishing activity (see §§ 27.93 and 27.94 of this chapter).

(m) *Kulm Wetland Management District*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the district subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the district.

(3) *Big game hunting.* We allow big game hunting on designated areas of the district.

(4) *Sport fishing.* We allow sport fishing on designated areas of the district subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day's fishing activity (see §§ 27.93 and 27.94 of this chapter).

(n) *Lake Alice National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the refuge subject to the following conditions:

(i) We allow motorized boats only during the migratory game bird hunting season; however, motors must not exceed 10 horsepower.

(ii) You must remove all boats, decoys, portable blinds, other personal property, and any materials brought onto the refuge for blind construction by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow hunting of ring-necked pheasants, sharp-tailed grouse, gray partridge, cottontail rabbit, jackrabbit, snowshoe hare, and fox on designated areas of the refuge.

(3) *Big game hunting.* We allow deer and fox hunting on designated areas of the refuge subject to the following conditions:

(i) We prohibit trapping.

(ii) We allow portable tree stands. Hunters must remove tree stands from the refuge by the end of each day's hunt (see § 27.93 of this chapter).

(4) *Sport fishing.* We allow ice fishing on designated areas of the refuge subject to the following conditions:

(i) We allow vehicles and fish houses on the ice as conditions allow.

(ii) We allow public access for ice fishing from 5 a.m. to 10 p.m.

(iii) You must remove ice fishing shelters and personal property from the refuge by 10 p.m. each day (see §§ 27.93 and 27.94 of this chapter).

(o) *Lake Ilo National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We open the lake to fishing from 5 a.m. to 10 p.m. year round.

(ii) We open the refuge to ice fishing from October 1 through March 31.

(p) *Lake Nettie National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed and mule deer

on designated areas of the refuge subject to the following conditions:

(i) We allow only portable tree stands.

(ii) Hunters must remove tree stands from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(4) [Reserved]

(q) *Lake Zahl National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of sharp-tailed grouse, Hungarian partridge, and ring-necked pheasant on designated areas of the refuge subject to the following conditions:

(i) We open to upland game bird hunting on the day following the close of the regular deer gun season through the end of the State season.

(ii) We allow the use of hunting dogs to retrieve upland game.

(3) *Big game hunting.* We allow deer hunting on designated areas of the refuge subject to the following conditions:

(i) You may only use portable tree stands and ground blinds. We prohibit leaving stands and blinds overnight (see § 27.93 of this chapter).

(ii) We prohibit entry to the refuge before 12 p.m. (noon) on the first day of the respective archery, gun, or muzzleloader deer hunting season.

(4) [Reserved]

(r) *Long Lake National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of ring-necked pheasant, sharp-tailed grouse, and grey partridge on designated areas of the refuge subject to the following condition: We open to upland game bird hunting annually on the day following the close of the firearm deer season through the close of the State season.

(3) *Big game hunting.* We allow hunting of deer on designated areas of the refuge.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: We only allow fishing from legal sunrise to legal sunset.

(s) *Long Lake Wetland Management District*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the district subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the district.

(3) *Big game hunting.* We allow big game hunting on designated areas of the district.

(4) *Sport fishing.* We allow sport fishing on designated areas of the district subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day's fishing activity (see §§ 27.93 and 27.94 of this chapter).

(t) *Lostwood National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of sharp-tailed grouse, Hungarian partridge, and ring-necked pheasant on designated areas of the refuge subject to the following condition: We allow the use of dogs to retrieve upland game.

(3) *Big game hunting.* We allow deer and moose hunting on designated areas of the refuge subject to the following condition: We prohibit entry to the refuge before 12 p.m. (noon) on the first day of the respective archery, gun, or muzzleloader deer hunting season.

(4) [Reserved]

(u) *Lostwood Wetland Management District*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the district subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the district.

(3) *Big game hunting.* We allow big game hunting on designated areas of the district.

(4) *Sport fishing.* We allow sport fishing on designated areas of the district subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day's fishing activity (see §§ 27.93 and 27.94 of this chapter).

(v) *Rose Lake National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: We allow vehicles and fish houses on the ice as conditions allow.

(w) *Sibley Lake National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge.

(4) [Reserved]

(x) *Silver Lake National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: We allow vehicles and fish houses on the ice as conditions allow.

(y) *Slade National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of deer on designated areas of the refuge.

(4) [Reserved]

(z) *Stewart Lake National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow ice or shore fishing on designated areas of the refuge.

(aa) *Tewaukon National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow ring-necked pheasant hunting on designated areas of the refuge subject to the following condition: We open for upland game hunting on the first Monday following the close of the State deer gun season through the close of the State pheasant season.

(3) *Big game hunting.* We allow deer hunting on designated areas of the refuge subject to the following conditions:

(i) We allow deer bow hunting on designated areas of the refuge as governed by State regulations.

(ii) The deer bow hunting season closes September 30, reopens the Friday following the close of the State gun deer season, and continues through the end of the State archery deer season.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(bb) *Tewaukon Wetland Management District*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the district subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the district.

(3) *Big game hunting.* We allow big game hunting on designated areas of the district.

(4) *Sport fishing.* We allow sport fishing on designated areas of the district subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day (see §§ 27.93 and 27.94 of this chapter).

(cc) *Upper Souris National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of wild turkey, sharp-tailed grouse, Hungarian partridge, and

pheasant on designated areas of the refuge subject to the following conditions:

(i) We allow the use of dogs for hunting and retrieving of upland game birds with the exception of wild turkey.

(ii) We allow hunters on the refuge from 5 a.m. until 10 p.m.

(3) *Big game hunting.* We allow deer and moose hunting on designated areas of the refuge subject to the following conditions:

(i) We only allow the use of portable tree stands and ground blinds. You must remove stands and blinds from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(ii) The condition set forth at paragraph (cc)(2)(ii) of this section applies.

(iii) We prohibit entry to the refuge before 12 p.m. (noon) on the first day of the respective bow, gun, or muzzleloader deer hunting seasons.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow the use of fishing boats, canoes, kayaks, and float tubes in designated boat fishing areas from Lake Darling Dam north to State Highway 28 (Greene) crossing for fishing from May 1 through September 30.

(ii) We allow fishing from nonmotorized vessels only on the Beaver Lodge Canoe Trail from May 1 through September 30.

(iii) We allow boating and fishing from vessels on the Souris River from Mouse River Park to the north boundary of the refuge from May 1 through September 30.

(iv) We allow snowmobiles, all-terrain vehicles (ATVs), utility terrain vehicles (UTVs), motor vehicles, and fish houses on the ice as conditions allow from Lake Darling Dam north to Carter Dam (Dam 41) for ice fishing.

(v) We allow you to place fish houses overnight on the ice of Lake Darling as governed by State regulations.

(vi) We allow anglers to place portable fish houses on the Souris River north of Carter Dam (Dam 41) and south of Lake Darling Dam for ice fishing, but anglers must remove the fish houses from the refuge at the end of each day's fishing activity (see § 27.93 of this chapter).

(vii) We allow anglers on the refuge from 5 a.m. until 10 p.m.

§ 32.54 Ohio.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Cedar Point National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow white-tailed deer hunting on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a State-issued permit. All hunters must check in and out at the refuge check station. We require hunters to check out with the State-issued Harvest Card no later than 2 hours after the conclusion of their controlled hunt.

(ii) We prohibit hunting or shooting within 150 feet (45.7 meters) of any structure, building, or parking lot.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing from legal sunrise to legal sunset.

(ii) We prohibit the taking of turtle, frog, leech, minnow, crayfish, and mussel (clam) species by any method on the refuge (see § 27.21 of this chapter).

(iii) You must remove all boats, ice fishing structures, devices, and personal property from the refuge each day (see § 27.93 of this chapter).

(b) *Ottawa National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, rail, gallinule, coot, dove, woodcock, and snipe on designated areas of the refuge subject to the following conditions:

(i) On controlled waterfowl hunt units, we allow hunting of goose, duck, and coot as governed by with State regulations and subject to the following conditions:

(A) You must stop hunting at 12 p.m. (noon) each day.

(B) You may possess no more than 25 shot shells.

(ii) On public hunting units, we allow hunting of duck, goose, rail, gallinule, coot, dove, woodcock, and snipe subject to the following conditions:

(A) We allow refuge access from 1½ hours prior to the State-listed morning shooting time and 1 hour after the State-listed evening shooting time.

(B) We allow the use of dogs when hunting, provided the dog is under the immediate control of the hunter at all times.

(C) We allow nonmotorized boats in areas open to waterfowl hunting during the waterfowl hunting seasons with the following exception: We allow motorized boats in the Metzger Marsh and Two Rivers units.

(2) *Upland game hunting.* We allow hunting of pheasant, squirrel, rabbit, fox, raccoon, skunk, opossum, groundhog, and coyote on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(1)(ii)(A) and (B) of this section apply.

(ii) We prohibit the use of buckshot for any hunting on the refuge.

(3) *Big game hunting.* We allow hunting of white-tailed deer and wild turkey on designated areas of the refuge subject to the following conditions:

(i) On controlled deer hunt units, we allow hunting of white-tailed deer only as governed by State regulations and subject to the following conditions:

(A) We require hunters to possess and carry a State-issued permit. You must check in and out at the refuge check station using the State-issued Harvest Card no later than 2 hours after the conclusion of your hunt.

(B) We prohibit hunting or shooting within 150 feet (45.7 meters) of any structure, building, or parking lot.

(ii) We allow hunting of white-tailed deer and turkey on designated public hunting units of the refuge as governed by State regulations and subject to the following conditions:

(A) The conditions set forth at paragraphs (b)(1)(ii)(A) and (b)(2)(ii) of this section apply.

(B) We allow only portable deer stands for hunting. We allow only one tree stand per hunter per refuge unit. We allow placement of tree stands after September 1, and require hunters to remove tree stands by March 1 of each year (see § 27.93 of this chapter). We require deer stands to be labeled with the hunter's Ohio customer identification number, which is on the hunting license.

(C) For hunting, you may use or possess only approved nontoxic shot shells (see § 32.2(k)) while in the field, including shot shells used for hunting wild turkey.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing from legal sunrise to legal sunset.

(ii) We prohibit the taking of any turtle, frog, leech, minnow, crayfish, and mussel (clam) species by any method on the refuge (see § 27.21 of this chapter).

(iii) You must remove all boats, ice fishing structures, devices, and personal property from the refuge each day (see § 27.93 of this chapter).

§ 32.55 Oklahoma.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Deep Fork National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, dark geese, merganser, and coot on

designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a signed refuge hunt tearsheet (signed brochure).

(ii) We allow waterfowl hunting on Fridays, Saturdays, Sundays, and Mondays, from ½ hour before legal sunrise until 1 p.m.

(iii) You may only use portable blinds or blinds constructed of natural dead vegetation. You must remove blinds, decoys, stands, and all personal equipment at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow hunting of fox and gray squirrel, swamp and cottontail rabbit, and raccoon on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(1)(i) and (iii) of this section apply.

(ii) We allow shotguns, .22- and .17-caliber rimfire rifles, and pistols for rabbit and squirrel hunting.

(iii) For raccoon hunting only, we allow hunting from legal sunset to legal sunrise only.

(iv) We allow the use of dogs when hunting squirrel, rabbit, and raccoon.

(3) *Big game hunting.* We allow hunting of white-tailed deer, wild turkey, and feral hog on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a signed refuge tearsheet (signed brochure) for the archery deer hunt. Hunters must turn in a Big Game Harvest Report (FWS Form 3–2359) by December 31 annually. Failure to submit the report will render the hunter ineligible for the next year's limited season archery deer hunt.

(ii) We will offer a limited season archery deer hunt following the controlled deer hunt.

(iii) You may hunt feral hog during any established refuge hunting season.

(iv) Hunters may place no more than one stand on the refuge. You may place stands starting on the day the hunt begins. You must remove stands the day the hunt ends (see § 27.93 of this chapter).

(4) *Sport fishing.* We allow sport fishing in designated areas of the refuge subject to the following conditions:

(i) We allow year-round fishing on the Deep Fork River and at the Montezuma Creek Fishing Area. We allow fishing on all other sloughs, farm ponds, and impoundments not connected to the River from March 1 through October 31.

(ii) We allow bowfishing on the refuge from legal sunrise to legal sunset from March 1 to September 30.

(iii) We prohibit snagging and netting.

(iv) We allow the use of trotlines, juglines, limblines, and yo-yos only in the Deep Fork River; we prohibit their use in any other areas on the refuge.

(b) *Little River National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck on designated areas of the refuge subject to the following conditions:

(i) You may only use portable blinds. You must remove blinds, decoys, and all personal equipment from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(ii) You may hunt from ½ hour before legal sunrise until 12 p.m. (noon) each day.

(iii) You must possess and carry a signed refuge tearsheet (signed brochure) while hunting.

(iv) We close the refuge to duck hunting during controlled deer hunts.

(2) *Upland game hunting.* We allow hunting of gray and fox squirrel, eastern cottontail and swamp rabbit, beaver, coyote, and raccoon on designated areas of the refuge subject to the following conditions:

(i) We open squirrel season from May 15 through the Friday before the State deer muzzleloader season. We reopen squirrel season on the Monday after the last refuge controlled deer hunt through January 31.

(ii) We open rabbit season from October 1 through the Friday before the State deer muzzleloader season. We reopen rabbit season on the Monday after the last refuge controlled deer hunt through January 31.

(iii) You may take take beaver, raccoon, and coyote as incidental take to any daytime established refuge hunt with legal weapons and a signed hunt tearsheet for the current hunt season.

(iv) Hunters may only hunt upland game during designated refuge seasons.

(v) We allow the use of dogs when hunting squirrel, rabbit, and raccoon.

(3) *Big game hunting.* We allow hunting of white-tailed deer, turkey, and feral hog on designated areas of the refuge subject to the following conditions:

(i) We open the deer archery season from October 1 through the Friday before the State deer muzzleloader season. We reopen deer season on the Monday after the last refuge controlled deer hunt through January 15.

(ii) We open the deer gun season during the months of October and November. Hunters must pay a fee and obtain a controlled hunt permit through the State.

(iii) We open the turkey archery season from October 1 through the Friday before the State deer muzzleloader season. We reopen turkey season on the Monday after the last refuge controlled deer hunt through January 15.

(iv) We open the turkey gun season during the month of April. Hunters must pay a fee and obtain a controlled hunt permit through the State.

(v) Shotgun hunters may only possess approved nontoxic shot (see § 32.2(k)) while in the field while hunting turkey.

(vi) You may hunt feral hog during any established refuge hunting season. Refuge signed tearsheet (signed brochure) and legal weapons apply for the current hunting season.

(vii) Hunters may only hunt big game during designated refuge seasons.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(c) *Optima National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of mourning dove on designated areas of the refuge.

(2) *Upland game hunting.* We allow hunting of ring-necked pheasant, bobwhite and scaled quail, cottontail rabbit, and jackrabbit on the refuge subject to the following condition: We allow only shotguns for upland game hunting.

(3) *Big game hunting.* We allow hunting of white-tailed deer, mule deer, and turkey on the refuge subject to the following conditions:

(i) We allow archery and shotguns during spring turkey season.

(ii) We allow only archery hunting during fall seasons.

(4) [Reserved]

(d) *Ozark Plateau National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of cottontail rabbit and gray and fox squirrel on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a signed refuge tearsheet (signed brochure).

(ii) We prohibit falconry.

(iii) The only allowed methods of take are shotguns, .17 or .22 rimfire rifle, and archery equipment as governed by State regulations.

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hogs on designated portions of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (d)(2)(i) of this section applies.

(ii) We only allow the use of archery equipment.

(iii) We allow the use of portable deer stands only. You must remove stand(s) from the refuge within 2 days of the last day of the season (see § 27.93 of this chapter).

(iv) We allow the incidental take of feral hogs during the deer, rabbit, and squirrel hunting seasons.

(4) [Reserved]

(e) *Salt Plains National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, American coot, sandhill crane, mourning dove, white-winged dove, Eurasian collared dove, and rock dove on designated areas of the refuge subject to the following conditions:

(i) We allow hunting from ½ hour before legal sunrise until 12 p.m. (noon).

(ii) We open public hunting areas to all access 2 hours prior to legal shooting time, and close those areas at 12 p.m. (noon).

(2) *Upland game hunting.* We allow hunting of northern bobwhite quail and ring-necked pheasant on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (e)(1)(i) and (ii) of this section apply.

(3) *Big game hunting.* We allow hunting of white-tailed deer, wild turkey, American beaver, and feral hog on designated areas of the refuge subject to the following conditions:

(i) We require a limited hunt permit (State-issued) for controlled hunts for deer and spring wild turkey hunts.

(ii) White-tailed deer and wild turkey hunters may place no more than one stand/blind on the refuge. You may place stands starting on the day the hunt begins. You must remove stands the day the hunt ends (see § 27.93 of this chapter).

(iii) White-tailed deer and wild turkey hunters must check-in and out at a refuge check station. Refuge staff provide a hunter briefing as part of check-in.

(iv) You may take feral hogs and American beaver only as incidental game during a controlled hunt, open upland game season, or open migratory game bird season using a State-approved method of take for that season.

(v) Wild turkey hunters must use and only possess approved nontoxic shot (see § 32.2(k)).

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing from April 1 through October 15.

(ii) We prohibit the use of netting, seines, cast nets, trawls, dip nets, and traps.

(iii) Posts used to secure or anchor trotlines must reach a minimum of 2 feet (30 centimeters) above the water surface, and you must mark them to make them clearly visible to boaters. You must remove posts when they are not in use (see § 27.93 of this chapter).

(iv) We only allow youth and persons with disabilities to fish on Bonham Pond subject to the following conditions:

(A) We open to fishing from legal sunrise to legal sunset.

(B) We limit anglers to one pole per person.

(C) We restrict Bonham Pond to catch-and-release fishing only.

(f) *Sequoyah National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, mourning dove, American coot, snipe, and woodcock on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a signed refuge hunt tearsheet (signed brochure).

(ii) We open the refuge to hunting only on Saturdays, Sundays, Mondays, and Tuesdays. We prohibit hunters from entering the land portion of the Sandtown Bottom Unit or any portion of Sally Jones Lake before 5 a.m. Hunters must leave the area by 1 hour after legal sunset.

(iii) We prohibit hunting or shooting within 50 feet (15 meters) of designated roads or parking areas.

(iv) Season lengths and bag limits will be governed by State regulations with the exception that all hunting, except for the conservation light goose season, will close on January 31 of each year. If a conservation light goose season is in effect, State regulations apply with the exception of special hunting days.

(v) You must remove stands, blinds, boats, and other personal property from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(vi) We prohibit hunters from using refuge boat ramps to access hunting areas outside the refuge boundary:

(A) On days when we close the refuge to hunting for certain species; and/or

(B) When hunting species that we do not allow to be hunted on the refuge.

(vii) We restrict the use of airboats within the refuge boundary to the navigation channel and the designated hunting areas from September 1 through March 31.

(2) *Upland game hunting.* We allow hunting of eastern gray and fox squirrel and swamp and eastern cottontail rabbit on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (f)(1)(i) through (iii) and (v) through (vii) of this section apply.

(ii) Season lengths and bag limits will be governed by State regulations with the exception that all upland game hunting will close on January 31 of each year.

(iii) We only allow legal shotguns, and .22 and .17 rimfire rifles, for hunting upland game. You must plug hunting shotguns so that they are incapable of holding more than three shells.

(iv) The east portion of the Sandtown Bottom Unit and the portion of Robert S. Kerr Reservoir, from Tuff boat ramp to the confluence of Vian Creek, are designated as a waterfowl sanctuary that we close to all entry, except for the designated hiking trail, from September 1 through March 31. The closed area is marked with signs and buoys.

(3) *Big game hunting.* We allow hunting of white-tailed deer, wild turkey, and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (f)(1)(i) through (iii) and (v) through (vii) of this section apply.

(ii) We require a limited hunt permit (State-issued) for controlled hunts for archery deer, and for spring wild turkey hunts.

(iii) Hunters must apply to the State-controlled deer hunt drawing administered by the Oklahoma Department of Wildlife Conservation for selection. You must attend a pre-hunt briefing.

(iv) Incidental take of feral hogs may occur during deer, wild turkey, rabbit, and squirrel hunting seasons.

(4) *Sport fishing.* We allow fishing and frogging on designated areas of the refuge subject to the following conditions:

(i) We prohibit fishing or frogging from September 1 through March 31 in the closed zone south of refuge headquarters, as designated by buoys and signs.

(ii) You must remove trotlines from the closed zone before September 1 (see § 27.93 of this chapter).

(iii) The conditions set forth at paragraphs (f)(1)(v) and (vii) of this section apply.

(g) *Tishomingo National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow the hunting of duck, teal, light geese, dark geese, snipe, gallinule, American coot, and merganser on designated areas of the refuge subject to the following conditions:

(i) We allow the hunting of migratory birds every day, but waterfowl hunters must be off the unit by 1 p.m.

(ii) Hunters must possess and carry a signed hunt tearsheet (signed brochure).

(iii) We require the hunters to self-check-in and self-check-out.

(iv) We allow only shotguns for hunting.

(v) We prohibit falconry.

(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer, feral hog,

and turkey on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (g)(1)(ii) of this section applies.

(ii) We require State-controlled deer hunt drawing hunters to attend a pre-hunt briefing.

(iii) You may hunt feral hog during any established refuge hunting season, using the weapon authorized for that particular hunt.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) Anglers may bank and wade fish with pole and line or rod and reel year-round.

(ii) Anglers may use boats from March 1 through September 30 in designated waters.

(iii) Anglers may ''no-wake'' boat fish during the boating season with line and pole or rod and reel, except in areas designated as sanctuary zones.

(iv) Anglers may use trotlines and other set tackle only in the Cumberland Pool (designated areas), Rock Creek, and between the natural banks of the Washita River. Anglers may only use set tackle with anchored floats.

(v) We prohibit use of limblines, throwlines, juglines, and yo-yos.

(vi) We prohibit use of any containers (jugs, bottles) as floats.

(vii) Anglers may fish after legal sunset from a boat (during boating season) in the Cumberland Pool, except in the sanctuary zones. Anglers may fish after legal sunset at the headquarters area, Sandy Creek Bridge, Murray 23, and Nida Point.

(viii) We prohibit bow fishing.

(ix) We prohibit take of fish by use of hands (noodling).

(x) We prohibit take of frog, turtle, or mussel (see § 27.21 of this chapter).

(h) *Tishomingo Wildlife Management Unit*—(1) *Migratory game bird hunting.* We allow hunting of mourning dove and waterfowl on the Tishomingo Wildlife Management Unit of Tishomingo National Wildlife Refuge.

(2) *Upland game hunting.* We allow hunting of quail, squirrel, turkey, and rabbit on the Tishomingo Wildlife Management Unit of Tishomingo National Wildlife Refuge.

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on the Tishomingo Wildlife Management Unit of Tishomingo National Wildlife Refuge.

(4) *Sport fishing.* We allow sport fishing on the Tishomingo Wildlife Management Unit of Tishomingo National Wildlife Refuge.

(i) *Washita National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, merganser, sandhill crane, mourning, white-winged, and Eurasian collared-dove on designated areas of the refuge subject to the following conditions:

(i) We require hunters to carry a signed tearsheet (signed brochure) while hunting duck, goose, merganser, and sandhill crane.

(ii) Duck, goose, merganser, and sandhill crane hunters must hunt only in designated fields on specified days at specified hours.

(iii) We prohibit bringing natural vegetation from outside the refuge onto the refuge to construct temporary blinds. You must remove temporary blinds, decoys, and other hunting equipment from the refuge at the end of each hunt day (see § 27.93 of this chapter).

(2) *Upland game hunting.* We allow hunting of bobwhite quail, cottontail rabbit, and black-tailed jackrabbit on designated areas of the refuge.

(3) *Big game hunting.* We allow hunting of white-tailed deer, feral hog, and Rio Grande wild turkey on designated areas of the refuge subject to the following conditions:

(i) We allow deer and feral hog hunting during the special refuge season. We will hold turkey hunts during the State spring turkey season.

(ii) You must check in and out of hunt areas daily at the refuge office or check station.

(iii) You must take bagged deer, hog, and/or turkey to the refuge check station.

(iv) We will determine bag limits on deer and turkey annually.

(v) We prohibit using handguns for hunting.

(4) *Sport fishing.* We allow fishing in designated areas of the refuge subject to the following conditions:

(i) Anglers may fish from March 15 through October 14 in the Washita River and Foss Reservoir.

(ii) Anglers may bank fish year-round in the Washita River and Foss Reservoir from open areas.

(j) *Wichita Mountains National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, merganser, and coot on designated portions of the refuge subject to the following conditions:

(i) Hunters must possess a current signed refuge hunting tearsheet (signed brochure) while hunting on the refuge.

(ii) We prohibit waterfowl hunting during the refuge controlled elk and deer hunts.

(iii) We allow waterfowl hunting from ½ hour before legal sunrise until 1 p.m.

(iv) We allow the use of hunting dogs only for waterfowl hunting.

(v) You may only build blinds constructed of natural vegetation materials from the refuge.

(vi) Hunters must remove decoys and blinds from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(vii) We prohibit jump shooting.

(viii) We prohibit hunting within 400 feet (122 meters) of any paved road, parking area, or building/dwelling.

(ix) We prohibit shooting from or across any designated trail, road, or parking area.

(x) We prohibit the use of motorized decoys in portions of the refuge designated as wilderness area.

(xi) We prohibit the use of game carts or other mechanical transportation devices on portions of the refuge designated as wilderness area.

(2) [Reserved]

(3) *Big game hunting.* We allow hunting of elk, turkey, and white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) We allow elk, deer, and turkey hunting only during the State-controlled hunt program.

(ii) We allow only five (5) rounds of ammunition per day during controlled elk and white-tailed deer hunts.

(iii) We allow elk and deer hunting with centerfire rifles only; the minimum calibers are .243 for deer and .270 caliber for elk.

(iv) You must possess only approved nontoxic shot (see § 32.2(k)) while in the field while hunting turkey.

(v) You must check all harvested elk and deer through the refuge check station, and attach a metal transportation tag, before leaving refuge property.

(vi) We only allow use of archery equipment and shotgun or muzzleloader with a shot size of #2 or smaller for turkey hunting. We prohibit crossbows.

(vii) You may take feral hogs and coyote only during controlled hunts with weapons approved for that hunt.

(viii) The conditions set forth at paragraphs (j)(1)(viii) and (xi) of this section apply.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) You may take fish only with pole and line or rod and reel.

(ii) We prohibit taking of frogs and turtles (see § 27.21 of this chapter).

(iii) Anglers may use motorized boats on Elmer Thomas Lake; however, we enforce a no-wake rule on the lake.

(iv) We allow fishing after legal sunset on the refuge, but we prohibit all other boating after legal sunset.

§ 32.56 Oregon.

The following refuge units are open for hunting and/or fishing as governed

by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Bandon Marsh National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the refuge subject to the following conditions:

(i) We allow hunting of goose, duck, coot, and snipe 7 days per week on that portion of the refuge west of U.S. Highway 101 and outside the Bandon city limits.

(ii) On the Ni-les'tun Unit of the refuge, we allow hunting of goose, duck, and coot only on Wednesdays, Saturdays, and Sundays.

(iii) You must remove all blinds, decoys, shotshell hulls, and other personal equipment and refuse from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(iv) Hunters accessing the Ni-les'tun Unit via boat must secure or anchor boats and use established boat launch areas. Hunters may park boats within the marsh while they hunt, but we require boats landing on the bank of the Coquille River within the Ni-les'tun Unit to park within a designated location.

(v) Hunters may enter the refuge no earlier than 2 hours before legal sunrise and must exit the refuge no later than 1 hour after legal sunset.

(vi) Hunters may use dogs as an aid to retrieving waterfowl during the hunting season.

(vii) You may enter posted retrieval zones while retrieving downed birds and when traveling to and from the hunting areas. We prohibit discharging firearms while in a retrieval zone.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(b) *Baskett Slough National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck and goose on designated areas of the refuge subject to the following conditions:

(i) We allow only hunters age 17 and younger to participate in the youth waterfowl hunt. Youths must be accompanied by an adult age 21 or older.

(ii) We require youth hunters to obtain a refuge waterfowl hunting permit (Waterfowl Lottery Application, FWS Form 3–2439, Hunt Application—National Wildlife Refuge System). All youth hunting waterfowl must do so from designated blinds.

(iii) You must remove blinds, decoys, and other personal property at the end of each day's hunt (see § 27.93 of this chapter).

(iv) We allow the use of dogs when hunting.

(v) We require waterfowl and goose permit hunters to check in and out at the Hunter Check Station (refuge office), which is open from 1½ hours before legal hunting hours to 8 a.m. and from 11 a.m. to 1 p.m. We prohibit hunting after 12 p.m. (noon).

(vi) We require goose hunters to space themselves no less than 200 yards (183 meters) apart from each other during the early September goose hunt.

(2)–(4) [Reserved]

(c) *Bear Valley National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of deer on designated areas of the refuge subject to the following conditions:

(i) Hunting opens concurrent with the State season and closes October 31.

(ii) We prohibit hunting or public entry of any kind from November 1 to the State-regulated opening day of deer season in the hunting unit.

(iii) We allow walk-in access only from designated entry points.

(4) [Reserved]

(d) *Cold Springs National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, dove, and snipe on designated areas of the refuge subject to the following conditions:

(i) We prohibit discharge of any firearm within ¼ mile (396 meters (m)) of any maintained building or Federal facility, such as, but not limited to, a structure designed for storage, human occupancy, or shelter for animals.

(ii) We allow hunting only on Tuesdays, Thursdays, Saturdays, Sundays, and all federally recognized holidays within the State season, with the exception of dove. We only allow hunting for all dove species within the State mourning dove season.

(iii) On the Memorial Marsh Unit:

(A) We allow waterfowl hunting only from numbered field blind sites. We allow a maximum of four persons per blind site.

(B) Waterfowl hunters must remain within 100 feet (30 m) of the numbered field blind post unless retrieving birds or setting decoys.

(iv) Hunters must remove all decoys and other equipment (see § 27.93 of this chapter) at the end of each day's hunt.

(2) *Upland game hunting.* We allow hunting of upland game birds on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (d)(1)(i) and (ii) of this section apply.

(ii) We allow hunting from 12 p.m. (noon) to the end of legal hunting hours.

(3) *Big game hunting.* We allow hunting of elk on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (d)(1)(i) of this section applies.

(ii) We only allow hunting with a valid, State-issued emergency hunt permit or kill permit.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge.

(e) *Deer Flat National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of mourning dove, goose, duck, coot, and snipe on designated areas of the refuge subject to the following condition: We allow only portable blinds and temporary blinds constructed of natural materials.

(2) *Upland game hunting.* We allow hunting of pheasant, quail, and partridge on designated areas of the refuge subject to the following condition: We prohibit hunting from February 1 through May 31.

(3) *Big game hunting.* We allow hunting of deer on designated areas of the refuge.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following condition: We prohibit shoreline fishing on the islands of the Snake River Sector from February 1 through May 31.

(f) *Hart Mountain National Antelope Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of chukar on designated areas of the refuge.

(3) *Big game hunting.* We allow hunting of deer, antelope, and bighorn sheep on designated areas of the refuge subject to the following conditions:

(i) We allow ground blinds, but we prohibit construction of them earlier than 1 week prior to the opening day of the legal season for which you have a valid permit.

(ii) You must remove blinds within 24 hours of harvesting an animal or at the end of the permittee's legal season (see § 27.93 of this chapter).

(iii) We limit hunters to one blind each, and you must tag blinds with the owner's State license or permit number.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge.

(g) *Julia Butler Hansen Refuge for the Columbian White-Tailed Deer*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, and common snipe on designated areas of the refuge subject to the following conditions:

(i) You must remove all personal property, including decoys and boats,

by 1 hour after legal sunset (see §§ 27.93 and 27.94 of this chapter).

(ii) We open the refuge for day-use access from 1½ hours before legal sunrise until 1½ hours after legal sunset.

(iii) We allow the use of dogs when hunting.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(h) *Klamath Marsh National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, and common snipe on designated areas of the refuge subject to the following condition: We prohibit the use of air-thrust and inboard water-thrust boats when waterfowl hunting.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: We prohibit the use of boats when sport fishing.

(i) *Lewis and Clark National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, and snipe on the designated areas of the refuge subject to the following conditions:

(i) You must remove all personal property, including decoys and boats, by 1 hour after legal sunset (see §§ 27.93 and 27.94 of this chapter).

(ii) We open the refuge for hunting access from 1½ hours before legal sunrise until 1½ hours after legal sunset.

(iii) We allow the use of dogs when hunting.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(j) *Lower Klamath National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, and common snipe on designated areas of the refuge subject to the following conditions:

(i) In the controlled waterfowl hunting area, we require a valid Refuge Recreation Pass (electronic form) for all hunters age 16 and older. All hunters age 15 and younger must remain in the immediate presence of an adult (age 18 or older) at all times while in the field.

(ii) We require advance reservations for the first 2 days of the hunting season. You may obtain a reservation through the waterfowl lottery (Migratory Bird Hunt Application, FWS form 3–2439, Hunt Application—National Wildlife Refuge System) each year.

(iii) Entry hours for hunters begin at 4:30 a.m. unless otherwise posted.

(iv) We prohibit the setting of decoys in retrieving zones.

(2) *Upland game hunting.* We allow hunting of pheasant on designated areas of the refuge subject to the following condition: In the controlled pheasant hunting area, we require a valid permit for all hunters age 16 and older. All hunters age 15 and younger must remain in the immediate presence of an adult (age 18 or older) at all times while in the field.

(3)–(4) [Reserved]

(k) *Malheur National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of dove, goose, duck, merganser, coot, snipe, and pigeon on designated areas of the refuge subject to the following conditions:

(i) We allow nonmotorized boats or boats equipped with only electric motors on the North and South Malheur Lake Hunt Units.

(ii) We allow only portable and temporary hunting blinds.

(iii) You must remove boats, decoys, blinds, materials, and all personal property at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(iv) The South Malheur Lake and Buena Vista Hunt Units open for migratory bird hunting on the fourth Saturday of October and close at the end of the State waterfowl season.

(v) You may access the South Malheur Lake Hunt Unit from the North Malheur Lake Hunt Unit, but no earlier than the fourth Saturday of October.

(2) *Upland game hunting.* We allow hunting of pheasant, quail, partridge, chukar, and rabbit on designated areas of the refuge subject to the following conditions:

(i) We allow hunting of upland game species on designated areas of the Blitzen Valley east of Highway 205 from the fourth Saturday in October through the end of the State pheasant season.

(ii) We allow hunting of upland game species on the North Malheur Lake Hunt Unit concurrent with the State pheasant season.

(3) *Big game hunting.* We allow hunting of deer and pronghorn on designated areas of the refuge.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit ice fishing on, and all public access to, any ice formations.

(ii) We allow fishing year-round on Krumbo Reservoir and in the Blitzen River, East Canal, and Mud Creek upstream from and including Bridge Creek.

(iii) We allow fishing on the north bank of the Blitzen River from Sodhouse Lane downstream to the bridge on the Boat Landing Road between August 1 and September 15.

(iv) We prohibit boats on public fishing areas, except that we allow nonmotorized boats and boats equipped with only electric motors on Krumbo Reservoir.

(l) *McKay Creek National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, snipe, and dove on designated areas of the refuge subject to the following conditions:

(i) We prohibit discharge of any firearm within ¼ mile (396 meters) of any maintained building or Federal facility, such as, but not limited to, a structure designed for storage, human occupancy, or shelter for animals.

(ii) Hunters must remove all decoys and other equipment from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(2) *Upland game hunting.* We allow hunting of upland game birds and turkey on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (l)(1)(i) of this section applies.

(ii) On the opening weekend of the hunting season, we require all hunters to possess and carry a special refuge permit (signed refuge brochure).

(3) *Big game hunting.* We allow hunting of deer and elk on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (l)(1)(i) and (ii) of this section apply.

(ii) We only allow elk hunting only with a valid, State-issued emergency hunt permit or kill permit.

(iii) We allow deer hunting only with a special, State-issued permit.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(m) *McNary National Wildlife Refuge.* Refer to § 32.66(h) for regulations.

(n) *Nestucca Bay National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck and coot on designated areas of the refuge subject to the following conditions:

(i) Hunters must remove all blinds, decoys, shotshell hulls, and other personal equipment and refuse from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(ii) Hunters may enter the refuge no earlier than 2 hours before legal sunrise and must exit the refuge no later than 1 hour after legal sunset.

(iii) Hunters may use dogs as an aid to retrieving waterfowl during the hunting season.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing and shellfishing on designated areas of the refuge.

(o) *Sheldon National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of quail, grouse, and partridge on designated areas of the refuge.

(3) *Big game hunting.* We allow hunting of deer and antelope on designated areas of the refuge.

(4) [Reserved]

(p) *Siletz Bay National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge subject to the following conditions:

(i) We allow waterfowl hunting 7 days per week on refuge lands west of U.S. Highway 101.

(ii) On the Millport Slough South Unit, we allow waterfowl hunting only on Wednesdays, Saturdays, and Sundays.

(iii) Hunters must remove all blinds, decoys, shotshell hulls, and other personal equipment and refuse from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(iv) Hunters may enter the refuge no earlier than 2 hours before legal sunrise and must exit the refuge no later than 1 hour after legal sunset.

(v) Hunters may use dogs as an aid to retrieving waterfowl during the hunting season.

(vi) You may enter posted retrieval zones while retrieving downed birds and when traveling to and from the hunting areas. We prohibit discharging firearms while in a retrieval zone.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow fishing and clamming on designated areas of the refuge only from legal sunrise to legal sunset.

(q) *Tualatin River National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow waterfowl hunting on designated areas of the refuge subject to the following conditions:

(i) Youth age 17 and younger may participate as active hunters. An adult age 21 or older must accompany and supervise youth hunters. We do not allow supervising adults to hunt.

(ii) We allow a maximum of two youth hunters and two nonhunters per hunting blind, for a maximum occupancy of four persons per blind.

(iii) Disabled youth hunters must possess an Oregon Disabilities Hunting and Fishing Permit issued by the Oregon Department of Fish and Wildlife (ODFW) to qualify for preference in using the designated accessible hunting blind.

(iv) We open the hunting season on the last weekend of October, as conditions allow, through the end of the regular State hunting season. We close the refuge for the third-period northwest permit zone goose hunt.

(v) Official hunting start times for game birds are governed by State regulations. Hunting ends at 1 p.m. for the entire season.

(vi) We open the hunt area for access 1½ hours before legal shooting hours.

(vii) You must remove decoys, other personal property, and trash from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(viii) We allow the use of dogs for retrieving waterfowl.

(ix) All hunters must hunt from designated blinds.

(x) All hunters must have visible means of retrieving waterfowl such as float tube, waders, or a dog capable of retrieving.

(xi) Hunters must check-in and check-out with a Refuge representative and submit a Migratory Bird Hunt Report (FWS Form 3–2361) when checking out.

(2)–(4) [Reserved]

(r) *Umatilla National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, dove, and snipe on designated areas of the refuge subject to the following conditions:

(i) We prohibit discharge of any firearm within ¼ mile (396 meters) of any maintained building or Federal facility, such as, but not limited to, a structure designed for storage, human occupancy, or shelter for animals.

(ii) Hunters must remove all decoys and other equipment at the end of each day's hunt (see § 27.93 of this chapter).

(iii) On the McCormack Unit, we allow hunting subject to the following conditions:

(A) The McCormack Unit is a fee-hunt area only open to hunting on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Year's Day during State waterfowl seasons.

(B) We require hunters to stop at the check station to obtain a special refuge permit (signed refuge brochure).

(C) We allow hunting only from assigned areas.

(2) *Upland game hunting.* We allow hunting of upland game birds on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (r)(1)(i) and (ii) of this section apply.

(ii) On the McCormack Fee Hunt Unit, we allow hunting subject to the following conditions:

(A) We allow hunting only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Year's Day from 12 p.m. (noon) to the end of State legal hunting hours.

(B) We require all hunters to possess and carry a special refuge permit (signed refuge brochure).

(3) *Big game hunting.* We allow hunting of deer on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (r)(1)(i) of this section applies.

(ii) We allow hunting only with a special, State-issued permit.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge.

(s) *Upper Klamath National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, and common snipe on designated areas of the refuge.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing in designated areas of the refuge.

(t) *William L. Finley National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow deer and elk hunting on designated areas of the refuge subject to the following conditions:

(i) You may harvest only antlerless elk with appropriate State-issued tags.

(ii) We prohibit hunting from any refuge structure, observation blind, or boardwalk.

(iii) We require all hunters to register at a self-service hunt kiosk. All hunters must complete a Big Game Harvest Report (FWS Form 3–2359) at the end of each hunt day.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing from legal sunrise to legal sunset.

(ii) We allow anglers to use only pole and line, or rod and reel. Anglers must attend their line.

§ 32.57 Pennsylvania.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Cherry Valley National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the refuge subject to the following conditions:

(i) Hunters must obtain a refuge hunt permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System). We require hunters to possess a signed refuge hunt permit at all times while scouting and hunting on the refuge.

(ii) Hunters may enter the refuge 2 hours before legal shooting time and must leave no later than 2 hours after legal shooting time.

(2) *Upland game hunting.* We allow hunting of squirrel, grouse, rabbit,

pheasant, quail, woodchuck, crow, fox, raccoon, opossum, skunk, weasel, coyote, and bobcat on designated areas of the refuge subject to the following conditions:

(i) Hunters must obtain a refuge hunt permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System). We require hunters to possess a signed refuge hunt permit at all times while scouting and hunting on the refuge.

(ii) The condition set forth at paragraph (a)(1)(ii) of this section applies.

(iii) We allow hunting from legal sunrise to legal sunset.

(3) *Big game hunting.* We allow hunting of white-tailed deer, bear, and wild turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(1)(ii) and (a)(2)(i) of this section apply.

(ii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(4) *Sport fishing.* We allow sport fishing on the refuge subject to the following conditions:

(i) The Cherry Creek section located on the former Cherry Valley Golf Course is open for catch-and-release fishing, with only artificial lures and barbless hooks. Anglers at this location must obtain a day-use fishing permit, with a maximum of three anglers per day.

(ii) We allow fishing from ½ hour before legal sunrise to ½ hour after legal sunset.

(iii) We allow only nonmotorized or electric-motor boats in designated areas.

(iv) We prohibit the use of eel chutes, eelpots, and fyke nets.

(v) We prohibit trapping fish for use as bait on the refuge.

(vi) We prohibit the take, collection, capture, killing and possession of any reptile or amphibian on the refuge (see § 27.21 of this chapter).

(b) *Erie National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of mourning dove, woodcock, rail, Wilson's snipe, Canada goose, duck, coot, and crow on designated areas of the refuge subject to the following conditions:

(i) We allow hunting activities on the refuge from September 1 through the end of February. We allow scouting for those same dates, and for the 7 days prior to the start of each season.

(ii) We allow only nonmotorized boats for waterfowl hunting in permitted areas.

(iii) We prohibit field possession of migratory game birds in areas of the refuge closed to migratory game bird hunting.

(2) *Upland game hunting.* We allow hunting of ruffed grouse, squirrel, rabbit, woodchuck, pheasant, quail, raccoon, fox, coyote, skunk, and opossum on designated areas of the refuge subject to the following conditions:

(i) We allow woodchuck hunting on the refuge from September 1 through the end of February.

(ii) We prohibit the use of raptors to take small game.

(3) *Big game hunting.* We allow hunting of deer, bear, and turkey on designated areas of the refuge.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow nonmotorized watercraft use in Area 5. Watercraft must remain in an area from the dike to 3,000 feet (900 meters) upstream.

(ii) We prohibit the taking of turtle or frog (see § 27.21 of this chapter).

(iii) We prohibit the collecting or releasing of baitfish.

(iv) We prohibit the taking or possession of shellfish on the refuge (see § 27.21 of this chapter).

(c) *John Heinz National Wildlife Refuge at Tinicum.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow archery-only hunting of white-tailed deer on designated areas of the refuge subject to the following condition: Hunters must possess a refuge hunt permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) and comply with all of its terms and conditions.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing on the refuge from legal sunrise to legal sunset.

(ii) Anglers may only operate boats, canoes, and floats in tidal waters.

(iii) We prohibit bowfishing or spearfishing on the refuge.

(iv) We prohibit the take, collection, or capture of any reptile or amphibian on the refuge (see § 27.21 of this chapter).

(d) *Ohio River Islands National Wildlife Refuge.* Refer to § 32.67(b) for regulations.

§ 32.58 Rhode Island.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Block Island National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) We require hunters to submit a hunt application (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) to be selected to hunt on the refuge.

(ii) Hunters must mark portable tree stands/blinds with refuge permit number.

(iii) We prohibit hunting within 100 feet (30 meters) of a refuge trail.

(4) *Sport fishing.* We allow saltwater fishing from refuge shorelines.

(b) *Ninigret National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) We require hunters to submit a hunt application (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) to be selected to hunt on the refuge.

(ii) Hunters must mark portable tree stands/blinds with refuge permit number.

(iii) We prohibit hunting within 100 feet (30 meters) of a refuge trail.

(4) *Sport fishing.* We allow saltwater fishing from refuge shorelines.

(c) *Sachuest Point National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow saltwater fishing on designated areas of the refuge subject to the following conditions:

(i) Anglers may only saltwater fish at Sachuest Beach shoreline from September 16 through March 31.

(ii) Anglers may night-fish after legal sunset with a refuge permit (FWS Form 3–2358).

(d) *Trustom Pond National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of Canada goose and mourning dove on designated areas of the refuge.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow saltwater fishing on designated areas of the refuge subject to the following condition: Anglers may saltwater fish from September 16 through March 31.

§ 32.59 South Carolina.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Cape Romain National Wildlife Refuge*—(1) *Migratory game bird*

hunting. We allow hunting of marsh hen/rail on designated areas of the refuge subject to the following conditions:

(i) We require each hunter to carry at all times while hunting a signed, current refuge hunt permit (signed brochure) and a government-issued picture identification.

(ii) We prohibit hunting on Sundays.

(iii) Each hunter age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older. Youth hunters must have successfully completed a State-approved hunter education course.

(iv) We allow the use of dogs while hunting for marsh hen/rail.

(2) *Upland game hunting.* We allow hunting of raccoon on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(1)(i) through (iii) of this section apply.

(ii) We allow hunting only on days designated annually by the refuge within the State season.

(iii) Each archery hunter must check-in at the camping site on Bulls Island before setting up camp or before starting to hunt. We require each hunter to record his or her State hunting license number in the available register.

(iv) Hunters may camp in the designated camping areas on Bulls Island during the archery white-tailed deer hunts from 9 a.m. on the day preceding the hunt until 12 p.m. (noon) on the day following the hunt.

(v) Hunters must hunt from a tree stand or the ground. We prohibit stalking, driving, corralling, or any other cooperative form of hunting.

(3) *Big game hunting.* We allow the hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(1)(i) through (iii) and (a)(2)(ii) through (v) of this section apply.

(ii) The refuge designates daily limits for white-tailed deer.

(iii) We prohibit crossbows, muzzleloaders, shotguns, rifles, pistols, and any other firearms or illegal means (as governed by State designations) to take white-tailed deer during the designated refuge archery hunt.

(iv) Hunters much check all white-tailed deer at the refuge check station prior to removal from Bulls Island.

(4) *Sport fishing.* We allow saltwater fishing and shell fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit cast nets on the pier at Garris Landing.

(ii) We prohibit anglers or visitors taking, possessing, or transporting more than one 3-quart plastic bag of sea shells per person per day from the refuge.

(b) *Carolina Sandhills National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of mourning dove and woodcock on designated areas of the refuge subject to the following conditions:

(i) All hunters must carry a signed refuge general hunt permit (signed brochure) and government-issued picture identification.

(ii) Each youth hunter (age 15 and younger) must remain within sight and voice contact and under supervision of an adult age 21 or older.

(iii) We prohibit discharge of any weapon on or across any part of the refuge road system.

(iv) We prohibit the use of outdoor recreational vehicles (ORVs) except by mobility-impaired hunters with a Special Use Permit (FWS Form 3–1383–G) to use ORV in designated areas during specified hunts. Companions assisting disabled hunters must be listed on the Special Use Permit.

(v) For hunting, you may possess shotguns with shot no larger than #5.

(vi) Legal shooting hours for September dove hunts are 12 p.m. (noon) to 6 p.m.

(vii) We prohibit the possession of more than 50 shotgun shells during the September dove hunts.

(2) *Upland game hunting.* We allow hunting of quail, rabbit, raccoon, and opossum on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(1)(i) through (iv) of this section apply.

(ii) We require dogs for hunting raccoon and opossum. All dogs must wear a collar displaying the owner's contact information.

(iii) Upland game hunters may possess shotguns with shot no larger than #4, or .22 caliber rimfire rifles or primitive muzzleloading rifles of .40 caliber or smaller. We prohibit possession of buckshot or slugs.

(iv) Upland game hunters using archery equipment must use small game tips on the arrows.

(v) All persons participating in refuge firearms hunts and while en route to and from hunting areas must wear either a hat, coat, or vest of solid blaze orange. This does not apply to raccoon and opossum hunters.

(vi) We prohibit falconry.

(3) *Big game hunting.* We allow hunting of white-tailed deer, turkey, and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(1)(i), (iii), and (iv) and (b)(2)(v) of this section apply.

(ii) Each youth hunter (age 15 and younger) must remain within sight and voice contact and under supervision of an adult age 21 or older. Each adult may supervise no more than one youth hunter.

(iii) Harvested deer, feral hog, or turkey must be checked at the designated check station prior to removing from the refuge. Hunters must complete the Big Game Harvest Report (FWS Form 3–2359).

(iv) During deer and turkey hunts, we prohibit hunters from entering the refuge earlier than 4 a.m. and staying on the refuge later than 2 hours after legal sunset.

(v) During the primitive weapons hunt, you may use bow and arrow, crossbows, muzzleloading shotguns (20 gauge or larger), or muzzleloading rifles (.40 caliber or larger). We prohibit revolving rifles and black-powder handguns.

(vi) During modern gun hunts, you may use shotguns, rifles (centerfire and larger than .22 caliber), handguns (.357 caliber or larger and barrel length no less than 6 inches [15 centimeters (cm)]), or any weapon allowed during the primitive weapons hunt. We prohibit military, hard-jacketed bullets, and .22 caliber rimfire rifles during the modern gun hunts.

(vii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(viii) We prohibit adults from possessing or discharging firearms during youth deer or turkey hunts.

(ix) We prohibit placing stands on the refuge more than 3 days prior to the opening day of each big game hunt period. You must remove stands at the end of each hunt period (see § 27.93 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing from 1 hour before legal sunrise to 1 hour after legal sunset.

(ii) We prohibit bow fishing, fish baskets, nets, set hooks, trotlines, or snagging devices.

(iii) We prohibit snagging of fish by pulling or jerking any device equipped with one or more hooks through the water for the purpose of impaling fish.

(iv) At Mays and Honkers Lakes, the creel limit on largemouth bass is five

fish per person per day. All bass must be a minimum length of 12 inches (30 cm).

(v) We designate Oxpen Lake as adult-youth fishing only. A youth (age 15 and younger) must be actively fishing and accompanied by no more than two adults age 18 or older. We prohibit adults fishing unless a youth accompanies them. The creel limit on channel catfish is five fish per person per day.

(vi) We prohibit the use or possession of alcoholic beverages while fishing on the refuge.

(c) *Ernest F. Hollings ACE Basin National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, and coot on designated areas of the refuge subject to the following conditions:

(i) We require each hunter to carry at all times while hunting a signed, current refuge hunting regulations brochure (signed brochure) containing a refuge hunt permit.

(ii) Each youth hunter (age 15 and younger) must remain within sight and normal voice contact of an adult age 21 or older. Youth hunters must have successfully completed a State-approved hunter education course.

(iii) We only allow hunting until 12 p.m. (noon) each day during the State waterfowl season.

(iv) You must remove portable blinds and decoys at the end of each day's hunt (see § 27.93 of this chapter).

(v) We only allow the use of dogs while hunting.

(vi) We allow scouting all year from legal sunrise to legal sunset.

(vii) You may access the hunt areas only by boat.

(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (c)(1)(i) and (ii) of this section apply.

(ii) Except for the special quota permit hunts, we allow only archery or muzzleloader hunting. During special quota permit hunts, we allow use of centerfire rifles or shotguns.

(iii) On hunt days, hunters may enter the refuge no earlier than 5 a.m. and must leave the refuge no later than 1 hour after legal sunset.

(iv) We require all deer taken during any hunt to be checked at the designated refuge check station before removal from the refuge. In addition, all deer must be tagged with an antlerless tag (State-issued) provided by the refuge.

(v) The refuge daily bag limit is two antlerless deer and one antlered buck that must have at least three antler points on one side. We define a ''point'' as an antler projection of at least 1 inch (2.5 centimeters) or more in length.

(vi) You may take feral hogs during refuge deer hunts. There is no size or bag limit on hogs. We may offer special hog hunts during and after deer season to further control this invasive species. We prohibit removal of live hogs from the refuge.

(vii) You must hunt deer and feral hogs from an elevated deer stand. We prohibit shooting big game from a boat.

(viii) All permanently fixed ground blinds are for the mobility-impaired hunt only.

(ix) We prohibit crossbows on the archery hunts. We only allow muzzleloading rifles using a single projectile on the muzzleloader hunts. We prohibit buckshot.

(x) You may use flagging to mark the site of hunter entry from roads or trails and again at the stand site. You may use clothespins with reflective tape between these sites to mark the route to the stand. Hunters must label all such markers with their last name and State hunting license number.

(xi) We require hunters to wear an outer garment visible above the waist that contains a minimum of 500 square inches (3,226 square centimeters) of solid, florescent-orange material at all times during the muzzleloader and mobility-impaired hunts.

(xii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing in impounded waters contained within dikes and levees in the Beaufort County portion of the refuge annually from April 1 through August 31 during daylight hours. We close fishing during all remaining times within all refuge-impounded waters.

(ii) We only allow bank fishing.

(iii) We only allow hook and line sport fishing using rod and reel or pole.

(d) *Pinckney Island National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) We only allow hunting on the refuge by lottery.

(ii) We require a refuge hunt permit (electronic form) for all hunters chosen in the lottery who are age 16 and older. You must sign the refuge hunt permit and carry it at all times when hunting.

(iii) Hunters must check-in at the designated check station and park in the designated area prior to hunting. We require personal identification at check-in.

(iv) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(v) Each hunter may place one stand on the refuge during the week preceding the hunt. You must remove your stand at the end of the hunt (see § 27.93 of this chapter).

(vi) We prohibit the use of buckshot.

(vii) We prohibit hunting closer than 100 yards (90 meters (m)) to U.S. Highway 278 or the check station area, or closer than 200 yards (180 m) to the residence area.

(viii) Refuge personnel must check deer harvested during a scheduled hunt before hunters leave the refuge.

(ix) You may take five deer (no more than two antlered).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow saltwater fishing year-round in the estuarine waters adjacent to the refuge.

(ii) We prohibit freshwater fishing.

(e) *Santee National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of raccoon and opossum on designated areas of the refuge subject to the following conditions:

(i) We allow only primitive weapons. We prohibit hunting with exploding arrows, centerfire rifles, and handguns.

(ii) All refuge hunters age 14 and younger must show proof of successful completion of a hunter-education/safety course. A properly licensed adult age 21 or older must directly supervise (within sight and normal voice contact) hunters age 14 and younger. An adult may supervise only one youth.

(iii) We require hunters to possess a refuge hunt permit (signed refuge hunt brochure), a valid State hunting license, and government-issued picture identification while hunting.

(iv) You must check in all harvested animals at a designated check station. If no refuge employee is present at a designated check station to check the harvested animal, the hunter must record species harvest information on the provided data sheet (FWS Form 3–2405).

(v) You must check all animals taken on the refuge before removing the animal from the refuge and prior to 8:30 p.m. at the check station.

(vi) We require hunters to make a reasonable effort to retrieve wounded game. You must obtain permission from refuge personnel to enter a ''No Hunting Zone'' or ''Closed Area'' for any purpose.

(vii) We prohibit hunting from within 100 feet (30 meters (m)) of or across any roadway, whether open or closed to vehicular traffic, or from or within 300 yards (270 m) of any designated hunter check station or residence.

(viii) We open hunting areas from 5 a.m. until 8:30 p.m. during designated hunt periods.

(ix) We allow the use of dogs only for raccoon and opossum hunting. The dogs must wear a collar displaying the owner's contact information.

(x) We allow take of raccoon and opossum only during night hunting from the hours of 6 p.m. to 6 a.m. We prohibit hunting on Saturday nights and Sunday nights. Special State regulations apply for night hunting.

(xi) We only allow take of raccoon and opossum with a shotgun using shot size no larger than #4 or a .22-caliber rimfire rifle. We prohibit possession of buckshot or slugs.

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (e)(2)(i) through (viii) of this section apply.

(ii) We prohibit night hunting of deer and feral hogs. On the refuge, we define ''nighttime'' as from ½ hour after legal sunset to ½ hour before legal sunrise.

(iii) We allow the unlimited incidental take of feral hog while hunting during the day.

(iv) We prohibit trail flagging. You may use clothes pins with reflective tape/tack or commercially made reflective orange glow or trail clips to mark the path to the tree. You must mark all clips and pins with your full name, and you must remove them at the end of the hunt period (see §§ 27.93 and 27.94 of this chapter).

(v) You must hunt deer and feral hog from portable elevated hunting stands. You must wear a safety belt or harness while using a hunting stand. We prohibit ground blinds. We allow only one stand per hunter, and each hunter must clearly mark stands with his or her State hunting license number.

(vi) You may place stands, clothespins, or clips, only on open hunt areas, on the Friday, Saturday, and Sunday immediately prior to each hunt (from 7 a.m. until 5 p.m.). You must remove them by 8:30 p.m. on the last day of each hunt period (see §§ 27.93 and 27.94 of this chapter).

(vii) We open the Plantation Islands (Cuddo Unit) to deer and feral hog hunting only from 5 a.m. until 2:30 p.m.

(viii) Shooting hours are from ½ hour before legal sunrise until ½ hour after legal sunset.

(ix) We allow the use of nonmotorized boats for accessing the unit's interior canals to inland areas open to hunting.

(x) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) Anglers must sign and possess a refuge fishing permit (signed brochure), and possess government-issued picture identification, while fishing on the refuge. We require all recreational fishing boat operators to have one refuge fishing permit per boat.

(ii) We open Cantey Bay (Bluff Unit), Black Bottom (Cuddo Unit), and Savannah Branch (Pine Island Unit) only to boating and fishing, from March 1 through October 31.

(iii) We allow fishing access in interior freshwater canals and ponds only by canoes or kayaks, or by foot or bicycle travel only.

(iv) We prohibit attaching trotlines, bush/limb lines, fishing devices, signs, or any other objects to trees, posts, or markers within refuge boundaries.

(f) *Savannah National Wildlife Refuge.* Refer to § 32.29(h) for regulations.

(g) *Waccamaw National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, dove, woodcock, and snipe on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry at all times while hunting a signed, current refuge hunting regulations brochure (signed brochure), which serves as the hunt permit.

(ii) Each youth hunter age 15 and younger must remain within sight, within normal voice contact, and under the supervision of an adult age 21 or older, except when participating in the Federal youth days waterfowl hunt, when the youth hunter must be under the supervision of an adult age 18 or older. We do not require youth hunters to have a hunter-education card for migratory gamebird hunting, but they must possess a signed refuge hunting regulations brochure. The supervising adult must comply with all State and Federal hunting license requirements and also possess a signed refuge hunting regulations brochure. Each supervising adult may supervise no more than two youths.

(iii) We allow waterfowl hunting only until 12 p.m. (noon) each Saturday and Wednesday during the State waterfowl season. Hunters may enter the refuge no earlier than 5 a.m. on hunt days and must be off the refuge by 2 p.m.

(iv) We allow scouting Monday through Friday during the waterfowl season. Hunters must be off the refuge by 2 p.m.

(v) Hunters must remove portable blinds and decoys from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(vi) We allow the use of dogs only while hunting. We require dogs to wear a collar displaying the owner's contact information.

(2) *Upland game hunting.* We allow hunting of gray squirrel, raccoon, and opossum on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (g)(1)(i), (ii), and (vi) of this section apply.

(ii) We allow hunting only on days designated annually by the refuge within the State season.

(iii) You may possess only nontoxic shot (see § 32.2(k)) no larger than #2 in shotguns for hunting. We allow .22-caliber rimfire rifles.

(iv) We prohibit shooting any game from a boat except waterfowl.

(v) We prohibit upland game hunting during refuge big game hunts.

(3) *Big game hunting.* We allow hunting of white-tailed deer, feral hog, and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (g)(1)(i) and (g)(2)(ii) and (iv) of this section apply.

(ii) We allow archery, muzzleloading (black powder), rifles (centerfire larger than .22 caliber), and shotguns according to refuge unit-specific regulations. We allow muzzleloading rifles that use only a single projectile on the muzzleloader hunts. We prohibit buckshot, rimfire ammunition, and full-metal-jacketed military ammunition.

(iii) We allow scouting all year during daylight hours except during the State waterfowl season. During the waterfowl season, the same regulations that apply to scouting for waterfowl (paragraph (g)(1)(iv) of this section) apply to scouting for big game species.

(iv) Hunters may enter the refuge no earlier than 5 a.m. on hunt days and must leave the refuge no later than 1 hour after legal sunset.

(v) We allow harvest of only one antlered deer for each hunt session; you may not exceed harvest of a total of three antlered deer per year. We allow harvest of three antlerless deer per season; you may not exceed harvest of more than two antlerless deer per day.

(vi) You may take feral hogs during refuge deer hunts. There is no size or bag limit on hogs.

(vii) We prohibit hunting on or within 100 feet (30 meters) of all routes marked as roads or trails on the hunt brochure map.

(viii) You must hunt deer and feral hog from an elevated hunting stand.

(ix) We allow only one portable tree stand per hunter, and you must clearly mark it with your State hunting license number. We prohibit placing deer stands on the refuge more than 3 days prior to the opening day of a hunting session. Hunters must remove stands from the refuge no later than 3 days after each refuge big game hunt (see § 27.93 of this chapter).

(x) We allow hunters to use flagging to mark the site of hunter entry from roads or trails and again at the stand site. We allow hunters to use clothes pins with reflective tape between entry and stand sites to mark the route to the stand. You must label all pins with your last name, and you must remove them at the end of the hunt (see §§ 27.93 and 27.94 of this chapter).

(xi) We require hunters to wear an outer garment visible above the waist that contains a minimum of 500 square inches (3,226 square centimeters) of solid, fluorescent-orange material at all times during big game hunts except for wild turkey.

(xii) We prohibit organized drives. We define a ''drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause game to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the game.

(xiii) We allow crossbows only during the big game hunting sessions, when we allow muzzleloaders and modern weapons.

(xiv) Each youth hunter age 15 and younger must remain within sight, within normal voice contact, and under supervision of an adult age 21 or older. Each youth hunter must possess a signed refuge hunting regulations brochure. We require youth hunters who are sitting in a hunting stand by themselves to possess a valid hunter-education card. The supervising adult must comply with all State and Federal hunting license requirements and possess a signed refuge hunting regulations brochure. Each supervising adult may supervise a maximum of one youth.

(xv) We only allow deer and hog hunting on the uplands of Sandy Island during a special archery-only lottery hunt. Hunters must apply for lottery entry (name/address/phone number) and are chosen by a random selection process. There is a quota on the number of hunters selected for this hunt.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge.

§ 32.60 South Dakota.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Huron Wetland Management District*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the district subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the district.

(3) *Big game hunting.* We allow big game hunting on designated areas of the district.

(4) *Sport fishing.* We allow sport fishing on designated areas of the district subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(b) *LaCreek National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow the hunting of goose, duck, coot, common snipe, sandhill crane, American crow, and mourning dove on designated areas of the refuge.

(2) *Upland game hunting.* We allow the hunting of ring-necked pheasant and sharp-tailed grouse on designated areas of the refuge subject to the following condition: Hunters may remain on the refuge no longer than ½ hour after legal sunset.

(3) *Big game hunting.* We allow hunting of white-tailed and mule deer on designated areas of the refuge subject to the following conditions:

(i) All archery deer hunters must possess and carry a refuge permit (signature required).

(ii) Deer hunters may enter the refuge 1½ hours before legal sunrise and remain no longer than 1½ hours after legal sunset.

(iii) Hunters may leave portable tree stands and free-standing elevated platforms on the refuge from the first Saturday after August 25 through February 15. Hunters must remove all other personal property by the end of the day's hunt (see § 27.93 of this chapter).

(iv) We close the refuge to archery hunting during refuge firearm seasons.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit the use or possession of live minnows or bait fish in Pools 3, 4, 7, and 10 and the Cedar Creek Trout Ponds.

(ii) We open designated fishing areas from ½ hour before legal sunrise to ½ hour after legal sunset, except the Little White River Recreation Area.

(c) *Lake Andes National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the refuge.

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the refuge.

(3) *Big game hunting.* We allow big game hunting on designated areas of the refuge.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: You must remove all boats, motor vehicles, fishing equipment, and other personal property, excluding ice houses, by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(d) *Lake Andes Wetland Management District*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the district subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the district.

(3) *Big game hunting.* We allow big game hunting on designated areas of the district subject to the following condition: You must remove portable ground blinds and other personal property at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the district subject to the following condition: You must remove boats,

motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day's fishing activity (see §§ 27.93 and 27.94 of this chapter).

(e) *Madison Wetland Management District*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the district subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the district.

(3) *Big game hunting.* We allow big game hunting on designated areas of the district subject to the following condition: You must remove portable ground blinds and other personal property by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the district subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day's fishing activity (see §§ 27.93 and 27.94 of this chapter).

(f) *Sand Lake National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of waterfowl on designated portions of the refuge subject to the following condition: Unarmed waterfowl hunters on the perimeter of the refuge may retrieve downed waterfowl up to 100 yards (90 meters) inside the refuge boundary.

(2) *Upland game hunting.* We allow hunting of pheasant, sharp-tailed grouse, and partridge on designated portions of the refuge subject to the following conditions:

(i) We allow hunting of upland game birds from the Monday following closure of the refuge firearms deer season through the first Sunday in January.

(ii) Hunters may enter the refuge no earlier than 10 a.m. each day.

(3) *Big game hunting.* We allow hunting of deer on designated areas of the refuge subject to the following conditions:

(i) Only firearms deer hunters possessing and carrying a State-issued Sand Lake refuge permit may hunt deer on the refuge.

(ii) We allow portable tree stands; portable, elevated hunting platforms not attached to trees; and portable ground blinds only.

(iii) You may place your tree stand(s), elevated platform(s), and/or ground blind(s) on the refuge only during your designated licensed season. You must remove these stands/blinds by the end of your designated licensed season (see § 27.93 of this chapter).

(iv) Deer hunters may enter the refuge 1 hour before legal shooting time and remain no longer than 1 hour after shooting time ends.

(v) We allow vehicles on designated refuge roads only for retrieving harvested deer and only during the following times: 9:30 to 10 a.m., 1:30 to 2 p.m., and from the end of legal shooting time to 1 hour after the end of shooting time (see § 27.31 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) Fishing hours are ½ hour before legal sunrise to ½ hour after legal sunset.

(ii) We allow ice fishing shanties, but anglers must remove them at the end of each day's fishing activity (see § 27.93 of this chapter).

(g) *Sand Lake Wetland Management District*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the district and subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the district.

(3) *Big game hunting.* We allow big game hunting on designated areas of the district subject to the following conditions:

(i) We allow hunters to leave portable tree stands and free-standing elevated platforms on waterfowl production areas from the first Saturday after August 25 through February 15.

(ii) You must remove portable ground blinds, trail cameras, and other personal property by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the district subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day's fishing activity (see §§ 27.93 and 27.94 of this chapter).

(h) *Waubay National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow deer hunting on designated areas of the refuge subject to the following conditions:

(i) Hunters must remove stands by the end of the hunt (see § 27.93 of this chapter).

(ii) Hunters may launch nonmotorized watercraft from designated access points to travel to islands.

(iii) We close archery seasons during refuge firearm seasons.

(iv) We prohibit organized deer drives during archery season. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(4) *Sport fishing.* We allow ice fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit open water fishing at any time.

(ii) Anglers must not be on the ice until 1 hour prior to legal sunrise and must be off the ice by 1 hour after legal sunset.

(iii) Anglers must remove ice shacks by 1 hour after legal sunset (see § 27.93 of this chapter).

(iv) We restrict angler foot travel to posted access points, public roads, and lake ice.

(i) *Waubay Wetland Management District*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the district subject to the following condition: You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the district.

(3) *Big game hunting.* We allow big game hunting on designated areas of the district subject to the following conditions:

(i) We allow hunters to leave portable tree stands and free-standing elevated platforms on waterfowl production areas from the first Saturday after August 25 through February 15.

(ii) You must remove portable ground blinds and other personal property by the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the district subject to the following condition: You must remove boats, motor vehicles, fishing equipment, and other personal property (excluding ice houses) by the end of each day's fishing activity (see §§ 27.93 and 27.94 of this chapter).

§ 32.61 Tennessee.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Chickasaw National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, merganser, mourning dove, woodcock, and snipe on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a signed refuge permit (signed refuge brochure) and comply with all permit provisions.

(ii) We allow hunting for duck, goose, coot, and merganser from ½ hour before legal sunrise to 12 p.m. (noon). We allow hunters to access the refuge no more than 2 hours before legal sunrise.

(iii) We close mourning dove, woodcock, and snipe seasons during all youth and muzzleloader hunts, and during the first 4 weeks of firearms deer seasons.

(iv) You may use only portable blinds, and you must remove all boats, blinds, and decoys from the refuge by 1 p.m. each day (see § 27.93 of this chapter).

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, quail, coyote, beaver, raccoon, and opossum on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (a)(1)(i) of this section applies.

(ii) We allow hunters to access the refuge no more than 2 hours before legal sunrise to no later than 2 hours after legal sunset, except that raccoon and opossum hunters may access the refuge from legal sunset to legal sunrise.

(iii) We close squirrel, rabbit, and quail seasons during all youth and muzzleloader hunts, and during the first 4 weeks of firearms deer seasons.

(iv) We close raccoon and opossum seasons on Friday and Saturday nights during all firearms, youth, and muzzleloader deer hunts and seasons, including the Friday night prior to any hunt or season that opens on a Saturday morning.

(v) You may take coyote and beaver incidental to legal hunting activities with legal methods of take for those hunts.

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(1)(i) and (a)(2)(ii) and (v) of this section apply.

(ii) You may only participate in the refuge quota hunts with a special quota permit issued through random drawing (electronic form).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing only with pole and line, or rod and reel.

(ii) We allow the use of bow and arrow, or a gig, to take nongame fish on refuge waters.

(iii) We prohibit taking frog or turtle on the refuge (see § 27.21 of this chapter).

(b) *Cross Creeks National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of Canada goose on designated areas of the refuge subject to the following conditions:

(i) We require a refuge hunt permit (electronic form) for all hunters age 17 and older. You must carry a valid refuge permit while hunting on the refuge.

(ii) The annual refuge hunting and fishing regulations brochure provides season dates and bag limits.

(iii) We prohibit hunting within 50 yards (45 meters) of any building, public use road, or boat launching ramp.

(iv) We allow hunters to access the refuge from 2 hours before legal sunrise to 2 hours after legal sunset.

(v) We allow the use of dogs to retrieve geese.

(vi) You may use only portable blinds, and you must remove all boats, blinds, and decoys from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(vii) We allow the take of beaver and coyote incidental to legal hunting activities with legal methods of take for those hunts.

(2) *Upland game hunting.* We allow hunting of squirrel, beaver, and coyote on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (b)(1)(i) through (iv) and (vii) of this section apply.

(3) *Big game hunting.* We allow the hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(2)(i) through (iv) and (b)(1)(vii) of this section apply.

(ii) We only allow the use of portable blinds and tree stands on the refuge. You must remove blinds, tree stands, and all other personal equipment from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(iii) You may only participate in the refuge quota deer hunts with a special quota permit (electronic form) issued through random drawing.

(iv) Each youth hunter age 16 and younger must remain within sight of and normal voice contact of an adult age 21 or older. One adult hunter may supervise no more than one youth hunter.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing on the refuge pools and reservoirs from March 16 through November 14, from ½ hour before legal sunrise to ½ hour after legal sunset.

(ii) We prohibit trotlines, limblines, jugs, and slat baskets in refuge pools and impoundments and on Elk Reservoir and South Cross Creeks Reservoir.

(iii) We prohibit taking frog, turtle, and crawfish on the refuge (see § 27.21 of this chapter).

(iv) We allow bow fishing in refuge impoundments and on Barkley Lake.

(c) *Hatchie National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, merganser, mourning dove, woodcock, and snipe on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a signed refuge permit (signed refuge brochure) and comply with all permit provisions.

(ii) We allow hunting for duck, goose, coot, and merganser from ½ hour before legal sunrise until 12 p.m. (noon). We allow hunters to access the refuge no earlier than 2 hours before legal sunrise.

(iii) We close mourning dove, woodcock, and snipe seasons during all quota gun and youth deer gun hunts.

(iv) You may use only portable blinds, and you must remove all boats, blinds, and decoys from the refuge by 1 p.m. each day (see § 27.93 of this chapter).

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, quail, coyote, beaver, raccoon, and opossum on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (c)(1)(i) of this section applies.

(ii) We allow hunters to access the refuge no earlier than 2 hours before legal sunrise to no later than 2 hours after legal sunset, except that raccoon and opossum hunters may access the refuge from legal sunset to legal sunrise.

(iii) We close all small game hunts during the refuge deer quota and youth gun hunts.

(iv) You may take coyote and beaver incidental to legal hunting activities with legal methods of take for those hunts.

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (c)(1)(i) and (c)(2)(ii) and (iv) of this section apply.

(ii) You may only participate in the refuge deer quota hunts with a special quota permit (electronic form) issued through random drawing.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing only with pole and line, or rod and reel.

(ii) We allow use of a bow and arrow, or gig, to take nongame fish on refuge waters.

(iii) We prohibit taking frog or turtle on the refuge (see § 27.21 of this chapter).

(iv) We open Oneal Lake for fishing during a restricted season and for authorized special events.

(v) We only allow fishing boats of 18 feet (5.5 meters) or less in length on refuge lakes.

(d) *Lake Isom National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of squirrel, coyote, beaver, and raccoon on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a signed refuge permit (signed refuge brochure) and comply with all permit provisions.

(ii) We allow hunters to access the refuge no earlier than 2 hours before legal sunrise to no later than 2 hours after legal sunset, except that raccoon hunters may access the refuge from legal sunset to legal sunrise.

(iii) You may take coyote and beaver incidental to legal hunting activities with legal methods of take for those hunts.

(3) *Big game hunting.* We allow only archery hunting for white-tailed deer on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (d)(2)(i) through (iii) of this section apply.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We open all waters of Lake Isom to fishing only from March 16 through November 14, and from legal sunrise to legal sunset.

(ii) We prohibit taking frog or turtle from refuge waters (see § 27.21 of this chapter).

(iii) We allow fishing only with pole and line, or rod and reel.

(iv) We allow use of a bow and arrow, or a gig, to take nongame fish on refuge waters.

(e) *Lower Hatchie National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, merganser, mourning dove, woodcock, and snipe on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a signed refuge permit (signed refuge brochure) and comply with all permit provisions.

(ii) We allow hunting for duck, goose, coot, and merganser from ½ hour before legal sunrise to 12 p.m. (noon). We allow hunters to access the refuge no earlier than 2 hours before legal sunrise.

(iii) We close mourning dove, woodcock, and snipe seasons all youth and muzzleloader hunts, and during the first 4 weeks of firearms deer seasons.

(iv) You may use only portable blinds, and you must remove all boats, blinds, and decoys from the refuge by 1 p.m. each day (see § 27.93 of this chapter).

(2) *Upland game hunting.* We allow hunting of squirrel, rabbit, quail, coyote, beaver, raccoon, and opossum on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (e)(1)(i) of this section applies.

(ii) We allow hunters to access the refuge no more than 2 hours before legal sunrise to no more than 2 hours after legal sunset, except that raccoon and opossum hunters may access the refuge from legal sunset to legal sunrise.

(iii) We close squirrel, rabbit, and quail seasons during all youth and muzzleloader hunts, and during the first 4 weeks of firearms deer seasons.

(iv) We close raccoon and opossum seasons on Friday and Saturday nights during all firearms, youth, and muzzleloader deer hunts and seasons, including the Friday night prior to any hunt or season that opens on a Saturday morning.

(v) You may take coyote and beaver incidental to legal hunting activities with legal methods of take for those hunts.

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (e)(1)(i) and (e)(2)(ii) and (v) of this section apply.

(ii) You may participate in the refuge quota hunts only with a special quota permit (electronic form) issued through random drawing.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge and the Sunk Lake Public Use Natural Area as governed by State regulations and subject to the following conditions:

(i) We allow fishing only from legal sunrise to legal sunset.

(ii) We allow fishing only with pole and line, or rod and reel.

(iii) We allow use of a bow and arrow, or a gig, to take nongame fish on refuge waters.

(iv) We prohibit taking frog or turtle on the refuge (see § 27.21 of this chapter).

(f) *Reelfoot National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of squirrel, coyote, beaver, and raccoon on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a signed refuge permit (signed refuge brochure) and comply with all permit provisions.

(ii) We allow hunters to access the refuge no earlier than 2 hours before legal sunrise to no later than 2 hours after legal sunset, except that raccoon hunters may access the refuge from legal sunset to legal sunrise.

(iii) You may take coyote and beaver incidental to legal hunting activities with legal methods of take for those hunts.

(3) *Big game hunting.* We allow hunting for white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (f)(2)(i) through (iii) of this section apply.

(ii) You may participate in the refuge firearms deer and turkey quota hunts only with a special quota permit (electronic form) issued through random drawing.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow access to the Long Point Unit (north of Upper Blue Basin) for fishing from March 16 through November 14, and the Grassy Island Unit (south of Upper Blue Basin) for fishing from February 1 through November 14.

(ii) We allow fishing on the refuge from legal sunrise to legal sunset.

(iii) We prohibit taking of frog or turtle on the refuge (see § 27.21 of this chapter).

(g) *Tennessee National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of Canada goose on designated areas of the refuge subject to the following conditions:

(i) We require a refuge hunt permit (name and address) for all hunters age 17 and older. You must carry a valid refuge permit while hunting on the refuge.

(ii) The annual refuge hunting and fishing regulations brochure provides season dates and bag limits.

(iii) We prohibit hunting within 50 yards (45 meters) of any building, public use road, or boat launching ramp.

(iv) We allow hunters to access the refuge from 2 hours before legal sunrise to 2 hours after legal sunset, except as provided under paragraph (g)(2)(ii) of this section.

(v) Youth hunters age 16 and younger must remain in sight of and normal voice contact with an adult hunter age 21 or older. One adult hunter may supervise no more than two youth hunters.

(vi) We allow the use of dogs to retrieve geese.

(vii) You may use only portable blinds, and you must remove all boats, blinds, and decoys from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(viii) We allow the take of beaver and coyote incidental to legal hunting activities with legal methods of take for those hunts.

(2) *Upland game hunting.* We allow hunting of squirrel, coyote, beaver, and raccoon on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (g)(1)(i) through (v) and (viii) of this section apply.

(ii) We allow hunting for raccoon from legal sunset to legal sunrise.

(3) *Big game hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (g)(1)(i) through (iv) and (viii) of this section apply.

(ii) Youth hunters age 16 and younger must remain in sight of and normal voice contact with an adult hunter age 21 or older. One adult hunter may supervise no more than one youth hunter.

(iii) You may participate in the refuge quota deer hunts only with a special quota permit (electronic form) issued through random drawing.

(iv) We allow the use of only portable blinds and tree stands on the refuge. You must remove blinds, tree stands, and all other personal equipment from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing in Swamp Creek, Sulphur Well Bay, and Bennetts Creek from March 16 through November 14. We open the remainder of the refuge portion of Kentucky Lake to fishing year-round. We allow bank fishing year-round along Refuge Lake from the New Johnsonville Pump Station.

(ii) We allow fishing on interior refuge impoundments from ½ hour before legal sunrise to ½ hour after legal sunset from March 16 to November 14.

(iii) We prohibit taking frog, turtle, and crawfish on the refuge (see § 27.21 of this chapter).

(iv) We prohibit trotlines, limblines, jugs, and slat baskets in refuge pools and impoundments.

(v) We allow bow fishing in refuge impoundments and on Kentucky Lake.

§ 32.62 Texas.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Anahuac National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, white-winged, mourning, rock, and Eurasian collared-dove, and rock pigeon on designated areas of the refuge subject to the following conditions:

(i) You must carry a current signed refuge hunting permit (signed tearsheet) while waterfowl hunting on all refuge hunt units.

(ii) Season dates for waterfowl will be concurrent with the State, except as specified in the refuge hunting permit (signed tearsheet).

(iii) Hunters age 17 and younger must be under the direct supervision of an adult age 18 or older.

(iv) For waterfowl hunting, you may enter the refuge hunt units no earlier than 4 a.m. Hunting starts at the designated legal shooting time and ends at 12 p.m. (noon). You must leave refuge hunt units by 12:30 p.m. For dove hunting, you may enter the refuge 1 hour before legal sunrise and must leave the refuge by ½ hour after legal sunset. We close refuge hunt units on Thanksgiving, Christmas, and New Year's Day.

(v) For waterfowl hunting, we allow hunting in portions of the East Unit on Saturdays, Sundays, and Tuesdays during the regular waterfowl seasons.

(vi) Hunters must check in and out through the check station (FWS Form 3–2405) when accessing the East Unit by vehicle.

(vii) We require hunters to remain in an assigned area for that day's hunt.

(viii) We allow hunters to access designated areas of the East Unit by boat from Jackson Ditch, East Bay Bayou, or Onion Bayou.

(ix) We allow hunting on the East Unit as governed by the State light goose conservation order. Hunt areas are by permit on a first-come, first-served basis the morning of the hunt. We allow a maximum of six persons per field. Individuals in each group must set up and stay in their permitted area and stay within 50 feet (15 meters (m)) of each other unless retrieving goose.

(x) Hunters must set up within 50 yards (45 m) of the post marker and must stay within 50 feet (15 m) of each other unless retrieving waterfowl. We allow a minimum of two, and a maximum of six, persons per permit.

(xi) We allow hunting in portions of the Middleton Tract daily during the September teal season and on Saturdays, Sundays, and Wednesdays of the regular waterfowl season.

(xii) We restrict motorized boats in inland waters of the Middleton Tract to motors of 25 horsepower or less or electric trolling motors during hunting season.

(xiii) You may access hunt areas by foot, nonmotorized watercraft, outboard motorboat, or airboat. Airboats may not exceed 10 horsepower with direct drive with a propeller length of 48 inches (120 centimeters) or less.

(xiv) On inland waters of refuge hunt areas open to motorized boats, we restrict the operation of motorized boats to lakes, ponds, ditches, and other waterways when hunting. We prohibit the operation of motorized boats on or through emergent wetland vegetation.

(xv) On inland waters of the refuge hunt areas open to motorized boats, we restrict the use of boats powered by air-cooled or radiator-cooled engines to those powered by a single engine of 25 horsepower or less and utilizing a propeller 9 inches (22.5 centimeters) in diameter or less during the hunting season.

(xvi) We allow portable blinds or temporary natural vegetation blinds. You must remove all blinds, decoys, boats, spent shells, marsh chairs, and other equipment from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(xvii) We require a minimum distance between hunt parties of 200 yards (180 m).

(xviii) We allow the use of dogs when hunting.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow fishing and crabbing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing and crabbing only with pole and line, rod and reel, or handheld line. We prohibit the use any method not expressly allowed, including trotlines, setlines, jug lines, limb lines, bows and arrows, gigs, spears, or crab traps.

(ii) We allow cast netting for bait for personal use along waterways in areas

open to the public and along public roads.

(iii) The conditions set forth at paragraphs (a)(1)(xiii) and (xv) of this section apply.

(iv) We prohibit mooring to water control structures.

(b) *Aransas National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, coot, and merganser on designated areas of the refuge subject to the following conditions:

(i) For the Matagorda Island upland units, each adult hunter age 17 or older must possess an annual public hunting permit administered by the State.

(ii) Hunting starts at the designated legal shooting time and ends at 12 p.m. (noon) on the Matagorda Island upland units. Hunters must leave upland units by 12:30 p.m. Authorized hunting on other designated areas begins 30 minutes before legal sunrise and ends at legal sunset.

(iii) Hunters age 17 and younger must be under the direct supervision of an adult age 18 or older.

(iv) We allow portable blinds or temporary natural vegetation blinds. You must remove all blinds, decoys, boats, spent shells, marsh chairs, and other equipment from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(v) For the Matagorda Island upland units, we require all hunters to check in and out at the hunter check station located on the north end of the Island.

(vi) We allow the use of dogs when hunting.

(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (b)(1)(iii) of this section applies.

(ii) On the Blackjack and Tatton Units, we allow hunting subject to the following conditions:

(A) We allow sprays and other non-ingestible attractants.

(B) For the archery and rifle season, hunters must obtain a refuge self-clearing permit (FWS Form 3–2405).

(C) The annual refuge hunt brochure provides bag limits.

(D) Hunters must field dress all harvested game in the field.

(E) We prohibit hunting on or across any part of the refuge road system, or hunting from a vehicle on any refuge road or road right-of-way. Hunters must remain at a minimum of 100 yards (90 meters) off any designated refuge road or structure.

(F) We prohibit hunters using handguns during archery and rifle hunts.

(G) We allow use of portable hunting stands, stalking of game, and still-hunting. There is a limit of two portable stands per permitted hunter. A hunter may set up the portable stands during the scouting day, but must remove them when the hunter's permit expires (see § 27.93 of this chapter).

(H) We allow the use of only biodegradable flagging tape to mark trails and hunt stand location during the archery and rifle hunts on the refuge. You must write your last name in black permanent marker on the first piece of flagging tape nearest the adjacent designated roadway.

(iii) On the Matagorda Island Unit, we allow hunting subject to the following conditions:

(A) The conditions set forth at paragraphs (b)(3)(ii)(A) through (H) of this section apply.

(B) We require all hunters to stay in their designated stand unless they are retrieving game. We prohibit stalking of game.

(C) Each adult hunter may supervise up to two youth hunters.

(4) *Sport fishing.* We allow sport fishing and fishing access on designated areas of the refuge subject to the following conditions:

(i) We prohibit the use of crab traps in marshes within the boundary of any refuge unit.

(ii) We allow the use of no more than two rods while fishing.

(iii) Beginning April 15 through October 15, you may access State waters for fishing at areas designated in the refuge fishing brochure. From October 16 through April 14, we open to fishing only the area adjacent to the picnic area off of the fishing pier; we allow wade fishing access in that immediate area. You may fish all year in the bayside marsh unit and the Gulf side beach of Matagorda Island.

(iv) We prohibit consumption of alcohol or possession of open alcohol containers while fishing.

(c) *Balcones Canyonlands National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of mourning, white-wing, rock, and Eurasian-collared dove on designated areas of the refuge subject to the following conditions:

(i) We allow hunters in designated area(s) from 12 p.m. (noon) to legal sunset.

(ii) We require refuge permits (name only).

(iii) We allow the use of dogs to retrieve game birds during the hunt.

(iv) Hunters age 17 and younger must be under the direct supervision of an adult age 18 or older.

(v) Hunter may bring up to two guests. Guests may not use a hunting firearm. Guests must be with the hunter at all times.

(2) *Upland game hunting.* We allow hunting of wild turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (c)(1)(ii) and (iv) of this section apply.

(ii) We require hunters to check in and out daily at designated check station(s).

(iii) The annual refuge hunt brochure provides bag limits.

(iv) We allow the use of all-terrain vehicles (ATVs) to retrieve downed game.

(v) We allow scent attractants.

(vi) A hunter may bring one guest. The guest may not use a hunting firearm or other hunting weapon (archery). The guest may assist the hunter in game retrieval or field dressing activities. The guest must be with the hunter at all times.

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions: The conditions set forth at paragraphs (c)(1)(iv) and (c)(2)(ii) through (vi) of this section apply.

(4) [Reserved]

(d) *Big Boggy National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge subject to the following conditions:

(i) Season dates will be concurrent with the State for the September teal season, youth-only season, and duck and coot regular season in the Texas South Zone, and goose regular season in the Texas East Zone, with the exception that we prohibit duck (not including the September teal and youth-only seasons) and coot hunting on the refuge until the last Saturday in October. If the State-specified duck and coot regular season opens later than the last Saturday in October, then hunting on the refuge will open consistent with the State-specified season date.

(ii) Hunters 17 and younger must be under the direct supervision of an adult age 18 or older.

(iii) Hunters may enter the refuge hunt units no earlier than 4 a.m. Hunting starts at the designated legal shooting time and ends at 12 p.m. (noon). Hunters must leave refuge hunt units by 1 p.m.

(iv) We allow motorized boats, including airboats, in open tidal waters. We prohibit the operation of motorized boats in shallow water through emergent and submergent wetland vegetation, or where bottom gouging would occur. We allow motorized boats to enter shallow water by drifting or polling, or by means of trolling motor where it does not cause damage to vegetation or the bottom.

(v) You must remove all decoys, boats, spent shells, marsh chairs, vegetation (blind material), and other equipment from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(vi) We require a minimum distance between hunt parties of 200 yards (180 meters).

(vii) We restrict vehicle access to designated roads and parking areas. You may access hunt units from land by foot or nonmotorized conveyance from designated parking areas or turn-arounds. You may access public waterfowl hunting areas by motorized boat from State waters, where applicable.

(2)–(4) [Reserved]

(e) *Brazoria National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge subject to the following conditions:

(i) Season dates will be concurrent with the State for the September teal season, youth-only season, and duck and coot regular season in the Texas South Zone, and goose regular season in the Texas East Zone, with the exception that we prohibit duck (not including the September teal and youth-only seasons) and coot hunting on the refuge until the last Saturday in October. If the State-specified duck and coot regular season opens later than the last Saturday in October, then hunting on the refuge will open consistent with the State-specified season date.

(ii) Hunters age 17 and younger must be under the direct supervision of an adult age 18 or older.

(iii) Hunters may enter the refuge hunt units no earlier than 4 a.m. Hunting starts at the designated legal shooting time and ends at 12 p.m. (noon). Hunters must leave refuge hunt units by 1 p.m.

(iv) We allow hunting in the Alligator Marsh public waterfowl hunting area daily during the September teal season and on Saturdays, Sundays, and Wednesdays of the regular waterfowl season.

(v) We allow motorized boats, including airboats, in open tidal waters. We prohibit the operation of motorized boats in shallow waters, through emergent and submergent wetland vegetation, or where bottom gouging would occur. We allow motorized boats to enter shallow water by drifting or polling, or by means of trolling motor where it does not cause damage to vegetation or the bottom.

(vi) You must remove all decoys, boats, spent shells, marsh chairs, vegetation (blind material), and other equipment from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(vii) We require a minimum distance between hunt parties of 200 yards (180 meters (m)).

(viii) We allow the retrieval of downed waterfowl inside a 100-yard (91-m) retrieval zone west of Middle Bayou. We also allow the retrieval of downed waterfowl inside a 100-yard (91-m) retrieval zone around the portions of Alligator Lake that are open to hunting.

(ix) We restrict vehicle access to designated roads and parking areas. You may access hunt units from land by foot or nonmotorized conveyance from designated parking areas and turn-arounds. You may access public waterfowl hunting areas by motorized boat from State waters, where applicable.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit the use or possession of alcoholic beverages in all public fishing areas.

(ii) We open Bastrop Bayou Fishing Pier and pull-offs to fishing 24 hours a day.

(iii) We prohibit the use of trotlines, sail lines, set lines, jugs, gigs, spears, bush hooks, snatch hooks, crossbows, or bows and arrows of any type.

(iv) The condition set forth at paragraph (e)(1)(v) of this section applies.

(f) *Buffalo Lake National Wildlife Refuge.* (1) [Reserved]

(2) *Upland game hunting.* We allow hunting of ring-necked pheasant on designated areas of the refuge subject to the following conditions:

(i) We require hunters to obtain a Special Use Permit (FWS Form 3–1383–G).

(ii) Hunters age 17 and younger (''youth hunters'') must be under the direct supervision of an adult age 18 or older (''adult supervisor'').

(iii) We limit hunting to 5 days, opening on Saturday as governed by the opening of the State of Texas hunting season, and the subsequent Monday, Wednesday, Friday, and Sunday.

(iv) Hunting hours will be from 9 a.m. to the close of legal shooting time as listed in the State of Texas pheasant hunting regulations.

(v) All hunters must check in and out at refuge headquarters.

(vi) We allow only shotguns for pheasant hunting.

(3) *Big game hunting.* We allow hunting of white-tailed deer, mule deer, and feral hog on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (f)(2)(ii) of this section applies.

(ii) After legal sunset, hunters may be in designated camping areas only. We prohibit hunters in all other areas of the refuge after legal sunset.

(iii) During the youth hunt:

(A) When hunting, each adult supervisor may supervise only one youth hunter. A youth hunter may have up to two adult supervisors.

(B) The condition set forth at paragraph (f)(2)(i) of this section applies.

(4) [Reserved]

(g) *Caddo Lake National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) The annual refuge tearsheet (signed brochure) provides season dates and bag limits.

(ii) Deer archery hunters must possess and carry a signed refuge tearsheet (signed brochure) while hunting.

(iii) Hunters age 17 and younger must be under the direct supervision of an adult age 18 or older.

(iv) You may hunt feral hog during any established refuge hunting season. Refuge permits and legal weapons apply for the current hunting season.

(v) We allow hunters to access the refuge no more than 2 hours before legal sunrise and no more than 2 hours after legal sunset.

(vi) You may participate in the refuge firearms deer hunt only with a Quota Deer Hunt Permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) issued through random drawing.

(vii) We allow the use of only portable blinds and tree stands on the refuge. You must remove blinds, tree stands, and all other personal equipment from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(viii) We allow all-terrain vehicles for medically documented disabled hunters by Special Use Permit (FWS Form 3–1383–G only).

(4) [Reserved]

(h) *Hagerman National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of mourning dove on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a signed refuge tearsheet (signed brochure).

(ii) Hunters age 17 and younger must be under the direct supervision of an adult age 18 or older.

(iii) We require hunters to self-check-in and self-check-out (FWS Form 3–2405), with the exception of Nocona Unit.

(iv) We prohibit falconry.

(v) We allow the use of dogs to retrieve game.

(vi) We allow only approved nontoxic shot (see § 32.2(k)) for all hunts on the refuge.

(vii) We prohibit hunting within 150 feet (45 meters) of any day use area or walking trail.

(2) *Upland game hunting.* We allow hunting of fox squirrel and eastern cottontail rabbit in the months of January, February, and September on designated areas of the refuge and subject to the following condition: The conditions set forth at paragraphs (h)(1)(i) through (vii) of this section apply.

(3) *Big game hunting.* We allow hunting of white-tailed deer, feral hog, and wild turkey on designated areas of the refuge subject to the following conditions:

(i) We require a limited hunt permit (name only) for controlled hunts for archery deer, hunts for feral hog, and spring wild turkey hunts.

(ii) We require feral hog and turkey hunters to self-check-in and self-check-out (FWS Form 3–2405), with the exception of Nocona Unit.

(iii) We require controlled deer hunters to check in and out (FWS Form 3–2405) at the refuge check station.

(iv) We allow muzzleloaders, bow and arrow, and shotguns for feral hog and spring turkey hunts. You may possess only lead-free, approved nontoxic (steel, bismuth, copper, or tungsten; see § 32.2(k)) bullets, slugs, and shot (00 buck for hogs, no shell larger than #4 shot size for turkey).

(v) We require all hunters to check-in, show proof of personal identification, and produce a valid limited hunt permit (name only) prior to the hunt.

(vi) We limit each hunter to one stand, which the hunter may place on the refuge during the day preceding each hunt. You must remove all stands by legal sunset on the last day of each hunt (see § 27.93 of this chapter).

(vii) Hunters must check all game harvested during limited hunts at the refuge check station the same day of the kill and prior to leaving the refuge for the day.

(viii) The conditions set forth at paragraphs (h)(1)(ii) and (v) of this section apply.

(ix) We require proof of completion of a bow hunter education course for all archery deer hunting.

(x) We require annual successful completion of an archery proficiency test with a score of 80 percent or higher for all deer hunt permit holders.

(xi) We allow hunting only from stands or blinds, or by stalking.

(xii) We prohibit cutting of trees or limbs greater than 1 inch (2.5 centimeters).

(xiii) We allow hunters with valid limited permits to place hunt stands on trees the day before their hunt segment begins, but they must first check-in at the hunter check station. They may not enter any hunt unit until 8 a.m., and they must leave the unit by 2 p.m. We will disqualify anyone in violation from hunting.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge and subject to the following conditions:

(i) We open Lake Texoma and connected streams to bank fishing with pole and line, rod and reel, or hand line year-round.

(ii) We allow wade fishing from March 15 through October 1 annually from all areas except Refuge Road, Wildlife Drive, Plover Road, Tern Road, and Egret Road.

(iii) We allow fishing in refuge ponds from March 15 through September 30 annually, with the exception of Refuge Road pond, which is open year-round.

(iv) We prohibit the use of glass containers, plastic jugs, and/or plastic bottles as floats on trotlines.

(v) You may only take bait for personal use while fishing in refuge waters as governed by Texas State law.

(vi) We allow the use of bow and arrow to take nongame fish on refuge waters except from Refuge Road, Wildlife Drive, Plover Road, Tern Road, and Egret Road.

(vii) We prohibit limb lines, throw lines, jug lines, seine nets, noodling, and yo-yos.

(viii) We prohibit taking frog, turtle, and mussel from refuge lands and waters (see § 27.21 of this chapter).

(i) *Laguna Atascosa National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer, feral hog, and nilgai antelope on designated areas of the refuge subject to the following conditions:

(i) We require hunters to obtain a refuge hunt permit (name and address only). We require the hunter to possess and carry a signed and dated refuge hunt permit (tearsheet) in addition to the State hunt permit.

(ii) We allow archery and firearm hunting on designated units of the refuge. Units 1, 2, 3, 5, 6, and 8 are open to archery hunting during designated dates. Units 2, 3, 5, and 8 are open to firearm hunting during designated dates.

(iii) The annual refuge hunt brochure provides the bag limit for deer hunted on the refuge.

(iv) Hunters age 17 and younger must be under the direct supervision of an adult age 18 or older.

(v) We allow a scouting period prior to the commencement of the refuge deer hunting season. A permitted hunter and a limit of two non-permitted individuals may enter the hunt units during the scouting period. We allow access to the units during the scouting period from 1½ hours before legal sunrise to legal sunset. You must clearly display the signed refuge hunt permit (tearsheet) face up on the vehicle dashboard when hunting and scouting.

(vi) We allow hunters to enter the refuge 1½ hours before legal sunrise during the permitted hunt season. Hunters must leave the hunt unit no later than 1 hour after legal shooting hours.

(vii) You may access hunt units only by foot or by bicycle.

(viii) We allow hunting from portable stands or by stalking and still hunting. There is a limit of one blind or stand per permitted hunter. You must attach hunter identification (permit number or license number) to the blind or stand. You must remove all blinds and stands at the end of the permitted hunt season (see § 27.93 of this chapter).

(ix) Hunters must field-dress all harvested big game in the field and check the game at the refuge check station before removal from the refuge. You may use a nonmotorized cart to assist with the transportation of harvested game animals.

(x) We prohibit killing or wounding a deer, hog, or antelope and then intentionally or knowingly failing to make a reasonable effort to retrieve and include it in the hunter's bag limit.

(4) *Sport fishing.* We allow fishing and crabbing on designated areas of the refuge subject to the following conditions:

(i) We only allow fishing and crabbing year-round from Adoph Thomae Jr. County Park on San Martin Lake of the Bahia Grande Unit, and on the South Padre Island Unit.

(ii) We only allow pole and line, rod and reel, hand line, dip net, or cast net

for fishing. We prohibit the use of crab traps or pots for crabbing. Anglers must attend all fishing lines, crabbing equipment, or other fishing devices at all times.

(iii) We allow the use of boats for sport fishing. We only allow bank and wade fishing on the shoreline of San Martin Lake within the refuge boundary. We only allow access by foot behind posted refuge boundary signs.

(j) *Lower Rio Grande Valley National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of mourning, white-winged, and white-tipped dove on designated areas of the refuge subject to the following conditions:

(i) We require hunters to obtain a refuge hunt permit (signed tearsheet) and to possess and carry that permit at all times during your designated hunt period. Hunters must also display the refuge-issued vehicle placard (part of the hunt permit) while participating in the designated hunt period.

(ii) Hunters age 17 and younger must be under the direct supervision of an adult age 18 or older.

(iii) You may access the refuge during your permitted hunt period from 1 hour before legal hunt time to 1 hour after legal hunt time. You must only hunt during legal hunt hours.

(iv) We restrict hunt participants to those listed on the refuge hunt permit (hunter, non-hunting chaperone, and non-hunting assistant).

(v) We allow hunters to use bicycles on designated routes of travel.

(vi) We allow the use of dogs to retrieve doves during the hunt.

(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer, feral hog, and nilgai antelope on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (j)(1)(i) through (v) of this section apply.

(ii) We allow the use of rattling horns.

(iii) We allow free-standing blinds or tripods. Hunters may set them up during the scouting days preceding each permitted hunt day and must take them down by the end of each hunt day (see § 27.93 of this chapter). Hunters must mark and tag all stands with their hunting license number during the period of use.

(iv) Hunters must field-dress all harvested big game in the field.

(v) Hunters may use nonmotorized dollies or carts off improved roads or trails to haul carcasses to a parking area.

(vi) We prohibit use of big game decoys.

(vii) We prohibit the killing, wounding, taking, or possession of a deer, hog, or antelope and then intentionally or knowingly failing to make a reasonable effort to retrieve or keep the edible portions of the animal and include it in your bag limit.

(4) [Reserved]

(k) *McFaddin National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge subject to the following conditions:

(i) Season dates will be concurrent with the State for the September teal season, youth-only season, and duck and coot regular season in the Texas South Zone, and goose regular season in the Texas East Zone, with the exception that we prohibit duck (not including the September teal and youth-only seasons) and coot hunting on the refuge until the last Saturday in October. If the State-specified duck and coot regular season opens later than the last Saturday in October, then hunting on the refuge will open consistent with the State-specified season date.

(ii) You must possess and carry a current signed refuge hunting permit (signed tearsheet) while hunting on all units of the refuge.

(iii) Hunters age 17 and younger must be under the direct supervision of an adult age 18 or older.

(iv) Hunters must enter the refuge hunt units between 4 a.m. and ½ hour before the designated legal shooting time. Hunting starts at legal shooting time and ends at 12 p.m. (noon). Hunters must leave refuge hunt units by 12:30 p.m. We close refuge hunt units on Thanksgiving, Christmas, and New Year's Day.

(v) You may access hunt areas by foot, nonmotorized watercraft, outboard motorboat, or airboat. Airboats may not exceed 10 horsepower with direct drive with a propeller length of 48 inches (120 centimeters) or less. Engines may not exceed 2 cylinders and 484 cc.

(vi) We allow hunting in the Star Lake/Clam Lake Hunt Unit daily during the special teal season and on Saturdays, Sundays, and Tuesdays of the regular waterfowl season. During the regular waterfowl season only, all hunters hunting the Star Lake/Clam Lake Hunt Units must register at the check station (FWS Form 3–2405), including those accessing the unit from the beach along the Brine Line or Perkins Levee.

(vii) We allow hunting in the Central Hunt Units daily during the September teal season and on Saturdays, Sundays, and Tuesdays of the regular waterfowl season.

(viii) We only allow hunting in the Spaced Hunt Units on Saturdays, Sundays, and Tuesdays of the regular waterfowl season. We allow a maximum of four hunters per area. Hunters must possess and carry Special Fee Area Permits (signed refuge tearsheet) while hunting.

(ix) We allow daily hunting in the Mud Bayou Hunt Unit during the September teal season and on Sundays, Wednesdays, and Fridays of the regular waterfowl season. We allow access by foot from the beach at designated crossings or by boat from the Gulf Intracoastal Waterway via Mud Bayou.

(x) On inland waters of the refuge hunt area open to motorized boats, we restrict the use of boats powered by air-cooled or radiator-cooled engines to those powered by a single engine of 25 horsepower or less and utilizing a propeller 9 inches (22.5 centimeters) in diameter or less during the hunting season.

(xi) We allow portable blinds and temporary natural vegetation blinds. You must remove all blinds, decoys, boats, spent shells, marsh chairs, and other equipment from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(xii) We require a minimum distance between hunt parties, and between hunters and driveable roads and buildings, of 200 yards (180 meters).

(xiii) We allow the use of dogs when hunting.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow fishing and crabbing on designated areas of the refuge subject to the following conditions:

(i) We only allow fishing and crabbing with pole and line, rod and reel, or handheld line. We prohibit the use of any method not expressly allowed in inland waters, including trotlines, set lines, jug lines, limb lines, bows and arrows, gigs, spears, and crab traps.

(ii) We allow cast netting for bait for personal use along waterways in areas open to the public and along public roads.

(iii) The conditions set forth at paragraphs (k)(1)(v) and (x) of this section apply.

(iv) We prohibit mooring to water control structures.

(l) *San Bernard National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge subject to the following conditions:

(i) Season dates will be concurrent with the State for the September teal season, youth-only season, and duck and coot regular season in the Texas South Zone, and goose regular season in the Texas East Zone, with the exception

that we prohibit duck (not including the September teal and youth-only seasons) and coot hunting on the refuge until the last Saturday in October. If the State-specified duck and coot regular season opens later than the last Saturday in October, then hunting on the refuge will open consistent with the State-specified season date.

(ii) Hunters age 17 and younger must be under the direct supervision of an adult age 18 or older.

(iii) Hunters may enter the refuge hunt units no earlier than 4 a.m. Hunting starts at the designated legal shooting time and ends at 12 p.m. (noon). Hunters must leave refuge hunt units by 1 p.m.

(iv) We require hunters to use the Waterfowl Lottery Application (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) for the Sargent Permit Waterfowl Hunt Area. Hunters must abide by all terms and conditions set by the permit.

(v) We allow motorized boats, including airboats, in open tidal waters. We prohibit the operation of motorized boats in shallow waters, through emergent and submergent wetland vegetation, or where bottom gouging would occur. We allow motorized boats to enter shallow water by drifting or polling, or by means of trolling motor where it does not cause damage to vegetation or the bottom.

(vi) You must remove all decoys, boats, spent shells, marsh chairs, vegetation (blind material), and other equipment from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(vii) We require a minimum distance between hunt parties of 200 yards (180 meters).

(viii) We restrict vehicle access to designated roads. You may access hunt units from land by foot or nonmotorized conveyance from designated parking areas or turn-arounds. You may access public waterfowl hunting areas by motorized boat from State waters, where applicable.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit the use or possession of alcoholic beverages in all public fishing areas.

(ii) The condition set forth at paragraph (l)(1)(v) of this section applies.

(m) *Texas Point National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge subject to the following conditions:

(i) Season dates will be concurrent with the State for the September teal season, youth-only season, and duck and coot regular season in the Texas South Zone, and goose regular season in the Texas East Zone, with the exception that we prohibit duck (not including the September teal and youth-only seasons) and coot hunting on the refuge until the last Saturday in October. If the State-specified duck and coot regular season opens later than the last Saturday in October, then hunting on the refuge will open consistent with the State-specified season date.

(ii) You must possess and carry a current signed refuge hunting permit (signed tearsheet) while hunting on all hunt units of the refuge.

(iii) Hunters age 17 and younger must be under the direct supervision of an adult age 18 or older.

(iv) Hunters must enter the refuge hunt unit between 4 a.m. and ½ hour before the designated legal shooting time. Hunting starts at legal shooting time and ends at 12 p.m. (noon). Hunters must be off refuge hunt units by 12:30 p.m. We close refuge hunt units on Thanksgiving, Christmas, and New Year's Day.

(v) We allow hunting in portions of the refuge daily during the September teal season and on Saturdays, Mondays, and Wednesdays during the regular waterfowl season.

(vi) You may access hunt areas by foot, nonmotorized watercraft, outboard motorboat, or airboat. Airboats may not exceed 10 horsepower with direct drive with a propeller length of 48 inches (120 centimeters) or less. Engines may not exceed 2 cylinders and 484 cc.

(vii) On inland waters of the refuge hunt area open to motorized boats, we restrict the use of boats powered by air-cooled or radiator-cooled engines to those powered by a single engine of 25 horsepower or less and utilizing a propeller 9 inches (22.5 centimeters) in diameter or less during the hunting season.

(viii) We allow portable blinds and temporary natural vegetation blinds. You must remove all blinds, decoys, boats, spent shells, marsh chairs, and other equipment from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(ix) We require a minimum distance between hunt parties of 200 yards (180 meters).

(x) We allow the use of dogs when hunting.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow fishing and crabbing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing and crabbing with pole and line, rod and reel, or handheld line. We prohibit the use of any method not expressly allowed in inland waters, including trotlines, set lines, jug lines, limb lines, bows and arrows, gigs, spears, and crab traps.

(ii) We allow cast netting for bait by individuals along waterways in areas open to the public and along public roads.

(iii) The conditions set forth at paragraphs (m)(1)(vi) and (vii) of this section apply.

(iv) We prohibit mooring to water control structures.

(n) *Trinity River National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck on designated areas of the refuge subject to the following conditions:

(i) We only allow hunting on Champion Lake by refuge lottery drawing.

(ii) We only allow hunting on Champion Lake Saturdays and Sundays during the State duck season. Hunters may not enter the refuge until 5 a.m. and must be out of the hunt area by 12 p.m. (noon).

(iii) You must remove all blinds, decoys, shell casings, and other personal equipment following each hunt day (see §§ 27.93 and 27.94 of this chapter).

(iv) We allow the use of dogs when retrieving game.

(v) Hunters age 17 and younger must be under the direct supervision of an adult age 18 or older.

(vi) We require a minimum distance between hunt parties of 150 yards (135 meters).

(2) *Upland game hunting.* We allow hunting for squirrel and rabbit on designated areas of the refuge subject to the following conditions:

(i) We require hunters to possess a refuge permit (signed tearsheet). The hunter must carry the nontransferable permit at all times while hunting.

(ii) We require that refuge hunters turn in the Upland/Small Game/Furbearer Report (FWS Form 3–2362) by the date specified on the permit. Failure to submit the report will render the hunter ineligible for the next year's limited upland game hunt.

(iii) The condition set forth at paragraph (n)(1)(v) of this section applies.

(iv) We allow all-terrain vehicle use for hunters with disabilities in designated units.

(v) We require a minimum distance between hunt parties of 200 yards (180 meters). Hunters must visibly wear 400 square inches (2,600 square centimeters) of hunter orange above the waist and a solid hunter-orange hat or cap.

(vi) Hunters may enter the refuge no earlier than 4:30 a.m. We allow hunting from ½ hour before legal sunrise to legal sunset only during the days specified on the permit.

(vii) Hunters may place no more than one temporary stand on the refuge. Hunters may place the stand during the scouting week before the hunt begins and must remove it the day the hunt ends (see § 27.93 of this chapter). Hunters must label blinds with the name of the permit holder. We prohibit hunting or erection of blinds on refuge roads or mowed/maintained trails.

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) We require a refuge permit (signed refuge tearsheet) and Big Game Harvest Report (FWS Form 3–2359). Hunters must turn in both forms by the date specified on the permit. Failure to submit the Big Game Harvest Report will render the hunter ineligible for the next year's limited big game hunt. Drawings are by lottery. The hunter must carry the nontransferable permit at all times while hunting.

(ii) The conditions set forth at paragraphs (n)(1)(v) and (n)(2)(iv) through (vii) of this section apply.

(iii) We allow hunting during a designated 23-day archery season.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We only allow fishing with pole and line, rod and reel, or hand-held line.

(ii) We prohibit the use of trotlines, setlines, bows and arrows, gigs, spears, fish traps, crab/crawfish traps, and/or nets.

(iii) We prohibit the harvesting of frog or turtle (see § 27.21 of this chapter).

(iv) We allow fishing from legal sunrise to legal sunset.

§ 32.63 Utah.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Bear River Migratory Bird Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, and tundra swan on designated areas of the refuge subject to the following conditions:

(i) We prohibit hunting or shooting within 100 yards (90 meters (m)) of refuge roads, parking areas, and observation platforms.

(ii) We allow airboats only in Refuge Unit 9 and Block C.

(iii) You may possess only 25 shells while hunting on or within 50 feet (15 m) from the center of Unit 1A or 2C dike.

(iv) We close for the spring and extended season goose hunts.

(v) We prohibit archery hunting on the refuge.

(vi) You may enter the refuge 2 hours before legal sunrise and must exit the refuge by 2 hours after legal sunset.

(2) *Upland game hunting.* We allow hunting of pheasant on designated areas of the refuge subject to the following condition: We prohibit hunting or taking of pheasants with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler incapable of removal without disassembling the gun so that its total capacity does not exceed three shells.

(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We open to fishing year-round.

(ii) You may fish only in designated areas west of the Auto Tour Road access gate from legal sunrise to legal sunset.

(b) *Fish Springs National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, coot, and goose on designated areas of the refuge subject to the following conditions:

(i) All hunters must register individually at the visitor information station before entering the open hunting area and must check-out at the same location prior to exiting the refuge.

(ii) We allow the use of dogs when hunting.

(iii) You may construct temporary blinds. You must remove all blinds constructed out of materials other than vegetation at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(iv) We allow the use of small boats (15 feet or less) when hunting. We prohibit gasoline motors and air boats.

(v) You may enter the refuge 2 hours prior to legal sunrise and must exit the refuge by 1½ hours after legal sunset. You must remove leave decoys, boats, vehicles, and other personal property on the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

(vi) We have a special blind area for use by disabled hunters. We prohibit trespass for any reason by any individual not registered to use that area.

(2)–(4) [Reserved]

(c) *Ouray National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, coot, and goose on designated areas of the refuge subject to the following condition: During hunting season, the refuge is open from 1½ hours before legal sunrise to 1½ hours after legal sunset.

(2) *Upland game hunting.* We allow hunting of pheasant and turkey on designated areas of the refuge subject to the following conditions:

(i) You may possess only approved nontoxic shot (see § 32.2(k)) while hunting turkey in the field.

(ii) We allow turkey hunting for youth hunters only.

(3) *Big game hunting.* We allow hunting of deer and elk on designated areas of the refuge subject to the following conditions:

(i) You must remove all tree stands and blinds no later than the last day of the hunting season for which you have a permit (see § 27.93 of this chapter).

(ii) We allow any-legal-weapon elk hunting for youth, disabled, and depredation pool hunters during State seasons.

(iii) We close for the general any-legal-weapon (rifle) and muzzleloader bull elk hunts.

(iv) We allow any-legal-weapon elk hunting during limited late season antlerless elk hunts starting on December 1 during State seasons.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) You may only fish with the aid of a pole, hook, and line. We prohibit trot lines, bow and arrows, spears, spear guns, cross bows, and firearms.

(ii) You must release unharmed any of the following four endangered fish if caught: Razorback sucker, Colorado pikeminnow, humpback chub, and bonytailed chub.

§ 32.64 Vermont.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Missisquoi National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, brant, merganser, coot, woodcock, and snipe on designated areas of the refuge subject to the following conditions:

(i) In the Delta Lakeshore Area:

(A) We prohibit blind staking and unattended decoys.

(B) We prohibit jumpshooting within 200 yards of a party hunting from a boat or blind.

(ii) In the Maquam Shore Area:

(A) We do not require a refuge permit to hunt or scout in this area.

(B) We prohibit jumpshooting within 200 yards (183 meters) of a party hunting from a boat or blind.

(iii) In the Saxes Pothole/Creek and Shad Island Pothole:

(A) This is a controlled hunting area. We require a refuge permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) to hunt in this area.

(B) Each hunting party must possess and carry a permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) for the specific zone on the specific day they are hunting in this area. Permits are not transferable.

(C) You must use a dog to retrieve migratory game birds.

(iv) In the Junior Waterfowl Hunting Area:

(A) This is a controlled hunting area. We require a refuge permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) to hunt in this area.

(B) Each junior hunter must possess and carry a permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) for the assigned blind site and day. On Mentor Day, mentors must also possess and carry this permit for the assigned blind site. Each adult hunting party must possess and carry a permit for the blind site and day they are hunting. Permits are not transferable.

(C) Shooting hours end at 11 a.m.

(v) In the Long Marsh Channel and Metcalfe Island:

(A) This is a controlled hunting area. We require a refuge permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) to hunt in this area.

(B) We limit hunting to Tuesdays, Thursdays, and Saturdays throughout the waterfowl hunting season for duck.

(C) Each hunting party must possess and carry a permit for the blind on the specific day they are hunting in this area. Permits are not transferable.

(D) Shooting hours end at 11 a.m.

(E) You must use a dog to retrieve migratory game birds.

(F) We close this area to waterfowl hunting during split seasons when geese are the only waterfowl that hunters may legally take.

(vi) In the Maquam Swamp Area:

(A) We prohibit blind staking and unattended decoys.

(B) You must use a dog to retrieve migratory game birds.

(2) *Upland game hunting.* We allow hunting of cottontail rabbit, snowshoe hare, ruffed grouse, and gray squirrel on designated areas of the refuge subject to the following conditions:

(i) You must obtain a signed refuge hunt brochure (signed brochure) at refuge headquarters prior to hunting, and you must hold a valid State hunting license.

(ii) We only allow shotguns or muzzleloaders on open areas east of the Missisquoi River and on Shad Island.

(iii) We prohibit hunting from the end of snowshoe hare and rabbit season through September 1.

(iv) On the Eagle Point Unit, conditions in paragraphs (a)(2)(i) through (iii) of this section do not apply.

(3) *Big game hunting.* We allow hunting of white-tailed deer, moose, bear, and turkey on designated areas of the refuge subject to the following conditions:

(i) You must obtain a signed refuge hunt brochure (signed brochure) at refuge headquarters prior to hunting, and you must hold a valid State hunting license.

(ii) We only allow shotguns, muzzleloaders, or archery equipment on open areas east and north of Vermont Route 78. We prohibit rifles in these areas at any time.

(iii) You may use portable tree stands as governed by State regulations guiding their use on State wildlife management areas with the following exception: We allow only one tree stand or ground blind for each signed refuge hunt brochure (signed brochure) we issue.

(iv) On the Eagle Point Unit, we allow hunting subject to the following conditions:

(A) You may use portable tree stands as governed by State regulations guiding their use on State wildlife management areas.

(B) We allow training of dogs during the regular hunting seasons as governed by State regulations. We allow dog training outside the regular hunting seasons (*i.e.,* from June 1 through July 31) only with a Special Use Permit (Permit Application Form: National Wildlife Refuge System General Special Use, FWS Form 3–1383–G).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow sport fishing (including bow fishing) by boat and ice fishing in designated areas with the following exceptions:

(A) We close the following areas from ice-out to July 15: Goose Bay, Saxes Creek and Pothole, Metcalfe Island Pothole, Long Marsh Channel, and Clark Marsh.

(B) We close the following areas from Labor Day to December 31: Long Marsh Bay and Long Marsh Channel.

(ii) We allow bank fishing along designated areas of Charcoal Creek.

(iii) We prohibit taking fish with firearms within refuge boundaries.

(iv) We allow boat launching from Louie's Landing year-round. We allow boat launching from Mac's Bend boat launch area from September through November (inclusive).

(b) *Silvio O. Conte National Fish and Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, crow, and American woodcock on designated areas of the refuge subject to the following condition: We allow disabled hunters to hunt from a vehicle that is at least 10 feet from the traveled portion of the refuge road if the hunter possesses a State-issued disabled hunting license and a Special Use Permit (FWS Form 3–1383–G) issued by the refuge manager.

(2) *Upland game hunting.* We allow hunting of coyote, fox, raccoon, bobcat, woodchuck, red squirrel, eastern gray squirrel, porcupine, skunk, snowshoe hare, eastern cottontail, and ruffed grouse on designated areas of the refuge subject to the following conditions:

(i) We allow disabled hunters to hunt from a vehicle that is at least 10 feet from the traveled portion of the refuge road if the hunter possesses a State-issued disabled hunting license and a Special Use Permit (FWS Form 3–1383–G) issued by the refuge manager.

(ii) Shooting from, over, or within 10 feet of the traveled portion of any gravel road is prohibited (see § 25.71 of this chapter).

(iii) We require hunters hunting at night to possess a Special Use Permit (FWS Form 3–1383–G) issued by the refuge manager.

(3) *Big game hunting.* We allow hunting of white-tailed deer, moose, black bear, and wild turkey on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (b)(2)(ii) of this section applies.

(ii) We allow disabled hunters to hunt from a vehicle that is at least 10 feet from the traveled portion of the refuge road if the hunter possesses a State-issued disabled hunting license and a Special Use Permit (FWS Form 3–1383–G) issued by the refuge manager.

(iii) You may use portable tree stands and blinds as governed by State regulations guiding their use on State wildlife management areas. You must remove tree stands and blinds by the end of the final deer season (see § 27.93 of this chapter).

(iv) You may retrieve moose at the Nulhegan Basin Division with the use of a commercial moose hauler, if the hauler possesses a Special Use Permit (FWS Form 3–1383–C) issued by the refuge manager.

(4) [Reserved]

§ 32.65 Virginia.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Back Bay National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

(i) We allow scouting on designated days prior to the start of each refuge hunt period. Hunters may enter the hunt zones on foot, on bicycle, or through transportation provided by the refuge only.

(ii) Hunters may go to Hunt Zone 1 (Long Island) only by hand-launched watercraft (canoe, punt, rowboat, and similar watercraft) from the canoe launch at refuge headquarters. We prohibit use of trailers.

(iii) We prohibit hunting or discharging of firearms within designated safety zones. We prohibit retrieval of wounded game from a ''No Hunting Area'' or ''Safety Zone'' without the consent of the refuge employee on duty at the check station.

(iv) We prohibit the use of tree stands, except on Long Island (Hunt Zone 1).

(4) *Sport fishing.* We allow sport fishing, noncommercial crabbing, and clamming on designated areas of the refuge subject to the following conditions:

(i) We close all areas within the hunting zones, as well as the oceanfront, to fishing, crabbing, and clamming during the annual refuge white-tailed deer and feral hog hunt.

(ii) You may surf fish, crab, and clam south of the refuge's beach access ramp. We allow night surf fishing by Special Use Permit (FWS Form 3–1383–G) in this area on dates and at times designated on the permit.

(iii) For sport fishing in D Pool:

(A) We only allow fishing from the docks or banks in D Pool. We prohibit boats, canoes, and kayaks on D Pool.

(B) We prohibit hooks other than barbless or flattened.

(C) You must catch and release all freshwater game fish. The daily creel limit for D Pool for other species is a maximum combination of any 10 nongame fish.

(D) Parking for non-ambulatory anglers is available adjacent to the dock at D Pool. All other anglers must enter the area by foot or bicycle.

(b) *Chincoteague National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of waterfowl and rail on designated areas of the refuge subject to the following conditions:

(i) You must obtain a refuge hunt permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) and maintain the permit on your person while hunting on the refuge.

(ii) You may only access hunting areas by boat.

(iii) We prohibit hunting on Assawoman and Metompkin Islands' beach and dune habitats beginning March 15.

(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer and sika in designated areas of the refuge subject to the following conditions:

(i) We allow holders of a refuge hunt permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) to access areas of the refuge typically closed to the nonhunting public. All occupants of a vehicle or hunt party must possess a refuge hunt permit and be actively engaged in hunting. We allow an exception for those persons aiding a disabled person who possesses a valid State-issued Commonwealth of Virginia Disabled Resident Lifetime License or Commonwealth of Virginia Resident Disabled Veteran's Lifetime License.

(ii) You may not hunt within 100 feet (30.5 meters) of any building.

(iii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(iv) You may not hunt, discharge a firearm, or nock an arrow or crossbow bolt within 50 feet (15.2 meters) of the centerline of any road, whether improved or unimproved, or paved trail.

(4) *Sport fishing.* We allow sport fishing, crabbing, and clamming from the shoreline of the refuge in designated areas subject to the following conditions:

(i) You must attend minnow traps, crab traps, crab pots, and handlines at all times.

(ii) We prohibit the use of seine nets and pneumatic (compressed air or otherwise) bait launchers.

(iii) The State regulates certain species of finfish, shellfish, and crustacean (crab) using size or possession limits. You may not alter these species, to include cleaning or filleting, in such a way that we cannot determine its species or total length.

(iv) In order to fish after the refuge closes for the day, anglers must obtain an overnight fishing pass (name/address/phone) issued by the National Park Service. Anglers can obtain a pass in person at the National Park Service Tom's Cove Visitor Center.

(v) We allow only three surf fishing poles per licensed angler, and those poles must be attended at all times. This includes persons age 65 or older who are license-exempt in Virginia.

(c) *Eastern Shore of Virginia National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow archery and shotgun hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) We allow holders of a refuge hunt permit (Quota Deer Hunt Application, FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) to access areas of the refuge typically closed to the nonhunting public. All occupants of a vehicle or hunt party must possess a refuge hunt permit and be actively engaged in hunting. We allow an exception for those persons aiding a disabled person who possesses a valid State-issued Commonwealth of Virginia Disabled Resident Lifetime License or Commonwealth of Virginia Resident Disabled Veteran's Lifetime License.

(ii) You must sign in before entering the hunt zone and sign out upon leaving the zone.

(iii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(iv) You may not hunt, discharge a firearm, or nock an arrow or crossbow bolt outside of the designated hunting areas.

(v) We only allow shotguns loaded with buckshot during the firearm season.

(4) [Reserved]

(d) *Elizabeth Hartwell Mason Neck National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of deer on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a refuge permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System).

(ii) Hunters must certify/qualify weapons and ammunition and view the orientation session online prior to issuance of a permit.

(iii) We only allow shotguns with slugs during the firearm season.

(iv) Hunters must remove all hunting equipment from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(v) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(4) [Reserved]

(e) *Great Dismal Swamp National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer and bear on designated areas of the refuge subject to the following condition: You must possess and carry a refuge permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System).

(4) *Sport fishing.* We allow sport fishing in designated areas of the refuge subject to the following conditions:

(i) We allow fishing in Lake Drummond from a boat (maximum 25 horsepower) and from the piers at Washington Ditch and Interior Ditch.

(ii) We prohibit bank fishing.

(iii) We require permits (Special Use Permit (FWS Form 3–1383–G)) for vehicular access to the boat ramp on Interior Ditch Road on the west side of Lake Drummond.

(f) *James River National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) We require hunters to possess and carry a refuge hunting permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System).

(ii) We require persons who wish to hunt during the refuge's archery season to obtain a refuge hunting permit through a lottery administered by the Virginia Department of Game and Inland Fisheries.

(iii) We require that, during firearms and muzzleloader seasons, hunters remain within 100 feet (30 meters (m)) of their assigned stand while hunting.

(iv) We require that hunters using a muzzleloader must hunt from a stand elevated 10 feet (3 m) or more above the ground.

(4) [Reserved]

(g) *Mackay Island National Wildlife Refuge.* Refer to § 32.52(e) for regulations.

(h) *Occoquan Bay National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of deer on designated areas of the refuge subject to the following conditions:

(i) You must possess and carry a refuge permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) and be selected in the refuge lottery to hunt.

(ii) Hunters must certify/qualify weapons and ammunition and view an orientation session online prior to issuance of a permit.

(iii) We only allow shotguns with slugs during the firearm season.

(iv) Hunters must remove all hunting equipment from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

(v) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(4) [Reserved]

(i) *Plum Tree Island National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory waterfowl, gallinule, and coot on designated areas of the refuge subject to the following conditions:

(i) We require migratory game bird hunters to obtain a permit through a lottery administered by the Virginia Department of Game and Inland Fisheries. We require hunters to possess and carry that permit, along with their State hunting license and stamps, while hunting migratory game birds on the refuge.

(ii) We prohibit jump-shooting by foot or boat.

(iii) You must hunt from a blind, as assigned by the hunting permit.

(2)–(4) [Reserved]

(j) *Presquile National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) We require big game hunters to obtain a permit through a lottery administered by the Virginia Department of Game and Inland Fisheries.

(ii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(iii) We allow shotgun hunting on designated days as indicated on refuge hunting permits, in the State hunting guide, and on the refuge website.

(iv) We require hunters to dock their boats at designated locations on the refuge.

(4) [Reserved]

(k) *Rappahannock River Valley National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require big game hunters to obtain a permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing access each day from legal sunrise to legal sunset.

(ii) During the period when the refuge is open for hunting, we close hunting areas to all other uses, including sport fishing.

(iii) We allow fishing only by use of one or more attended poles with hook and line attached. We prohibit all other fishing methods and means.

(iv) We prohibit the use of lead sinkers in freshwater ponds, including Wilna Pond and Laurel Grove Pond.

(v) We require catch-and-release fishing for largemouth bass in freshwater ponds, including Wilna Pond and Laurel Grove Pond. Anglers may take other finfish species as governed by State regulations.

(vi) We prohibit the use of minnows as bait.

(vii) We prohibit use of boats propelled by gasoline motors, sail, or mechanically operated paddle wheel while fishing.

(l) *Wallops Island National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) You must obtain a refuge hunt permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) and carry it on your person while hunting.

(ii) You must sign in at the hunter registration station prior to entering your hunt zone and sign out upon exiting your hunt zone. All hunters must sign out no later than 2 hours after the end of legal shooting hours.

(iii) You must report all harvested animals on the sign-out sheet at the hunter registration station when signing out.

(iv) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(4) [Reserved]

§ 32.66 Washington.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Billy Frank Jr. Nisqually National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge subject to the following conditions:

(i) We allow hunters to possess and carry no more than 25 shells while hunting in the field.

(ii) Hunters may access the hunt areas by boat only.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow fishing and shellfishing on designated areas of the refuge subject to the following conditions:

(i) We prohibit bank fishing within the refuge along the Nisqually River and McAllister Creek.

(ii) We prohibit shellfishing (clams, oysters, mussels) on the tideflats.

(iii) We prohibit tidal flat and marsh access from refuge trails.

(b) *Columbia National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, and snipe on designated areas of the refuge subject to the following conditions:

(i) We prohibit discharge of any firearm within ¼ mile (396 meters) of any maintained building or Federal facility, such as, but not limited to, a structure designed for storage, human occupancy, or shelter for animals.

(ii) We only allow portable blinds and temporary blinds constructed of nonliving natural materials. Hunters must remove all decoys and other equipment at the end of each day's hunt (see § 27.93 of this chapter).

(iii) We allow hunting only on Wednesdays, Saturdays, Sundays, and Federal holidays on Marsh Unit 1 and Farm Units 226 and 227.

(2) *Upland game hunting.* We allow hunting of upland game birds on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (b)(1)(i) of this section applies.

(ii) We allow hunting from 12 p.m. (noon) to legal sunset on Wednesdays, Saturdays, Sundays, and Federal holidays in Marsh Unit 1.

(3) *Big game hunting.* We allow hunting of deer on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (b)(1)(i) of this section applies.

(ii) We allow hunting with shotgun, muzzleloader, and archery only.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) On waters open to fishing, we allow fishing only from April 1 to September 30, except that we allow fishing year-round on Falcon, Heron, Goldeneye, Corral, Blythe, Chukar, and Scaup Lakes.

(ii) We allow frogging during periods when we allow fishing on designated waters.

(c) *Conboy Lake National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, and snipe on designated areas of the refuge subject to the following conditions:

(i) We prohibit discharge of any firearm within ¼ mile (396 meters) of any maintained building or Federal facility, such as, but not limited to, a structure designed for storage, human occupancy, or shelter for animals.

(ii) Hunters must remove all decoys and other equipment at the end of each day's hunt (see § 27.93 of this chapter).

(2) [Reserved]

(3) *Big game hunting.* We allow hunting of deer on designated areas of the refuge subject to the following conditions: The condition set forth at paragraph (c)(1)(i) of this section applies.

(4) [Reserved]

(d) *Dungeness National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow saltwater fishing on designated areas of the refuge.

(e) *Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, dove, and snipe on designated areas of the monument/refuge subject to the following conditions:

(i) We prohibit discharge of any firearm within ¼ mile (396 meters) of any maintained building or Federal facility, such as, but not limited to, a structure designed for storage, human occupancy, or shelter for animals.

(ii) Hunters must remove all decoys and other equipment at the end of each day's hunt (see § 27.93 of this chapter).

(2) *Upland game hunting.* We allow hunting of pheasant, quail, grey partridge, and chukar partridge on designated areas of the monument/refuge subject to the following conditions: The conditions set forth at paragraphs (e)(1)(i) and (ii) of this section apply.

(3) *Big game hunting.* We allow hunting of deer and elk on designated areas of the monument/refuge subject to the following conditions:

(i) We allow sport hunting of deer and elk on the Saddle Mountain, Ringold, and Wahluke (East) units of the monument/refuge subject to the following conditions:

(A) The condition set forth at paragraph (e)(1)(i) of this section applies.

(B) We allow hunting with shotgun, muzzleloader, and archery only.

(ii) We allow population control hunting of elk on the Rattlesnake Unit of the monument/refuge subject to the following conditions:

(A) We prohibit overnight camping, overnight parking, and smoking.

(B) We require elk population control hunters to participate in a Service-directed, hunt-specific training session each year prior to hunting. Hunters must check-in and out at a refuge check station and fill out and display the Self-Clearing check-In Permit (Form 3–2405) on the dashboards of their vehicles.

(C) We allow hunting with modern firearms only.

(D) We allow authorized vehicles only on designated roads and only in designated parking areas.

(E) We prohibit the use of bicycles and carts.

(F) We allow hunting Monday through Friday only.

(G) All hunt assistants must check-in and out at a refuge check station and be under the supervision of the permitted hunter at all times. All hunt assistants must fill out and display the Self-Clearing check-In Permit (Form 3–2405) on the dashboards of their vehicles.

(H) We allow foot access only beyond designated roads and parking areas.

(I) We prohibit retrieval of animals outside the hunt area without prior Service approval.

(4) *Sport fishing.* We allow sport fishing on the designated areas of the monument/refuge subject to the following condition: We allow access from legal sunrise to legal sunset, except that we allow access to the Wahluke Unit's White Bluffs boat launch from 2 hours before legal sunrise until 2 hours after legal sunset for launch and recovery activities only.

(f) *Julia Butler Hansen Refuge for the Columbian White-Tailed Deer*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, and common snipe on designated areas of the refuge subject to the following conditions:

(i) You must remove all personal property, including decoys and boats, by 1 hour after legal sunset (see §§ 27.93 and 27.94 of this chapter).

(ii) We open the refuge for hunting access from 1½ hours before legal

sunrise until 1½ hours after legal sunset.

(iii) We allow the use of dogs when hunting.

(2) [Reserved]

(3) *Big game hunting.* We allow hunting of elk on designated areas of the refuge subject to the following conditions:

(i) We allow hunting on Mondays through Fridays only. We close the refuge to hunting on weekends and Federal holidays.

(ii) We allow a maximum of 10 hunters to use the refuge in any one day, with one hunt period consisting of 5 consecutive days.

(iii) We allow hunting of elk using muzzleloading firearms only.

(iv) We require hunters to attend a refuge-specific orientation session each year prior to hunting on the refuge.

(v) We require hunters to sign in and out each day at the refuge headquarters. When signing out for the day, you must report hunting success or failure, and any hit-but-not-retrieved animals on the Big Game Harvest Report (FWS Form 3–2359).

(vi) Additional persons may assist hunters during elk retrieval only. No more than one unlicensed person may assist each licensed hunter during the hunt or during elk retrieval.

(vii) We prohibit hunters from operating motorized vehicles on the refuge.

(4) *Sport fishing.* We allow bank fishing on designated areas of the refuge.

(g) *Little Pend Oreille National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the refuge subject to the following conditions:

(i) We allow hunting September through December.

(ii) We allow the use of dogs when hunting.

(2) *Upland game hunting.* We allow hunting of upland game and small game on designated areas of the refuge subject to the following conditions:

(i) We allow hunting September through December, and during the spring wild turkey season.

(ii) During the spring turkey season, we prohibit hunting of all species except wild turkey.

(iii) We allow the use of dogs when hunting, with the exception of raccoon.

(3) *Big Game Hunting.* We allow hunting of big game on designated areas of the refuge subject to the following conditions: The condition set forth at paragraph (g)(1)(i) of this section applies.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(h) *McNary National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, dove, and snipe on designated areas of the refuge subject to the following conditions:

(i) We prohibit discharge of any firearm within ¼ mile (396 meters) of any maintained building or Federal facility, such as, but not limited to, a structure designed for storage, human occupancy, or shelter for animals.

(ii) Hunters must remove all decoys and other equipment at the end of each day's hunt (see § 27.93 of this chapter).

(iii) On the McNary Fee Hunt Area (McNary Headquarters Unit), we allow hunting subject to the following conditions:

(A) The McNary Fee Hunt Area (McNary Headquarters Unit) is only open on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Year's Day.

(B) We require hunters to possess and carry a special refuge permit (signed refuge brochure).

(C) We allow hunting only from assigned areas.

(iv) On the Peninsula Unit, we allow hunting subject to the following condition: On the east shoreline of the Peninsula Unit, we allow hunting only from established numbered blind sites, assigned on a first-come, first-served basis, and we require hunters to remain within 100 feet (30 meters) of marked posts unless retrieving birds or setting decoys.

(2) *Upland game hunting.* We allow hunting of upland game birds on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (h)(1)(i) of this section applies.

(ii) On the McNary Fee Hunt Area (McNary Headquarters Unit), we allow hunting on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Year's Day from 12 p.m. (noon) to the end of State legal hunting hours.

(3) *Big game hunting.* We allow hunting of deer on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (h)(1)(i) of this section applies.

(ii) On the Stateline and Juniper Canyon Units, we allow hunting with modern firearms, shotgun, muzzleloader, and archery.

(iii) On the Peninsula, Two-Rivers, and Wallula Units, we allow hunting with archery and shotgun only.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(i) *Ridgefield National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge subject to the following conditions:

(i) You may not shoot or discharge any firearm from, across, or along any designated route of travel, including pedestrian trails.

(ii) We close the refuge to goose hunting when the dusky Canada goose harvest reaches the quota posted at the refuge.

(iii) We allow hunting on designated portions of the River ''S'' Unit on Tuesdays, Thursdays, and Saturdays, excluding Federal holidays, during the regular State waterfowl hunting season.

(iv) Prior to entering the hunt area, you must check in at the refuge check station, and obtain a Migratory Bird Hunt Report (FWS Form 3–2361). You must carry the Migratory Bird Hunt Report while hunting as proof of blind assignment and user fee payment.

(v) We allow access to the refuge check station 2 hours before legal shooting time. We require hunters to depart the refuge no later than 1 hour after legal shooting time.

(vi) We allow hunting only from designated permanent blinds.

(vii) We allow a maximum of three persons per hunting blind.

(viii) We prohibit additional hunters to join a hunt party after the party has checked in.

(ix) We allow the use of dogs when hunting.

(x) Prior to switching blinds, you must first report to the refuge check station to obtain a new blind assignment. You must submit an accurate Migratory Bird Hunt Report (FWS Form 3–2361) for the blind being vacated, and obtain a new Migratory Bird Hunt Report for the new blind.

(xi) Prior to leaving the hunt area, you must check out at the refuge check station, submit an accurate Migratory Bird Hunt Report (FWS Form 3–2361), and present all harvested birds for inspection by check station personnel.

(xii) We reserve Blind 1A for exclusive use by hunters with permanent disabilities who qualify for a valid State Disabled Hunter Permit or America the Beautiful access pass, and their nonhunting assistants.

(2)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing and frogging on designated areas of the refuge subject to the following conditions:

(i) We allow fishing and frogging from March 1 through September 30 only.

(ii) We allow fishing and frogging from legal sunrise to legal sunset only.

(j) *San Juan Islands National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(k) *Toppenish National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, dove, and snipe on designated areas of the refuge subject to the following conditions:

(i) We prohibit discharge of any firearm within ¼ mile (396 meters (m)) of any maintained building or Federal facility, such as, but not limited to, a structure designed for storage, human occupancy, or shelter for animals.

(ii) We allow only portable blinds and temporary blinds constructed of nonliving natural materials. Hunters must remove all decoys and other equipment at the end of each day's hunt (see § 27.93 of this chapter).

(iii) On the Pumphouse, Petty, Isiri, Chamber, and Chloe Units, we allow hunting 7 days a week subject to the following condition: We require a minimum distance between hunt parties of 200 yards (180 m).

(iv) On the Halvorson and Webb Units, we allow hunting only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

(v) On the Robbins Road Unit, we allow hunting only on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

(vi) On the Robbins Road and Pumphouse Units, we allow hunting only from numbered field blind sites. We prohibit free-roam hunting or jump shooting, and you must remain within 100 feet (30 m) of the numbered field blind post unless retrieving birds or setting decoys. We allow a maximum of four persons per blind site.

(2) *Upland game hunting.* We allow hunting of upland game birds on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (k)(1)(i) of this section applies.

(ii) We allow hunting of upland game birds from 12 p.m. (noon) to legal sunset of each hunt day.

(iii) On the Halvorson and Webb Units, we allow hunting only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

(iv) On the Robbins Road Unit, we allow hunting only on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

(3)–(4) [Reserved]

(l) *Turnbull National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, goose, and coot on designated areas of the refuge subject to the following conditions:

(i) We only allow hunting during the State youth season.

(ii) We allow the use of dogs when hunting.

(iii) Hunters may access the refuge no earlier than 2 hours before legal sunrise and must leave no later than 1 hour after legal sunset.

(iv) Hunters must obtain a letter from the refuge manager authorizing them to access the refuge for the purpose of hunting migratory game birds.

(2) [Reserved]

(3) *Big game hunting.* We allow hunting of elk on designated areas of the refuge subject to the following conditions:

(i) Hunters must obtain a letter from the refuge manager assigning them a hunt unit.

(ii) Hunters may access the refuge no earlier than 2 hours before State legal shooting time and must leave no later than 5 hours after the end of State legal hunting hours.

(iii) Hunters not using approved nontoxic ammunition (see § 32.2(k)) must remove or bury the visceral remains of harvested animals.

(4) [Reserved]

(m) *Umatilla National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, dove, and snipe on designated areas of the refuge subject to the following conditions:

(i) We prohibit discharge of any firearm within ¼ mile (396 meters) of any maintained building or Federal facility, such as, but not limited to, a structure designed for storage, human occupancy, or shelter for animals.

(ii) Hunters must remove all decoys and other equipment at the end of each day's hunt (see § 27.93 of this chapter).

(iii) On the Paterson and Whitcomb Units, we allow hunting only on Wednesdays, Saturdays, Sundays, and all Federal holidays within the State season.

(iv) On the Ridge Unit, we allow only shoreline hunting; we prohibit hunting from boats.

(2) *Upland game hunting.* We allow hunting of upland game birds on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (m)(1)(i) and (iii) of this section apply.

(ii) On the Whitcomb Island Unit, we only allow hunting of upland game from 12 p.m. (noon) to the end of State legal hunting hours.

(3) *Big game hunting.* We allow hunting of deer on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (m)(1)(i) of this section applies.

(ii) We allow hunting by special permit only (issued by the State).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(n) *Willapa National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, coot, and snipe on designated areas of the refuge subject to the following conditions:

(i) We require all hunters to obtain and carry a Migratory Bird Hunt Application (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) prior to entering the hunt area at the Riekkola Unit.

(ii) We require all hunters to report waterfowl taken per instructions on the Migratory Bird Hunt Report (FWS Form 3–2361).

(iii) In the designated goose hunt area in the Riekkola Unit, hunters may take ducks, coots, and snipe only incidental to hunting geese.

(iv) We allow goose hunting on Wednesdays, Saturdays, and Sundays in the designated goose hunt area in the Riekkola Unit.

(v) We open the refuge for hunting access from 1½ hours before legal sunrise until 1½ hours after legal sunset.

(vi) We allow the use of dogs when hunting.

(vii) You must remove all personal property, including decoys and boats, by 1 hour after legal sunset (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow hunting of forest grouse (sooty and ruffed) on designated areas of the refuge subject to the following conditions:

(i) We require all hunters to obtain and carry a Big/Upland Game Hunt Application (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System).

(ii) We require all hunters to report game taken, hours hunted, and name/address/date on the Upland/Small Game/Furbearer Report (FWS Form 3–2362).

(iii) We allow archery hunting only.

(iv) The conditions set forth at paragraphs (n)(1)(v) and (vi) of this section apply.

(3) *Big game hunting.* We allow hunting of deer, elk, and bear on

designated areas of the refuge subject to the following conditions:

(i) We require all Long Island hunters to obtain and carry a Big/Upland Game Hunt Application (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System).

(ii) We require all hunters to report game taken, hours hunted, and name/address/date on the Big Game Harvest Report (FWS Form 3–2359).

(iii) At Long Island, we allow only archery hunting; we prohibit hunting firearms.

(iv) We prohibit bear hunting on any portion of the refuge except Long Island.

(v) We prohibit the use of centerfire or rimfire rifles within the Lewis, Porter Point, and Riekkola Units.

(vi) The conditions set forth at paragraphs (n)(1)(v) and (vi) of this section apply.

(vii) You may leave your tree stand(s) in place for 3 days. You must label your tree stand(s) with your hunting license number and the date you set up the stand. You may set up stands 1½ hours before legal sunrise. You must remove your tree stand(s) and all other personal property from the refuge by 1½ hours after legal sunset on the third day (see § 27.93 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

§ 32.67 West Virginia.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Canaan Valley National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, rail, coot, gallinule, mourning dove, snipe, and woodcock on designated areas of the refuge subject to the following conditions:

(i) We require each hunter to possess and carry a signed refuge hunting brochure (signed brochure).

(ii) We prohibit overnight parking except by Special Use Permit (FWS Form 3–1383–G) on Forest Road 80.

(iii) We allow the use of dogs for hunting migratory game birds. We prohibit more than two dogs per hunter. We require all dogs to wear a collar displaying the owner's name and telephone number.

(iv) We prohibit dog training except during legal hunting seasons.

(2) *Upland game hunting.* We allow the hunting of ruffed grouse, squirrel, cottontail rabbit, snowshoe hare, red fox, gray fox, bobcat, woodchuck, coyote, opossum, striped skunk, and raccoon on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(1)(i) and (iv) of this section apply.

(ii) You may hunt raccoon at night, but you must obtain a Special Use Permit (FWS Form 3–1383–G) for raccoon hunting.

(iii) We only allow hunting in the No Rifle Zones with the following equipment: archery (including crossbow), shotgun, or muzzleloader.

(iv) We allow the use of dogs for hunting upland game species. We prohibit more than six dogs per hunting party for raccoon hunting. All dogs must wear a collar displaying the owner's name and telephone number.

(v) We prohibit the hunting of upland game species from March 1 through August 31.

(3) *Big game hunting.* We allow the hunting of white-tailed deer, black bear, and turkey on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (a)(1)(i) and (iv) and (a)(2)(iii) of this section apply.

(ii) We allow the use of temporary tree stands. You must clearly print your name and telephone number on the stand in a place that is easily read while the stand is affixed to a tree. You must remove tree stands at the end of the deer season (see § 27.93 of this chapter).

(iii) We allow the use of dogs for hunting black bear during the gun season. We prohibit more than six dogs per hunting party. We require all dogs to wear a collar displaying the owner's name and telephone number.

(4) [Reserved]

(b) *Ohio River Islands National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds (waterfowl, coot, rail, gallinule, snipe, woodcock, and dove) on designated areas of the refuge subject to the following conditions:

(i) We require each hunter to possess and carry a signed refuge hunting brochure (signed brochure).

(ii) Hunters and anglers may enter the refuge 1 hour before legal sunrise and must exit the refuge, including parking areas, no later than 1 hour after legal sunset.

(iii) When hunting migratory game birds, you may only use dogs to locate, point, and retrieve.

(2) *Upland game hunting.* We allow hunting of rabbit and squirrel on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(1)(i) and (ii) of this section apply.

(ii) We prohibit the use of rifles, muzzleloaders, or pistols for hunting rabbit or squirrel.

(3) *Big game hunting.* We allow archery (including crossbow) hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) The conditions set forth at paragraphs (b)(1)(i) and (ii) of this section apply.

(ii) We prohibit organized deer drives. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase, or otherwise frighten or cause deer to move in the direction of any person(s) who is part of the organized or planned hunt and known to be waiting for the deer.

(iii) We only allow the use of temporary tree stands and blinds. You must remove your tree stand(s) and/or blind(s) at the end of each hunt day (see § 27.93 of this chapter). You must clearly print your name and telephone number on the stand(s) and/or blind(s) in a place that is easily read while the stand is affixed to a tree.

(4) *Sport fishing.* We allow sport fishing throughout the refuge subject to the following conditions:

(i) The condition set forth at paragraph (b)(1)(ii) of this section applies.

(ii) We prohibit trotlines (setlines) and turtle lines.

§ 32.68 Wisconsin.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Fox River National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge and subject to the following conditions:

(i) Hunters must remove all stands from the refuge following each day's hunt (see § 27.93 of this chapter). We prohibit hunting from any stand left up overnight.

(ii) Hunters may enter the refuge no earlier than 1 hour before legal shooting hours and must exit the refuge no later than 1 hour after legal shooting hours end.

(iii) Any ground blind used during any gun deer season must display at least 144 square inches (929 square centimeters) of solid, blaze-orange material visible from all directions.

(4) [Reserved]

(b) *Green Bay National Wildlife Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer on

designated areas of the refuge subject to the following conditions:

(i) You must remove all stands from the refuge following each day's hunt (see § 27.93 of this chapter). We prohibit hunting from any stand left up overnight.

(ii) Hunters may enter the refuge no earlier than 1 hour before legal shooting hours and must exit the refuge no later than 1 hour after legal shooting hours end.

(iii) Any ground blind used during any gun deer season must display at least 144 square inches (929 square centimeters) of solid, blaze-orange material visible from all directions.

(iv) We require hunters to possess a permit (FWS Form 3–1383–G) for deer hunting on Plum Island.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: We only allow fishing from the shoreline; we prohibit fishing from docks, piers, and other structures.

(c) *Hackmatack National Wildlife Refuge.* Refer to § 32.32(f) for regulations.

(d) *Horicon National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge subject to the following condition: We allow only participants in the Learn to Hunt and other special programs to hunt.

(2) *Upland game hunting.* We allow hunting of wild turkey, ring-necked pheasant, gray partridge, squirrel, and cottontail rabbit on designated areas of the refuge subject to the following condition: For wild turkey hunting, hunters may possess only approved nontoxic shot shells (see § 32.2(k)) while in the field.

(3) *Big game hunting.* We allow hunting of white-tailed deer in designated areas of the refuge subject to the following conditions:

(i) Hunters must remove all stands and personal property from the refuge following each day's hunt (see §§ 27.93 and 27.94 of this chapter). We prohibit hunting from any stand left up overnight.

(ii) Hunters must possess a refuge permit (FWS Form 3–2439, Hunt Application—National Wildlife Refuge System) to hunt in Area E (surrounding the office/visitor center).

(iii) Hunters may enter the refuge no earlier than 1 hour before legal shooting hours and must exit the refuge no later than 1 hour after legal shooting hours.

(iv) Any ground blind used during any gun deer season must display at least 144 square inches (929 square centimeters) of solid-blaze-orange material visible from all directions.

(v) We prohibit the field possession of white-tailed deer in areas closed to white-tailed deer hunting.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We only allow bank fishing or fishing through the ice.

(ii) We prohibit the use of fishing weights or lures containing lead.

(e) *Leopold Wetland Management District*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds throughout the district, except that we prohibit hunting on the Blue-wing waterfowl production area (WPA) in Ozaukee County and on the Wilcox WPA in Waushara County, subject to the following conditions:

(i) We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times.

(ii) You must remove boats, decoys, and blinds at the conclusion of each day (see § 27.93 of this chapter).

(2) *Upland game hunting.* We allow hunting of upland game throughout the district, except that we prohibit hunting on the Blue-wing WPA in Ozaukee County and on the Wilcox WPA in Waushara County, subject to the following conditions:

(i) The condition set forth at paragraph (e)(1)(i) of this section applies.

(ii) For hunting, you may use or possess only approved nontoxic shot shells (see § 32.2(k)) while in the field, including shot shells used for hunting wild turkey.

(3) *Big game hunting.* We allow hunting of big game throughout the district, except that we prohibit hunting on the Blue-wing WPA in Ozaukee County and on the Wilcox WPA in Waushara County, subject to the following condition: Any ground blind used during any gun deer season must display at least 144 square inches (929 square centimeters) of solid, blaze-orange material visible from all directions.

(4) *Sport fishing.* We allow sport fishing on WPAs throughout the district.

(f) *Necedah National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the refuge subject to the following condition: We allow the use of dogs while hunting migratory game birds, provided the dog is under the immediate control of the hunter at all times.

(2) *Upland game hunting.* We allow hunting of wild turkey, ruffed grouse, gray squirrel, fox squirrel, cottontail rabbit, snowshoe hare, and raccoon on designated areas of the refuge subject to the following conditions:

(i) For wild turkey hunting, you may use or possess only approved nontoxic shot shells (see § 32.2(k)) while in the field.

(ii) During the spring turkey season, we allow unarmed hunters who have a valid spring turkey permit in their possession to scout the hunt area. We allow this scouting beginning on the Saturday immediately prior to the opening date listed on the State turkey hunting permit.

(iii) We open Refuge Area 3 to hunting after the State deer gun season through the end of the respective State seasons or until February 28, whichever occurs first.

(iv) We allow the use of dogs while hunting upland game (except raccoon), provided the dog is under the immediate control of the hunter at all times.

(v) You may only hunt snowshoe hare during the season for cottontail rabbit.

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) We prohibit possession of a loaded firearm or a nocked arrow on a bow within 50 feet (15 meters (m)) of the centerline of all public roads. During the gun deer season, we prohibit possession of a loaded firearm within 50 feet (15 m) of the center of refuge trails, and we prohibit discharge of guns from, across, down, or alongside these trails.

(ii) You may use portable elevated devices, but you must lower them to ground level at the close of shooting hours each day. You must remove all blinds, stands, platforms, and ladders from the refuge at the end of the hunting season (see §§ 27.93 and 27.94 of this chapter).

(iii) You must clearly mark all non-natural blinds, stands, platforms, and ladders on the exterior with the hunter's State hunting license number in letters that are at least 1 inch (2.5 centimeters) high. You may also use an attached metal tag with stamped or engraved lettering that is clearly visible.

(iv) We open Refuge Area 2 to deer hunting during State archery, gun, and muzzleloader seasons, except for any early antlerless-only hunts.

(v) We open Refuge Area 3 to deer hunting during the State regular gun, muzzleloader, and late archery seasons. Unarmed deer hunters may enter Area 3 to scout beginning the Saturday prior to the gun deer season.

(vi) You may use clothespins marked with flagging or reflective material. We

prohibit all other types of marking. You must clearly identify the hunter's State hunting license number on the clothes pin or the flagging itself. You must remove all clothes pins by the last day of archery season (see §§ 27.93 and 27.94 of this chapter).

(vii) Beginning the Saturday prior to the opening of the State regular gun deer season, you may use nonmotorized boats on Sprague-Goose Pools until freeze-up in order to access areas for deer hunting.

(viii) Any ground blind used during any gun deer season must display at least 144 square inches (929 square centimeters) of solid-blaze-orange material visible from all directions.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow use of nonmotorized boats in Sprague-Goose pools only when we open these pools to fishing.

(ii) We allow motorized boats in Suk Cerney Pool.

(iii) We allow fishing by hook and line only.

(g) *St. Croix Wetland Management District*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas throughout the district subject to the following conditions:

(i) We prohibit hunting on designated portions posted as closed of the St. Croix Prairie Waterfowl Production Area (WPA) and the Prairie Flats—South WPA in St. Croix County.

(ii) We close the Oak Ridge WPA in St. Croix County to hunting from the opening day of waterfowl season until the first Saturday in December, except that we allow deer hunting during regular archery, gun, and muzzleloader seasons.

(2) *Upland game hunting.* We allow hunting of upland game on designated areas throughout the district subject to the following conditions:

(i) The conditions set forth at paragraphs (g)(1)(i) and (ii) of this section apply.

(ii) For hunting, you may use or possess only approved nontoxic shot shells (see § 32.2(k)) while in the field, including shot shells used for hunting wild turkey.

(3) *Big game hunting.* We allow hunting of big game on designated areas throughout the district subject to the following condition: We prohibit hunting on designated portions of the St. Croix Prairie WPA and the Prairie Flats—South WPA in St. Croix County.

(4) *Sport fishing.* We allow sport fishing on WPAs throughout the district.

(h) *Trempealeau National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of migratory game birds on designated areas of the refuge subject to the following conditions:

(i) We allow hunting of duck, merganser, goose, coot, mourning dove, sora, Virginia rail, woodcock, snipe, and crow on refuge lands north of the main channel of the Trempealeau River and north of State Highway 35/54, subject to the following conditions:

(A) We allow only the use of portable or temporary blinds.

(B) We allow the use of dogs while hunting migratory game birds, provided the dog is under the immediate control of the hunter at all times.

(ii) We allow hunting of duck, merganser, goose, and coot on refuge lands south of the main channel of the Trempealeau River and south of State Highway 35/54, subject to the following condition: We require a refuge permit.

(2) *Upland game hunting.* We allow hunting of wild turkey, ruffed grouse, ring-necked pheasant, bobwhite quail, Hungarian partridge, sharp-tailed grouse, coyote, gray and red fox, bobcat, raccoon, snowshoe hare, cottontail rabbit, and gray and red squirrel on designated areas of the refuge subject to the following conditions:

(i) We allow upland game hunting only on refuge land north of the main channel of the Trempealeau River and north of State Highway 35/54.

(ii) We allow only the use of portable or temporary blinds.

(iii) We allow the use of dogs while hunting upland game birds, provided the dog is under the immediate control of the hunter at all times.

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) On refuge land south of the main channel of the Trempealeau River and south of State Highway 35/54:

(A) We prohibit the use of rifles for deer hunting.

(B) We allow white-tailed deer hunting only by refuge permit.

(ii) On refuge land north of the main channel of the Trempealeau River and north of State Highway 35/54:

(A) We allow white-tailed deer hunting during the State archery, muzzleloader, and firearms seasons.

(B) We allow hunting during the youth gun deer hunt and the gun hunt for hunters with disabilities as governed by State regulations.

(4) *Sport fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing only from legal sunrise to legal sunset.

(ii) We allow boats propelled by hand or electric motors only on refuge pools. We do not prohibit the possession, only the use, of other watercraft motors.

(iii) We prohibit harvest of turtle (see § 27.21 of this chapter).

(iv) We prohibit night-lighting, archery, spearing, or netting of fish.

(i) *Upper Mississippi River National Wildlife and Fish Refuge.* Refer to § 32.42(r) for regulations.

(j) *Whittlesey Creek National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of waterfowl on designated areas of the refuge subject to the following conditions:

(i) We allow only the use of portable or temporary blinds.

(ii) You must remove portable or temporary blinds and any material brought on to the refuge for blind construction at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) [Reserved]

(3) *Big game hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

(i) We allow archery deer hunting to take place on refuge lands owned by the Service that constitute tracts greater than 20 acres (8 hectares).

(ii) Hunters may construct ground blinds entirely of dead vegetation from refuge lands.

(iii) Hunters must remove all stands and blinds from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) We allow fishing from legal sunrise to legal sunset only.

(ii) We prohibit the taking of any mussel (clam), crayfish, frog, leech, or turtle species by any method on the refuge (see § 27.21 of this chapter).

§ 32.69 Wyoming.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Cokeville Meadows National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of duck, dark goose, coot, merganser, snipe, Virginia rail, Sora rail, sandhill crane, and mourning dove on designated areas of the refuge subject to the following conditions:

(i) We allow the use of dogs to find and retrieve legally harvested migratory game birds.

(ii) Hunters may only access the refuge 1 hour before legal sunrise until 1 hour after legal sunset.

(2) *Upland game hunting.* We allow hunting of blue grouse, ruffed grouse, chukar partridge, gray partridge, cottontail rabbit, snowshoe hare, squirrel (red, gray, and fox), red fox, raccoon, and striped skunk on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (a)(1)(ii) of this section applies.

(ii) We allow the use of dogs to find and retrieve legally harvested upland game birds, cottontail rabbits, and squirrels. You may not use dogs to chase red fox, raccoon, striped skunk, or any other species not specifically allowed in this paragraph (a)(2)(ii).

(iii) Licensed migratory bird, big game, or upland/small game hunters may harvest red fox, raccoon, and striped skunk on the refuge from September 1 until the end of the last open big game, upland bird, or small game season. You must possess, and remove from the refuge, all red fox, raccoon, or striped skunk that you harvest on the refuge.

(3) *Big game hunting.* We allow hunting of elk, mule deer, white-tailed deer, pronghorn, and moose subject to the following condition: The condition set forth at paragraph (a)(1)(ii) of this section applies.

(4) [Reserved]

(b) *Hutton Lake National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow youth hunting of goose, duck, coot, and merganser on designated areas of the refuge during the Wyoming Zone C2 ''special youth waterfowl hunting days'' subject to the following conditions:

(i) We allow the use of dogs when hunting.

(ii) We prohibit the cleaning of birds on the refuge.

(2)–(4) [Reserved]

(c) *National Elk Refuge.* (1)–(2) [Reserved]

(3) *Big game hunting.* We allow hunting of elk and bison on designated areas of the refuge subject to the following conditions:

(i) We require refuge permits (issued by State of Wyoming).

(ii) We prohibit shooting from or across refuge roads and parking areas.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge.

(d) *Pathfinder National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge.

(2) *Upland game hunting.* We allow hunting of sage grouse and cottontail rabbit on designated areas of the refuge.

(3) *Big game hunting.* We allow hunting of pronghorn antelope and deer on designated areas of the refuge.

(4) [Reserved]

(e) *Seedskadee National Wildlife Refuge*—(1) *Migratory game bird hunting.* We allow hunting of dark goose, duck, coot, merganser, dove, snipe, and rail on designated areas of the refuge subject to the following conditions:

(i) We open the refuge to the general public from ½ hour before legal sunrise to ½ hour after legal sunset. Waterfowl hunters may enter the refuge 1 hour before legal shooting hours to set up decoys and blinds.

(ii) We allow the use of dogs when hunting.

(iii) You must only use portable blinds or blinds constructed from dead and downed wood.

(iv) You must remove portable blinds, tree stands, decoys, and other personal equipment from the refuge after each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting.* We allow hunting of sage grouse, cottontail rabbit, jackrabbit, raccoon, fox, and skunk on designated areas of the refuge subject to the following condition: The conditions set forth at paragraphs (e)(1)(i) and (ii) of this section apply.

(3) *Big game hunting.* We allow hunting of pronghorn, mule deer, white-tailed deer, elk, and moose on designated areas of the refuge subject to the following condition: The condition set forth at paragraph (e)(1)(i) section applies.

(4) *Sport fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

(i) The condition set forth at paragraph (e)(1)(i) of this section applies.

(ii) We prohibit taking of mollusk, crustacean, reptile, and amphibian from the refuge (see § 27.21 of this chapter).

§ 32.70 Guam.

The following refuge units are open for hunting and/or fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional refuge-specific regulations.

(a) *Guam National Wildlife Refuge.* (1)–(3) [Reserved]

(4) *Sport fishing.* We allow sport fishing and collection of marine life on designated areas of the refuge as governed by Government of Guam laws and regulations and subject to the following conditions:

(i) We open the refuge to anglers from 8:30 a.m. until 5 p.m. each day year-round, except on Thanksgiving, Christmas, and New Year's Day, when we close to all public entry.

(ii) You may not possess surround or gill nets on the refuge.

(iii) We prohibit use of Self Contained Underwater Breathing Apparatus (SCUBA) to take fish or invertebrates.

(b) [Reserved]

PART 36—ALASKA NATIONAL WILDLIFE REFUGES

■ 7. The authority citation for part 36 continues to read as follows:

Authority: 16 U.S.C. 460(k) *et seq.,* 668dd–668ee, 3101 *et seq.,* Pub. L. 115–20, 131 Stat. 86.

§ 36.32 [Amended]

■ 8. Amend § 36.32 by removing paragraph (c)(1)(iv).

SUBCHAPTER E—MANAGEMENT OF FISHERIES CONSERVATION AREAS

■ 9. Revise part 71 to read as follows:

PART 71—HUNTING AND SPORT FISHING ON NATIONAL FISH HATCHERIES

Subpart A—General Provisions

Sec.
71.1 Opening of national fish hatcheries to hunting and sport fishing.
71.2 What are the requirements for hunting on areas of the National Fish Hatchery System?
71.3 Information collection requirements.

Subpart B—Hatchery-Specific Regulations for Hunting and Sport Fishing

Sec.
71.11 National fish hatcheries open for hunting.
71.12 National fish hatcheries open for sport fishing.

Authority: Sec. 4, Pub. L. 73–121, 48 Stat. 402, as amended; sec. 4, Pub. L. 87–714, 76 Stat. 654; 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 1534.

Subpart A—General Provisions

§ 71.1 Opening of national fish hatcheries to hunting and sport fishing.

National fish hatchery areas may be opened to hunting or sport fishing when such activity is not detrimental to the propagation and distribution of fish or other aquatic wildlife.

§ 71.2 What are the requirements for hunting on areas of the National Fish Hatchery System?

The following provisions apply to public hunting and sport fishing on a national fish hatchery area:

(a) Each person must secure and possess the required State license.

(b) Each person age 16 and older must obtain and possess a Federal Migratory Bird Hunting and Conservation Stamp

(Federal Duck Stamp) while hunting migratory waterfowl.

(c) Each person must comply with the applicable provisions of Federal laws and regulations including this subchapter and the current Federal migratory bird regulations at 50 CFR parts 20 and 21.

(d) Each person must comply with the applicable provisions of the laws and regulations of the State in which a hatchery is located unless further restricted by Federal law or regulation.

(e) Each person must comply with the terms and conditions authorizing access and use of the national fish hatchery area.

(f) The regulations contained in this part are prescribed for hunting and sport fishing of all National Fish Hatcheries and supplement the general National Wildlife Refuge System regulations found in 50 CFR chapter I, subchapter C. The general National Wildlife Refuge System regulations are automatically applicable in their entirety to the National Fish Hatcheries except as supplemented by the regulations in this part. If the regulations in this part conflict with the general National Wildlife Refuge System regulations, comply with these regulations.

(g) Each person must comply with the provisions of any special notices governing hunting on the national fish hatchery area. Such special notices will be posted throughout the area and will be available at the headquarters of the fish hatchery to which they relate.

(1) Special notices are issued only after the announcement of applicable annual State and Federal hunting regulations.

(2) Special notices may contain the following items:

(i) Wildlife species which may be hunted, or species of fish which may be taken;

(ii) Seasons;

(iii) Bag/creel limits;

(iv) Methods of hunting or fishing;

(v) Description of areas open to hunting or fishing; or

(vi) Other provisions as required.

(3) Special notices will not liberalize existing State law or regulations.

(4) Special notices may be amended as needed to meet management responsibilities for the area.

§ 71.3 Information collection requirements.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0140. The information is being collected to provide the refuge managers the information needed to decide whether or not to allow the requested use. A response is required in order to obtain a benefit. The Service 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. Direct comments regarding the burden estimate or any other aspect of these information collection requirements to the Service's Information Collection Clearance Officer at the address provided at 50 CFR 2.1(b).

Subpart B—Hatchery-Specific Regulations for Hunting and Fishing

§ 71.11 National fish hatcheries open for hunting.

The following hatcheries are open for hunting as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional hatchery-specific regulations.

(a) *Iron River National Fish Hatchery*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the hatchery.

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the hatchery.

(3) *Big game hunting.* We allow big game hunting on designated areas of the hatchery subject to the following conditions:

(i) You must label tree stands and ground blinds with the owner's State hunting license number. The label must be readable from the ground.

(ii) You may place tree stands and ground blinds on the refuge only from September 1 to December 31 annually.

(b) *Leadville National Fish Hatchery*—(1) *Migratory game bird hunting.* We allow migratory game bird hunting on designated areas of the hatchery.

(2) *Upland game hunting.* We allow upland game hunting on designated areas of the hatchery.

(3) *Big game hunting.* We allow big game hunting on designated areas of the hatchery subject to the following conditions:

(i) You must label tree stands and ground blinds with the owner's State hunting license number. The label must be readable from the ground.

(ii) You may place tree stands and ground blinds on the refuge only from September 1 to December 31 annually.

(4) *Sport fishing.* See § 71.12(g) for hatchery-specific fishing regulations for this hatchery.

(c) *Southwest Native Aquatic Resources and Recovery Center*—(1) *Migratory game bird hunting.* We allow the hunting of sandhill crane, light and dark goose, duck, merganser, coot, mourning and white-winged dove, and band-tailed pigeon on designated areas of the hatchery.

(2) *Upland game hunting.* We allow the hunting of Eurasian collared dove; dusky (blue) grouse; pheasant; scaled quail; and Abert's, red, gray, and fox squirrel on designated areas of the hatchery.

(3) [Reserved]

§ 71.12 National fish hatcheries open for sport fishing.

The following hatcheries are open for sport fishing as governed by applicable Federal and State regulations, and are listed in alphabetical order with additional hatchery-specific regulations.

(a) *Craig Brook National Fish Hatchery.* We allow sport fishing on designated areas of the hatchery subject to the following condition: We only allow fishing from legal sunrise to legal sunset.

(b) *Edenton National Fish Hatchery.* We allow sport fishing on designated areas of the hatchery subject to the following conditions:

(1) We allow fishing during open hatchery hours only.

(2) We prohibit the cleaning of fish on the hatchery.

(c) *Entiat National Fish Hatchery.* We allow sport fishing on designated areas of the hatchery.

(d) *Harrison Lake National Fish Hatchery.* We allow sport fishing on designated areas of the hatchery subject to the following conditions:

(1) We only allow fishing from ½ hour before legal sunrise until ½ hour after legal sunset.

(2) We prohibit the use of nets for the capture of fish in Herring Creek.

(3) We prohibit the use of gasoline motors greater than 5 horsepower on watercraft.

(e) *Hotchkiss National Fish Hatchery.* We allow sport fishing on designated areas of the hatchery subject to the following condition: We prohibit the cleaning of fish on the hatchery.

(f) *Inks Dam National Fish Hatchery.* We allow sport fishing on designated areas of the hatchery.

(g) *Leadville National Fish Hatchery.* We allow sport fishing on designated areas of the hatchery subject to the following condition: We prohibit the cleaning of fish on the hatchery. See § 71.11 for hatchery-specific hunting regulations for this hatchery.

(h) *Leavenworth National Fish Hatchery.* We allow sport fishing on designated areas of the hatchery.

(i) *Little White Salmon National Fish Hatchery.* We allow sport fishing on designated areas of the hatchery subject to the following condition: We allow

fishing after legal sunset, but the hatchery access road is closed from 11 p.m. to 4 a.m.

(j) *Orangeburg National Fish Hatchery.* We allow sport fishing on designated areas of the hatchery subject to the following conditions:

(1) We prohibit fishing after legal sunset.

(2) We prohibit the cleaning of fish on the hatchery.

(3) We prohibit motorized boats on the hatchery while fishing.

(k) *Spring Creek National Fish Hatchery.* We allow sport fishing on designated areas of the hatchery subject to the following condition: We only allow fishing from legal sunrise to legal sunset.

(l) *Tishomingo National Fish Hatchery.* We allow sport fishing on designated areas of the hatchery.

(m) *Valley City National Fish Hatchery.* We allow sport fishing on designated areas of the hatchery subject to the following condition: We prohibit the cleaning of fish on the hatchery.

Dated: August 16, 2019.

Ryan Hambleton,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2019–18054 Filed 8–29–19; 11:15 am]

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 424, et al.

Medicare, Medicaid, and Children's Health Insurance Programs; Program Integrity Enhancements to the Provider Enrollment Process; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 424, 455, 457, and 498

[CMS–6058–FC]

RIN 0938–AS84

Medicare, Medicaid, and Children's Health Insurance Programs; Program Integrity Enhancements to the Provider Enrollment Process

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period implements statutory provisions that require Medicare, Medicaid, and Children's Health Insurance Program (CHIP) providers and suppliers to disclose certain current and previous affiliations with other providers and suppliers. In addition, it provides the agency with additional authority to deny or revoke a provider's or supplier's Medicare enrollment in certain specified circumstances. The provisions we are finalizing in this rule are necessary to address various program integrity issues and vulnerabilities by enabling CMS to take action against unqualified and potentially fraudulent entities and individuals, which in turn could deter other parties from engaging in improper behavior.

DATES: *Effective date:* This final rule with comment period is effective on November 4, 2019.

Comment date: To be assured consideration, comments regarding sections II.A.1. and 2. of this final rule with comment period and §§ 424.519 and 455.107 must be received at one of the addresses provided below, no later than 5 p.m. on November 4, 2019.

ADDRESSES: In commenting, please refer to file code CMS–6058–FC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6058–FC, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6058–FC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Frank Whelan, (410) 786–1302.

SUPPLEMENTARY INFORMATION:

I. Executive Summary and Background

A. Executive Summary

1. Purpose and Need for Regulatory Action

This final rule with comment period will implement a provision of the Social Security Act (the Act) that requires Medicare, Medicaid, and Children's Health Insurance Program (CHIP) providers and suppliers to disclose any current or previous direct or indirect affiliation with a provider or supplier that—(1) has uncollected debt; (2) has been or is subject to a payment suspension under a federal health care program; (3) has been or is excluded by the Office of Inspector General (OIG) from Medicare, Medicaid, or CHIP; or (4) has had its Medicare, Medicaid, or CHIP billing privileges denied or revoked. This provision permits the Secretary to deny enrollment based on such an affiliation when the Secretary determines that the affiliation poses an undue risk of fraud, waste, or abuse. Also, this final rule with comment period will revise various provider enrollment provisions in 42 CFR part 424, subpart P, and certain program integrity provisions in 42 CFR parts 405, 455, and 457. We proposed these provisions in a proposed rule published in the March 1, 2016 **Federal Register** (81 FR 10720) titled, ''Medicare, Medicaid, and Children's Health Insurance Programs; Program Integrity Enhancements to the Provider Enrollment Process.''

As discussed in greater detail in section II. of this final rule with comment period, the provisions we are finalizing in this rule are necessary to address various program integrity issues and vulnerabilities. We believe that these provisions will help make certain that entities and individuals who pose risks to the Medicare and Medicaid programs and CHIP are removed from and kept out of these programs; this final rule with comment period will also assist in preventing providers and suppliers from circumventing Medicare requirements through name and identity changes, as well as through elaborate, inter-provider relationships. In short, this final rule with comment period will enable us to take action against unqualified and potentially fraudulent entities and individuals, which in turn could deter other parties from engaging in improper behavior.

The following are the principal legal authorities for our final provisions:

- Section 1902(kk)(3) of the Act,[1] as amended by section 6401(b) of the Affordable Care Act, which mandates that states require providers and suppliers to comply with the same disclosure requirements established by the Secretary under section 1866(j)(5) of the Act.[2]
- Section 2107(e)(1) of the Act, as amended by section 6401(c) of the Affordable Care Act, which makes the requirements of section 1902(kk) of the Act, including the disclosure requirements, applicable to CHIP.
- Section 1866(j) of the Act, which provides specific authority with respect to the enrollment process for providers and suppliers.
- Sections 1102 and 1871 of the Act, which provide general authority for the Secretary to prescribe regulations for the efficient administration of the Medicare program.

2. Summary of the Major Provisions

The major provisions of this final rule with comment period will do the following:

- Implement a provision of the Act that requires Medicare, Medicaid, and CHIP providers and suppliers to disclose any current or previous direct or indirect affiliation with a provider or supplier that has uncollected debt; has been or is subject to a payment suspension under a federal health care program; has been excluded from

[1] Because section 6401(b) of the Affordable Care Act erroneously added a duplicate section 1902(ii) of the Act, the Congress enacted a technical correction in the Medicare and Medicaid Extenders Act of 2010 (MMEA) (Pub. L. 111–309) to redesignate section 1902(ii) of the Act as section 1902(kk) of the Act, a designation we will use in this final rule with comment period.

[2] Section 1304 of the Health Care and Education Reconciliation Act (Pub. L. 111–152) added a new paragraph (j)(4) to section 1866 of the Act, thus re-designating the subsequent paragraphs. Accordingly, we are interpreting the reference in section 1902(kk)(3) of the Act to ''disclosure requirements established by the Secretary under section 1866(j)(4)'' of the Act to mean the disclosure requirements described in section 1866(j)(5) of the Act.

Medicare, Medicaid, or CHIP; or has had its Medicare, Medicaid, or CHIP billing privileges denied or revoked (all of which are hereafter occasionally referred to as ''disclosable events''), and that permits the Secretary to deny enrollment based on such an affiliation when the Secretary determines that it poses an undue risk of fraud, waste, or abuse.

++ Define the terms ''affiliation,'' ''disclosable event,'' ''uncollected debt,'' and ''undue risk'' as they pertain to this provision of the Act.

• Provide CMS with the authority to do the following:

++ Deny or revoke a provider's or supplier's Medicare enrollment if CMS determines that the provider or supplier is currently revoked under a different name, numerical identifier, or business identity, and the applicable reenrollment bar period has not expired.

++ Revoke a provider's or supplier's Medicare enrollment—including all of the provider's or supplier's practice locations, regardless of whether they are part of the same enrollment—if the provider or supplier billed for services performed at, or items furnished from, a location that it knew or should reasonably have known did not comply with Medicare enrollment requirements.

++ Revoke a physician's or eligible professional's Medicare enrollment if he or she has a pattern or practice of ordering, certifying, referring, or prescribing Medicare Part A or B services, items, or drugs that is abusive, represents a threat to the health and safety of Medicare beneficiaries, or otherwise fails to meet Medicare requirements.

++ Increase the maximum reenrollment bar from 3 to 10 years, with exceptions as stated in this rule.

++ Prohibit a provider or supplier from enrolling in the Medicare program for up to 3 years if its enrollment application is denied because the provider or supplier submitted false or misleading information on or with (or omitted information from) its application in order to gain enrollment in the Medicare program.

++ Revoke a provider's or supplier's Medicare enrollment if the provider or supplier has an existing debt that CMS refers to the United States Department of Treasury.

++ Deny a provider's or supplier's Medicare enrollment application if—(1) the provider or supplier is currently terminated or suspended (or otherwise barred) from participation in a state Medicaid program or any other federal health care program; or (2) the provider's or supplier's license is currently revoked or suspended in a state other than that in which the provider or supplier is enrolling.

3. Summary of Costs and Benefits

a. Costs

As explained in greater detail in sections IV. and V. of this final rule with comment period, we estimate an annual cost to providers and suppliers of $937,500 in each of the first 3 years of this rule. This cost involves the information collection burden associated with the requirement that Medicare, Medicaid, and CHIP providers and suppliers disclose certain current and prior affiliations.

b. Savings

As described further in section V. of this final rule with comment period, we project the following savings from our finalized provisions:'

• Our new revocation authorities will lead to approximately 2,600 new revocations per year, resulting in a 10-year savings of $4.16 billion (based on a projected per-revoked provider amount of $160,000).

• Our new reenrollment and reapplication bar provisions will apply to approximately 400 of CMS' revocations per year, resulting in an estimated 10-year actual savings of $1.79 billion (based on a projected per-revoked provider amount of $160,000) and a caused savings of $4.48 billion. ''Caused savings'' refers to the full amount of money that will be saved based on the new reenrollment and reapplication bars applied over 10 years; a large portion of the savings will be made after the first 10-year period of interest and will not be fully actualized until year 20. (Section IV of this final rule with comment period discusses the concept of ''caused savings'' in greater detail.)

• Concerning our affiliation provisions, over the last 5 years, $51.9 billion (with adjusted factors applied) has been paid to 2,097 entities with affiliations stemming from the revoked Medicare enrollment of an associated individual or other entity. Adjusted factors refer to adjustments made to gross billing, based on provider and supplier type, in relation to the percentage of services that are not transferred to a different provider or supplier after a revocation. There is a range across provider and supplier types of what percentage of services transfer to other practitioners or entities after a revocation—that is, they were legitimate services—versus what percentage of services do not transfer to another practitioner or entity—that is, the services were never rendered, were medically unnecessary, or for some other reason do not result in a transfer of services to another practitioner or entity. If the affiliations/undue risk revocation authority we are finalizing in this rule had been in place during that period, we project that CMS would have taken revocation action in approximately 40 percent of identified prior affiliation cases (or approximately 838 cases) based on a determination of undue risk of fraud, waste, or abuse. We accordingly would not have paid those problematic providers. As a result, over the last 5 years the program would have seen a resulting $20.7 billion in cost-avoidance savings, or an average of $4.14 billion per year. We recognize, though, that our 40 percent figure is merely an estimate. To accommodate the possibility of fluctuation, below are projections of savings based on figures of 20 percent, 40 percent, and 60 percent:

TABLE 1—RANGE OF PROJECTED SAVINGS RELATED TO AFFILIATIONS PROVISIONS

Percentage	5-year affiliations authority total	Annual affiliations authority total
60% of the 5-year adjusted factor total of $51.9 billion	$31.1 billion over 5 years	$6.22 billion.
40% of the 5-year adjusted factor total of $51.9 billion	$20.7 billion over 5 years	$4.14 billion.
20% of the 5-year adjusted factor total of $51.9 billion	$10.3 billion over 5 years	$2.06 billion.

Given the foregoing savings estimates for revocations based on new authorities other than the affiliations authority, reenrollment and reapplication bars, and revocations stemming from the affiliations authority (using our median 40 percent figure), we project a total savings over a 10-year period of $47.35 billion.

B. General Overview

1. Medicare

The Medicare program (title XVIII of the Act) is the primary payer of health care for approximately 54 million enrolled beneficiaries. Under section 1802(a) of the Act, a beneficiary may obtain health care services from an individual or organization qualified to participate in the Medicare program. Qualifications to participate are specified in statute and in regulations (see, for example, sections 1814, 1815, 1819, 1833, 1834, 1842, 1861, 1866, and 1891 of the Act; and 42 CFR chapter IV, subchapter G, of the regulations, which concerns standards and certification requirements).

Providers and suppliers furnishing services must comply with the Medicare requirements stipulated in the Act and in our regulations. These requirements are meant to confirm compliance with applicable statutes as well as to promote the furnishing of high quality care. As Medicare program expenditures have grown, we have increased our efforts to make certain that only qualified individuals and organizations are allowed to enroll in and maintain their enrollment in Medicare.

2. Medicaid and CHIP

The Medicaid program (title XIX of the Act) is a joint federal and state health care program that covers nearly 70 million low-income individuals. States have considerable flexibility in how they administer their Medicaid programs within a broad federal framework, and programs vary from state to state. CHIP (title XXI of the Act) is a joint federal and state health care program that provides health care coverage to more than 8.4 million children. In operating Medicaid and CHIP, states historically have permitted the enrollment of providers who meet the state requirements for program enrollment as well as any applicable federal requirements (such as those in 42 CFR part 455). State enrollment requirements must be consistent with section 1902(a)(23) of the Act and implementing regulations at § 431.51, under which states may set reasonable standards relating to the qualifications of providers but may not restrict the right of beneficiaries to obtain services from any person or entity that is both qualified and willing to furnish such services.

C. General Background on the Enrollment Process

1. The 2006 Provider Enrollment Final Rule

In the April 21, 2006 **Federal Register** (71 FR 20754), we published a final rule titled, ''Medicare Program; Requirements for Providers and Suppliers to Establish and Maintain Medicare Enrollment.'' The final rule set forth certain requirements in 42 CFR part 424, subpart P, that providers and suppliers must meet to obtain and maintain Medicare billing privileges. We cited in that rule sections 1102 and 1871 of the Act as general authority for our establishment of these requirements, which were designed for the efficient administration of the Medicare program.

2. The 2011 Provider Enrollment Final Rule

In the February 2, 2011 **Federal Register** (76 FR 5861), we published a final rule with comment period titled, ''Medicare, Medicaid, and Children's Health Insurance Programs; Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers.'' This final rule with comment period implemented various provisions of the Act, including the following:

- Required submission of application fees by institutional providers and suppliers as part of the Medicare, Medicaid, and CHIP provider enrollment processes.
- Establishment of Medicare, Medicaid, and CHIP provider enrollment screening categories and corresponding screening requirements.
- Authorization of temporary moratoria on the enrollment of new Medicare, Medicaid, and CHIP providers and suppliers of a particular type (or the establishment of new practice locations of a particular type) in a geographic area when necessary to combat fraud, waste, or abuse.

3. Form CMS–855—Medicare Enrollment Application

Under § 424.510, a provider or supplier must complete, sign, and submit to its assigned Medicare contractor the appropriate Form CMS–855 (OMB Control No. 0938–0685) application in order to enroll in the Medicare program and obtain Medicare billing privileges. The Form CMS–855, which can be submitted via paper or electronically through the internet-based Provider Enrollment, Chain, and Ownership System (PECOS) process, captures information about the provider or supplier that is needed for CMS or its contractors to determine whether the provider or supplier meets all Medicare requirements. The enrollment process helps ensure that unqualified and potentially fraudulent individuals and entities do not bill Medicare and that the Medicare Trust Funds and Medicare beneficiaries are accordingly protected. Data collected during the enrollment process include but are not limited to—(1) general identifying information (for example, legal business name, tax identification number); (2) licensure data; (3) practice locations; and (4) information regarding the provider's or supplier's owning and managing individuals and organizations. The application is used for a variety of provider enrollment transactions, including the following:

- Initial enrollment—The provider or supplier is—(1) enrolling in Medicare for the first time; (2) enrolling in another Medicare contractor's jurisdiction; or (3) seeking to enroll in Medicare after having previously been enrolled.
- Change of ownership—The provider or supplier is reporting a change in its ownership.
- Revalidation—The provider or supplier is revalidating its Medicare enrollment information in accordance with § 424.515.
- Reactivation—The provider or supplier is seeking to reactivate its Medicare billing privileges after it was deactivated in accordance with § 424.540.
- Change of information—The provider or supplier is reporting a change in its existing enrollment information in accordance with § 424.516.

Besides the aforementioned 2006 and 2011 final rules, we have made several other regulatory changes to 42 CFR part 424, subpart P, to address various payment safeguard issues that have arisen.

D. Background on Disclosure of Affiliations for Medicare, Medicaid, and CHIP (Section 1866(j)(5) of the Act)

As previously mentioned, providers and suppliers must complete and submit (via paper or through internet-based PECOS) a Form CMS–855 application to their Medicare contractor in order to enroll or revalidate their enrollment in the Medicare program. The Form CMS–855 requires the provider or supplier to disclose certain information, such as general identifying data (for example, legal business name), the provider's or supplier's practice locations, and the provider's or supplier's owning and managing employees and organizations.

In operating Medicaid and CHIP, states may have somewhat different enrollment processes, although all states must comply with the federal requirements in 42 CFR part 455, subparts B and E, as well as the ''free choice of provider'' requirement in § 431.51. Under 42 CFR part 455, subpart B, providers and disclosing entities must furnish disclosures regarding ownership and control of the provider or disclosing entity, certain business transactions, and criminal convictions related to federal health care programs.

Section 1866(j)(5) of the Act, added by section 6401(a)(3) of the Affordable Care Act, states that a provider or supplier that submits an enrollment application or a revalidation application for Medicare, Medicaid, or CHIP shall disclose (in a form and manner and at such time as determined by the Secretary) any current or previous affiliation (directly or indirectly) with a provider or supplier that has uncollected debt; has been or is subject to a payment suspension under a federal health care program (as defined in section 1128B(f) of the Act); has been excluded from participation from Medicare, Medicaid, or CHIP; or has had its billing privileges denied or revoked. Under section 1866(j)(5)(B) of the Act, the Secretary may deny the application if the Secretary determines that the affiliation poses an undue risk of fraud, waste, or abuse.

Pursuant to section 1902(kk)(3) to the Act, states must require providers and suppliers to comply with the same disclosure requirements established by the Secretary under section 1866(j)(5) of the Act. Further, pursuant to section 2107(e)(1) of the Act, the requirements of section 1902(kk) of the Act, including the disclosure requirements, are applicable to CHIP.

II. Provisions of the Proposed Regulations and Analysis of and Responses to Public Comments

We received 87 timely pieces of correspondence in response to the March 1, 2016 proposed rule. A summary of the major issues raised and our responses thereto follow.

A. Disclosure of Affiliations

We proposed in the March 1, 2016 proposed rule to implement section 1866(j)(5) of the Act. We explained that, consistent with this statutory provision, the implementation of these disclosure provisions would help combat fraud, waste, and abuse by enabling CMS and the states to: (1) Better track current and past relationships between and among different providers and suppliers; and (2) identify and take action on affiliations among providers and suppliers that pose an undue risk to Medicare, Medicaid, and CHIP.

In November 2008, the OIG of the Department of Health and Human Services issued an Early Alert Memorandum titled ''Payments to Medicare Suppliers and Home Health Agencies Associated with 'Currently Not Collectible' Overpayments'' (OEI–06–07–00080). The memorandum stated that anecdotal information from OIG investigators and Assistant United States Attorneys indicated that suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) with outstanding Medicare debts may inappropriately receive Medicare payments by, among other means, operating businesses that are publicly fronted by business associates, family members, or other individuals posing as owners. In its study, the OIG selected a random sample of 10 DMEPOS suppliers in Texas that each had Medicare debt of at least $50,000 deemed currently not collectible (CNC) by CMS during 2005 and 2006. The OIG found that 6 of the 10 reviewed DMEPOS suppliers were associated with 15 other DMEPOS suppliers or home health agencies (HHAs) that received Medicare payments totaling $58 million during 2002 through 2007. Most associated DMEPOS suppliers had lost their billing privileges by January 2005 and had accumulated a total of $6.2 million of their own CNC debt to Medicare. The OIG also found that most of the reviewed DMEPOS suppliers were connected to other DMEPOS suppliers and HHAs through shared owners or managers.

On March 2, 2011, the OIG testified before the Congress that fraud schemes in South Florida often rely on the use of networks of affiliations among fraudulent owners.[3] In those schemes, Medicare providers and suppliers disguise their true ownership by the use of nominee owners to bill Medicare fraudulently on a temporary basis so as to evade detection. Providers and suppliers will—(1) hide their true ownership through the use of nominee owners; (2) bill the Medicare program for millions of dollars; and (3) close down, take over another company, and then repeat the process in another location. In addition to this information from the OIG, our own experience has shown that networks of individuals and entities can be behind widespread fraud schemes; in some instances, shared owners were behind multiple providers and suppliers engaging in improper billings.

We have long shared these and other concerns the OIG has expressed regarding individuals and entities that enroll in Medicare (or own or operate Medicare providers or suppliers), accumulate large debts or otherwise engage in inappropriate activities, and depart the Medicare program voluntarily or involuntarily, yet continue their behavior by—(1) reentering the program in some capacity (for instance, as an owner); and/or (2) shifting their activities to another enrolled Medicare provider or supplier with which they are affiliated. To illustrate, a provider or supplier may engage in inappropriate billing, exit Medicare prior to detection, and then change its name or business identity in order to reenroll in Medicare under this new identity. Another example involves an entity that owns or manages several Medicare providers and suppliers. One of the providers or suppliers may be involved in abusive behavior with the approval or at the instigation of that owner or managing entity. In this example, if the abusive provider's enrollment is revoked, the owning/managing entity shifts its behavior to another of its enrolled entities.

In such situations, and absent the owning or managing individual's or organization's (1) felony conviction, (2) exclusion from Medicare by the OIG, or (3) debarment from participating in any federal procurement or non-procurement program, CMS does not currently have a regulatory basis to prevent such individuals or entities from continuing their activities through other enrolled or newly enrolling providers and suppliers. Put another way, providers and suppliers currently can be denied, revoked, or terminated from participating in Medicare, Medicaid, or CHIP; but absent a felony conviction, exclusion, or debarment, their owners and managers can often remain as direct or indirect participants in these programs. Consider this example: Individual X owns 100 percent of three enrolled DMEPOS suppliers, each of which has submitted a revalidation application to Medicare. Individual X completes each application. He submits false information on one application in order to retain that supplier's existing Medicare enrollment but not on the other two applications. CMS revokes the first DMEPOS supplier's enrollment under § 424.535(a)(4). However, we cannot revoke the other two suppliers because false information was not submitted on their applications; this means that two Medicare suppliers

[3] *https://oig.hhs.gov/testimony/docs/2011/perez_testimony_03022011.pdf.*

whose owner has furnished false information to Medicare are still enrolled in the program.

CMS must have the capacity to address this and similar situations when necessary and appropriate. In many cases, the owners and managers of fraudulent entities hide behind the organizational structure itself when in fact they are, for purposes of their behavior, one and the same. This final rule with comment period will allow CMS to take immediate action against such persons and entities to ensure that they do not continue to use the provider or supplier organization as a shield for their conduct. This, in turn, will help protect the Medicare Trust Funds, the taxpayers, Medicare beneficiaries, and honest and legitimate Medicare providers and suppliers. The changes described later in this section II serve these goals by implementing section 1866(j)(5) of the Act.

We also proposed to apply these changes to Medicaid and CHIP, such that states must require providers and suppliers to comply with the same disclosure requirements established by the Secretary.

Many of the comments we received regarding this proposal—(1) covered multiple topics (for example, application of the undue risk standard and the proposed requirement to report new or changed information), and (2) did not indicate whether they applied to Medicare alone or to Medicare, Medicaid, and CHIP. Therefore, except as otherwise noted, we—(1) have organized the comments and our responses thereto within what we believe are the most appropriate sections (though there may be occasional overlap between sections); and (2) assume that the comments apply to all three federal programs (that is, while our responses may refer to the Medicare program, they should be presumed to apply equally to the disclosure of affiliation provisions in the Medicaid program and CHIP, unless otherwise noted). Comments that exclusively applied to Medicaid and CHIP are addressed in our discussion of the affiliation disclosure provisions for those programs.

1. Medicare

a. Definition of Affiliation

We proposed to define ''affiliation'' in § 424.502, for purposes of applying the affiliation disclosure provisions in § 424.519, as meaning any of the following:

- A 5 percent or greater direct or indirect ownership interest that an individual or entity has in another organization.
- A general or limited partnership interest (regardless of the percentage) that an individual or entity has in another organization.
- An interest in which an individual or entity exercises operational or managerial control over, or directly or indirectly conducts, the day-to-day operations of another organization (including, for purposes of § 424.519 only, sole proprietorships), either under contract or through some other arrangement, regardless of whether or not the managing individual or entity is a W–2 employee of the organization.
- An interest in which an individual is acting as an officer or director of a corporation.
- Any reassignment relationship under § 424.80.

The first four types of interests (5 percent or greater ownership, partnership interests, managing control, and corporate officer and director interests) are consistent with the definitions of—(1) ''owner'' and ''managing employee'' in § 424.502; and (2) ''ownership or control interest'' in section 1124(a)(3) of the Act. We also note that consistent with sections 1124 and 1124A of the Act, entities and individuals that have one or more of these four interests in an enrolling or enrolled Medicare provider or supplier must be reported on the provider's or supplier's Form CMS–855 enrollment application. Likewise, reassignment relationships must be reported to Medicare via the Form CMS–855R (OMB Control No. 0938–1179); this form facilitates the reassignment of benefits from a physician or non-physician practitioner to another Medicare provider or supplier. To make certain that there is uniformity with these other reporting requirements and that we are aware of prior and current relationships that could present risks of fraud, waste, or abuse, we proposed that the ''affiliation'' definition should include these five interests.

We explained in the proposed rule our belief that there is a sufficiently close relationship between a reassignor (the physician or non-physician practitioner) and a reassignee (the other provider or supplier) to warrant including reassignments within the definition of ''affiliation.'' Indeed, a W–2 employee or independent contractor may have a closer day-to-day relationship with the entity or person he or she works for and reassigns benefits to than, for instance, an indirect owner has with an entity in which he or she has a 5 percent ownership interest. We requested comment on the regularity of close reassignor and reassignee relationships and whether inclusion of these relationships is likely to lead to additional information that may prevent fraud, waste, and abuse. We also solicited comment on whether the types of disclosable affiliations should include additional ownership or managerial interests or other relationships.

We received the following comments regarding our proposed definition of ''affiliation'':

Comment: A commenter questioned whether a physician director and a director of nursing must be reported as managing parties on the Form CMS–855A as part of the existing provider enrollment process and the proposed disclosure requirement. The commenter, as well as other commenters, also questioned whether the following parties and interests fall within the definition of ''affiliation'': (1) Members of the board of trustees of a tax-exempt entity; (2) billing agencies and/or collection agencies; and (3) 5 percent or greater mortgage or security interests. Another commenter questioned whether general and limited partnerships include both direct and indirect interests for purposes of the definition of ''affiliation.''

Response: As previously noted, our definition of ''affiliation'' incorporates concepts of ownership and managerial control from other program integrity and provider enrollment provisions. We interpret our definition of ''affiliation'' consistent with these other provisions. Accordingly, if the physician director or director of nursing in question falls within the definition of managing employee under § 424.502, he or she must be reported as part of the existing enrollment process and, if the requirements of § 424.519 are met (for example, the individual was previously a managing employee of another provider or supplier with a disclosable event), also falls within the purview of the latter provision.

Per CMS Publication 100–08, Program Integrity Manual (PIM), Chapter 15, members of a board of trustees are considered to be corporate directors for purposes of Form CMS–855 reporting. Hence, the definition of affiliation in § 424.502 encompasses such relationships.

Also per Chapter 15 of the PIM, 5 percent or greater mortgage and/or security interests are considered to be 5 percent or greater ownership interests for purposes of the Form CMS–855. They will be treated similarly with respect to our disclosure of affiliation provisions.

Concerning billing agencies and/or collection agencies, we believe the commenters were mentioning these parties in the context of managerial control over the provider or supplier. If the agency in question meets the definition of managing employee as it applies to organizations, it will fall within the previously mentioned ''operational or managerial control'' category of the ''affiliation'' definition.

Indirect partnership interests are not considered partnership interests under our definition of affiliation in § 424.502. However, the interest could qualify as an indirect ownership interest of at least 5 percent.

Comment: A commenter questioned whether an affiliation exists if a board of trustees or other governing body holds a 5 percent or greater direct or indirect ownership in another organization, a general or limited partnership interest in another organization, or exercises operational or managerial control in another organization. The commenter also questioned whether officers and directors of tax-exempt providers fall within the ''affiliation'' definition if they serve in similar capacities on other governing bodies or hold ownership interests or provide operational or managerial control in other organizations (tax-exempt or otherwise). The commenter cited the example of a local hospital administrator who serves as treasurer and member of the board of trustees of a local HHA; the commenter asked whether this individual's association with the hospital would be deemed an affiliation.

Response: Non-profit entities and officials thereof fall within the purview of the affiliation definition to the same extent as for-profit organizations and their officials; thus, for example, officers and directors of non-profit corporations come within the definition of affiliation, as do—(1) ownership, partnership, and managerial interests in non-profit entities; and (2) reassignment relationships with non-profit organizations.

Comment: A commenter stated that CMS should not consider an affiliation with a public company that owns 5 percent or more of an enrolling or reenrolling company to pose an ''undue risk'' to Medicare, Medicaid, or CHIP. Such companies, the commenter stated, are subject to adequate oversight of investors, the Securities and Exchange Commission, and the public, and the risks presented by a public company that owns a portion of another public company would be extremely limited.

Response: We do not believe that public companies should be automatically excluded from the purview of § 424.519, nor can we conclude that any affiliation with a public company with a disclosable event will never pose an undue risk. All factual scenarios are different, and we must retain the flexibility to address them on their own merits.

Comment: A commenter stated CMS should only require disclosure of affiliated managing individuals who are responsible in some way for actions relating to Medicare, Medicaid, or CHIP payment. Citing the example of laboratories, the commenter stated that managing individuals often have no responsibilities concerning payments for services. Rather, a managing employee who conducts the ''day to day operations'' of a laboratory facility often is in charge of maintaining the licensure of a laboratory facility, ensuring that the facility follows industry standards, evaluating information associated with laboratory procedures performed onsite, and overseeing the scientific integrity of the processes and protocols followed at the site. The commenter noted that laboratories necessarily are vigilant about the credentials and actions of those who are in charge of laboratory sites, for any hint of impropriety may put the site's entire operations at risk.

Response: We respectfully disagree with the commenter. We note that the statutory definition of managing employee in section 1126(b) of the Act, upon which the definition of managing employee in § 424.502 and the reference to managing parties in the definition of affiliation are based, includes all persons who directly or indirectly conduct the provider's day-to-day operations. It is not limited to parties involved in actions related to the payment of services. In other words, the test is the broader direct or indirect conduct of operations, not merely a relationship to the payment of services. Thus we believe that the inclusion within the definition of affiliation and the scope of § 424.519 of—(1) managerial interests for purposes of enrollment and (2) affiliations involving managing parties with disclosable events, should not be based strictly on the party's involvement with payment-related actions.

Comment: Several commenters stated that the minimum 5 percent ownership stake referenced in the ''affiliation'' definition should be higher. They generally stated that a party with a low ownership interest is unlikely to be involved in the day-to-day operations of the practice. Raising the required percentage of ownership, the commenters believed, would not only better safeguard the Medicare program but also substantially lower the regulatory burden on honest providers; with a higher required percentage, CMS could better identify affiliates that actually pose a danger to the Medicare program without being bogged down with information from providers and suppliers on harmless affiliations. They also cited the likely burden of tracking all 5 percent or greater ownership interests. Several commenters suggested a 25-percent threshold, while others suggested a 50-percent threshold or a majority interest.

Response: The affiliation definition's 5 percent threshold is consistent with our existing enrollment reporting requirements and with sections 1124 and 1124A of the Act, both of which reference a 5 percent standard. Further, it is conceivable that parties with a minority ownership interest as low as 5 percent could be involved in questionable activities, hence jeopardizing the integrity of the Medicare program. The fact that they may not actively control the provider's or supplier's daily operations should not exclude such parties and affiliations from scrutiny. We recognize, however, that certain levels of ownership interests may pose different risks than others and, as we proposed, will consider the degree and extent of the affiliation in determining whether an undue risk of fraud, waste, and abuse exists.

Comment: Several commenters stated that CMS should not automatically consider a general or limited partnership interest that an individual or entity has in another organization to be an affiliation. The commenters generally stated that a limited or general partner with only a minority interest is unlikely to influence the operations of the entity and, as such, likely would not pose a risk to the Medicare program. A commenter stated that CMS should consider the percentage of a party's general or limited partnership in determining whether the party is an affiliate; another commenter suggested a 25-percent threshold.

Response: Similar to our earlier statements regarding the 5 percent ownership threshold, we believe that parties with even small partnership interests can, depending on the scope and type of behavior involved, threaten the integrity of the Medicare program. However, we will consider the extent of the affiliation in determining whether an undue risk exists.

Comment: A commenter recommended that CMS add a ''catch-all'' provision to the affiliation definition stating that the provider or supplier report any affiliation (regardless of ownership or operational

interest) where the affiliate has, for instance, uncollected Medicare debt, past exclusions or civil penalties. As examples, the commenter suggested adding phrases to the definition such as ''association with,'' ''connection with/to,'' ''alliance with/to,'' ''alignment with,'' ''link with/to,'' ''incorporation into,'' and ''integration into.''

Response: While we appreciate this suggestion, we believe that the phrases the commenter proposes describe relationships that may be more vague than those contemplated in this final rule with comment period. To illustrate, a 5 percent ownership stake is a clear and determinable interest, whereas an ''association'' or ''alignment'' can be susceptible to a variety of interpretations. Therefore, we prefer to include within our definition of ''affiliation'' only those interests that are quantifiable (for example, limited partnership interests) or have been used in the provider enrollment context for many years (for example, managing employee) and with which the provider community is familiar. Moreover, we believe that the commenter's suggested relationships may be more distant and loose than those which we proposed and which, we believe, the statute contemplates; a 50 percent ownership interest, for instance, likely reflects a closer, clearer relationship than a mere ''association'' or ''connection.''

Comment: Many commenters opposed the inclusion of reassignments within the definition of ''affiliation.'' Overall, they contended that—(1) reassignment relationships do not raise the same risks of fraud, waste, and abuse as other affiliations referenced in the definition; and (2) for large provider organizations and health systems, the burden of having to constantly track and disclose all of its reassignment relationships would be enormous. Several commenters added that the practitioner typically has no ownership or managerial interest in the reassignee and no direct or indirect influence over the reassignee's decision-making; the mere fact of a reassignment relationship without more, one of the commenters stated, does not result in the close relationship that CMS assumes.

Response: We continue to believe there is a sufficiently close relationship between a reassignor (the physician or non-physician practitioner) and reassignee (the provider or supplier) to warrant including reassignments within the definition of ''affiliation.'' Again, a W–2 employee or independent contractor may have a closer day-to-day relationship with the entity or person he or she works for and reassigns benefits to than, for instance, an indirect owner has with an entity in which he or she has a 5 percent ownership interest. We are therefore retaining reassignments within the definition of ''affiliation.'' Nonetheless, we recognize the potentially sizable burden on physician and practitioner organizations (and especially hospitals and large health plans) in researching, tracking and, if applicable, submitting disclosable affiliation data involving the individuals who reassign their benefits to them. In sections II.A.1.b. and II.A.1.e. of this final rule with comment period, we discuss means we are adopting to limit the burden on providers and suppliers.

Comment: A commenter stated that since both parties (the reassignor and reassignee) are already jointly responsible for claims and associated overpayment risk within their reassignment relationship, it is unnecessary to go further and define a reassignment relationship as an ''affiliation.'' Another commenter stated that because reassignors and reassignees must be enrolled in Medicare to facilitate a reassignment relationship, these parties have already (1) been properly vetted by Medicare and (2) submitted the data we referenced under our proposal. Several other commenters stated that including reassignments within the affiliation definition exceeds what the Congress intended and authorized.

Response: With respect to the first commenter, the closeness of the relationship that the commenter implies is precisely why we believe it is appropriate to include reassignments within the definition of ''affiliation.''

We respectfully disagree with the second and third comments. While the individual Form CMS–855 applications for enrollment for the reassignor and reasignee are screened, there currently is no review of whether the relationship between these two parties presents an undue risk to the Medicare program, which is the precise issue that section 1866(j)(5) seeks to address. In addition, we note that section 1866(j)(5) does not define the term ''affiliation,'' and thus the scope of that term must be defined via regulation. We also have general rulemaking authority under sections 1102 and 1871 of the Act to include reassignments within the definition of ''affiliation.''

Comment: In response to our request for comments on the subject, a commenter stated that no additional ownership or managerial interests or other relationships (beyond those in the proposed definition of ''affiliation'') should be disclosed, in part because providers and suppliers currently provide a significant amount of information.

Response: We agree that no additional interests or relationships should be included within the definition of affiliation.

Comment: Several commenters urged CMS to remove indirect ownership interests from the definition of affiliation. They generally contended that—(1) it would be very difficult to obtain, track, and maintain this information, especially for providers and suppliers with complex ownership structures (such as chain organizations) involving many affiliates; (2) many indirect owners have very little involvement in or influence over the day-to-day operations of the provider or supplier; and (3) some providers and suppliers have up to five levels of indirect ownership. One commenter noted that an applicant would not only have to report its own indirect owners, but also identify all affiliation relationships held by the applicant's indirect owners. The applicant would then be required to determine whether any such affiliation is with a provider or supplier that has had a disclosable event. All of these steps, this commenter concluded, would be very burdensome for providers and suppliers.

Response: We disagree that indirect ownership interests should be excluded. It should not be assumed that indirect owners never exercise certain degrees of control over providers; in fact, a provider's direct owner may be a mere holding company with the indirect owner actually operating the provider. Given the vast variety of ownership arrangements among provider and supplier organizations, we must retain our flexibility to address particular situations. We further note that section 1866(j)(5) of the Act refers to any current or previous affiliation (directly or indirectly). We will consider the degree and extent of the indirect owner's affiliation in determining whether an undue risk exists.

Comment: A commenter stated that CMS should remove officers, directors, and managing employees from the definition of affiliation, citing the reporting burden.

Response: We respectfully disagree that these parties should be removed from the definition of affiliation, given their typical level of control over the provider's or supplier's operations. Yet we recognize that certain officials may have greater influence over said operations than others, and we will consider the degree and extent of the affiliation in our determination of whether an undue risk exists. Also, and as previously stated, we discuss in

sections II.A.1.b. and II.A.1.e. of this final rule with comment period means by which we are limiting the burden on providers and suppliers.

Comment: Several commenters requested that the final rule provide clearer directions and guidance on reporting affiliations and histories. Some commenters stated that the definition of affiliation is confusing and impractical.

Response: Although we believe that the definition of affiliation is clear on its face, we may issue subregulatory guidance on this topic as necessary.

Comment: A commenter stated that the disclosure of ''passive'' investors (that is, non-health care investors such as large mutual or pension funds) could prove extremely difficult. These entities would need to—(1) identify for the provider or supplier all current and previous indirect ownership interests they have had in other health care providers and suppliers; and (2) further ascertain whether any of these affiliated providers and suppliers has or has had a disclosable event. Passive investors, the commenter stated, may not know of those providers and suppliers in which they have had an indirect ownership interest, nor have any mechanism to determine whether they have or have had any disclosable events.

Response: Under sections 1124 and 1124A of the Act, all parties with at least a 5 percent direct or indirect ownership must be disclosed as part of the enrollment process. These statutory provisions do not exempt ''passive'' investors, and we do not believe such parties should be exempt from the definition of affiliation or the purview of § 424.519. We again recognize, though, that it may prove difficult at times to obtain affiliation data related to such parties, which is why we proposed a knew or should reasonably have known standard for disclosure. We discuss this standard in more detail in section II.A.1.c. of this final rule with comment period.

Comment: A commenter stated that if the final rule includes indirect ownership interests within the affiliation definition, CMS should impose practical limitations or cut-offs at which such interests are excluded from the definition. Suggestions included exempting—(1) parties that have an ownership interest in another provider or supplier through a publicly-traded company, mutual fund, or other large investment vehicle; and (2) indirect ownership interests under 50 percent.

Response: We respectfully disagree. As previously indicated, there could be situations where an indirect owner, even one with less than a 50 percent interest, exercises some influence over the provider. We also reiterate that neither sections 1124 and 1124A of the Act, nor the current definition of owner in § 424.502, exclude public companies or investment interests from the purview of those provisions.

Comment: A commenter stated that CMS should define affiliation by those interests reported on all of the Form CMS–855 applications, rather than those reported on only some of the forms; otherwise, the commenter stated, CMS will be demanding that physicians disclose far more information than is currently required.

Response: Section 1866(j)(5) of the Act addresses a provider's or supplier's relationships with other parties; the focus, in other words, is on affiliations rather than on identifying data that is specific to the enrolling provider or supplier. Thus, physicians may be required under § 424.519 to furnish more data than they currently do.

Comment: A commenter stated that including 5 percent or greater direct or indirect ownership interests within the affiliation definition is problematic because the reporting burden associated therewith would—(1) discourage joint ventures and provider collaborations, which are necessary for the success of payment reform and alternate payment models; and (2) place chain organizations at a disadvantage.

Response: We respectfully disagree. Five percent or greater direct and indirect ownership interests, including those involving chain organizations, are currently disclosed as part of the regular provider enrollment process. However, we are unaware of any discouragement of joint ventures or provider collaborations or a disproportionately negative impact on chain organizations stemming therefrom.

Comment: A commenter stated that the Form CMS–855A requires disclosure of limited partnership interests that are at least 10 percent. The commenter questioned whether the Form CMS–855A and other enrollment applications will be modified to incorporate the disclosure of all limited partnership interests.

Response: We appreciate this comment and will consider whether the referenced change to the scope of reportable limited partnership interests on the Form CMS–855A is warranted.

Comment: A commenter stated that CMS should exclude from the definition of affiliation—(1) disclosed officers', directors', or managing employees' indirect operational or managerial control interests in other providers; and (2) officer, director, or operational or managing control positions of another provider's indirect owners and parent companies. The commenter stated that these are not individuals who fit within the current definition of a control interest in a provider or supplier; thus they are not individuals (absent some additional relationship with the provider or supplier) currently identified on the Form CMS–855 applications. The commenter added that these individuals generally are not involved in the day-to-day operations of the provider or suppliers, and that reporting them would be unduly burdensome and unlikely to result in a finding of undue risk.

Response: For reasons previously discussed, we are retaining managing employees, corporate officers, corporate directors, and 5 percent or greater indirect owners within the definition of affiliation. We note again that all of a provider's or supplier's managing employees, corporate officers and directors, and 5 percent or greater indirect owners currently must be disclosed as part of the Form CMS–855 provider enrollment process.

Comment: Several commenters stated that only direct owners, managing employees, and managing organizations (which the commenters described as ''close affiliates'') should be included within the affiliation definition. Distant affiliates (described by a commenter as affiliates of close affiliations or affiliates that are not close affiliates) should not be included, with one commenter stating that CMS could review PECOS to ascertain distant affiliations. A commenter stated that CMS should limit disclosure of prior affiliations to close affiliates for which CMS can show it does not have available information. Another commenter suggested that CMS bifurcate the disclosure of affiliations into two parts—(1) affiliations reportable by providers directly (''reportable affiliations''); and (2) other affiliations on which CMS may rely in making a determination of undue risk, provided that CMS takes materiality into account. The commenter believed this would achieve an appropriate balance between the dual needs to reduce the burden on providers and suppliers and to ensure that CMS can take action to protect program integrity.

Response: We appreciate these comments but do not believe that affiliation disclosures should be bifurcated or restricted as suggested. While we acknowledge that some affiliations may pose greater risks than others (and some may pose little, if any, risk), it is possible that even certain ''distant'' affiliations could, depending on the particular facts of the case,

threaten the integrity of Medicare, Medicaid, or CHIP. We consequently must retain the discretion to review each case on its own merits by carefully considering the factors outlined in § 424.519(f), which are discussed elsewhere in this final rule with comment period.

Comment: A commenter stated that suppliers should only have to disclose past affiliations for persons identified as 5 percent or greater owners on the Form CMS–855.

Response: We respectfully disagree. Parties such as managing employees and general partners can often have as much, if not more, influence over the daily operations of a provider or supplier than an owner. As such, we do not believe they should be excluded from the definition of affiliation.

After consideration of the comments received, we are finalizing our definition of affiliation as proposed.

b. Disclosable Events (§ 424.519)

In new § 424.519, we proposed in paragraph (b) that a provider or supplier that is submitting an initial or revalidating Form CMS–855 application must disclose whether it or any of its owning or managing employees or organizations (consistent with the terms ''owner'' and ''managing employee'' as defined in § 424.502) has or, within the previous 5 years, has had an affiliation with a currently or formerly enrolled Medicare, Medicaid, or CHIP provider or supplier that—

• Currently has an uncollected debt to Medicare, Medicaid, or CHIP, regardless of—(1) the amount of the debt; (2) whether the debt is currently being repaid (for example, as part of a repayment plan); or (3) whether the debt is currently being appealed. For purposes of § 424.519 only, and as stated in proposed § 424.519(a), we proposed that the term ''uncollected debt'' only applies to—

++ Medicare, Medicaid, or CHIP overpayments for which CMS or the state has sent notice of the debt to the affiliated provider or supplier;

++ Civil money penalties (CMP) (as defined in § 424.57(a)); and

++ Assessments (as defined in § 424.57(a)).

• Has been or is subject to a payment suspension under a federal health care program (as that term is defined in section 1128B(f) of the Act), regardless of when the payment suspension occurred or was imposed;

• Has been or is excluded by the OIG from participation in Medicare, Medicaid, or CHIP, regardless of whether the exclusion is currently being appealed or when the exclusion occurred or was imposed (we note that although section 1866(j)(5) of the Act uses the phrase ''has been excluded,'' we proposed to clarify that a current exclusion is also a disclosable event); or

• Has had its Medicare, Medicaid, or CHIP enrollment denied, revoked or terminated, regardless of—(1) the reason for the denial, revocation, or termination; (2) whether the denial, revocation, or termination is currently being appealed; or (3) when the denial, revocation, or termination occurred or was imposed. For purposes of § 424.519 only, and as stated in proposed paragraph (a), we proposed that the terms revoked, revocation, terminated, and termination would include situations where the affiliated provider or supplier voluntarily terminated its Medicare, Medicaid, or CHIP enrollment to avoid a potential revocation or termination.

We stated in the proposed rule that the affiliated provider or supplier need not have been enrolled in Medicare, Medicaid, or CHIP when the disclosing party had its relationship with the affiliated provider or supplier. We cited the following illustration. Assume Provider A sold its 30 percent interest in an affiliated provider in January 2016. In March 2016, the affiliated provider enrolled in Medicare yet had its enrollment revoked in September 2016. In April 2017, Provider A applied for Medicare enrollment. If we limited the reporting of affiliations to periods when the affiliated provider was enrolled in Medicare, Medicaid, or CHIP, Provider A would not have to report—and we would perhaps not learn of—its relationship with a provider that was revoked only 8 months after the affiliation ended. We concluded in the proposed rule that such information would be valuable in helping us determine whether the affiliation poses an undue risk of fraud, waste, or abuse.

We also proposed that the disclosable event could have occurred or been imposed either before the affiliation began or after it ended. We stated that if disclosure of an affiliation were restricted to the time period of the disclosing party's relationship with the affiliated provider, we might remain unaware of situations where, for instance—(1) a disclosing party sells its majority interest in an affiliated provider or supplier that is terminated from Medicaid 2 months after the sale; and (2) a 40 percent owner of a Medicare-enrolled affiliated provider engages in questionable billing practices, sells its share, and seeks to separately enroll in Medicare, shortly after which the affiliated provider is notified that it has a large Medicare debt that must be repaid. We expressed particular concern about the latter scenario; as previously mentioned, we have seen instances where providers and suppliers with significant overpayments close down their businesses and attempt to enroll under other business identities.

Additionally, we proposed that the actions identified in § 424.519(b) applied regardless of whether an appeal is pending. We wanted to avoid situations where an initially enrolling provider or supplier would not have to disclose, for example, an affiliated provider that was revoked from Medicare 6 months ago (based on a felony conviction) because the revocation is under appeal; without this information, the provider or supplier in question might become enrolled in Medicare without CMS knowing of its relationship with a recently convicted affiliated provider or supplier. Conversely, we proposed that actions that have been overturned on appeal or otherwise reversed would not need to be reported.

We further proposed a look-back period of 5 years for previous affiliations. A sufficient look-back period was deemed necessary because a past affiliation could be an indicator of a disclosing party's future behavior. The look-back period would be the 5-year timeframe prior to the date on which the disclosing provider or supplier submits its Form CMS–855; thus at least part of the affiliation must have occurred within the 5-year period preceding the date on which the application is submitted. However, we did not propose to limit the look-back period for disclosable events (other than uncollected debts), meaning that said event could have occurred any time in the past to be subject to disclosure.

We proposed, too, that if the affiliated provider or supplier had its Medicare, Medicaid, or CHIP enrollment denied, revoked, or terminated, this must be reported regardless of the reason for the denial, revocation, or termination. Since all denial, revocation, and termination reasons are of concern to us, we did not believe certain reasons should be excluded from disclosure. Nevertheless, we solicited comment on whether disclosure should be restricted to particular denial, revocation, and termination reasons and, if so, what those reasons should be.

We also sought comment on the following issues regarding our proposed definition of uncollected debt: (1) Whether there should be a threshold for the level of debt that would need to be reported; (2) whether a provider or supplier should be exempt from

reporting an uncollected debt if it is complying with a repayment plan; and (3) whether the level of reporting burden on the provider or supplier is low enough to merit collection of this information without any threshold or exemption.

We previously mentioned our proposal that the terms revoked, revocation, terminated, and termination (for purposes of disclosure under § 424.519) would include situations where the affiliated provider or supplier voluntarily terminated its Medicare, Medicaid, or CHIP enrollment to avoid a potential revocation or termination; this is referenced in proposed § 424.519(a). As explained in more detail in section II.B.10. of this final rule with comment period, we have seen instances where a provider or supplier engages in inappropriate behavior, recognizes that its enrollment may soon be revoked, and then voluntarily withdraws from Medicare prior to the imposition of a revocation so as to avoid the revocation and an associated reenrollment bar under § 424.535(c). (See section II.B.4. of this final rule with comment period for more information on reenrollment bars.) Since the provider or supplier is thus not revoked from Medicare, it could immediately reenroll in Medicare without having to wait until the reenrollment bar expires. We believed such behavior poses a risk to the Medicare program in that the provider or supplier is seeking to avoid Medicare rules and, in the process, possibly reenter the Medicare program to continue its improper activities. Accordingly, although we also address this concern in new § 424.535(j), which is discussed in section II.B.10. of this final rule with comment period, we stated our view that for purposes of § 424.519, such actions should be included within the category of revocations and terminations.

We further solicited comment on proposed § 424.519(b) regarding the following issues—

- Whether 5 years is an appropriate look-back period for affiliations;
- Whether exclusions, denials, and revocations that are being appealed should be exempt from disclosure.
- Whether there should be a limited look-back period for disclosable events and, if so, how long (for example, 15 years, 10 years, 7 years).

We note that, pursuant to §§ 424.502 and 424.519, an affiliation applies to both parties in the affiliation. This means that if the definition of affiliation is met with respect to a particular relationship, both parties have an affiliation. However, whether the affiliation must be disclosed will depend upon whether the requirements of § 424.519(b) are met. For example, suppose Enrolling Provider X has a 50 percent ownership interest in Enrolled Provider Y, which is currently under a Medicare payment suspension. X would have to disclose its relationship with Y. Yet Y would not have to disclose the affiliation pursuant to § 424.519(b) unless X has a disclosable event.

We received the following comments regarding proposed § 424.519(a) and (b).

Comment: Many commenters expressed general concern about the burden of researching, tracking, and reporting information under § 424.519(b). One commenter stated that the rule as a whole (including the affiliation provision) should be geared towards non-compliant providers and suppliers rather than burdening honest providers and suppliers. Another commenter noted that the entire rule (including the affiliation provision) would significantly increase regulatory burden without efficiently targeting enforcement toward higher-risk enrollees, with another commenter stating that the rule should be more focused on identifying and weeding out potentially fraudulent parties. Another commenter stated that—(1) random, untargeted program integrity measures can bring harm to Medicare beneficiaries and all other stakeholders, and (2) Medicare providers may be forced to incur unnecessary costs to comply with a new rule and respond to a new integrity effort when a broad-based action is taken to address the abusive, but isolated conduct of a few providers. Another commenter stated that CMS should reconsider some of the disclosure, timing, and reporting requirements to lessen the administrative burden on providers and suppliers.

Consistent with the suggestion to modify our proposed affiliation provision to target providers and suppliers potentially posing a threat to the Medicare program instead of burdening all providers and suppliers, a commenter noted the previously mentioned February 2, 2011 final rule with comment period, wherein we established categories of risk for provider and supplier types for purposes of enrollment screening. These screening requirements were specifically tailored based upon the level of risk that the category of provider/supplier posed to Medicare, Medicaid, and CHIP. The commenter stated that CMS should consider taking a similar approach with the disclosure of affiliations requirement. The commenter stated it is unlikely that CMS is concerned with the risk of fraud posed by, for example, a hospital that previously employed a physician as a managing employee who now seeks to work at a new hospital; if the goal is not to target these types of scenarios, the commenter added, CMS should consider implementing a narrower, more focused approach in the final rule.

Another commenter noted language in section 1866(j)(5) of the Act stating that the provider or supplier shall disclose the information referenced in section 1866(j)(5) of the Act in a form and manner and at such time as determined by the Secretary. The commenter believed this language permits CMS to consider ''alternative approaches.''

Too, a number of commenters stated that CMS can already access much of a provider's or supplier's disclosable affiliation data through PECOS; therefore, it is duplicative and unnecessary to burden providers and suppliers with obtaining, maintaining, tracking, and submitting this information.

Response: We appreciate these comments and are sympathetic to the concerns raised by the commenters regarding the significant burden this rule could place on providers and suppliers. In response to these concerns, and given the statutory language requiring disclosures to be provided in a form and manner and at such time as determined by the Secretary, we have decided to adopt a ''phased-in'' approach to implementing § 424.519(b), beginning with a more targeted approach that will then be expanded following further rulemaking and a concomitant assessment of the progress of the phased-in approach. To this end, we are revising § 424.519(b) to, for now, require disclosure of affiliations only from those providers and suppliers that have one or more affiliations, as determined by CMS, that would trigger a disclosure in accordance with § 424.519. Such providers and suppliers will be required to report their disclosable affiliations upon request from CMS, as detailed later in this final rule with comment period. This requirement will become effective after CMS has revised the Form CMS–855 to accommodate the required disclosures. (For purposes of this policy, the term ''Form CMS–855'' includes, and will collectively refer to—(1) the applicable Form CMS–855 paper applications; and (2) the respective online enrollment applications submitted through PECOS. Thus, both the paper and online applications, which will be subject to notice-and-comment, will be revised prior to the commencement of any affiliation disclosure requests.)

In reviewing whether a particular provider or supplier has one or more applicable affiliations, CMS will, as applicable, research and consider data revealed through such sources as, but not limited to: (1) PECOS, which, as explained previously, contains provider enrollment information submitted by the provider or supplier (for instance, as part of an initial application submission, a change of information request, a revalidation application, or a reactivation application); and (2) other CMS databases and external, non-CMS databases that could indicate behavior (such as improper billing patterns) of concern to us. After reviewing all applicable data, CMS will request the disclosure of affiliations in accordance with § 424.519 from a provider or supplier if the provider or supplier, or any of its owning or managing employees or organizations may currently have or, within the previous 5 years, have had an affiliation with a currently or formerly enrolled Medicare, Medicaid, or CHIP provider or supplier that may have one or more of the following disclosable events:

++ Currently has an uncollected debt to Medicare, Medicaid, or CHIP.

++ Has been or is subject to a payment suspension under a federal health care program;

++ Has been or is excluded by the OIG from participation in Medicare, Medicaid, or CHIP.

++ Has had its Medicare, Medicaid, or CHIP enrollment denied, revoked or terminated.

We believe that these four events are appropriate triggers for the requirement to report all affiliations specified in this rule. In addition to being consistent with the statutory language regarding the types of events to be disclosed, we believe that each of these events raises potential program integrity concerns and accordingly provides a basis to require the provider or supplier to disclose all applicable affiliations.

For now, providers and suppliers will not be required to disclose affiliations under § 424.519 unless CMS, after performing the research and analysis described earlier and determining that the provider or supplier may have at least one affiliation that includes any of the four disclosable events, specifically requests it to do so. We believe this will ease the burden on the provider community because CMS, rather than the provider or supplier, will be responsible for reviewing whether the disclosure requirement applies to the provider or supplier. However, should CMS find, that it does apply, the provider or supplier in question must then report any and all affiliations that come within the scope of § 424.519, not merely the one(s) on which CMS made its determination. This could require the provider or supplier to conduct research to determine whether additional disclosable affiliations exist, which would then need to be reported to CMS.

We stress that merely because a provider or supplier may have at least one affiliation with a disclosable event and must therefore report all such affiliations upon a CMS request does not mean that CMS has determined that the provider and/or its affiliations pose an undue risk of fraud, waste, or abuse as stated in section 1866(j)(5) of the Act. The disclosure requirement is entirely separate from any undue risk finding. Indeed, CMS must first carefully review and analyze all disclosed affiliations before determining whether the undue risk standard (described in more detail in section II.A.1.d of this final rule with comment period) has been met; CMS will, in every case, act with caution and prudence when determining whether an undue risk of fraud, waste, or abuse exists.

To summarize, once CMS updates its Form CMS–855 applications to include an affiliation disclosure section, a provider or supplier that may have at least one affiliation involving a disclosable event, as identified by CMS, will be required to report any and all affiliations upon initial enrollment or revalidation, as applicable, when CMS specifically requests such information from the particular provider or supplier. Submission via revalidation will be done through a provider's or supplier's periodic revalidation (every 3 years for DMEPOS suppliers per § 424.57(g); every 5 years for all other provider and supplier types per § 424.515) or an off-cycle revalidation per § 424.515(d). We estimate that this will affect only about 2,500 to 4,000 providers and suppliers per year, although this figure could vary. This means that well over 99 percent of prospective and currently enrolled providers and suppliers will not be required to research or disclose affiliation information in the first several years following the effective date of this rule.

Although we will initially be implementing a more targeted approach to the disclosure requirement, we recognize that section 1866(j)(5) of the Act requires every provider and supplier (regardless of the relative risk they may pose) to disclose affiliations upon initial enrollment and revalidation. While section 1866(j)(5) of the Act does give the Secretary some discretion in applying this provision in terms of form, manner, and timing, it does not permanently exempt any provider or supplier from its applicability; for example, section 1866(j)(5) of the Act does not permit the Secretary to establish an exception for physicians or hospitals or other specific provider or supplier types. Moreover, even if CMS already has, for instance, affiliation data in PECOS regarding a provider that is nearing the end of its 5-year revalidation cycle, section 1866(j)(5) of the Act still requires disclosure as part of the provider's upcoming revalidation. Consequently, CMS must eventually secure affiliation data from all initially enrolling and revalidating providers. In light of the very large universe of such providers and suppliers, which we project would be around 1.7 million, we seek public comment on potential approaches for obtaining affiliation information from this group in terms of timing, mechanism, and priority. After receiving and reviewing these comments, CMS will publish a notice of proposed rulemaking (NPRM) outlining the proposed handling of disclosures for these providers and suppliers, followed by the issuance of a final rule (hereafter occasionally referred to as ''the subsequent final rule'') after consideration of the public comments received on the proposed rule.

The specific issues on which we seek public feedback are as follows:

• Whether CMS should adhere to a specific schedule in its requests, such as, for example, requesting 20,000 providers and suppliers to disclose affiliations in the first 12 months after the subsequent final rule's effective date; 30,000 providers and suppliers in the second year; 40,000 in the third year; and so forth.

• Whether CMS, beginning in the first year after the subsequent final rule's effective date, should stagger its requests based on:

++ The risk of fraud, waste, or abuse posed by the individual provider or supplier in question and how CMS should assess this risk.

++ The risk of fraud, waste, or abuse posed by provider and supplier type (for example, Provider Type A is considered the highest risk provider or supplier type in Medicare and should, therefore, be the first provider type to disclose affiliations).

++ Whether the provider or supplier is initially enrolling in Medicare or is revalidating their enrollment (that is, whether initially enrolling providers or, instead, revalidating providers should take precedence in CMS' disclosure requests.)

++ The size of the provider or supplier and/or likely number of affiliations (for instance, larger

providers with presumably more affiliations should be required to disclose affiliations in the initial year following the subsequent final rule's effective date; small providers with few affiliations should receive disclosure requests only in future years).

++ Any combination of the previous criteria.

++ Any other consideration (for example, geographic location).

• The total length of time that CMS should take to complete its collection of affiliation data from the entire universe of providers and suppliers (for example, 2 years; 4 years; 7 years; 10 years; etc.)

• How and when a provider or supplier should be notified that it must or need not disclose affiliation information on its initial or revalidation application, such as, for example:

++ When a provider or supplier submits an initial enrollment application, whether it should—(1) receive prior notice (for instance, via the *www.cms.gov* website) as to whether it must complete the disclosure of affiliation section of the Form CMS–855; or (2) only be notified after submitting the application and after review by CMS or the Medicare contractor.

++ Whether the letter that a provider or supplier receives from CMS or the Medicare contractor requesting the submission of a revalidation application should indicate whether the provider or supplier needs to disclose its affiliations.

Comment: A number of commenters stated that CMS should establish a monetary threshold for reporting debts. They generally contended that—(1) small or nominal amounts of debts would not pose an undue risk to Medicare, Medicaid, or CHIP; and (2) obtaining specific data from other parties (for example, indirect owners; an outside entity for which one of the enrolling provider's board members serves as a managing employee) on such small amounts would be an enormous burden. Suggested minimum debt amounts included $1,000, $10,000, and $100,000; another commenter recommended $50,000 since this is the minimum amount required for DMEPOS surety bonds. Another commenter urged CMS to consider establishing a *de minimis* standard based upon a percentage of a provider's/supplier's gross billings.

Response: While we appreciate these comments and carefully considered them, we do not believe a monetary threshold should be formalized in this rule. Our preferred approach is to consider the debt's amount as a factor in determining whether the debt presents an undue risk of fraud, waste, or abuse. We recognize that smaller debts often will not pose the same degree of risk as larger debts. However, there could be isolated cases where a particular debt, though of a *de minimis* amount, presents an undue risk when all of the applicable factors are considered. In short, we believe that viewing the debt amount as one factor among several, rather than automatically excluding all smaller debts from consideration, will give us the necessary flexibility to address a variety of factual scenarios.

Comment: Several commenters stated that debts that are being repaid should be exempt from the scope of ''uncollected debt.'' They contended that this would reduce the reporting burden on providers and suppliers. Moreover, the commenters stated that parties that are repaying their debts are proving their good-faith and are very unlikely to pose an undue risk of fraud, waste, or abuse.

Response: We appreciate these comments. For reasons similar to our position regarding debt thresholds, however, we decline to exclude debts that are being repaid from the scope of this rule. We believe that consideration of the debt's repayment status as one of several factors in determining whether an undue risk exists is the sounder path. This will give us the flexibility to address a variety of factual scenarios. To illustrate, suppose Enrolling Medicare Provider X was until recently a 60 percent owner of Medicare Provider Y. Y has an outstanding Medicare debt of $2.5 million. Even if the debt is being repaid, we would have reason to be concerned about the amount of the debt, X's recent relationship with Y, and the potential risk posed to the Medicare program. We acknowledge that a debt that is being repaid might in some cases present less of a risk than one that is not. Yet this does not mean that a debt being repaid can never present concerns; indeed, other factors may indicate that an undue risk exists. We believe, in sum, that excluding all debts that are being repaid from disclosure could permit certain providers and suppliers with affiliations posing an undue risk to enroll or remain enrolled in Medicare. This would be inconsistent with our obligation to protect the Medicare program and the Trust Funds.

Comment: A commenter recommended that CMS broaden the scope of the Electronic Submission of Medical Documentation (''edMD'') tool to allow Medicare contractors, states, and CHIP programs to transmit documentation, notices, and letters to providers and suppliers electronically. This would facilitate efficient routing within an organization to those responsible for monitoring and acting on debt and overpayment notices; it also would allow for electronic receipt confirmation. The commenter, as well as several others, urged CMS to consider creating a centralized database through which providers and suppliers can monitor, identify, and address debt notices that CMS and state health care programs have issued; said database should include the information required to research and reconcile submitted claims and track recoupments and interest.

Response: We appreciate these comments but believe they are outside the scope of this rule.

Commenter: A number of commenters stated that debts that are being appealed should be exempt from the category of ''uncollected debts.'' In general, they contended that—(1) the appeals process can often take considerable time; (2) many overpayments are overturned on appeal; (3) obtaining, maintaining, and tracking information on debts that are being appealed would be overly burdensome for providers and suppliers; (4) debts that are being appealed (as well as the providers and suppliers availing themselves of the appeals process) lack any indicia or risk of fraud, waste, or abuse; and (5) the current backlog in the appeal process must be factored into consideration regarding the reporting of debt. A commenter stated that including debts under appeal is administratively burdensome and pressures providers to affirmatively pay Zone Program Integrity Contractors (ZPIC) and Additional Documentation Request (ADR) amounts, versus allowing the Medicare Administrative Contractor (MAC) to recoup the amount.

Response: We appreciate these comments. As with debts that are being repaid, however, we do not believe that debts under appeal should be automatically excluded from disclosure. Instead, we believe it is more appropriate to consider the appeal status of an affiliated party's debt as one of the factors in determining whether the affiliation presents an undue risk. In situations where, for instance, an enrolling provider or supplier has a close affiliation with another provider that has a very large overpayment, we believe that the existence of the overpayment, whether or not under appeal, could be an indication of risk. Thus, consistent with our obligation to protect the Medicare program and the Trust Funds, as well as with our authority under section 1866(j)(5) of the Act, we believe we should have the ability to determine whether the debt and the associated affiliation pose an

undue risk regardless of whether the debt is being appealed. If we excluded such debts from disclosure, we might be compelled to enroll a provider or supplier that was at least indirectly involved in accumulating significant debt. In short, we continue to believe that—(1) we must have the discretion and flexibility to address a wide variety of situations; and (2) the exclusion of certain actions, such as debts being repaid or under appeal, would hinder us in detecting risks to Medicare.

Additionally, as a point of clarification, ZPICs are no longer operational. Uniform Program Integrity Contractors (UPICs) have taken over the functions that ZPICs previously performed. Furthermore, while on the topic of contractors, we note that affiliation disclosures also may support CMS contractor investigative efforts related to discovering networks of individuals and entities engaged in fraud, waste, or abuse (for example, information regarding new leads, new networks, or more extensive networks than previously known), in addition to revealing affiliations that pose an undue risk of fraud, waste, or abuse.

Comment: Several commenters stated that the phrase ''notice of the debt to the provider, civil money penalties, or assessments'' should not include audit requests or routine denial letters where refunds are made through remittance advices or claims corrections and the provider has otherwise been in good standing. Another commenter stated that the definition of uncollected debt should exclude certain recoveries, such as those associated with the Electronic Health Records (EHR) Incentive Program and reconciliations from alternative payment models, to prevent duplicative penalties for the same instance (which the commenter believed would effectively constitute double jeopardy). Another commenter stated that hospices routinely receive notices of debt for hospice cap overpayments and regular Periodic Interim Payment settlements. The commenter questioned whether such notices would trigger the disclosure requirement at § 424.519.

Response: We recognize that there are numerous types of Medicare, Medicaid, and CHIP debts. As applied to § 424.519, ''uncollected debt'' refers to any debt stemming from a Medicare, Medicaid, or CHIP overpayment for which CMS or the state has sent notice of the debt, such as a demand letter or other formal request for payment, to the affiliated provider or supplier and which has not been fully repaid.

Comment: A commenter suggested that the language regarding overpayments in the definition of uncollected debt be restricted to overpayments for which CMS or the state has sent notice of the debt to the affiliated provider or supplier and the due date for payment thereof has passed, subject to the following exceptions: (1) Debt for which the provider or supplier has filed a timely notice of appeal, until such time as a court or agency of competent jurisdiction has found the debt to be valid and no further appeals are available; or (2) debt that is subject to a repayment plan.

Response: For reasons previously stated, we are not exempting debts that are being either repaid or appealed from disclosure.

Comment: A commenter stated that there is a separate statutory and regulatory process in place (with separate requirements, timelines, and consequences for any failure to comply) for provider and supplier overpayments. The commenter stated that overpayments should be handled through this already well-defined and finalized process and not brought within the scope of this rule.

Another commenter stated that all overpayments should be—(1) excluded from the definition of uncollected debts; and (2) reviewed differently than CMPs and assessments. The commenter contended that the term ''overpayment'' in and of itself does not signify fraud or intentional harm but rather that payments were made erroneously. The commenter cited an example of when the components of a service are improperly documented and, as documented, do not justify the code for which the program was billed; the commenter stated that this is not indicative of intentional fraud. The commenter also stated that it can often be some time before overpayments are identified by an organization; as such, the overpayment amounts may be substantial, seriously affecting an individual's or organization's ability to quickly repay the amount, particularly in situations where significant interest has accrued. These situations may require negotiations and the development of repayment schedules.

Response: We respectfully disagree with these commenters. Section 1866(j)(5) of the Act specifically references uncollected debts, and we previously mentioned instances where providers and suppliers have accumulated large uncollected debts, closed their business, and reopened another provider or supplier organization to repeat their behavior. Therefore, we believe that including uncollected overpayments within § 424.519 is necessary.

Comment: A commenter stated that CMS should clarify whether its intent is only for CMPs and assessments imposed on DMEPOS suppliers to be disclosed or those imposed against any type of provider or supplier.

Response: We appreciate this comment. We will clarify in the final regulatory text that the scope of CMPs and assessments applies to all provider and supplier types by—(1) deleting the references to the definitions of CMPs and assessments in § 424.57(a), which are limited to DMEPOS suppliers; and (2) adding language that refers to any CMP and assessment imposed under title 42. We note that the latter includes, but is not limited to, OIG CMPs under Title XI of the Act that are referenced in title 42.

Comment: Many commenters expressed concern about the burden of obtaining, tracking, and maintaining debt information regarding affiliates (and the affiliates of the provider's or supplier's affiliates). Several contentions were made. First, Medicare contractors do not always send debt notices to the correct address, especially when the provider's administrative office is different from the provider's place of operations. Second, contractors sometimes have different procedures for notifying providers and suppliers of debts and for collecting such debts; issues presented by the first and second scenarios, a commenter stated, are particularly acute with respect to Medicaid debts and state Medicaid programs. Third, it would be difficult for large providers and suppliers with many locations to accumulate the debt information involving all of its sites.

Response: We appreciate these concerns. In light of our previously mentioned revision to § 424.519(b), the overwhelming majority of providers and suppliers will not have to report the information to which the commenters refer for several years. Also, CMS will closely monitor the progress of § 424.519(b)'s implementation; should limitations on the reporting of certain types of uncollected debts be necessary, CMS may consider additional rulemaking. We further note that we understand the concerns about a provider's or supplier's ability to obtain debt (and other) data from affiliates. We address this matter further in section II.A.1.c. of this final rule with comment period.

Comment: Several commenters stated that denials, revocations, and terminations should be deemed reportable only if they involved fraudulent activities (for example, a formal finding of fraud by the OIG, the Department of Justice, a Medicare

contractor, or a court of law) or were imposed on otherwise serious grounds. One commenter stated that this is necessary because of the possibility of denials and revocations due to mistakes or technical misunderstandings. Other commenters stated that this limitation would reduce the regulatory burden.

Another commenter stated that termination reasons should be limited to fraudulent or wasteful behavior. The commenter cited the example of a provider terminated from Medicaid because he or she did not renew his or her Drug Enforcement Administration (DEA) certification in a timely manner; the commenter did not believe this behavior should be disclosed and scrutinized for possible Medicare termination. Another commenter stated that providers and suppliers should not be required to disclose denials for what the commenter deemed non-substantive reasons, such as minor typographical or similar errors that are not based on an assessment that the provider or supplier is ineligible to participate in the program. Another commenter requested that CMS distinguish between OIG exclusions based on fraud, waste, or abuse, and those based on what the commenter described as more innocuous reasons, such as a failure to repay student loans; the commenter did not believe the latter would affect a provider's or supplier's ability to furnish services to patients. An additional commenter stated that CMS should differentiate between denials, revocations and terminations that are ''without fault'' and ''without cause'' and those related to fraud, integrity or quality concerns. The commenter appeared to indicate that the former should be exempt from disclosure, such as instances where a provider's application is denied for failing to respond to a Medicare contractor's request for additional information. Yet another commenter stated that the reporting of payment suspensions should be limited to those imposed based on a determination of a credible allegation of fraud.

Response: We respectfully disagree with these commenters. All program denials, revocations, terminations, OIG exclusions, and payment suspensions are of concern to us. However, we understand that the facts and circumstances behind each action may differ and, consequently, pose different risks to Medicare, Medicaid, and CHIP. Rather than explicitly exempt certain types of these actions from disclosure, we believe the better approach is to carefully consider the factors we proposed in § 424.519 in determining whether an undue risk exists. This will give us the flexibility needed to address a variety of scenarios.

Comment: A number of commenters opposed including voluntary terminations within the scope of disclosable events. They stated that—(1) many voluntary terminations are for innocuous reasons and do not pose a risk to federal health care programs; and (2) including voluntary terminations as a disclosable event is inconsistent with congressional intent.

Response: Although we recognize the commenters' concerns, we explained previously our reasons for including voluntary terminations within the scope of § 424.519; specifically, there have been instances where providers and suppliers have voluntarily terminated their enrollment in order to avoid a revocation and subsequent reenrollment bar. To allow CMS to determine whether such a scenario occurred, we maintain that all voluntary terminations should be included within § 424.519, all the while understanding that there are voluntary terminations that are for legitimate reasons unrelated to a pending revocation and thus pose no risk to Medicare.

We wish to reiterate that simply because a particular affiliation must be disclosed does not automatically mean that it will result in a finding that the affiliation poses an undue risk of fraud, waste, or abuse. CMS will—(1) review each situation based on the totality of the circumstances at hand; and (2) exercise its discretion to deny or revoke in a cautious and prudent manner.

Comment: A commenter stated that section 1866(j)(5) of the Act does not require the disclosure of terminations; hence, terminations should be excluded as a disclosable event.

Response: Section 1866(j)(5) of the Act refers to Medicare, Medicaid, and CHIP denials and revocations. However, in Medicaid and CHIP terminology, providers are terminated, rather than revoked. Our reference to terminations in § 424.519 is thus intended to cover Medicaid and CHIP program actions.

Comment: A commenter questioned what is meant by the ''to avoid a potential revocation or termination'' standard and how it would be applied. The commenter also requested that CMS issue standards for distinguishing between affected and non-affected voluntary terminations.

Response: The phrase ''to avoid a potential revocation or termination'' means that the provider or supplier voluntarily terminated its enrollment to avoid being revoked by Medicare and subjected to a reenrollment bar. Regarding the establishment of standards as the commenter suggests, we will consider—(1) issuing subregulatory guidance concerning the reporting of voluntary terminations to assist providers and suppliers; and (2) the surrounding facts of the case in determining whether the voluntary termination falls within this category.

Comment: A commenter stated that the late filing of a cost report may trigger a payment suspension. The commenter questioned whether such a payment suspension would have to be reported at that time. Another commenter posed the same question regarding payment suspensions stemming from the late submission of a self-determined Medicare cap liability based on an inability to secure Provider Statistical and Reimbursement report (PS&R) information.

Response: As we proposed, all payment suspensions under a federal health care program, regardless of the specific regulatory basis involved, fall within the purview of § 424.519. This will enable us to examine the facts behind the payment suspension in determining whether an undue risk exists.

Comment: Several commenters recommended that CMS exempt from disclosure all disclosable events that are currently being appealed. They generally stated that this—(1) would ease the reporting burden on providers and suppliers; (2) eliminate any presumption that the disclosable event actually happened; (3) be consistent with due process; (4) prevent parties from being permanently harmed if the event is later overturned on appeal (for instance, it would not remain in CMS' records as a disclosable event); and (5) prevent providers, suppliers, CMS, and Medicare contractors from having to expend resources on premature reporting and undue risk determinations. Another commenter suggested that CMS add a provision to the final rule that allows for all appeals to be exhausted before a provider or supplier is required to report under § 424.519(b). Another commenter disagreed with CMS' stated concern in the proposed rule about the filing of frivolous appeals to avoid reporting disclosable events; the commenter urged CMS to exclude disclosable events that are being appealed.

Response: We respectfully decline to exempt denials, revocations, terminations, payment suspensions, and exclusions by the OIG that are being appealed from the purview of § 424.519. Such actions can involve significant transgressions, and we must be able to take prompt action to protect the Medicare program and the Trust Funds.

Comment: Several commenters stated that CMS should not require a provider or supplier to report if an affiliate had its Medicare, Medicaid, or CHIP enrollment denied, revoked, or terminated if said affiliate was not enrolled in Medicare, Medicaid, or CHIP at the time of the affiliation. One commenter stated that providers should only be required to disclose affiliations with other providers that were—(1) enrolled or attempted to enroll during the period in which the affiliation occurred; or (2) enrolled prior to the affiliation period. If the affiliate was not enrolled during or prior to the affiliation period, this commenter stated, the provider would have no reason to believe that it had a disclosable event and would not collect or monitor such information.

Response: We respectfully disagree with these commenters. Improper behavior within a health care provider or supplier can occur regardless of whether it is enrolled in a federal health care program. In other words, the crucial issue with respect to the scenario the commenters pose is more the behavior itself than the provider's or supplier's enrollment status. We thus believe that disclosable events should be reported even if the provider or supplier in question was not enrolled at the time of the affiliation.

Comment: Several commenters stated that a 5-year look-back period for affiliations is appropriate.

Response: We appreciate the commenters' support.

Comment: A number of commenters stated that our proposed 5-year look-back period is too long. They generally contended that—(1) requiring research, tracking, and disclosure over a 5-year period would be too burdensome for providers and suppliers; and (2) relationships occurring 4 or 5 years ago typically would not pose a risk of fraud, waste, or abuse. Commenters suggested a shorter period; among those mentioned were 3 years, 2 years, and 1 year. They stated that a shorter period would still permit CMS to take action against providers and suppliers with problematic affiliations without—(1) penalizing providers and suppliers for having affiliations with entities whose disclosable events have passed; and (2) imposing an unacceptable burden on providers and suppliers.

Response: We appreciate these comments and concerns. After careful consideration, though, we continue to believe that a 5-year period is warranted. A 5-year period will enable us to capture a sufficient extent of the provider's or supplier's disclosable event history without requiring the provider or supplier to research affiliations from many years prior. Put another way, we believe a 5-year period strikes a suitable balance between—(1) ensuring our ability to detect undue risks to the Medicare program and the Trust Funds and (2) restricting the burden of research and disclosure on providers and suppliers. We acknowledge that current or more recent affiliations may, depending on the facts of the case, present more concern than those that ended 4 or 5 years ago, and we will take into account when the affiliation occurred in determining whether an undue risk exists.

Comment: A commenter stated that the proposed 5-year look-back period for previous affiliations is longer than any of the look-back periods associated with related fraud and abuse statutes, such as the physician self-referral (Stark) law, the CMP provisions, or the anti-kickback statute. The commenter contended that CMS fails to provide any justification as to why 5 years is the appropriate timeframe.

Response: Our 5-year look-back period is based on the objectives of section 1866(j)(5) of the Act. It need not be predicated on look-back periods for other, unrelated statutes; indeed, the affiliation disclosure requirement is entirely different from these other statutes, and any disclosure period established therewith must be predicated on the particular objectives and circumstances of said requirement. Further, we explained in the proposed rule that a 5-year look-back period would divulge to us past situations that could present future concerns, while being less onerous than, for instance, a 10-year period. We also respectfully note that a 5-year lookback period for previous affiliations is shorter than the lookback periods associated with overpayment and fraud and abuse statutes to which the commenter referred.

Comment: A number of commenters recommended that CMS establish a look-back period for disclosable events. They essentially stated that—(1) the lack of a look-back period would impose an enormous burden on providers and suppliers because they would have to obtain, submit, and regularly monitor information from potentially decades ago, which could take resources away from patient care, and (2) disclosable events that occurred many years prior do not pose a significant, if any, risk to federal health care programs. Among the look-back periods they suggested for disclosable events were 5 years, 3 years, and 2 years. The commenters stated that such periods would be sufficient to remove problematic parties from Medicare, Medicaid, and CHIP without overly burdening providers and suppliers. One commenter stated that if there is no look-back period for disclosable events, the universe of organizations that will have experienced at least one disclosable event will increase dramatically year-to-year; eventually, it is conceivable that nearly all providers and suppliers will have experienced at least one disclosable event at some point in their existence. Other commenters noted that CMS has a 10-year reporting limit for felony convictions and suggested that—(1) any look-back period for disclosable events should not exceed 10 years for offenses equivalent in scope to a felony; and (2) CMS should strongly consider reducing the disclosure period for less severe actions (such as non-felony final adverse actions), which a commenter suggested should be 3 years.

Response: We appreciate these comments and understand the concerns regarding burden. However, after carefully considering them, we maintain our view that no look-back period for disclosable events should be established. While we recognize that disclosable events occurring many years previously often will not present the same level of concern as a more recent action, such events could still pose risks. Given our obligation to protect the Medicare program and the Trust Funds, we must retain the flexibility to address various factual scenarios. Yet we also reemphasize that, per our previously discussed revisions to § 424.519(b), many providers and suppliers will not have to research or report disclosable affiliations for at least several years after the effective date of this rule.

Comment: A commenter recommended a 7-year look-back period that would involve the submission of reports documenting disclosable events (including those for the potential billing service provider, the service owner or director, and accounts receivable personnel) that occurred during that timeframe. The commenter stated that such an assessment is necessary for the prevention of fraudulent activity. The commenter also stated that—(1) a 7-year timeframe is consistent with credit reporting; and (2) the Internal Revenue Service has a timeline of 7 years for documentation regarding a loss.

Response: We appreciate this suggestion. For reasons previously stated, however, we are not adopting a look-back period for disclosable events and are retaining our proposed 5-year period for disclosable affiliations.

Comment: Several commenters stated CMS should not require a provider or supplier to report any disclosable event

imposed on a prior affiliate after the relationship between the provider or supplier and the affiliate is terminated. A commenter stated that while the statute requires reporting current and past affiliations with individuals or entities that have experienced certain events, it references past events by using the past perfect conjugation. The commenter believed that this indicates that the Congress did not intend for providers or suppliers to disclose information on events that occurred after the affiliation period. Such events, the commenter stated, would be in the future in terms of the relationship between the individuals or entities, thus making the events outside the scope of the requirement.

Response: We respectfully disagree with these commenters. Adoption of this suggestion could mean, for instance, that a party involved in improper activities could depart an affiliated provider immediately before any sanctions are imposed on the latter and purchase an enrolling provider, but CMS could take no action under § 424.519 to prevent said enrollment. We explained in the proposed rule our concern about parties that engage in inappropriate behavior in one forum and then move to another provider or supplier to repeat their activities. The structure and scope of our disclosure requirements are designed to prevent this. We believe we have the discretion to interpret section 1866(j)(5)(A) of the Act as not requiring the disclosable event to have occurred during the affiliation. Additionally, we have authority to include such situations within the scope of disclosable affiliations pursuant to our general rulemaking authority under sections 1102 and 1871 of the Act.

Comment: A commenter stated that any look-back period for disclosable events should not precede the date on which the provider or supplier established a covered affiliation with the relevant entity.

Response: It appears that the commenter is suggesting that disclosable events occurring prior to the establishment of the affiliation should not be included within the scope of § 424.519. We respectfully disagree. Depending on the particular facts of the case, we believe that affiliations established with parties that have some type of adverse history can still present risks. We believe we must retain the discretion to address such situations in order to protect the Medicare program and the Trust Funds.

Comment: A commenter stated that look-back periods for affiliations and disclosable events should be 2 to 3 years and limited to timeframes following the acquisition of an entity and prior to the sale of an entity.

Response: We appreciate this comment. However, for reasons stated earlier, we believe that a 5-year period is more appropriate for affiliations, with no look-back period for disclosable events. As we mentioned in the proposed rule, the 5-year timeframe extends back from the date on which the application is submitted; it is unrelated to the date of any relevant acquisition or sale.

Comment: Several commenters recommended that CMS only require the reporting of disclosable events that occurred during the affiliation; in other words, the disclosable event must have occurred during the affiliation, not before or after, to require disclosure. A commenter contended that an enrolling or revalidating provider may have no way to reasonably know about disclosable events occurring outside the period of their affiliation with another provider or supplier. Another commenter stated that if the look-back period for disclosable events is not coterminous with the affiliation reporting obligation, providers will have to track the activities of entities either pre- or post-affiliation. Another commenter stated that a provider typically would not (and should not be expected to) know of a disclosable event after an affiliation has ended. Several commenters added that providers and suppliers should only be required to report disclosable events that occurred before the end of an affiliation with a close affiliate. Another commenter stated that if CMS requires reporting of disclosable events occurring before or after an affiliation, such events should not be considered for purposes of determining undue risk.

Response: For reasons stated previously, we believe it is important that disclosable events occurring before or after an affiliation be included within the purview of § 424.519. It is possible that such an affiliation—even one involving parties that might not be considered ''close'' affiliates—could pose an undue risk; indeed, we previously cited the example of a party that associates with a provider, engages in improper conduct, and then ends the association prior to any imposition of an adverse action or before the determination that a large overpayment exists. We again recognize, though, as we have discussed in detail in this section II of this final rule with comment period, the burden that could be involved in ascertaining this information. We also have revised § 424.519(b) such that only a very small number of providers and suppliers will have to report affiliations in the initial years following the effective date of this final rule with comment period.

Comment: A commenter stated that with respect to past affiliations, providers should only be required to disclose whether the provider or the affiliate had a disclosable event during the affiliation period. Having to obtain information from past affiliates, the commenter stated, could be extremely difficult. Another commenter stated that providers and suppliers should not be required to report prior disclosable events of any other providers or suppliers with which it has or had an affiliation. The commenter stated that once a relationship with a close affiliate ends, the provider or supplier may have no way to know or obtain information about the individual's or entity's behavior and actions. Another commenter stated that requiring reporting disclosable events occurring after an affiliation ends would be extremely burdensome on providers and suppliers; it would mandate them to continue to perform due diligence on an organization with which they no longer do business. Once a financial relationship has been terminated, the commenter explained, there would be no plausible reason for either party to maintain contact and, moreover, it is unclear whether the former affiliate could be compelled to disclose whether, for instance, it had its enrollment denied, revoked, or terminated after the affiliation had ended; also, the former affiliate would have no incentive to be forthcoming with the provider or supplier because there would be no penalty for being untruthful. This would, the commenter stated, leave providers or suppliers who are acting in good faith in a precarious position.

Response: We understand the potential difficulty involved in obtaining data from past affiliates. However, we reiterate our belief that disclosable events occurring before or after an affiliation could present program integrity risks and that we must be able to take action to protect the Medicare program and the Trust Funds.

After consideration of the comments received, we are finalizing proposed § 424.519(a) and (b) with several exceptions and with a revision to § 424.502:

- In paragraph (a), we are doing the following:

++ Changing the language ''(as defined in § 424.57(a))'' to ''imposed under this title.''

++ Adding the language ''to the definition of disclosable event in § 424.502'' to the end of the opening

paragraph. This is to accommodate our revisions to §§ 424.502 and 424.519(b).

• In lieu of listing the four disclosable events that we proposed in § 424.519(b) within that paragraph, we are adding to § 424.502 a definition of ''disclosable event'' to encompass them. Doing so, we believe, will shorten § 424.519(b) to make it more concise and readable. Within this definition, we are also adding ''by the OIG'' immediately after the word ''excluded'' to clarify that we are referring to OIG exclusions.

• We are revising the entirety of § 424.519(b) to read as set out in the regulatory text.

In addition, and as mentioned previously, we solicit public comment on operational approaches (specifically with respect to timing, mechanism, and priority) for obtaining affiliation information from providers and suppliers other than those to which § 424.519(b) will apply.

c. Affiliation Data, Mechanism of Disclosure, and ''Reasonableness'' Standard

In § 424.519(c), we proposed to require the disclosure of the following information about the affiliation:

• General identifying data about the affiliated provider or supplier. This includes the following:

++ Legal name as reported to the Internal Revenue Service or the Social Security Administration (if the affiliated provider or supplier is an individual).

++ ''Doing business as'' name (if applicable).

++ Tax identification number.

++ NPI.

• Reason for disclosing the affiliated provider or supplier (for example, uncollected Medicare debt or Medicaid payment suspension).

• Specific data regarding the relationship between the affiliated provider or supplier and the disclosing party. Such data include the—(1) length of the relationship; (2) type of relationship (for instance, an owner of the initially enrolling provider or supplier was a managing employee of the affiliated provider or supplier); and (3) degree of affiliation (for example, percentage of ownership; whether the ownership interest was direct or indirect; the individual's specific managerial position; the scope of the individual's or entity's managerial duties; whether the partnership interest was general or limited).

• If the affiliation has ended, the reason for the termination.

We stated that the information in proposed § 424.519(c) is necessary to help us assess the risk of fraud, waste, or abuse that the affiliation poses.

In § 424.519(d), we proposed that the information required under § 424.519 be furnished to CMS or its contractors via the Form CMS–855 application (paper or the internet-based PECOS enrollment process). This is to ensure that all enrollment information continues to be reported via a single vehicle.

In § 424.519(e), we proposed that the disclosing provider's or supplier's failure to fully and completely furnish the information specified in § 424.519(b) and (c) when the provider or supplier knew or should reasonably have known of this information may result in either of the following:

• The denial of the provider's or supplier's initial enrollment application under § 424.530(a)(1) and, if applicable, § 424.530(a)(4).

• The revocation of the provider's or supplier's Medicare enrollment under § 424.535(a)(1) and, if applicable, § 424.535(a)(4).

Under our proposed ''reasonableness'' standard in § 424.519(e), we would require particular information to be reported only if the disclosing provider or supplier knew or should reasonably have known of said data. For instance, while a provider or supplier would typically know of a past affiliation, it may not necessarily know whether a § 424.519(b) action occurred or was imposed after the affiliation ceased. We stated that we would review each situation on a case-by-case basis in determining whether the disclosing entity knew or should have known of the information.

We also solicited comment regarding the following:

• Whether we should establish a ''reasonableness'' test, whereby we explain what constitutes a sufficient effort to obtain information in the context of the ''should reasonably have known'' standard.

• If we establish such a test, what its specific elements should be (for example, what constitutes a reasonable inquiry; the minimum steps that the provider must undertake in researching information).

We received the following comments regarding paragraphs (c), (d), and (e):

Commenter: A commenter questioned whether affiliations would have to be reported prior to updates to the Form CMS–855 to capture this information. In a similar vein, another commenter questioned whether, once the rule becomes final, organizations would immediately be required to collect data regarding ownership interests or other affiliations with Medicare providers and suppliers, or whether there would be a grace period to permit entities (especially large ones) to prepare for the affiliation disclosure requirements. Another commenter urged CMS to give providers and suppliers a reasonable implementation period to prepare for said requirements.

Response: Disclosable affiliations will not have to be reported until the Form CMS–855 applications are updated to collect this data; additionally, CMS will issue accompanying subregulatory guidance regarding the affiliation disclosure process, though this may or may not be issued before CMS' begins sending affiliation disclosure requests to providers and suppliers. Because disclosure will not be required until the applicable forms are revised, all stakeholders will have sufficient time to prepare for said requirements.

Comment: A commenter stated that an elaborate regulatory ''reasonableness'' test is unnecessary. Instead, the commenter suggested that—(1) the reasonableness standard should be based on the principle of good faith, and (2) physicians should be neither required nor expected to research information about disclosable events relevant to affiliations that they would not otherwise be aware of in the general course of business. The commenter stated that a presumption of good faith should be applied that takes account of the limited knowledge providers may possess regarding their affiliated entities, especially when the extent or duration of the affiliation is relatively minor. Several other commenters also recommended a ''good-faith'' basis for any reasonableness test, with another commenter stating that providers and suppliers should not be required or expected to research data about disclosable events relevant to prior affiliations that they would not be otherwise aware of in the overall course of business.

An additional commenter stated that setting a standard for a ''reasonable'' effort might inadvertently—(1) expose honest providers to a level of risk that this rule does not intend, and (2) offer a potential benchmark for questionable and fraudulent parties. With the former, the commenter stated that most medical practices would strive to meet any reasonableness standard, but that they may lack the resources to meet an excessive standard. Concerning the latter, the commenter stated that a clearly delineated standard would signal to parties engaged in fraudulent behavior exactly how ''far away'' to keep their information, thus increasing the chances that innocent providers are unknowingly associated with unethical entities. The commenter recommended that CMS base any reasonableness

standard on the presumption of good faith and not a complex process.

Response: As previously stated in both this final rule with comment period and the proposed rule, we recognize that various data may be difficult to obtain. We intend to issue subregulatory guidance that will clarify our expectations regarding the level of effort that is required in securing the relevant affiliation information.

Comment: A number of commenters recommended that CMS—(1) more clearly define the ''knew or should reasonably have known'' standard; (2) develop criteria for said standard; (3) explain what constitutes a sufficient effort to obtain information; (4) specify how CMS will assess whether a provider or supplier knew or should reasonably have known of an affiliation or disclosable event; and (5) furnish examples of when and how the standard would and would not be applied. One commenter stated that CMS should provide illustrations of what would constitute a reasonable attempt to obtain certain information, similar to the Internal Revenue Service's ''Rebuttable Presumption'' standard. For example, the commenter stated, if a provider adheres to certain protocols, it should not be penalized if the information gathered pursuant to such protocols turns out to be false. The commenter believed this was equitable and would promote practical compliance.

An additional commenter stated that CMS should not institute a strict test for reasonableness but instead provide guidance on the steps that CMS expects providers and suppliers to take to meet the ''should reasonably have known'' standard. The commenter contended that an explicit test—(1) may be too administratively burdensome on providers and suppliers; and (2) might not be applicable to a variety of activities and relationships.

Response: We appreciate and understand the commenters' concerns. As stated previously, we plan to issue subregulatory guidance that will clarify our expectations regarding the level of effort providers and suppliers must expend when researching affiliations.

Comment: A commenter sought clarification as to the appropriate process for providers and suppliers to follow if they disagree with CMS' application of the ''knew or should reasonably have known'' standard in a particular case; the commenter asked whether the remedy is limited to a post-revocation appeal. The commenter recommended that if there is a dispute about whether the test has been met, no final enrollment action should be taken until all rights of appeal are exhausted. Another commenter stated that if the provider or supplier disagrees with any CMS application of the ''knew or should reasonably have known'' test that results in a denial or revocation, the provider or supplier can appeal CMS' denial or revocation. Another commenter stated that individuals often cannot be expected to discover a disclosable event when many of the affected parties are not in a sufficient position of control to obtain data regarding whether past, present, or future relationships may involve such an event; the commenter added that there is no comprehensive database of this information.

Response: We acknowledge the commenters' concerns and, as already stated, will issue appropriate subregulatory guidance concerning the ''knew or should reasonably have known'' standard. We note also that the provider or supplier may appeal a denial or revocation triggered by our affiliation disclosure provisions under 42 CFR part 498.

Comment: A commenter recommended that CMS require providers to report debts only for affiliates that they have reasonable knowledge to believe are over the established debt threshold. A reasonable knowledge standard, the commenter stated, would—(1) allow CMS to identify debtors that could pose a risk to the integrity of the Medicare program; and (2) ease the regulatory burden on providers because they would not have to investigate in-depth every current or past affiliate.

Response: We appreciate this comment and believe that our ''knew or should reasonably have known'' standard is not inconsistent therewith. However, we strongly reemphasize, that this does not mean that actual knowledge without any attempt to research affiliation data should be the test for compliance. Even with our ''knew or should reasonably have known'' standard, the provider or supplier must put forth a sufficient effort to research actual and possible affiliations.

We also reiterate that we are not establishing a debt threshold in this final rule with comment period.

Comment: Several commenters stated that a failure to report a disclosable event (either during initial enrollment, revalidation, or through changes in information) should not result in denial or revocation unless the omission was material and intentional, with some commenters adding that this policy is necessary because of the lack of clarity regarding what constitutes an affiliation. Some stated that denial or revocation would only harm legitimate providers and suppliers that are making honest efforts to report said data but that inadvertently neglect certain information or are unable to obtain it.

Response: We respectfully decline to establish a ''material and intentional'' standard, for this could give the impression that—(1) certain required data can be withheld without consequences; and (2) little effort is necessary so long as information is not purposely withheld. Nevertheless, we again recognize that some data could be difficult to secure, and we stress that we will only take denial or revocation action pursuant to § 424.519(e) after careful consideration of the facts and circumstances and not as a matter of course.

Comment: A commenter stated that by using certified mail to inform providers and suppliers of certain information, CMS will have a legally binding signed document with which to prove what an entity or person should reasonably have known. The commenter added that a searchable CMS program participant database that tracks this information could prevent fraudulent activity before payments are made.

Response: We appreciate these comments but believe they are outside the scope of this rule.

Comment: A commenter stated that a provider or supplier should only be required to complete steps in its research that are clearly outlined and can be accomplished through publicly available search mechanisms, such as the OIG exclusion list. The commenter added that DMEPOS suppliers are required to complete a fingerprinting process as part of enrollment and re-enrollment, which, the commenter believed, should suffice to meet the intent of background research on individual owners.

Response: While we believe that public database searches would prove useful in obtaining affiliation data, we do not believe the provider's or supplier's efforts should be automatically restricted to these means. Depending on the particular circumstances involved and recognizing that certain instances might necessitate greater degrees of research, this could require, for instance, a review of internal records and contacting affiliates. Such actions may yield data and information that is not otherwise available via public databases.

We note that DMEPOS suppliers are subject to our fingerprinting requirements only as prescribed in § 424.518.

Comment: A commenter suggested that CMS—(1) should establish a rebuttable presumption that the

provider or supplier exercised sufficient diligence in gathering affiliation information; and (2) should not deny or revoke enrollment if the provider or supplier follows the appropriate procedure to obtain a rebuttable presumption. The commenter stated that this would promote compliance while recognizing that legitimate mistakes will be made in the data collection process.

Response: We respectfully disagree that we should automatically presume that every provider or supplier submitting affiliation data exercised sufficient diligence in gathering the required information. We will review each case on its own merits, while acknowledging, as previously stated, that certain data may be difficult to secure.

Comment: A commenter stated that CMS should explicitly state that hospitals and health systems may rely upon disclosures furnished by their affiliates, rather than being held to a ''should reasonably have known'' standard.

Response: We respectfully disagree. A provider's or supplier's reliance upon information furnished by its affiliates is a matter between those parties, and the provider or supplier itself is ultimately responsible for furnishing accurate data to CMS. This is no different from the current requirement to furnish correct ownership, managerial, and adverse history information on the Form CMS–855 as part of the regular enrollment process. As stated previously, we will review each case on its own merits with the understanding that certain data may be difficult to obtain.

After reviewing the comments received, we are finalizing § 424.519(c), (d), and (e) as proposed.

d. Undue Risk

We proposed in § 424.519(f) that upon receiving the information described in § 424.519(b) and (c) (and consistent with section 1866(j)(5)(B) of the Act), we would determine whether any of the disclosed affiliations poses an undue risk of fraud, waste, or abuse. The following factors would be considered:

- The duration of the disclosing party's relationship with the affiliated provider or supplier.
- Whether the affiliation still exists and, if not, how long ago it ended.
- The degree and extent of the affiliation (for example, percentage of ownership).
- If applicable, the reason for the termination of the affiliation.
- Regarding the disclosable event—
  - ++ The type of action (for instance, payment suspension);
  - ++ When the action occurred or was imposed;
  - ++ Whether the affiliation existed when the action (for example, revocation) occurred or was imposed;
  - ++ If the action is an uncollected debt—(1) the amount of the debt; (2) whether the affiliated provider or supplier is repaying the debt; and (3) to whom the debt is owed (for example, Medicare); and
  - ++ If a denial, revocation, termination, exclusion, or payment suspension is involved, the reason for the action (for example, felony conviction; failure to submit complete information).
- Any other evidence that CMS deems relevant to its determination.

In summary, these factors would focus largely, though not exclusively, on—(1) the length and period of the affiliation; (2) the nature and extent of the affiliation; and (3) the type of disclosable event and when it occurred. We stated in the proposed rule that a closer, longer, and more recent affiliation involving, for instance, an excluded provider or a large uncollected debt might present a greater risk to the Medicare program than a brief affiliation that occurred 5 years ago. Yet we stressed that it should not be assumed that the latter situation would never pose an undue risk. We declined to make specific conclusions in the proposed rule regarding what would constitute an undue risk, for affiliations vary widely. We stated that we must retain the flexibility to deal with each situation on a case-by-case basis, utilizing the aforementioned factors. We also solicited comment on the following issues related to these factors:

- Whether additional factors should be considered.
- Which, if any, of the proposed factors should not be considered.
- Which, if any, factors should be given greater or lesser weight than others.

In § 424.519(g), we proposed that a CMS determination that a particular affiliation poses an undue risk of fraud, waste, or abuse would result in, as applicable, the denial of the provider's or supplier's initial enrollment application under new § 424.530(a)(13) or the revocation of the provider's or supplier's Medicare enrollment under new § 424.535(a)(19). We noted that an actual finding of fraud, waste, or abuse would not be necessary for § 424.519(g) to be invoked. Only a determination that an undue risk of fraud, waste, or abuse exists would be required.

We received the following comments regarding proposed § 424.519(f) and (g):

Comment: A commenter stated that CMS should include in its undue risk determinations the following factors—(1) whether the disclosing provider or supplier was involved with the disclosable event; and (2) whether the affiliated individual or organization plays a tangible role in the day-to-day management and operations of the disclosing provider or supplier. Another commenter stated that CMS should evaluate whether the disclosing provider or supplier had any involvement with or was otherwise implicated by the disclosable event.

Response: We believe that the commenter's second suggested factor falls within the scope of our proposed factor concerning the degree and extent of the affiliation. We do not believe that the commenter's first criterion should be explicitly listed as a factor in § 424.519(f). Section 1866(j)(5)(B) of the Act focuses on whether the affiliation poses an undue risk rather than on the provider's or supplier's actual or potential involvement in the adverse action. In other words, the relationship itself is the relevant issue. We are concerned that adding the suggested factor would imply that the provider or supplier must have been directly involved with the disclosable event (and for there to be clear evidence thereof) in order for an undue risk under § 424.519(f) to exist. We believe this would be inconsistent with the spirit of section 1866(j)(5)(B) of the Act and could hinder our efforts to protect Medicare against problematic provider relationships.

Consider the following illustration: Assume that a non-physician practitioner has been a one-third owner of three separate Medicare-enrolled group practices for the past 5 years. Two of the groups have their enrollments revoked; the third group has an outstanding overpayment of $300,000. The practitioner wants to open a separate practice of which she will be the sole owner. The practitioner's affiliations would certainly raise questions about whether an undue risk exists. However, if we included the commenter's suggested factor within § 424.519(f) and there is no firm proof directly tying the practitioner to the grounds for the revocations or the debt, we could be required to enroll the practitioner despite our legitimate concerns and the possible threat to the Medicare Trust Funds.

Notwithstanding this, we wish to make clear that we will exercise our denial or revocation authority under § 424.519(f) cautiously. We recognize that many disclosable affiliations may not pose an undue risk. Yet we must be

able to take action to protect Medicare from those affiliations that do.

Comment: A commenter recommended that CMS—(1) furnish providers with a written explanation of why it determined that an undue risk exists, including credible evidence of its belief, before taking action under § 424.519(g); and (2) provide examples in the rule's preamble of types of disclosable events, how it plans to apply the undue risk factors, and what action CMS may take in response. Other commenters also requested such examples, with a commenter stating that the examples should be subject to public notice and comment before the rule is finalized. Overall, commenters requested greater clarification of what constitutes an undue risk including, perhaps, a concrete definition or, at a minimum, objective standards. The commenters expressed concern that—(1) CMS' desire to retain its flexibility to address situations on a case-by-case basis gives CMS too much discretion; and (2) several of the factors are too broad. An additional commenter stated that CMS must establish objective measures with clear correlation to consequences in determining undue risk.

Response: We appreciate the commenters' concerns and will include pertinent information regarding the reason(s) for the undue risk determination in the denial or revocation letter sent to the provider or supplier. Such information would be in the revocation or denial letter itself, not a pre-revocation or pre-denial notice, as suggested by one commenter. Furthermore, as we stated in the proposed rule, the determination of undue risk will be so dependent on the individual facts and circumstances involved that it is difficult to identify examples of what would and would not constitute an undue risk or to clearly define the term ''undue risk.'' Every case is different, and we must retain the discretion to address each based on its own merits and facts. In addition, we do not believe our factors are overly broad; we believe they are fairly specific, while simultaneously containing a measure of flexibility to deal with particular circumstances.

Comment: A commenter stated that CMS should not take action against the disclosing provider or supplier without credible evidence or information showing that there will be an undue risk of fraud, waste, or abuse. The commenter stated that without this limitation, large groups and chains of providers and suppliers might have their Medicare enrollments revoked due to loose, indirect affiliation relationships with parties that have had disclosable events unrelated to the disclosing entities.

Response: As stated earlier, we will only take action under § 424.519(f) after a very careful review of the aforementioned factors.

Comment: A commenter questioned—(1) how CMS would handle undue risk determinations when it only has partial information available; and (2) whether a decision would be based only on that partial data.

Response: Although the commenter's reference to ''partial'' information is somewhat unclear, we will make our determination based on the available information. If an undue risk is found and the provider's or supplier's enrollment is consequently denied or revoked, the provider or supplier may challenge the determination through an appeal of the denial or revocation.

Comment: A commenter requested that CMS furnish guidance in the rule as to when CMS will notify a provider or supplier of whether an affiliation poses an undue risk; the commenter suggested a 30-day decision period. The commenter stated that prompt notice is important so that if the provider or supplier has employment screening procedures, the hiring process is not hindered.

Response: Since the facts of each case will differ, we cannot conclusively specify the timeframe in which an undue risk determination will be made. If an undue risk is found and the enrollment is denied or revoked, the affected provider or supplier will be notified via letter.

Comment: A commenter stated that if Medicare contractors will make undue risk determinations, CMS must ensure that such determinations are made in a consistent manner; if CMS will perform the determinations, CMS must have sufficient staff to timely make these determinations and communicate them to the provider or supplier. Another commenter stated that CMS should clarify whether CMS Central Office, CMS' Regional Offices, or the MACs will perform undue risk determinations.

Response: We may issue subregulatory guidance concerning the process by which undue risk determinations will be made. In all cases, however, we will ensure that sufficient resources for implementing our disclosure of affiliation provisions are available.

Comment: A commenter stated that in determining undue risk, CMS should only rely upon disclosable events involving parties with at least 50 percent ownership, which the commenter referred to as ''substantial owners'' who are in a position to control or otherwise influence the provider's actions; alternatively, CMS should consider only those affiliations that occurred within 1 year or are currently in effect and are of a significant degree. The commenter stated that affiliations with parties other than these do not accurately reflect whether a provider poses an undue risk.

Response: For reasons mentioned previously, we do not believe that—(1) affiliations involving less than 50 percent ownership and (2) prior affiliations should be automatically excluded from disclosure or consideration regarding risk. Every disclosable affiliation will be reviewed under § 424.519, although the degree, extent, and timing of the affiliation will be among the factors considered in our undue risk determinations.

Comment: A commenter stated that CMS should establish clear factors by which disclosable events and undue risk are evaluated. In general, the commenter suggested criteria such as—(1) how recent the affiliation was; (2) the type of disclosable event; (3) how much control (or interest) the provider or supplier reporting the disclosable event has over the affiliated party; and (4) intent. The commenter cited an illustration of a current affiliation less than 1 year old with a party that is excluded by the OIG; the commenter stated that this poses a substantially higher risk than an affiliation of multiple years involving uncollected debt. The commenter also stated that a 5 percent ownership interest is less likely to involve significant influence over an affiliate than a significantly higher percentage.

Response: The first three factors are already included within § 424.519(f). Concerning intent, we are unclear as to whether the commenter is referring to the affiliation or the disclosable event. In either case, evidence of intentional wrongdoing would, of course, impact our determination, but the lack thereof would not dictate that there is no undue risk. All of the factors in § 424.519(f), including any evidence that is relevant to our decision, will be considered. However, we note that not all or even a majority of the factors would have to indicate risk in order for us to conclude that a denial or revocation is warranted.

The percentage of ownership will fall within our analysis of the degree and extent of the affiliation. While larger ownership shares could, depending on the facts involved, weigh more heavily towards a finding of undue risk, it should not be assumed that a 5 or 10 percent interest will never result in such a determination. Again, each case will

be judged on its particular circumstances.

Comment: Several commenters stated that findings of undue risk should be restricted to egregious conduct. Another commenter stated that, except for uncollected debts, CMS should restrict undue risk determinations to cases involving intentional fraud or misconduct or exclusions.

Response: As stated previously, we will exercise our denial or revocation authority under § 424.519(f) carefully. However, we do not believe that the disclosable event must have involved intentional fraud or misconduct for an affiliation to present an undue risk. Other types of affiliations involving behavior that does not contain such elements can endanger federal health care programs. Again, we will carefully consider the circumstances of the disclosable event in making our undue risk determinations.

Comment: A commenter contended that the statute requires the affiliation to pose an undue risk by the provider or supplier.

Response: We are not entirely certain of the commenter's contention, but we believe it is that the statute requires the provider or supplier—rather than the affiliation—to pose an undue risk. We respectfully disagree. Section 1866(j)(5)(B) of the Act refers to the affiliation itself posing an undue risk of fraud, waste, or abuse, rather than such risk being posed by the provider or supplier.

Comment: A commenter stated that the lack of objective standards regarding undue risk creates a high potential for inconsistent determinations on comparable facts. To reduce subjectivity, the commenter suggested that CMS establish a decision matrix that includes decision ''weights'' regarding the relevant factors. Each undue risk criterion and ''should reasonably have known'' evaluation would be assigned a weight of importance, which would then create a score tied to a decision outcome. The commenter stated that CMS has used decision matrices in other areas, most recently with the CMP provisions of the home health intermediate sanction rules.

Response: We appreciate this suggestion but do not believe such a matrix is necessary or advisable. Given the vast variety of factual situations we will encounter, as stated previously, we must retain as much flexibility as possible in our undue risk determinations. We believe that elements such as ''decision weights'' would adversely impact our ability to fairly consider all of the facts, since it would effectively require that specific ''scores'' be given for certain criteria and circumstances.

After reviewing the comments received, we are finalizing § 424.519(f) and (g) as proposed with one exception. In § 424.519(f), we are changing the term ''action'' to ''disclosable event.'' This is to achieve greater consistency with our addition of the definition of ''disclosable event'' to § 424.502. In addition, we are changing the heading of § 424.530(a)(13) from ''Affiliation that poses undue risk of fraud'' to simply ''Affiliation that poses an undue risk'' in order to achieve consistency with the heading of § 424.535(a)(19).

e. Additional Affiliation Provisions

We proposed in § 424.519(h)(1) that providers and suppliers must report new or changed information regarding existing affiliations, consistent with our requirement in § 424.516 to submit changes in enrollment data; this would include the reporting of new affiliations. However, under paragraph (h)(2) providers and suppliers would not be required to report either of the following:

- New or changed information regarding past affiliations (except as part of a Form CMS–855 revalidation application) (paragraph (h)(2)(i)).
- Affiliation data in that portion of the Form CMS–855 that collects affiliation information if the same data is being reported in the ''owning or managing control'' (or its successor) section of the Form CMS–855 (paragraph (h)(2)(ii)).

We stated that requiring providers and suppliers to report new or changed information regarding past affiliations would impose an unnecessarily excessive burden; providers and suppliers would have to constantly monitor and track information changes involving parties with whom they, their owners, or their managers no longer have a relationship. Regarding the second exception, we believed this would limit duplicate reporting and ease the burden on providers and suppliers.

We received the following comments regarding this section:

Comment: Several commenters expressed concern about the requirement to report changes in affiliation data. They generally stated that—(1) the burden of continually monitoring, tracking, and reporting data on many possible affiliates would be enormous; and (2) the penalty of revocation for failing to timely a report a change is too severe, especially if a reenrollment bar is imposed as well, and could unfairly and substantially impact legitimate providers and suppliers. Given the substantial burden involved, some commenters stated that any changes should only be reported during the provider's or supplier's next revalidation, rather than requiring the constant reporting of new or changed information.

Response: We agree with the commenters' concerns regarding the potential burden and will not finalize proposed § 424.519(h)(1) and (h)(2)(i). As already discussed, affiliation data under § 424.519 will only be required in the limited circumstances described in revised § 424.519(b). However, we emphasize that providers and suppliers will still be required to report changes in ownership and management consistent with existing regulations.

Comment: A commenter stated that CMS has not outlined a plan for how it will track new or changed affiliation data and how this information should be reported. The commenter asked whether—(1) CMS staff will check and monitor such data; and (2) PECOS will recognize these changes. Another commenter stated that CMS should only require providers to report new or changed information on close affiliates.

Response: As stated in the previous response, we are not finalizing proposed § 424.519(h)(1) and (h)(2)(i) due to the potential burden of regularly tracking and reporting disclosable affiliation information.

After reviewing the comments submitted, we are deleting §§ 424.519(h)(1) and (h)(2)(i). Paragraph (h)(2)(ii) will be redesignated as paragraph (h).

In § 424.519(i), we proposed that CMS may apply proposed § 424.530(a)(13) or § 424.535(a)(19) (as applicable) to situations where a disclosable affiliation (as described in § 424.519(b) and (c)) presents an undue risk of fraud, waste, or abuse, but the provider or supplier has not yet disclosed or is not required at that time to disclose the affiliation to CMS. Although we received no specific comments on proposed § 424.519(i) and are therefore finalizing it, we received the following comment that we believe indirectly touches upon this provision:

Comment: A commenter posed a scenario where a provider (the first provider) is owned by five individuals, one of whom is associated with another provider (the second provider) that has an uncollected Medicare debt. The commenter asked whether the first provider would be denied or revoked if the aforementioned individual's ownership interests in the first provider are terminated prior to enrollment or revalidation.

Response: The first provider or supplier could be denied or revoked if the scenario meets the requirements of § 424.519(i) regarding undisclosed affiliations. In that case, if CMS learned of the first provider's affiliation prior to the individual in question terminating his or her ownership interest, CMS could make an undue risk determination under § 424.519(g). CMS could then elect to revoke the first provider under § 424.535(a)(19). However, this could only occur if CMS identified the affiliation while the individual owner was still in an ownership role with the first provider. In addition, if, when CMS evaluated the first provider, the individual owner was no longer in an ownership or other applicable role, with the second provider, no affiliation would be present; thus, no undue risk determination could be made.

From a disclosure perspective under § 424.519(b), CMS would not take action against the first provider at the time of an initial or revalidation application if the individual owner had already terminated his or her ownership interest with the first provider. Whether related to a disclosure or a CMS assessment, an owning or managing party must be in an ownership or managerial role with the provider in order for an affiliation to exist and an undue risk determination to be made.

2. Medicaid

Consistent with our discussion in section II.A.1.a. of this final rule with comment period and for the reasons stated therein, we proposed to revise the Medicaid provisions in 42 CFR part 455.

In § 455.101, we proposed to add the same definition of ''affiliation'' that we proposed to add to § 424.502, with the exception of the paragraph regarding ''reassignment.'' Section 424.80 only applies to Medicare. However, we proposed to include payment assignments under § 447.10(g) within the definition of ''affiliation'' in § 455.101. Under § 447.10(g), payment for services provided by an individual practitioner may be made to—

++ The employer of the practitioner, if the practitioner is required as a condition of employment to turn over his fees to the employer;

++ The facility in which the service is provided, if the practitioner has a contract under which the facility submits the claim; or

++ A foundation, plan, or similar organization operating an organized health care delivery system, if the practitioner has a contract under which the organization submits the claim.

As with Medicare reassignments, we stated in the proposed rule that the relationships described in § 447.10(g) are sufficiently close to warrant their inclusion within the definition of ''affiliation'' in § 455.101; again, a W–2 employee or independent contractor may have a closer day-to-day relationship with the individual or organization he or she works for than, for instance, an indirect owner has with an entity in which he or she has a 5 percent ownership interest. We also noted that these provisions are similar to those in § 424.80.

After considering the previously discussed comments we received regarding our Medicare definition of ''affiliation,'' we are finalizing our proposed definition of ''affiliation'' in § 455.101.

In revised § 455.103, we proposed that a state plan must provide that the requirements of §§ 455.104 through 455.107 are met. Section 455.103 currently only references §§ 455.104 through 455.106. Our revision included a reference to new § 455.107. We received no comments on this proposal and are, therefore, finalizing it.

In new § 455.107, we proposed several paragraphs.

(i) Discussion of § 455.107(a) and (b)

In paragraph (b), we proposed that a provider that is submitting an initial or revalidating Medicaid application must disclose whether it or any of its owning or managing employees or organizations (consistent with the definitions of ''person with an ownership or control interest'' and ''managing employee'' in § 455.101) has or, within the previous 5 years, has had an affiliation with a currently or formerly enrolled Medicare, Medicaid, or CHIP provider or supplier that—

• Currently has an uncollected debt to Medicare, Medicaid, or CHIP, regardless of—(1) the amount of the debt; (2) whether the debt is currently being repaid (for example, as part of a repayment plan); or (3) whether the debt is currently being appealed. For purposes of § 455.107 only, and as stated in proposed § 455.107(a), the term ''uncollected debt'' would only apply to—

++ Medicare, Medicaid, or CHIP overpayments for which CMS or the state has sent notice of the debt to the affiliated provider or supplier;

++ CMPs (as defined in § 424.57(a)); and

++ Assessments (as defined in § 424.57(a));

• Has been or is subject to a payment suspension under a federal health care program (as that latter term is defined in section 1128B(f) of the Act), regardless of when the payment suspension occurred or was imposed;

• Has been or is excluded from participation in Medicare, Medicaid, or CHIP, regardless of whether the exclusion is currently being appealed or when the exclusion occurred or was imposed; or

• Has had its Medicare, Medicaid, or CHIP enrollment denied, revoked or terminated, regardless of—(1) the reason for the denial, revocation, or termination; (2) whether the denial, revocation, or termination is currently being appealed; or (3) when the denial, revocation, or termination occurred or was imposed. For purposes of § 455.107 only, the terms ''revoked,'' ''revocation,'' ''terminated,'' and ''termination'' would include situations where the affiliated provider or supplier voluntarily terminated its Medicare, Medicaid, or CHIP enrollment to avoid a potential revocation or termination. This clarification is included in proposed § 455.107(a).

After considering the previously discussed comments regarding the related Medicare provisions at § 424.519(a) and (b), we are finalizing proposed § 455.107(a) with two exceptions. First, we are changing the language ''(as defined in § 424.57(a))'' to ''imposed under this title.'' Second, we are adding the following language to the end of the opening paragraph of § 455.107(a): ''to the definition of disclosable event in § 455.101:''

Similar to our previously referenced change to § 424.502, we are also adding a definition of ''disclosable event'' to § 455.101 to encapsulate the four aforementioned events (that is, uncollected debt, payment suspension, OIG exclusion, enrollment denial/revocation/termination) that will trigger an affiliation disclosure under § 455.107. We believe this will help simplify and shorten the text of § 455.107(b). In addition, we are adding ''by the OIG'' immediately after the word ''excluded'' in our ''disclosable event'' definition'' to clarify that we are referring to OIG exclusions.

With respect to paragraph (b), and for reasons akin to those concerning our changes to § 424.519(b), we are making a number of revisions to incorporate a ''phased-in'' approach. However, there are some differences between how the ''phased-in'' approach will be conducted under § 424.519 for Medicare providers and suppliers and how the approach will be conducted under § 455.107 for Medicaid providers.

(A) Implementation Approaches for Medicaid and CHIP—Background

Under revised § 455.107(b), each state will, in consultation with CMS, select one of two options for the implementation of the affiliation disclosure requirement. The option chosen will be in effect until we engage in further rulemaking regarding this requirement; states will not be able to switch options prior to such additional rulemaking. Under the first option, disclosures must be submitted by all newly enrolling or revalidating Medicaid and/or CHIP providers that are not enrolled in Medicare. Under the second and more targeted option, disclosures must be submitted only upon request by the state. Specifically, the states that choose this second option will request disclosures from those Medicaid and/or CHIP enrolled providers that are not enrolled in Medicare and that the state, in consultation with CMS, determines meets certain criteria, discussed further below.

(1) First Option

In states that select the first option, a provider that is not enrolled in Medicare but is initially enrolling in Medicaid or CHIP (or is revalidating its Medicaid or CHIP enrollment information) must disclose any and all affiliations that it or any of its owning or managing employees or organizations (consistent with the terms ''person with an ownership or control interest'' and ''managing employee'' as defined in § 455.101) has or, within the previous 5 years, had with a currently or formerly enrolled Medicare, Medicaid, or CHIP provider or supplier that has a disclosable event (as defined in § 455.101).

(2) Second Option

In states that select the second option, upon request from the state, a provider that is not enrolled in Medicare but is initially enrolling in Medicaid or CHIP (or is revalidating its Medicaid or CHIP enrollment information) must disclose any and all affiliations that it or any of its owning or managing employees or organizations (consistent with the terms ''person with an ownership or control interest'' and ''managing employee'' as defined in § 455.101) has or, within the previous 5 years, had with a currently or formerly enrolled Medicare, Medicaid, or CHIP provider or supplier that has a ''disclosable event'' (as defined in § 455.101). The state will request such disclosures when it, in consultation with CMS, has determined that the initially enrolling or revalidating provider may have at least one such affiliation.

(A) Characteristics of Each Option

There are several similarities between the two options.

First, under either option, only those providers that are not enrolled in Medicare would be required to disclose affiliations. This is because the states will, as applicable, be able to rely on CMS' review of actual or potential affiliation data for dually-enrolled providers (that is, providers enrolled in both Medicare and Medicaid or CHIP). In contrast, Medicare and PECOS would not have affiliation information for Medicaid-only or CHIP-only providers; thus, the state would be unable to rely upon any affiliation data that Medicare may have on file for these providers. The limiting of the disclosure requirement to providers not enrolled in Medicare would therefore eliminate duplicative efforts by CMS and the states.

Second, the disclosable events pertaining to each option mirror not only each other but also the disclosable events applicable to Medicare enrollment as defined in § 424.502 and in section 1866(j)(5) of the Act. We believe this will help ensure consistency with Medicare and with the statute. In addition, and as previously discussed, the relationships described in section 1866(j)(5) of the Act are of concern to CMS and the states from a program integrity perspective. Including them within the scope of § 455.107(b) will assist our efforts in deterring fraud, waste, and abuse.

Third, with both options, any provider required to submit a disclosure of affiliations must report any and all affiliations that come within the scope of § 455.107. Even if the state selects the second option and, for a particular provider, identifies only one affiliation that triggers a request for the provider to submit a disclosure of affiliations, that provider must disclose all applicable affiliations regardless of whether the state may already have information on these relationships.

Fourth, a provider's disclosure of affiliations, irrespective of which option is selected, does not automatically mean that the state, in consultation with CMS, has determined or will determine that all or any of the disclosed affiliations pose an undue risk of fraud, waste, or abuse.

Fifth, providers will not be required to report all applicable affiliation information to the state under either option until the applicable state has revised its relevant enrollment application(s) to accommodate the disclosure of affiliations requirement. However, per § 455.107(h) and as addressed in more detail later in this section, if a state determines that a provider has an affiliation(s)—via a source(s) other than provider reporting—and determines, in consultation with CMS, that one or more affiliations of that provider represent an undue risk of fraud, waste, or abuse, the state may deny or terminate the provider's enrollment in the state Medicaid program even before the state's applications (or other means of capturing affiliation information, whether in physical or electronic form) have been updated with an affiliation disclosure section.

Despite the parallels between the two options, there is one critical difference, in that the first option is significantly broader than the second. Excluding Medicare-enrolled providers and suppliers, the former option applies to all newly enrolling and revalidating providers without exception, whereas the second option only requires the submission of affiliation data upon a state request. On a broader level, the first option does not involve a gradual, incremental enforcement such as that which we are adopting with Medicare providers and suppliers in § 424.519(b). The second option, however, largely duplicates the ''phased-in'' approach of § 424.519(b), under which the states will conduct internal research to determine whether a disclosable affiliation under § 455.107 may exist and then request a disclosure of all applicable affiliations. We believe that affording the states more than one alternative will permit them greater flexibility in implementing the affiliation requirement.

We note that section 1866(j)(5) of the Act requires every provider and supplier (regardless of the relative risk they may pose) to disclose affiliations upon initial enrollment and revalidation. All states that choose the second option will therefore eventually be required to collect affiliation disclosures from their providers upon the submission of each initial and revalidation application. Future rulemaking will address the next phases of the Medicaid and CHIP affiliations disclosure process. We would appreciate feedback from the public on the possible content of this rulemaking, particularly with respect to the same general topics on which we have requested comments regarding the Medicare affiliation process (for example, priority of disclosure requests).

States will notify CMS, via a process outlined in future subregulatory guidance, as to which of the two options

they are choosing. CMS subregulatory guidance will also provide instruction to the states as to how to inform the necessary stakeholders, such as the relevant health care provider community, about which option it has selected so that Medicaid-only and CHIP-only providers know if they are automatically required to furnish affiliations disclosures upon initial enrollment or revalidation or if they must do so only upon request. After a state notifies both CMS and necessary stakeholders about which option it selected, the state will then begin to collect affiliation disclosures in a manner consistent with that option.

(ii) Discussion of § 455.107(c), (d), and (e)

In paragraph (c), we proposed that the following information about the affiliation must be disclosed:

• General identifying data about the affiliated provider or supplier. This would include the following:

++ Legal name as reported to the Internal Revenue Service or the Social Security Administration (if the affiliated provider or supplier is an individual).

++ ''Doing business as'' name (if applicable).

++ Tax identification number.

++ NPI.

++ Reason for disclosing the affiliated provider or supplier (for example, uncollected CHIP debt; payment suspension).

++ Specific data regarding the affiliation relationship. Such data would include the—(1) length of the relationship; (2) type of relationship; and (3) degree of affiliation.

++ If the affiliation has ended, the reason for the termination.

In paragraph (d), we proposed that the information described in § 455.107(b) and (c) must be furnished to the state in a manner prescribed by the state.

In paragraph (e), we proposed that the disclosing provider's failure to fully and completely furnish the information in § 455.107(b) and (c) when the provider knew or should reasonably have known of this information may result in—

• The denial of the provider's initial enrollment application; or

• The termination of the provider's Medicaid or CHIP enrollment.

Based on the previously discussed comments we received regarding the general contents of § 424.519(c) through (e), we are finalizing § 455.107(c), (d), and (e) as proposed with one exception. We are adding the language ''in consultation with the Secretary'' to the end of § 455.107(d). Section 1866(j)(5) of the Act, as explained earlier, specifies that affiliation disclosures are to be furnished ''in a form and manner and at such time as determined by the Secretary.'' To comply with this requirement, we believe that states should consult with CMS as to the ''form and manner'' of said disclosures. We will communicate with the states regarding this consultation requirement and issue subregulatory outlining the parameters thereof.

(iii) Discussion of § 455.107(f), (g), (h), and (i)

In paragraph (f), we proposed that upon receiving the information described in § 455.107(b) and (c), the state, in consultation with CMS, would determine whether any of the disclosed affiliations poses an undue risk of fraud, waste, or abuse. The state, in consultation with CMS, would consider the following factors in its determination:

• The duration of the disclosing party's relationship with the affiliated provider or supplier.

• Whether the affiliation still exists and, if not, how long ago it ended.

• The degree and extent of the affiliation.

• If applicable, the reason for the termination of the affiliation.

• Regarding the affiliated provider's or supplier's disclosable event—

++ The type of action;

++ When the action occurred or was imposed; and

++ Whether the affiliation existed when the action occurred or was imposed.

++ If the action is an uncollected debt—(1) the amount of the debt; (2) whether the affiliated provider or supplier is repaying the debt; and (3) to whom the debt is owed (for example, Medicare);

• If a denial, revocation, termination, exclusion, or payment suspension is involved, the reason for the action; and

• Any other evidence that the state, in consultation with CMS, deems relevant to its determination.

In paragraph (g), we proposed that a determination by the State, in consultation with CMS, that a particular affiliation poses an undue risk of fraud, waste, or abuse results in, as applicable, the denial of the provider's initial enrollment application or the termination of the provider's Medicaid or CHIP enrollment.

We received the following comments that were specific to proposed § 455.107(f) and (g):

Comment: A commenter stated that there is no current federal requirement that a state Medicaid agency consult with CMS in making enrollment determinations. The commenter recommended that CMS—(1) permit greater discretion regarding the required consultation with CMS; (2) furnish clarification and guidance to states concerning this process; (3) establish timeframes by which CMS, under this provision, must respond to the state in order to avoid delays in application processing; and (4) permit states to rely upon any CMS undue risk determinations involving Medicare-enrolled providers or providers enrolled with another state Medicaid agency. Concerning the final recommendation, the commenter believed there would be no need for the state to consult CMS on a matter that CMS has already reviewed. Another commenter stated that CMS should eliminate the requirement that the state consult with CMS on undue risk determinations, contending that the rule does not address the possibility of disagreement or delays in reaching a determination. If the requirement is retained, the commenter stated that the rule should establish a clear and expedited process for making such determinations. This should include a provision that all state recommendations are automatically affirmed after 15 days, which would ensure that determinations are promptly made.

Response: While we appreciate these comments, we respectfully decline to remove the consultation language, for consultation is necessary to satisfy the statutory requirement that the Secretary determine ''undue risk.'' However, we will work closely with the states in developing a subregulatory process by which there is adequate guidance and efficient communication between the states and CMS, while recognizing the traditional flexibility given to states in their enrollment determinations. We note that the two previously mentioned options under § 455.107(b) will apply only to providers that are not enrolled in Medicare because, as we explained, states will be able to rely on CMS' review of Medicare-enrolled providers and suppliers in the matter of affiliation disclosures.

Comment: A commenter requested that CMS provide clear guidance regarding a state agency's responsibility under our proposal, specifically (1) the degree to which a state must establish that a provider seeking Medicaid enrollment has accurately disclosed affiliations under § 455.107; (2) the required extent of the state's consultation with CMS, provider outreach and education, and ongoing documentation of information outlined in § 455.107; and (3) the length of time that states will have to implement § 455.107. Another commenter

suggested that the final rule contain a provision making the rule effective no sooner than 6 months from the end of the state's legislative session that begins after the rule's publication date. This will help states ensure that—(1) state law reflects the rule's requirements; and (2) providers are fully informed of said requirements. Another commenter requested that CMS consider allowing sufficient time to implement the rule, suggesting a 12-month period that, the commenter believed, would enable providers to prepare for and be compliant at the onset of these changes.

Response: We will work closely with the states and disseminate sufficient guidance to them in implementing our affiliation disclosure provisions. The three issues the first commenter raised may be addressed in such guidance.

Consistent with our position regarding § 424.519, states will not be expected to implement § 455.107—and Medicaid and CHIP providers will not have to disclose affiliation data under this provision—until each state's pertinent Medicaid and/or CHIP initial and/or revalidation applications are updated to collect this information. Further, CMS will issue accompanying subregulatory guidance to the states regarding the operationalization of § 455.107 (although said guidance may or may not be issued before some states send out their initial affiliation disclosure requests). The timing of the updates to each state's Medicaid and/or CHIP applications will vary from state to state; it is not possible, of course, to predict how long it will take each state to update its applications because of the numerous variables involved. Regardless, we believe that the need for each state to revise its applications and discuss with CMS those aspects of this process where such consultation is required will give stakeholders sufficient time to prepare for these requirements.

After reviewing the comments received, we are finalizing § 455.107(f) and (g) as proposed with one exception. In § 455.107(f), we are changing the term ''action'' to ''disclosable event.'' This is to achieve greater consistency with our addition of the definition of ''disclosable event'' to § 455.101.

In paragraph (h), we proposed the following:

- Providers would be required to report new or changed information regarding existing affiliations. This would include reporting any new affiliations.
- Providers would not be required to report new or changed information regarding past affiliations (except as part of a revalidation application).

We received the following comment regarding § 455.107(h):

Comment: A commenter questioned whether providers would have to furnish this new or changed data to Medicaid or CHIP within a CMS-specified time period, or whether the state has the discretion to establish the time period.

Response: For the same reasons behind our revision of proposed § 424.519(h), we have decided not to finalize proposed § 455.107(h).

In paragraph (i), we proposed that the state, in consultation with CMS, may apply paragraph (g) to situations where a reportable affiliation poses an undue risk of fraud, waste, or abuse, but the provider has not yet disclosed or is not required at that time to disclose the affiliation to the state. We received no comments specifically referencing § 455.107(i) and are, therefore, finalizing it as proposed, with one exception: we are re-designating § 455.107(i) as § 455.107(h) due to our previously mentioned decision not to finalize proposed § 455.107(h).

c. CHIP

Section 2107(e) of the Act states that sections 1902(a)(77) and (kk) of the Act (which relate to Medicaid provider screening, oversight, and reporting requirements) apply to CHIP to the same extent that they apply to Medicaid. We thus proposed to apply our proposed Medicaid affiliation disclosure requirements to CHIP providers for two principal reasons. First, section 1866(j)(5) of the Act specifically references the need to disclose current and prior affiliations with CHIP providers. We believe it logically follows that CHIP providers should have to disclose similar affiliation information. Second, and for reasons previously explained, the disclosure of affiliation information would assist efforts in deterring fraud, waste, and abuse in CHIP.

Section 457.990(a) states that part 455, subpart E, applies to a state under Title XXI in the same manner as it applies to a state under Title XIX. We proposed to revise § 457.990(a) such that § 455.107 would also apply to Title XXI. Paragraph (a) would thus read: Section 455.107.

We received no comments on our proposed revision to § 457.990(a), therefore we are finalizing it as proposed.

3. Miscellaneous Comments

We received the following miscellaneous comments on our affiliation disclosure proposal. They pertain more to the proposal in general than to specific provisions in §§ 424.519 and 455.107.

Comment: A commenter stated that to ensure that providers and suppliers have sufficient notice to begin preparing for this new requirement (for example, to begin acquiring and tracking affiliation data), CMS should only apply the reporting requirement to existing affiliations or to those established on or after the implementation date of the final rule.

Response: We disagree. We believe that any affiliation covered under § 424.519, including those that existed prior to the rule's implementation date, should be reported. We must be able to take action to protect the Medicare program and the Trust Funds against undue risks.

Comment: A commenter stated that the DMEPOS industry seeks clear guidance on how different infractions will impact their supplier number(s). The commenter stated that the rule does not specify how—(1) each type of reported affiliation will affect impact the enrolling supplier; and (2) a reported affiliation that results in a revocation would be applied to other NPIs associated with the enrollee. The commenter recommended that affiliations be reported based on the NPI.

Response: Denials and revocations pursuant to § 424.519 will be applied no differently than how other denials and revocations are currently applied. As for the commenter's recommendation, affiliations will be reported in accordance with the requirements of this rule irrespective of the particular NPI enumeration involved.

Comment: A commenter stated that CMS should delay the implementation of the look-back requirements for at least the length of the look-back period. This will allow providers and suppliers to identify all existing affiliations as of the rule's effective date and monitor them prospectively for disclosable events.

Response: We do not believe that the implementation of § 424.519 should be delayed 5 years. It is important that we be able to take prompt action to protect Medicare and the Trust Funds against undue risks.

Comment: Several commenters questioned whether this proposal would be effective in addressing CMS' program integrity concerns. They contended that—(1) dishonest providers and suppliers that CMS is concerned about will not disclose affiliations to CMS, much less to other providers and suppliers with which it competes; and (2) only well-intentioned providers and suppliers, who pose little if any risk,

will report this data yet will ultimately bear the significant administrative and cost burdens of doing so. In other words, the commenters stated, honest providers and suppliers, rather than dishonest ones, would be penalized under this proposal. They added that the rule as a whole should be geared towards non-compliant providers and suppliers instead of burdening honest parties.

Response: We recognize that many providers and suppliers have and have had affiliations that pose little if no risk, and we have taken steps in this rule to reduce the reporting burden on these parties. However, dishonest providers and suppliers that deliberately withhold information must understand that we will, through our examination of internal data—(1) be able to determine whether such providers and suppliers have or have had a disclosable affiliation; and (2) take appropriate administrative action as needed.

Comment: Several commenters stated that the proposal would effectively require providers and suppliers to become investigative bodies; that is, they would have to expend considerable resources (including, perhaps, hiring additional personnel and outside parties) to investigate other providers and suppliers. Such resources, they maintained, would be better used towards patient care. Another commenter stated that CMS should recognize that certain affiliates may be reluctant for various reasons to furnish data to the provider or supplier. The commenter added that CMS should avoid imposing requirements that could place current or former affiliates in untenable positions or create conflicts of interest.

Response: As stated earlier, we recognize the potential researching and reporting burden involved and that certain data may be difficult to obtain. As one step toward reducing said burden, we have removed the requirement to disclose new or changed affiliations (except as part of a revalidation). Moreover, CMS will review each affiliation disclosure situation on its own merits, acknowledging that there may be cases where a provider or supplier simply cannot secure particular information even after making a substantial effort to do so. We anticipate that future subregulatory guidance will address the research and reporting process for affiliations.

Comment: Several commenters stated that many providers and suppliers already closely screen their owners, managers, physicians, health care personnel, etc., before including them within their organization; this may consist of, for instance, reviews of the individual's malpractice and medical discipline record via the National Practitioner Data Bank (NPDB).

Response: We appreciate the efforts of these providers and suppliers in screening their owners, managers, and personnel. However, consistent with section 1866(j)(5)(b) of the Act, we believe that CMS and the states, in consultation with CMS, must be able to make their own undue risk determinations independent of any internal screening the provider or supplier undertakes.

Comment: A commenter stated that CMS should rescind the proposed rule and craft a new rulemaking that is more narrowly focused.

Response: We respectfully disagree that the proposed rule should be rescinded. We believe that these new disclosure provisions will be valuable tools in our program integrity efforts, especially with respect to inter-provider schemes.

Comment: A commenter stated that a disclosable affiliation that occurred prior to the rule's effective date should not have to be reported.

Response: We respectfully disagree. We believe that previous disclosable affiliations, even those ending prior to this final rule with comment period, can be germane to a determination of whether an undue risk exists and should be considered, assuming they occurred within the prior 5 years.

Comment: Several commenters stated that there is no publicly available federal database that instantly updates all disclosable events, such as debts and revocations; this could lead to innocent provider and supplier errors in disclosure or an inability to furnish certain information, with resulting revocations and appeals. They urged the establishment of such a database.

Response: We appreciate this comment and may explore means of increasing the public availability of certain data.

Comment: A commenter asked why the proposed affiliation provision did not include section 1877 of the Act, which addresses various financial and ownership relationships.

Response: Our focus in this rule was on addressing the relationships referenced in section 1866(j)(5) of the Act.

Comment: A commenter questioned—(1) whether CMS and/or its contractors would review every application in detail; (2) if not, how they would determine which applications to focus on; and (3) whether CMS and its contractors actually have enough personnel with sufficient expertise to review all submitted data and to detect any omissions of information.

Response: All disclosures will be closely reviewed, and we intend to have sufficient personnel available to carry out this function. We may issue subregulatory guidance concerning the process by which undue risk determinations will be made.

Comment: A commenter indicated that CMS' recent amendment to the appeals process (via a manual revision) requiring providers and suppliers to perfect their appeals at the reconsideration level without the ability to add additional evidence beyond this stage could negatively impact a provider's or supplier's ability to effectively appeal a denial or revocation under § 424.519.

Response: We appreciate this comment but believe it is outside the scope of this final rule with comment period.

Comment: A commenter questioned whether any Form CMS–855 changes resulting from our proposed disclosure requirements would be subject to public notice and comment prior to finalization.

Response: All Form CMS–855 changes are subject to public notice and comment under the Paperwork Reduction Act. This will also be the case with our revisions to the Form CMS–855 to capture affiliation information.

Comment: A commenter stated that there should be no exemptions for complete disclosure. The commenter believed that full disclosure would demonstrate the integrity of the individual who is applying for CMS enrollment.

Response: Although we appreciate this comment, we have modified certain aspects of our disclosure requirements to reduce the overall reporting burden while simultaneously ensuring that we can detect risks to the Medicare program and the Trust Funds.

Comment: A commenter stated that a revocation resulting in the maximum reenrollment bar should always be disclosed regardless of age. For all other actions, however, the commenter contended that ''expanded documentation'' at CMS should be sufficient for the agency to capture information on other disclosable events.

Response: We appreciate this suggestion and believe that there should be no look-back period for disclosable events, including revocations involving a maximum reenrollment bar. As for internal CMS documentation, we earlier recognized that CMS may have much of the required affiliation data in PECOS

and other systems. Section 1866(j)(5) of the Act, however, is clear that such information must be furnished upon initial enrollment and revalidation in a form and manner and at such time as determined by the Secretary.

Comment: A commenter stated that when a health care organization (such as a hospital) submits and/or obtains affiliation data on behalf of a physician it employs, the legal responsibility for this should shift to the physician, for the hospital is dependent on the physician to furnish accurate information; in other words, the individual physician should be held accountable for providing accurate enrollment information. The commenter further recommended that there be—(1) an opportunity for the health care entity to work with the physician to correct the information, and (2) an appeals process for denials.

Response: The provider or supplier is solely responsible for ensuring the accuracy and completeness of enrollment data it furnishes to Medicare, Medicaid, or CHIP under parts 424 and 455. It cannot shift this burden to another party. This is current CMS policy and will remain so with respect to § 424.519. We also believe that the provider and supplier should work with the affiliate to confirm the accuracy of the information prior to submitting it, although the provider or supplier may appeal any subsequent denial or revocation under part 498.

Comment: A commenter stated that the proposed rule was an excellent way to discourage fraud and waste in the health care system through a stricter Medicare enrollment process. The commenter stated that our proposals regarding the denial or revocation of enrollment before making payments could prevent fraudulent activities and abuses from occurring, which can be more efficient than later tracking down false claims and fraudulent providers. While expressing support for the rule, the commenter stated that it—(1) could impose a massive burden on doctors and providers; and (2) should include clear directions, guidance, and resources for identifying, evaluating and reporting partnership histories.

Response: We appreciate this comment, which we believe pertains largely to our affiliation provisions. We recognize that there may be operational concerns associated with our affiliation policies, and we will provide subregulatory guidance to address the matters raised in the commenter's final sentence.

Comment: A commenter believed that § 424.519 would require a change to the Disclosure of Ownership and Control Interest forms that Medicaid Managed Care Organizations (MCO) must send to their providers through the MCO contracts' flow-through of the federal provision. The commenter recommended that the proposal be for the proactive collection of information only during the initial credentialing or re-credentialing process. The commenter also requested CMS' support in encouraging states to share their collected information with MCOs, when applicable.

Response: We will work with the states and MCOs to ensure the effective implementation of this rule as it pertains to Medicaid.

Comment: A commenter sought clarification regarding—(1) the types of verifications that would be required when providers disclose affiliations with organizations other than hospitals and clinics; (2) how often a provider would be required to notify all of its affiliate organizations that it has a new interest or ownership in another Medicare or Medicaid provider or supplier; (3) whether entities would be required to disclose to other organizations that they do not have any current CMS sanctions or actions against them; (4) what would constitute sufficient documentation of the provider's enrollment status (that is, in ''good-standing'' or not) of an organization or affiliated entity; and (5) what information, if any, would organizations be required to provide to each other for purposes of verifying current or past affiliations to ensure that provider enrollment applications are completed correctly.

Response: The specific means of securing such data will depend on the surrounding circumstances, the provider's or supplier's operations, and the likely number of affiliations to research, although such means could include reviewing internal records and contacting affiliates. These are mechanisms that providers and suppliers currently use in acquiring information about, for instance, indirect owners and corporate directors.

This rule does not require the regular exchange or updating of information between providers and suppliers and their affiliates. It only requires the provider's or supplier's disclosure of data upon initial enrollment and revalidation.

Comment: A commenter requested that CMS include language in the final rule (presumably in the regulatory text) to clearly confirm that providers would not have to report new or changed information regarding past affiliations except as part of a revalidation application.

Response: As stated earlier, we are removing proposed §§ 424.519(h)(1) and (h)(2)(i) and 455.107(h) in this final rule with comment period.

Comment: A commenter suggested the following alternative to our disclosure provisions (1) providers and suppliers (and all applicable owners, partners, officers, directors, and managing employees) must report whether they have had any disclosable events, though this disclosure would not extend to other providers and suppliers when an initial or revalidation application is submitted; (2) CMS and/or the states would review the information disclosed, confirm its accuracy, and determine whether it raises an undue risk of fraud, waste, or abuse—either for the disclosing provider or supplier or any other provider or supplier with which they may be affiliated; and (3) if an undue risk is found, CMS could query the disclosing provider or supplier for additional information about their affiliation relationships. The commenter stated that this would meet the requirements of section 1866(j)(5) while eliminating the need for providers and suppliers to continuously monitor their affiliations and those of their owners, officers, directors, partners, and managing employees for potential disclosable events. Another commenter stated that if CMS determines that a provider or supplier failed to report a disclosable affiliation, CMS should, before taking any action—(1) notify the provider or supplier of the disclosable event; and (2) give it the opportunity to explain the basis for the failure to disclose.

Response: We appreciate these comments. We note that we have removed proposed §§ 424.519(h)(1) and (h)(2)(i) and 455.107(h) from this final rule with comment period, which we believe will eliminate much of the burden of regularly tracking and reporting new or changed information. We disagree, however, with suggestions that we should never take action prior to querying the provider or supplier about a detected undue risk or a failure to report a disclosable affiliation. We believe we must be able to act promptly to protect Medicare, Medicaid, and CHIP against threats to these programs. We reiterate, though, that the provider or supplier may appeal any denial or revocation; moreover, failure to report a disclosable affiliation will not automatically result in a denial or revocation if, for instance—(1) the affiliation poses no undue risk; and (2) the failure to disclose was based on an honest inability to obtain the relevant information.

Comment: Several commenters believed that our proposal violates basic constitutional principles because it implies ''guilt by association.'' One commenter stated that due process requires that those accused of a crime have the opportunity to respond to those allegations before guilt or innocence is pronounced and sanctions are imposed. The commenter stated that—(1) mere affiliation with those who have been found guilty of criminal behavior is not enough and that they themselves must have also been found guilty of such behavior; (2) the proposed regulation assumes that all individuals or organizations associated with parties that have violated the law or engaged in suspicious behavior have themselves also violated the law. Another commenter contended that CMS is ''punishing'' providers based on the parties with whom they choose to affiliate yet over whom they have no control. The commenter stated that it would be impossible for CMS to ensure that enrollees are accurately reporting their affiliations and disclosable events, short of ''spying'' on enrollees and tracking their public accounts; to ensure compliance with this provision, the commenter continued, CMS would have to employ means that trespass upon the privacy of providers and suppliers and approach unconstitutional practices. Other commenters contended that it would be unfair to punish parties who may have only had marginal relationships with other parties that have or had disclosable events, with several commenters questioning the constitutionality of this and the impact on due process.

Response: We respectfully disagree that our proposal implies guilt by association. We believe that section 1866(j)(5) of the Act and §§ 424.519 and 455.107 of the regulations are clear that the core issue is whether the affiliation itself, rather than the enrolling or enrolled provider or supplier, poses an undue risk of fraud, waste, or abuse. In other words, these provisions focus on whether certain relationships present risks; they do not automatically ascribe nefarious behavior to the provider or supplier. Our recognition that most affiliations may not pose such risks is reflected in our earlier statement that we will only take action under § 424.519 or § 455.107 after careful consideration of the facts and circumstances. We have further acknowledged that some data may be difficult to secure. Given that we have also taken steps to reduce the reporting burden on providers and suppliers and that denied or revoked enrollments may be appealed, we believe that our disclosure provisions contain sufficient due process and fairness safeguards for providers and suppliers.

Comment: A commenter expressed concern that our proposal could discourage co-ownership arrangements between health care entities and providers, which could negatively impact team-based delivery of health care.

Response: We do not believe our affiliation provisions will discourage co-ownership arrangements, particularly since we have stated that the denial, revocation, or termination authority under § 424.519 or § 455.107 will be invoked only after careful consideration. We also note that providers and suppliers are currently required to report certain ownership and managerial relationships and any associated adverse action history.

Comment: A commenter recommended that CMS exempt referral-dependent specialties from our proposal, stating that such providers would have to obtain, maintain, and submit information regarding many relationships. Another commenter suggested that the disclosure requirements be tailored toward higher-risk provider and supplier categories, similar to the screening requirements in § 424.518.

Response: We do not believe that certain provider and supplier types should be automatically exempt from § 424.519. Affiliations can pose risks regardless of the provider or supplier type involved. Further, excluding particular provider or supplier types would, in our view, be inconsistent with the statute, which we interpret as applying to all providers and suppliers submitting an initial or revalidation application. As mentioned previously, however, we have revised § 424.519(b) such that we will undertake a ''phased-in'' approach that initially (though not exclusively or permanently) targets potentially high risk providers or suppliers, for which CMS believes that at least one affiliation could apply.

Comment: A commenter expressed concern that—(1) CMS, its contractors, and Medicaid, and CHIP state programs would apply aspects of our proposal inconsistently, and (2) the affiliation requirement would greatly increase the number of applications submitted to these entities, resulting in processing delays and errors. The commenter urged CMS to issue clear guidance to all stakeholders regarding the processing of such applications and how the disclosure and risk factors would be applied.

Response: CMS and the states will take steps to ensure that undue risk determinations are made consistently and that sufficient guidance is disseminated to relevant stakeholders.

Comment: A commenter stated that radiologists are commonly involved in reassignment agreements involving imaging facilities and referring providers. The commenter expressed concern that the proposed rule could cause sweeping changes to these agreements.

Response: We respectfully disagree with this comment, which we believe pertains to our affiliation provisions. Nothing in this rule prohibits providers and suppliers from engaging in reassignment relationships. Insofar as the definition of ''affiliation'' in § 424.502 includes reassignments, we do not believe that the reporting requirements in revised § 424.519(b) will significantly alter reassignment relationships. This is particularly true given that CMS requests for disclosable affiliation data will be made only—(1) upon initial enrollment and revalidation; and (2) to providers and suppliers that CMS has determined may have one or more disclosable affiliations.

Comment: A commenter contended that CMS exceeded its statutory authority under section 1866(j)(5) by proposing to—(1) revoke providers and suppliers under § 424.519; and (2) require the submission of new or changed data. Another commenter stated that the mandate in section 1866(j)(5) was exceeded because the latter only requires a provider to report an affiliation with a provider that has a reportable event; that is, the statute only requires that a provider disclose whether its close affiliates have had a disclosable event.

Response: Concerning revocations, as we stated in the proposed rule, section 1866(j)(5)(A) of the Act references a revalidation application, which can only be submitted by an enrolled provider or supplier. Having the ability to revoke the enrollment of providers or suppliers with affiliations posing an undue risk is necessary to protect the integrity of the Medicare program. Thus, we interpret the statute as applying to both enrolled providers and suppliers and those applying for enrollment. As for new or changed information, we have removed proposed §§ 424.519(h)(1) and (h)(2)(i) and 455.107(h) so as to limit the burden on providers and suppliers. Regarding the suggestion that the statute only requires disclosures with respect to ''close affiliates,'' we note that section 1866(j)(5)(A) of the Act expressly applies to both direct and

indirect affiliations. In sum, we believe that §§ 424.519 and 455.107 are consistent with section 1866(j)(5) as well as our general rulemaking authority under sections 1102 and 1871 of the Act.

Comment: A commenter questioned whether a provider that is revalidating its enrollment in 2017 and has an affiliated provider that had a 2015 debt that has been repaid would be required to report the debt, since the affiliation existed within the previous 5 years.

Response: This scenario would not involve a disclosable affiliation because the debt has been repaid. It is no longer an uncollected debt for purposes of our affiliation requirements.

Comment: Several commenters stated that CMS should consider the potential impact that this rule's reporting burden would have on beneficiary access to care.

Response: We believe that our previously referenced modification to § 424.519(h) and removal of proposed § 455.107(h) will alleviate any concerns regarding access to care by limiting the burden on providers and suppliers, hence allowing more time to treat patients. Rather than having to regularly track, monitor, and report new and changed affiliation data, providers and suppliers will only need to disclose affiliation information in the limited circumstances outlined in § 424.519(b) or § 455.107(b).

Comment: Several commenters expressed concern that providers and suppliers may have to establish new employment screening processes to help identify and determine whether its physicians, managing employees, etc., may have disclosable affiliations. One commenter questioned whether providers will be afforded any protection in the reporting process when such individuals or organizations furnish false or incomplete representations to the provider. Another commenter stated the affiliations proposal could negatively impact managers of providers by effectively requiring them to examine prospective employees well beyond what normal procedures would mandate.

Response: Our affiliation provisions do not require providers and suppliers to undertake or increase employment screening practices. Any decision to do so lies solely within the provider's or supplier's discretion. The provider or supplier is ultimately responsible for furnishing accurate information to CMS or the state irrespective of the source of the data.

Comment: A commenter requested clarification that—(1) disclosures are only required when submitting an initial or revalidating Form CMS–855 application; and (2) disclosures are not required when a change of information or change of ownership is reported on the Form CMS–855.

Response: Disclosures are only required—(1) upon initial enrollment and revalidation; (2) if § 424.519(b) or § 455.107(b) applies to the provider or supplier; and (3) if CMS or a state asks the provider or supplier to disclose affiliation information. Also, for reasons explained previously, we are not finalizing proposed §§ 424.519(h)(1) and (h)(2)(i) and 455.107(h).

Comment: A commenter recommended that emergency physicians be excluded from our affiliation disclosure provisions. The commenter stated that many emergency medicine practices are very large with multiple affiliations, most of which are unbeknown to the individual emergency physicians on staff. The commenter recommended that if CMS does not exempt emergency physicians from the affiliation provisions, CMS should clarify the following issues: (1) Whether an emergency physician who leaves one emergency medicine practice to join another such practice is required to know the affiliations of his or her former employer; (2) if the answer to the first question is yes, how the physician would learn of the former employer's affiliations in order to disclose them; (3) what mechanisms exist to require the physician's former employer to disclose its affiliations to the physician; and (4) which party—the physician or the new practice he or she is joining—would be liable if the physician's former employer had affiliations that were not disclosed and reported on the physician's enrollment application.

Response: As stated previously, we do not believe certain provider or supplier types should be automatically and permanently exempt from § 424.519. Regarding the remaining comments, and as already explained, it is the provider's or supplier's responsibility to report all affiliations pursuant to § 424.519(b). We stress, though, that only the provider's or supplier's affiliations would need to be disclosed, not the affiliations of an unrelated party.

Comment: A commenter stated that any previous affiliation with a Medicare, Medicaid, or CHIP provider should be disclosed to CMS for review and approval. If CMS determines that one of the associated providers previously committed fraud while employed as a managing partner, owner, or stakeholder, the provider should not be allowed to furnish CMS-covered services in the future.

Response: We appreciate this comment and believe that our finalized affiliation provisions will assist us in protecting Medicare, Medicaid, and CHIP against the behavior and relationships the commenter describes.

B. Other Proposed Provisions Affecting the Medicare Program Only

Except as noted otherwise, the legal authorities for our proposed provisions in section II.B. of this final rule with comment period are as follows. First, section 1866(j) of the Act states that the Secretary shall establish by regulation a process for the enrollment of providers of services and suppliers. Second, sections 1102 and 1871 of the Act give the Secretary the authority to establish requirements for the efficient administration of the Medicare program.

1. Revoked Under Different Name, Numerical Identifier, or Business Identity

We proposed in new § 424.530(a)(12) that CMS may deny a provider's or supplier's Medicare enrollment application if CMS determines that the provider or supplier is currently revoked under a different name, numerical identifier, or business identity, and the applicable reenrollment bar period has not expired. Likewise, we proposed in new § 424.535(a)(18) that CMS may revoke a provider's or supplier's Medicare enrollment if CMS determines that the provider or supplier is revoked under a different name, numerical identifier, or business identity.

As discussed in section II.A.1.a. of the proposed rule, we have identified instances where a provider or supplier has its Medicare enrollment revoked but tries to evade the revocation and reenrollment bar by opening a new provider or supplier organization to effectively ''replace'' the revoked entity. In the previously mentioned November 2008 OIG Early Alert Memorandum, the OIG indicated that some providers and suppliers operate ''fronts,'' whereby associates, family members, or other individuals pose as owners or managers of the entity on behalf of the persons who actually operate, run, or profit from the business. We proposed to add new §§ 424.530(a)(12) and 424.535(a)(18) to address this type of behavior.

In determining whether a provider or supplier is in fact a currently revoked provider or supplier under a different name, numerical identifier, or business identity, CMS proposed to investigate the degree of commonality by considering the following factors:

- Owning and managing employees and organizations, regardless of whether

they have been disclosed on the Form CMS–855 application (since the definitions of ''owner'' and ''managing employee'' in § 424.502 do not require the individual or organization to be listed on the Form CMS–855 in order to qualify as such).

- Geographic location (for example, same city or county).
- Provider or supplier type (for example, same provider type).
- Business structure.
- Any evidence indicating that the two parties are similar or that the provider or supplier was created to circumvent the revocation or the reenrollment bar.

We stated that it should not be assumed that having different owners, locations, or business structures would automatically result in a finding that the two are not the same. CMS would consider any evidence indicating that the entities are effectively identical or that the new entity was established to avoid the revocation or reenrollment bar. Thus, even if several factors suggest that the entities may be distinct, we would reserve the right to apply § 424.530(a)(12) or § 424.535(a)(18) if we find evidence of evasion.

We further stated that we would invoke the latter two provisions without requiring a separate finding that the revoked entity, the newly enrolling entity, or the currently enrolled entity (as applicable) poses an undue risk of fraud, waste, or abuse. This is because—(1) we were not relying upon section 1866(j)(5) of the Act as authority for these two provisions, and (2) we believe that behavior designed to evade the reenrollment bar poses an inherent risk. We instead relied upon our general rulemaking authority in sections 1102 and 1871 as well as section 1866(j) of the Act, which provides specific authority concerning the enrollment process for providers and suppliers.

We received the following comments regarding our proposal:

Comment: A commenter asked whether—(1) an ''attempt to evade'' standard regarding parties that open a new provider organization to replace a revoked entity actually applies; or (2) it is automatically determined that if the two involved businesses meet the ''commonality'' test, the new provider is attempting to evade the revocation or enrollment bar.

Response: As indicated in the factors listed in §§ 424.530(a)(12) and 424.535(a)(18), evidence of deliberate circumvention will be only one of several criteria we will consider in determining the degree of commonality. Depending upon the specific facts of the case, we may still determine that the two parties are sufficiently similar if the other factors suggest as much.

Comment: A commenter contended that CMS must carefully evaluate situations where a supplier is reorganizing its business and not automatically determine that the supplier intends to commit fraud. The commenter stated that suppliers may add new locations or consolidate locations to better manage their business.

Response: We agree with the commenter, and in each case we will review all of the circumstances in determining whether action under § 424.530(a)(12) or § 424.535(a)(18) is warranted.

After consideration of the comments received, we are finalizing § 424.530(a)(12) and § 424.535(a)(18) as proposed.

2. Non-Compliant Practice Location

We proposed in new § 424.535(a)(20) that we may revoke a provider's or supplier's Medicare enrollment—including all of the provider's or supplier's practice locations, regardless of whether they are part of the same enrollment—if the provider or supplier billed for services performed at or items furnished from a location that it knew or should reasonably have known did not comply with Medicare enrollment requirements.

As explained in the proposed rule, we have identified examples of providers and suppliers operating from multiple practice locations (either as part of the same enrollment or, for DMEPOS suppliers and independent diagnostic testing facilities (IDTFs), through separately enrolled locations) of which one or more of the locations does not meet Medicare enrollment requirements. For instance, a particular location may not be operational, fails to comply with certain DMEPOS or IDTF supplier standards, or is otherwise noncompliant. The provider or supplier, however, continues to perform services at or furnish items from this location (or claims to do so) when it knows or should know that the location does not meet Medicare enrollment requirements. We have seen this with providers and suppliers operating locations that either do not exist or are false storefronts, meaning that the location appears legitimate from the outside but is in fact a vacant site or a nonmedical business.

We have conducted site visits uncovering several similar situations, and revocations of providers and suppliers locations have accordingly ensued. Yet we stressed in the proposed rule that more must be done. Providers and suppliers must realize that if they submit claims for services or items furnished at or from non-compliant locations, they risk not only the revocation of that site but also of their other locations. As an illustration, assume that a DMEPOS supplier has four separately enrolled locations. The supplier shifts one of its locations without notifying Medicare, and the new site is a false storefront. The supplier furnishes no items from this location, but it submits bills for DME allegedly provided from the site. Under our proposal, CMS could revoke this location as well as the three other sites. Even if the other sites had different numerical identifiers, legal business names, or ownership, we could take action against them if there is evidence to suggest that they are effectively under the control of similar parties. This is to ensure that providers and suppliers do not attempt to circumvent § 424.535(a)(20) by opening locations under different identities or with different ''front men'' (such as family members).

We proposed to consider the following factors when determining whether and how many of the provider's or supplier's other locations should be revoked:

- The reason(s) for and facts behind the location's non-compliance (for example, false storefront; otherwise non-operational; other violation of supplier standards).
- The number of additional locations involved.
- Whether the provider or supplier has any history of final adverse actions (as that term is defined in § 424.502) or Medicare or Medicaid payment suspensions.
- The degree of risk that the location's continuance poses to the Medicare Trust Funds (specifically, the other location(s), rather than the non-compliant location).
- The length of time that the non-compliant location was non-compliant.
- The amount that was billed for services performed at or items furnished from the non-compliant location.
- Any other evidence that we deem relevant to our determination.

We received the following comments regarding this proposal:

Comment: Several commenters stated that CMS already has the authority to revoke enrollment based on the grounds indicated in proposed § 424.535(a)(20). The commenters contended that CMS should rely upon existing protocols (such as fines, recoupments, and revocations) rather than create new revocation mechanisms.

Response: The circumstances addressed in § 424.535(a)(20) go beyond the mere non-compliance of a single practice location or single Medicare enrollment. For instance, suppose a provider has four practice locations (A, B, C, and D) under four separate enrollments. The provider knows that Location D is non-compliant yet bills for services performed there. While § 424.535(a)(5) permits the revocation of the enrollment associated with Location D, it does not explicitly address the potential revocation of the provider's other three enrollments associated with Locations A, B, or C, respectively. However, § 424.535(a)(20) will emphasize that the provider and all of its locations can be revoked (in other words, all of the enrollments associated with the practice locations). In short, we do not believe our existing regulations sufficiently address this type of arrangement and that additional clarification is needed.

Comment: Several commenters expressed concern about CMS' proposed ability under § 424.535(a)(20) to revoke the provider's other locations if there is evidence to suggest that they are effectively under the control of similar parties. Two of the commenters stated that this disregards corporate formalities without evidence of wrongdoing by the providers. Two other commenters suggested that CMS apply the proposed undue risk standard in determining whether other locations should be revoked under § 424.535(a)(20).

Response: We do not believe a provider should be able to avoid the revocation of its other locations under § 424.535(a)(20) simply because they are, for instance, under different tax identification numbers. CMS must be able to take action against the provider's other or associated locations if truly warranted under the circumstances in order to protect the Medicare program. We emphasize, however, that CMS will carefully consider the factors outlined in § 424.535(a)(20) in determining whether and/or which other locations should be terminated. As previously described, this will include reviewing the degree of risk that a particular location's continuance poses to the Trust Funds.

Comment: A few commenters stated that § 424.535(a)(20)'s application should be restricted to cases where the provider has actual knowledge of non-compliance or, one of the commenters stated, demonstrated gross negligence in failing to monitor the location.

Response: Providers are responsible for closely monitoring and ensuring the compliance of all of their locations at all times. Establishing an ''actual knowledge'' or ''gross negligence'' standard would, in our view, effectively permit providers to avoid this responsibility and the potential application of § 424.535(a)(20).

Comment: Opposing the proposal as written, a commenter stated that the proposed regulatory text did not include language from the preamble regarding CMS' intent on stopping providers and suppliers from knowingly operating fictitious or otherwise non-compliant locations to circumvent CMS policies. The commenter added that a revocation could become a permanent blemish (and potentially render an affected practitioner virtually unemployable). The commenter recommended that CMS revise the regulatory text to limit the authority to revoke multiple locations to egregious, fraudulent transgressions.

Response: We do not believe that language such as ''egregious, fraudulent transgressions'' is appropriate for regulatory text. However, we reiterate that this provision will be applied in cases where the maintenance of the provider's or supplier's other enrollments would jeopardize the Medicare Trust Funds.

Comment: A commenter stated that CMS currently may revoke Medicare enrollment under § 424.535(a)(1) if the provider is determined to not be in compliance with the enrollment requirements applicable for its provider or supplier type, and has not submitted a plan of corrective action as outlined in part 488 of this chapter. The commenter stated that by adding more revocation authorities, CMS seeks to circumvent the existing regulatory scheme, which permits providers to submit a plan of correction for violations of Medicare requirements.

Response: The addition of § 424.535(a)(20) and other revocation reasons in the rule are not intended to circumvent part 488. Nothing in § 424.535(a) prohibits a certified provider or certified supplier from submitting a part 488 plan of correction under the provisions of that part. This does not mean, however, that we cannot take revocation action even if such plan is submitted (except as stated in § 424.535(a)(1)). Moreover, providers and suppliers are ensured due process through their right to appeal any revocation under part 498.

Comment: A commenter stated that CMS should clarify that it can only take action against different legal entities under paragraph (a)(20) if it determines that the sites are exercising a circumvention scheme.

Response: We respectfully disagree because § 424.535(a)(20) is not primarily focused on the issue of schemes designed to circumvent revocations and reenrollment bars. Rather, § 424.535(a)(20) concerns billing for services furnished at or from a non-compliant location and whether any of the provider's other locations should be revoked as a result.

Comment: While stating that the proposed factors are reasonable considerations, a commenter expressed concern about the possible revocation of many or all of a provider's practice locations for minor technical instances of non-compliance in a single location. The commenter urged CMS to include in the regulatory text the language from the proposed rule's preamble indicating that this provision is designed primarily to stop providers and suppliers that knowingly operate fictitious or otherwise non-compliant locations in order to circumvent CMS policies.

Response: Language that outlines the underlying purpose of (or rationale for) a particular regulatory provision is generally not included in regulatory text; the latter is typically limited to outlining specific requirements or standards. We thus respectfully decline to insert the commenter's requested verbiage. Regardless, we note again that this provision concerns billing for services furnished at or from a non-compliant location and whether any of the provider's other locations should be revoked as a result.

After consideration of the comments received, we are finalizing § 424.535(a)(20) as proposed, with the exception of modifying the first two sentences of the paragraph. We believe it is necessary to clarify that a revocation occurs at the enrollment level, rather than the practice location level. We are concerned that paragraph (a)(20), as currently written, could be construed as indicating that practice locations themselves can be revoked. Accordingly, the first two sentences of paragraph (a)(20) will be slightly revised to read as set out in the regulatory text.

3. Improper Ordering, Certifying, Referring, or Prescribing of Part A or B Services, Items, or Drugs

In a final rule published in the **Federal Register** on December 5, 2014 titled ''Medicare Program; Requirements for the Medicare Incentive Reward Program and Provider Enrollment'' (72 FR 72499), we finalized § 424.535(a)(8)(ii). Under this provision, CMS may revoke a provider's or supplier's Medicare billing privileges if the provider or supplier has a pattern or practice of submitting claims that fail to meet Medicare requirements such as, but not limited to, the requirement that the service be reasonable and necessary.

The provision is intended to place providers and suppliers on notice that they have a legal obligation to submit correct and accurate claims; the provider's or supplier's repeated failure to do so, we concluded, poses a risk to the Medicare Trust Funds.

We also published a final rule in the **Federal Register** (79 FR 29843) on May 23, 2014, titled ''Medicare Program; Contract Year 2015 Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs.'' Under § 424.535(a)(14), which was finalized in that rule, we may revoke a physician's or eligible professional's Medicare billing and prescribing privileges if we determine that he or she has a pattern or practice of prescribing Part D drugs that fall into one of the following categories:

- The pattern or practice is abusive, represents a threat to the health and safety of Medicare beneficiaries, or both.
- The pattern or practice of prescribing fails to meet Medicare requirements.

In the January 10, 2014 proposed rule (79 FR 1917), which resulted in the aforementioned May 23, 2014 final rule, we expressed our view that the concept behind proposed § 424.535(a)(8)(ii) should extend to revoking Medicare enrollment for Part D prescribers who engage in abusive prescribing practices. We explained that if a physician or eligible professional consistently fails to exercise reasonable judgment in his or her prescribing practices, we should be able to remove such individuals from the Medicare program in order to protect beneficiaries' safety and health, as well as the Medicare Trust Funds.

Notwithstanding these new safeguards, neither § 424.535(a)(14) nor § 424.535(a)(8)(ii) address the improper ordering or certifying of Medicare services and items or the prescribing of Part B drugs. We have received numerous reports of physicians and eligible professionals engaging in abusive or otherwise inappropriate ordering. While the particular circumstances of each case have varied, they frequently fall within one or more of the following categories—(1) the ordered item or service was not reasonable, not necessary, or both; or (2) the physician or eligible professional misrepresented his or her diagnosis to justify the service or test.

Such behavior increases the risk of improper payment for inappropriate items or services or Part B drugs. It also endangers Medicare beneficiaries by unnecessarily exposing them to potentially harmful services and tests. As with the threats that abusive prescribing and billing pose, we believe that the risks of improper ordering, certifying, and referring, as well as the prescribing of Part B drugs, must be stemmed in order to protect the Medicare program.

Accordingly, we proposed in new § 424.535(a)(21) that CMS may revoke a physician's or eligible professional's Medicare enrollment (as the term ''enrollment'' is defined in § 424.502) if he or she has a pattern or practice of ordering, certifying, referring, or prescribing Medicare Part A or B services, items or drugs that is abusive, represents a threat to the health and safety of Medicare beneficiaries, or otherwise fails to meet Medicare requirements. Recognizing that not all patterns or practices involve inappropriate behavior, we stated in the proposed rule that we would consider the following factors in determining whether a pattern or practice of improper ordering, certifying, referring, or Part B drug prescribing exists:

- Whether the physician's or eligible professional's diagnoses support the orders, certifications, referrals, or prescriptions in question.
- Whether there are instances where the necessary evaluation of the patient for whom the service, item, or drug was ordered, certified, referred, or prescribed could not have occurred (for example, the patient was deceased or out of state at the time of the alleged office visit).
- The number and type(s) of disciplinary actions taken against the physician or eligible professional by the licensing body or medical board for the state or states in which he or she practices, and the reason(s) for the action(s).
- Whether the physician or eligible professional has any history of final adverse actions (as that term is defined in § 424.502).
- The length of time over which the pattern or practice has continued.
- How long the physician or eligible professional has been enrolled in Medicare.
- The number and type(s) of malpractice suits that have been filed against the physician or eligible professional related to ordering, certifying, referring, or prescribing that have resulted in a final judgment against the physician or eligible professional or in which the physician or eligible professional has paid a settlement to the plaintiff(s) (to the extent this can be determined).
- Whether any state Medicaid program or any other public or private health insurance program has restricted, suspended, revoked, or terminated the physician's or eligible professional's ability to practice medicine, and the reason(s) for any such restriction, suspension, revocation, or termination.
- Any other information that we deem relevant to our determination.

We received the following comments regarding our proposal:

Comment: A commenter expressed support for our proposed addition of § 424.535(a)(21).

Response: We appreciate the commenter's support.

Comment: A commenter opposed our proposal, stating that it—(1) duplicates current safety mechanisms; (2) interferes with the long history of states regulating the licensure process; and (3) adds another layer of bureaucracy and administrative costs to the program. The commenter added that CMS is inappropriately suggesting that a medical liability lawsuit is somehow equivalent to liability without regard for the lawsuit's outcome. The commenter stated that—(1) there are many ways in which physicians could be named in a medical liability suit, regardless of whether there is any evidence of negligence; and (2) many liability insurers settle cases with little to no merit.

Response: We respectfully disagree with the commenter's contentions. First, § 424.535(a)(21) does not duplicate any existing Medicare safety mechanisms. Unlike with abusive billing (§ 424.535(a)(8)(ii)) and abusive prescribing of Part D drugs (§ 424.535(a)(14)), we currently lack the authority to take enrollment action against patterns or practices of abusive ordering or certifying of Medicare items and services or Part B drugs. This is behavior we have seen and against which we must protect the Medicare program. Second, we recognize the role of state medical boards in monitoring the practice of medicine. Such bodies, however, operate independently of CMS. They play no role in overseeing the Medicare program, a responsibility that rests with CMS. As such, we must be able to rapidly take protective measures without having to wait for possible action by state licensing boards or other bodies.

We do not believe this provision adds layers of bureaucracy. It is simply a further regulatory protection for the Medicare program. Concerning medical liability lawsuits, we currently consider this criterion in determining whether a revocation under § 424.535(a)(14) is warranted, and we are duplicating this factor in § 424.535(a)(21). We emphasize, however, that it is only one of several factors we will consider in

our determination; it is not alone dispositive.

After consideration of the comments received, we are finalizing § 424.535(a)(21) as proposed.

4. Reenrollment and Reapplication Bar Period

a. Reenrollment Bar

Under § 424.535(c), if a provider, supplier, owner, or managing employee has their billing privileges revoked, they are barred from participating in Medicare from the date of the revocation until the end of the reenrollment bar. The reenrollment bar begins 30 days after CMS or its contractor mails notice of the revocation. It lasts a minimum of 1 year, but not greater than 3 years, depending on the severity of the basis for revocation.

We proposed the following changes to § 424.535(c):

First, we proposed to incorporate the existing version of § 424.535(c) into a new paragraph (c)(1) that would increase the current maximum reenrollment bar from 3 years to 10 years (excluding the situations described in new paragraphs (c)(2) and (3), discussed later in this section of this final rule with comment period). We stated in the proposed rule that it would be reasonable in certain cases to prevent a provider or supplier from participating in Medicare for longer than 3 years. Indeed, certain behavior could prove so harmful to Medicare, its beneficiaries, and/or the Trust Funds that a very lengthy bar from Medicare is warranted. We believed that a 10-year maximum timeframe is appropriate, both to—(1) ensure that providers and suppliers engaging in such activities are kept out of Medicare; and (2) deter others from potentially duplicating this behavior. We chose 10 years because there is precedent for this period; under § 424.535(a)(3)(iii), it constitutes the minimum revocation timeframe for providers that have been convicted of multiple felonies. However, we did not expect to impose longer reenrollment bars for certain existing revocation reasons. Revocations that currently involve only a 1-year reenrollment bar, for instance, would not necessarily result in a longer period under new § 424.535(c)(1).

Second, we proposed in new § 424.535(c)(2) that CMS may add up to 3 more years to the provider's or supplier's reenrollment bar (even if such period exceeds the maximum otherwise allowable under paragraph (c)(1)) if CMS determines that the provider or supplier is attempting to circumvent its existing reenrollment bar by enrolling in Medicare under a different name, numerical identifier, or business identity. We stated that such efforts to avoid Medicare rules warrant the provider's or supplier's Medicare revocation being for a longer timeframe than was originally imposed.

We noted that the affected provider or supplier could appeal CMS' imposition of additional years to the provider's or supplier's existing reenrollment bar under § 424.535(c)(2). These appeal rights would be governed by 42 CFR part 498. However, they would not extend to the imposition of the original reenrollment bar under § 424.535(c)(1); they would be limited to the additional years imposed under § 424.535(c)(2).

Third, we proposed in new § 424.535(c)(3) that CMS may impose a reenrollment bar of up to 20 years if the provider or supplier is being revoked from Medicare for the second time. Multiple revocations indicate that the provider or supplier cannot be considered a reliable partner of the Medicare program. The reenrollment bar under paragraph (c)(3) would be in lieu of the reenrollment bar described in paragraph (c)(1). We proposed to determine the bar's length by considering the following factors—(1) the reasons for the revocations; (2) the length of time between the revocations; (3) whether the provider or supplier has any history of final adverse actions (other than Medicare revocations) or Medicare or Medicaid payment suspensions; and (4) any other information that CMS deems relevant to its determination. In addition, we proposed to apply paragraph (c)(3) even if the two revocations occurred under different names, numerical identifiers, or business identities so long as we can determine that the two actions effectively involved the same provider or supplier.

Fourth, we proposed in new § 424.535(c)(4) that a reenrollment bar would apply to a provider or supplier under any of its current, former, or future business names, numerical identifiers, or business identities. We explained that this would help ensure that revoked providers and suppliers do not attempt to circumvent a revocation and reenrollment bar by changing their name, identity, business structure, etc.

We emphasized in the proposed rule that our sole objective was to make certain that unscrupulous providers and suppliers are kept out of Medicare for as long as possible.

b. Reapplication Bar

We also proposed in new § 424.530(f) that CMS may prohibit a prospective provider or supplier from enrolling in Medicare for up to 3 years if its enrollment application is denied because the provider or supplier submitted false or misleading information on or with (or omitted information from) its application in order to gain enrollment in Medicare. This reapplication bar would apply to the individual or organization under any current, former, or future name, numerical identifier, or business identity.

The purpose of this proposal was to keep untrustworthy providers and suppliers from entering the Medicare program and to forestall future efforts to enroll. We explained that the submission of false information or the withholding of information relevant to the provider's or supplier's enrollment eligibility represents a significant program integrity risk. For this reason, and to provide consequences for such behavior, we stated that our proposed reapplication bar was warranted. When determining the reapplication bar's length, we proposed to consider the following factors—(1) the materiality of the information in question; (2) whether there is evidence to suggest that the provider or supplier purposely furnished false or misleading information or deliberately withheld information; (3) whether the provider or supplier has any history of final adverse actions or Medicare or Medicaid payment suspensions; and (4) any other information that we deem relevant to our determination.

c. Comments Received

We received the following comments regarding our reenrollment bar and reapplication bar proposals:

Comment: A number of commenters opposed our proposed—(1) expansion of the maximum reenrollment bar from 3 years to 10 years; and (2) establishment of a maximum reenrollment bar of 20 years for a second revocation. They believed the proposed bars were excessive and overly punitive. Several of them urged CMS to retain the existing 3-year reenrollment bar.

Response: As explained in the proposed rule, we believe it is reasonable in certain cases to prevent a provider or supplier from participating in Medicare for longer than 3 years. Certain behavior could prove so harmful to Medicare, its beneficiaries, and/or the Trust Funds that a longer bar from Medicare is justified. Again, we believe that the 10-year and 20-year maximum periods are appropriate to—(1) make sure that abusive parties are kept out of Medicare; and (2) deter others from mirroring such behavior. We emphasize, though, that 10-year and 20-year bars (as

well as other longer bars) will typically be reserved for more serious conduct and not be imposed unless determined to be warranted after careful consideration of all of the required factors.

With respect to the maximum 20-year bar for individuals or entities that have been revoked a second time, CMS believes that the standard appeals process at Part 498 should allow for the resolution of ''mistaken identity'' cases regarding the first revocation. In other words, if a provider or supplier to which CMS applies § 424.535(c)(3) correctly claims on appeal that a different individual or entity was, in fact, the subject of the first revocation, CMS will be able modify the re-enrollment bar length such that it only applies to the second revocation, pursuant to § 424.535(c)(1). As explained below, we are modifying § 498.3(b)(17) to afford appeal rights in this scenario.

Comment: A commenter stated that the proposed rule does not clarify the lengths of the reenrollment bars that will be applied to different offenses, meaning that reenrollment bars would be determined arbitrarily. The commenter, as well as others, urged CMS to provide guidelines as to what offenses would merit bans of certain time periods. They added that said guidance should be narrowly defined to target egregious cases and hold harmless reputable providers.

Response: We respectfully decline to specify in regulation the precise reenrollment bar lengths that will be imposed for particular acts. Each case could vary widely, and we must continue to have the discretion and flexibility to (consistent with current practice) consider all relevant facts, including circumstances that mitigate against a longer reenrollment bar.

Comment: A commenter suggested—(1) a maximum reenrollment bar of 5 years instead of 10 years; and (2) a bar for a second revocation of 10 years rather than 20. Another commenter urged a maximum reenrollment bar of 6 years with exceptions.

Response: We appreciate these recommendations. As indicated earlier, we believe that the seriousness of certain conduct warrants a longer maximum re-enrollment bar. A 5-year or 6-year bar may be insufficient to protect the Medicare program in some instances. We believe that our 10-year and 20-year maximum bars enable us to address various factual situations, including particularly improper or fraudulent behavior.

Comment: Some commenters supported our proposed reenrollment bar provisions in § 424.535(c).

Response: We appreciate the commenters' support.

Comment: A commenter contended that barring a provider for 10 years would only be justified in extreme cases of fraud. Another commenter stated that any reenrollment bar should only be imposed when there—(1) is sufficient evidence that serves a program integrity goal; and (2) are robust due process and appeal rights for the affected provider or supplier.

Response: While we respectfully disagree that a 10-year bar should only be warranted in extreme instances of fraud, 10-year timeframes will generally be restricted to serious behavior. Concerning the second commenter, we believe that every reenrollment bar aids our program integrity objectives by prohibiting revoked parties from effectively circumventing the revocation by immediately submitting an application to reenroll. We note also that providers and suppliers may appeal a revocation under § 498.3, thus ensuring due process.

Comment: A commenter cited CMS's statement in the proposed rule's preamble concerning precedent for the 10-year reenrollment bar in existing § 424.535(a)(3)(ii) (specifically, a 10-year bar for multiple felony convictions). The commenter stated that felony convictions involve substantially more due process than the largely administrative adjudications addressed under § 424.535(c). The commenter contended that § 424.535(a)(3)(ii) is not a precedent for the proposed reenrollment bar. Rather, it is a cautionary note about the degree of due process that should be afforded to providers before such a lengthy ban is imposed. The commenter added that CMS' assurance that longer bars would only apply to egregious cases is an inadequate substitute for a finding of criminal guilt beyond a reasonable doubt by a court of law. Another commenter stated that under 48 CFR 9.406–4, the period of debarment for a government contractor generally should not exceed 3 years unless there is a violation of the Drug-Free Workplace Act of 1988; even in the latter situation, the debarment may not exceed 5 years.

Response: The reference to § 424.535(a)(3)(ii) was strictly intended to demonstrate a precedent for a 10-year timeframe, not to equate felony convictions with all other actions covered under § 424.535(a). Regardless, we note that serious misconduct can occur without a criminal conviction. In fact, many of our revocation reasons in § 424.535(a) neither involve criminal behavior nor require a judgment of guilt. We reiterate our view that an extended reenrollment bar (that is, longer than 3 years) may sometimes be warranted, depending upon the facts, circumstances, and scope of the provider's or supplier's conduct. Moreover, we—(1) do not believe that significantly longer bars should be restricted to felony convictions; and (2) are not bound by 48 CFR 9.406–4 and have the discretion to establish a reenrollment bar specific to Medicare.

Comment: A commenter stated that expanding the reenrollment bar beyond 3 years may be appropriate under certain limited circumstances for program integrity reasons. However, the commenter was concerned about the reenrollment bar's application to any current, former or future business names, identifiers or business identities. The commenter stated that this could lead to an overly broad application to well-intentioned and compliant providers and suppliers. The commenter urged that CMS—(1) not impose a reenrollment bar across multiple providers or suppliers that may be affiliated with a provider or supplier, but which had no knowledge of the behavior leading to the bar; and (2) allow flexibility in extenuating circumstances that appropriately balances program integrity risk with community need.

Response: Section 424.535(c)(4) is designed to prevent situations where a provider or supplier is revoked and under a reenrollment bar, and then changes its name to circumvent both sanctions. In cases where, for instance, a provider or supplier is revoked based on an affiliation with another revoked provider or supplier, each revocation is treated separately. Both revoked providers, moreover, should be subject to a reenrollment bar to prevent an immediate reenrollment and consequent circumvention of their revocation, though it should not be assumed that both bars will be the same length. We will carefully review the circumstances of each revocation on its own merits and facts in determining the appropriate bar for that provider; as the commenter suggests in its second comment, we will balance various considerations in establishing bars.

Comment: A commenter opposed the extension of the maximum re-enrollment bar if the affiliation disclosure provisions are finalized. The commenter stated that a 10-year reenrollment bar is too drastic given the extreme difficulty of complying with the reporting requirements in certain circumstances.

Response: We have stated in this final rule with comment period our rationale for the 10- and 20-year reenrollment bars. We will make certain, however, that the length of the imposed re-enrollment bar is proper for the behavior involved by considering all relevant facts and circumstances.

Comment: A commenter recommended that CMS establish a specific reenrollment bar for each revocation reason. Citing examples, the commenter stated that if a site survey found the supplier to be non-compliant and the supplier is appealing the revocation, 3 or 5 years would be an appropriate period; if an owner of the supplier is found guilty of a felony, the commenter stated, a 10-year period would be more appropriate.

Response: We appreciate the commenter's suggestions and examples. As previously stated, however, each case may differ widely. We must have the flexibility to consider every situation on its own merits rather than be compelled to impose certain reenrollment bar lengths for particular actions.

Comment: Several commenters stated that—(1) a 3-year reenrollment or reapplication bar is adequate only in egregious cases of intentional fraud, submission of false claims, or other instances that CMS specifically identifies; (2) any bar should be removed or shortened if the provider eliminates its affiliation with an organization or individual that had a disclosable event; and (3) CMS should only bar reenrollment and reapplication if a provider's actions or omissions were intentional and material.

Response: We respectfully disagree with the commenters' first and third contentions regarding reenrollment bars. A 3-year reenrollment bar for the conduct described may often be too short. Such providers and suppliers should not be permitted to reenter Medicare to potentially repeat their behavior after such a comparatively brief timeframe; the Medicare Trust Funds and Medicare beneficiaries must be protected for as long as possible. Further, as already mentioned, any failure to impose a reenrollment bar for a revocation would undercut the latter action since the provider could otherwise immediately resubmit an application for reenrollment. As for the second contention, we note that a provider or supplier under § 424.535(e) may avoid a revocation and associated reenrollment bar if it terminates (and submits proof that it has terminated) its business relationship with the applicable party within 30 days of the revocation notification. If said affiliation relationship does not fall within the confines of § 424.535(e), CMS considers the scope of the relationship in determining whether an undue risk exists under § 424.519(f) and, by extension, the appropriate length of any reenrollment bar.

Regarding the reapplication bar, evidence of intent and the information's materiality are factors that we will consider in our determination. Certainly, evidence of purposeful falsification of crucial data will warrant a longer reapplication bar. Given the various factual scenarios that could arise and the need for flexibility in our determinations, however, we believe it is imprudent to explicitly require evidence of intent and materiality before a bar is imposed.

After consideration of the comments received, we are finalizing our proposed reenrollment bar and reapplication bar provisions. However, we believe that two minor technical edits to §§ 405.800 and 498.3(b)(17) are necessary to ensure that appeal rights are available under Part 498 regarding additional years applied under § 424.535(c)(2)(i) to any existing reenrollment bar.

First, we are adding a new paragraph (c) to § 405.800 that discusses notification to the provider or supplier of additional years applied to a provider's or supplier's existing reenrollment bar under § 424.535(c)(2)(i). Said notice per § 405.800(c)(1) will include the following:

- The reason for the application of additional years in sufficient detail to allow the provider or supplier to understand the nature of the action.
- The right to appeal in accordance with part 498 of this chapter.
- The address to which the written appeal must be mailed.

In § 405.800(c)(2), we specify that paragraph (c)(1) applies only to the years added to the existing reenrollment bar under § 424.535(c)(2)(i) and not to the original length of the reenrollment bar, which is not subject to appeal.

The language concerning written notice and the contents thereof is consistent with that used in § 405.800(a) and (b) regarding denials and revocations of enrollment. It is designed to ensure that the provider or supplier receives sufficient information regarding the action taken. Paragraph (c)(2) is necessary to clarify that the original length of the reenrollment bar is not appealable.

Second, § 498.3(b) outlines matters on which CMS makes initial determinations. Paragraph (b)(17) lists among them the determination as to whether to deny or revoke a provider or supplier's Medicare enrollment in accordance with § 424.530 or § 424.535. To clarify the availability of appeal rights, we are reorganizing and revising paragraph (b)(17) as follows:

- The existing version of paragraph (b)(17) will be redesignated as paragraph (b)(17)(i).
- New paragraph (b)(17)(ii) will state: ''Whether, under § 424.535(c)(2)(i) of this chapter, to add years to a provider's or supplier's existing reenrollment bar;''
- New paragraph (b)(17)(iii) will state: ''Whether, under § 424.535(c)(3) of this chapter, an individual or entity other than the provider or supplier that is the subject of the second revocation was the actual subject of the first revocation.''

5. Referral of Debt to the United States Department of Treasury

The Debt Collection Improvement Act of 1996 requires federal agencies to refer eligible delinquent debt to the United States Department of Treasury-designated Debt Collection Center (DCC) for cross-servicing and offset. CMS must refer all eligible debt over 120 days delinquent for cross-servicing and offset. Prior to sending a debt to the Department of Treasury, CMS attempts to recoup it via the procedures outlined in CMS Publication 100–06, chapter 4. Generally speaking, we refer a debt to the Department of Treasury only if we cannot fully recover the debt through our existing procedures. In all cases, though, a provider or supplier is given adequate opportunity to repay the debt or make arrangements to do so (for example, if eligible for an extended repayment plan) before the debt is sent to the Department of Treasury.

We stated in the proposed rule that referral to the Department of Treasury may indicate the provider's or supplier's unwillingness to repay a debt, which brings into doubt whether the provider or supplier can be a reliable partner of the Medicare program. Accordingly, we proposed in new § 424.535(a)(17) that CMS may revoke a provider's or supplier's Medicare enrollment if the provider or supplier has an existing debt that CMS refers to the Department of Treasury. In determining whether a revocation is appropriate, we proposed to consider the following factors:

- The reason(s) for the failure to fully repay the debt (to the extent this can be determined).
- Whether the provider or supplier has attempted to repay the debt.
- Whether the provider or supplier has responded to our request(s) for payment.
- Whether the provider or supplier has any history of final adverse actions

or Medicare or Medicaid payment suspensions.

- The amount of the debt.
- Any other information that we deem relevant to our determination.

We received the following comments regarding this proposal:

Comment: A commenter requested that CMS eliminate proposed § 424.535(a)(17) from the final rule.

Response: We respectfully disagree. We believe that this provision is based upon sound fiscal policy and will help ensure that providers and suppliers repay their debts to the Medicare program.

Comment: A commenter stated that there have been instances where a referral of a debt to Treasury occurred—(1) when the debt has been or was in the process of repayment through an agreed-upon repayment plan; or (2) regarding an individual when a corporate debt had not been timely repaid. The commenter requested that CMS clarify when the Treasury referral applies to the enrollment determination and to identify the remedy for erroneous referrals.

Response: We appreciate this comment. If a provider's or supplier's debt is referred to the Department of Treasury, we may invoke § 424.535(a)(17) after a careful consideration of the factors stated therein. The provider or supplier may appeal the revocation under part 498. CMS recognizes, however, that some debts could indeed, as the commenter suggests, be referred to Treasury incorrectly. We are therefore adding the word ''appropriately'' before ''refers'' in § 424.535(a)(17). This will clarify that only debts that have been referred to Treasury correctly will constitute a ground for revocation under § 424.535(a)(17).

After consideration of the comments received, we are finalizing § 424.535(a)(17) as proposed with two exceptions. First, as just explained, we are adding the word ''appropriately'' before ''refers''. Second, we are adding the language ''(to the extent this can be determined)'' to the end of the factors enumerated in § 424.535(a)(17)(ii) (concerning attempts to repay) and (iii) (regarding responses to request for repayment). This is to account for the possibility that it may occasionally prove difficult to ascertain and acquire this information.

6. Failure to Report

Existing § 424.535(a)(9) permits CMS to revoke the Medicare enrollment of a physician, non-physician practitioner, physician group, or non-physician practitioner group if the supplier fails to comply with § 424.516(d)(1)(ii) or (iii), which requires the supplier to report a change in its practice location or final adverse action status within 30 days of the change.

We proposed to expand § 424.535(a)(9) in two ways. First, we proposed that CMS may apply § 424.535(a)(9) to all of the reporting requirements in § 424.516(d), not merely those in § 424.516(d)(1)(ii) and (iii). We could thus revoke the Medicare enrollment of a physician, non-physician practitioner, physician group, or non-physician practitioner group if the supplier fails to report either of the following:

- A change of ownership, final adverse action, or practice location within 30 days of the change (as required under § 424.516(d)(1)(i), (ii), and (iii), respectively).
- Any other change in enrollment data within 90 days of the change (as required under § 424.516(d)(2)).

Second, we proposed that CMS may apply § 424.535(a)(9) to the reporting requirements in § 410.33(g)(2) (pertaining to IDTFs), § 424.57(c)(2) (pertaining to DMEPOS suppliers), and § 424.516(e) (pertaining to all other provider and supplier types). This means we could revoke a provider or supplier under § 424.535(a)(9) if any of the following occur:

- An IDTF fails to report a change in ownership, location, general supervision, or final adverse action within 30 days of the change or fails to report any other change in its enrollment data within 90 days of the change.
- A DMEPOS supplier fails to submit any change in its enrollment information within 30 days of the change.
- A provider or supplier other than a physician, non-physician practitioner, physician group, non-physician practitioner group, IDTF, or DMEPOS supplier fails to report any of the following:

++ A change in ownership or control within 30 days of the change.

++ A revocation or suspension of a federal or state license or certification within 30 days of the revocation or suspension.

++ Any other change in its enrollment data within 90 days of the change.

We contended that our revocation authority under § 424.535(a)(9) should not be restricted to certain provider and supplier types that have omitted reporting a change in practice location or final adverse action. Any failure to report changed enrollment data, regardless of the provider or supplier type involved, is of concern to us. We must have complete and accurate data on each provider and supplier to help confirm that the provider or supplier still meets all Medicare requirements and that Medicare payments are made correctly. Inaccurate or outdated information puts the Medicare Trust Funds at risk.

While we stated that we would retain the discretion to revoke a provider's or supplier's enrollment for any failure to meet the reporting requirements in § 424.516(d) or (e), § 410.33(g)(2), or § 424.57(c)(2), our proposal was focused on significant cases of non-reporting. For instance, a provider's belated omission to report a ZIP code change until 120 days after the change does not represent an equivalent level of program integrity risk as a complete failure to report a new practice location. We proposed to consider the following factors in determining whether a § 424.535(a)(9) revocation is appropriate (1) whether the data in question was reported; (2) if the data was reported, how belatedly; (3) the materiality of the data in question; and (4) any other information that we deem relevant to our determination.

We received the following comments regarding our proposal:

Comment: Several commenters expressed concern regarding our proposed revision to § 424.535(a)(9). They stated that the proposal could allow CMS to revoke providers and suppliers for inadvertent or innocent errors or oversights, even if no federal health care program reimbursement was involved with the enrollment change that was not reported. They added that many reporting failures are mere oversights and not indicative of fraud or abuse. They recommended that CMS rescind its proposal, believing that revocation in such instances is an overly severe penalty.

Response: We note that we already have the authority to revoke providers and suppliers under § 424.535(a)(1) for failing to timely report changes of information under, as applicable, §§ 424.516(d), 410.33(g)(2), and 424.57(c)(2). Our revision to § 424.535(a)(9) simply establishes a dedicated paragraph in § 424.535(a) to address all information changes, not merely those in § 424.516(d)(ii) and (iii). In other words, we have always had general authority to revoke for failing to report changes, and this rule expands upon that existing authority. The expansion of § 424.535(a)(9), however, is focused largely on significant cases of non-reporting, and we will carefully consider several factors, such as the data's materiality, in determining

whether a revocation is appropriate. Yet we must emphasize that we still retain the right to revoke under § 424.535(a)(9) for any failure to timely report informational changes.

Comment: A commenter suggested that CMS require advance notice and an opportunity for information correction or rebuttal of allegations of noncompliance prior to imposing a revocation for a failure to timely report a practice location change.

Response: We believe that a failure to report a practice location is a serious matter, especially considering that practice location data has a material effect on the accuracy of Medicare payments. Thus, we do not believe that advance notice and an opportunity to correct is appropriate and stress that the provider or supplier may appeal any revocation under part 498. We note further that advance notice and a correction opportunity could remove any incentive for providers and suppliers to timely report information changes. The provider or supplier could simply wait until receiving such notice (assuming that CMS even learns of the new or changed data) to disclose the information via the Form CMS–855.

Comment: A commenter stated that while our proposed factors under § 424.535(a)(9) were reasonable considerations, they were inadequate to protect against the revocation of a provider for trivial reasons. The commenter recommended that CMS add to the regulatory text the language from the proposed rule's preamble indicating that a decision to revoke would be focused on ''egregious'' cases of non-reporting. Another commenter stated that revoking Medicare enrollments under § 424.535(a)(9) should only occur in egregious cases.

Response: We believe that our proposed factors sufficiently ensure that—(1) we will carefully consider all circumstances of the case before taking action; and (2) any decision to revoke will not be taken lightly. Also, we believe that the language regarding ''egregious'' non-reporting is inappropriate for regulatory text.

Comment: A commenter stated that revocation under § 424.535(a)(9) should extend only to instances where the unreported information was material and the non-disclosure intentional. Materiality would thus be the threshold question as opposed to a mere factor for consideration. The commenter suggested that materiality could be based on whether the failure to report would result in ''undue risk'' (as articulated in section 1866(j)(5)) or otherwise would have changed the provider's enrollment status. The commenter also requested that CMS provide additional examples of what constitutes egregious cases of non-reporting.

Response: We do not believe that materiality should be the threshold question, for this would imply that certain information need never be reported to CMS. In other words, providers and suppliers might assume that they need not comply with our reporting requirements in many cases because they would only be revoked for instances involving material data. We emphasize that providers and suppliers have a continuing obligation to report changes in their enrollment information via the Form CMS–855 regardless of the data's relative materiality. In addition, we respectfully decline to set forth examples of significant non-reporting. The facts of each case may vary greatly, and we must retain our flexibility to address and consider particular circumstances.

After consideration of the comments received, we are finalizing our proposed revisions to § 424.535(a)(9).

7. Payment Suspensions

Section 424.530(a)(7) permits the denial of a provider's or supplier's Medicare enrollment application if the current owner, physician, or non-physician practitioner has been placed under a Medicare payment suspension in accordance with §§ 405.370 through 405.372. Under § 405.371, a Medicare payment suspension may be imposed if CMS determines that a credible allegation of fraud against a provider or supplier exists. The general purpose of a payment suspension based upon a credible allegation of fraud is to temporarily halt the payment of Medicare Trust Fund dollars to a provider or supplier pending the resolution of a particular investigation concerning, for instance, whether the provider or supplier has engaged in fraudulent activity. CMS also has the authority to impose a payment suspension based upon reliable information that an overpayment exists. The goal of this type of suspension is to temporarily halt Medicare payments while CMS performs subsequent action to determine the existence of an overpayment.

We proposed several revisions to § 424.530(a)(7) and one revision to § 405.371.

First, we proposed to expand the applicability of § 424.530(a)(7) to—(1) all provider and supplier types; and (2) any owning or managing employee or organization of the provider or supplier. We stated that the existing scope of § 424.530(a)(7), which is limited to owners, physicians, and non-physician practitioners, does not address the continuum of program vulnerabilities in this area. Indeed, providers and suppliers other than physicians and non-physician practitioners are currently not prohibited from enrolling in Medicare based on a payment suspension. We note further that a managing individual or entity often has as much (or more) day-to-day control over a provider or supplier as an owner. In our view, automatically allowing a provider or supplier to enroll in Medicare even though one of its managing officials or organizations is under a payment suspension poses a risk to Medicare and its beneficiaries.

Second, we proposed to include Medicaid payment suspensions within the purview of § 424.530(a)(7). Under § 455.23, the state Medicaid agency must suspend all Medicaid payments to a provider or supplier after the agency determines that there is a credible allegation of fraud for which a Medicaid investigation is pending (unless the agency has good cause to not suspend payments). We contended that there was no significant difference between Medicare and Medicaid payment suspensions in terms of the threat posed to federal health care program integrity; potentially fraudulent behavior in the Medicaid program could be repeated in the Medicare program. We thus proposed to be able to prevent such providers and suppliers from entering Medicare.

Third, we proposed to incorporate these revised provisions into a new § 424.530(a)(7)(i).

Fourth, we proposed to establish a new § 424.530(a)(7)(ii) that would permit CMS to apply § 424.530(a)(7) to the following:

- Any of the provider's or supplier's or owning or managing employee's or organization's current or former names, numerical identifiers, or business identities.
- Any of the provider's or supplier's existing enrollments.

This reflected our previously discussed desire to ensure that questionable parties are unable to reenter the Medicare program (be it as a provider, supplier, owner, or manager) by using alternate identifiers. We were also concerned about situations where the provider or supplier has multiple enrollments, including those under different names, tax identification numbers, or other identifiers or business structures.

We proposed to consider the following factors in determining whether a denial is appropriate:

- The specific behavior in question.

• Whether the provider or supplier is the subject of other similar investigations.

• Any other information that we deem relevant to our determination.

Fifth, we proposed to expand § 405.371 to state that a Medicare payment suspension may be imposed if a state Medicaid program suspends payment pursuant to § 455.23(a)(1). Again, we expressed concern that possible fraudulent behavior in Medicaid might be repeated in Medicare.

We received the following comments regarding these proposals:

Comment: Regarding our proposal to expand the application of § 424.530(a)(7), a commenter questioned whether this authority applies if the payment suspension is later lifted or reversed.

Response: Under existing policy, if a Medicare enrollment application is denied under § 424.530(a)(7) because of a current payment suspension, the application denial is not reversed if the payment suspension is later lifted or reversed. Once the suspension ends, however, the provider or supplier may submit another initial application for enrollment.

Comment: A commenter expressed concern about denials based on terminations or suspensions that are under appeal because the latter actions can be caused by administrative or other error. The commenter recommended that CMS allow the appeals process to run its course before denying an application, stating that—(1) this would be consistent with due process; and (2) CMS would retain the ability to revoke the provider's enrollment if the appeal is unsuccessful.

Response: We respectfully disagree. If a provider or supplier has potentially engaged in questionable behavior, we should not be required to enroll the provider or supplier pending the completion of the appeals process or, in the case of payment suspensions, the rebuttal process under § 405.374. We must be able to take steps at the beginning of the enrollment process to protect the Medicare program, the Trust Funds, and beneficiaries from such risks.

After consideration of the comments received, we are finalizing our proposed changes to §§ 424.530(a)(7) and 405.371.

8. Other Federal Program Termination

To further protect Medicare from inappropriate activities occurring in other programs, we proposed two changes regarding denials and revocations.

a. Denials

We proposed in new § 424.530(a)(14) that CMS may deny a provider's or supplier's Medicare enrollment application if:

• The provider or supplier is currently terminated or suspended (or otherwise barred) from participation in a state Medicaid program or any other federal health care program; or

• The provider's or supplier's license is currently revoked or suspended in a state other than that in which the provider or supplier is enrolling.

Section 455.416(c) states that a Medicaid state agency must deny enrollment or terminate the enrollment of any provider that is terminated on or after January 1, 2011, under Medicare or the Medicaid program or CHIP of any other state. We explained in the proposed rule that § 424.530(a)(14) would facilitate consistency with the framework of § 455.416(c). Again, a provider's or supplier's improper behavior in another federal health care program may be duplicated in Medicare. Likewise, a Medicare provider's or supplier's actions that led to a license revocation or suspension in one state could be repeated with respect to its prospective enrollment in another state.

We stated in the proposed rule that a relevant program or license suspension warrants additional scrutiny, for the conduct behind the suspension could raise questions concerning the prospective provider's or supplier's ability to be a dependable Medicare participant. We recognized that license and federal program suspensions are generally temporary rather than permanent actions. Under certain conditions, however, license suspensions may be imposed for extended periods and involve serious transgressions. We believed that in circumstances triggering significant program integrity concerns, we should consider such conduct and determine the risk it poses before allowing the provider or supplier to enroll.

We stated that § 424.530(a)(14) could apply regardless of whether any appeals are pending. We acknowledge that, under current § 424.535(a)(12)(ii), we may not revoke a provider's or supplier's Medicare enrollment based on a Medicaid termination unless the provider or supplier has exhausted all applicable appeal rights regarding the Medicaid termination. Yet we did not believe a similar clause should apply to § 424.530(a)(14). As discussed earlier regarding license or federal program suspensions, Medicaid or other program terminations may be indicators of serious transgressions. We thus deemed it inappropriate to permit a Medicaid-terminated provider or supplier (or a provider or supplier terminated under any federal program) into Medicare simply because that party had not yet exhausted its appeal rights. In fact, such a clause might encourage the provider or supplier to file a frivolous appeal in order to enroll in Medicare prior to the exhaustion of its appeal rights.

In determining whether to invoke § 424.530(a)(14) in a particular case, we proposed to consider the following factors:

• The reason(s) for the termination, revocation, or suspension.

• Whether, as applicable, the provider or supplier:

++ Is currently terminated or suspended (or otherwise barred) from more than one program (for example, more than one state's Medicaid program);

++ Has been subject to any other sanctions during its participation in other programs or by any other state licensing boards; or

++ Has had any other final adverse actions imposed against it.

• Any other information that we deem relevant to our determination.

Consistent with our previously discussed rationale, we further proposed that § 424.530(a)(14) would apply to the provider or supplier under any of its current or former names, numerical identifiers, or business identities.

b. Revocations

Under existing § 424.535(a)(12), Medicare may revoke a provider's or supplier's enrollment if a state Medicaid agency terminates the provider's or supplier's Medicaid enrollment. Similar to our discussion concerning § 424.530(a)(14), we proposed to expand § 424.535(a)(12)(i) such that CMS may revoke a provider's or supplier's Medicare enrollment if the provider or supplier is terminated or revoked (or otherwise barred) from participation in any other federal health care program. In determining whether a revocation is appropriate, we proposed to consider the following factors:

• The reason(s) for the termination or revocation.

• Whether the provider or supplier:

++ Is currently terminated, revoked, or otherwise barred from more than one program (for example, more than one state's Medicaid program); or

++ Has been subject to any other sanctions during its participation in other programs.

• Any other information that we deem relevant to our determination.

Section 424.535(a)(12)(ii) states that Medicare may not terminate a provider's

or supplier's enrollment unless and until a provider or supplier has exhausted all applicable appeal rights. We did not propose to modify this provision. We would not revoke a provider's or supplier's enrollment under paragraph (a)(12)(i) unless all applicable appeal rights relating to the termination have been exhausted.

In addition, and for reasons previously explained, we proposed to add new § 424.535(a)(12)(iii). This would enable us to apply § 424.535(a)(12)(i) to the provider or supplier under any of its current or former names, numerical identifiers, or business identities.

c. Comments Received

We received the following comments regarding these denial and revocation proposals:

Comment: A commenter stated that CMS should apply penalties only after a termination or suspension is final and not while it is being appealed. The commenter stated that this is similar to how CMS treats revocations.

Response: We respectfully disagree. As already stated, if a provider or supplier has perhaps engaged in questionable behavior, we should not be required to enroll the provider or supplier pending the completion of the appeals process. We must be able to protect the Medicare program, the Trust Funds, and beneficiaries from such risks at the beginning of the enrollment process. Waiting to take action until the end of a possibly lengthy appeals process could permit the provider or supplier to continue its behavior for an extended period. We also note that Medicare revocations may be and have been imposed prior to the expiration of the applicable Medicare appeals process.

Comment: A commenter supported our proposal to deny or revoke enrollment if the provider or supplier is currently terminated from a Medicaid or other federal health care program under any of its current or former names, numerical identifiers, or business entities. However, the commenter opposed the proposal to deny or revoke enrollment if the provider's or supplier's license is revoked in a state other than that in which the provider or supplier is enrolled or enrolling.

Response: We appreciate the commenter's support for our proposal addressing program terminations. Concerning out-of-state license terminations, we note that these denial and revocation authorities are discretionary and will only be exercised after a careful consideration of the specified factors. We add that these authorities regarding out-of-state license terminations are necessary because, once again, potentially improper conduct in one state can be repeated in another state.

After consideration of the comments received, we are finalizing new § 424.530(a)(14) and revised § 424.535(a)(12) as proposed with several exceptions. In § 424.530(a)(14), we are changing the phrase ''particular State Medicaid program'' to ''State Medicaid program''. We believe that elimination of the term ''particular'' will help clarify that the provisions refer to any state Medicaid program rather than a specific one. In the same section, we are adding ''(as that term is defined in § 424.502)'' to § 424.530(a)(14)(i)(B) as a reference to the regulatory definition of final adverse actions. As for § 424.535(a)(12), we are changing ''particular Medicaid program'' to ''State Medicaid program'' for the same reason described above. Also, we are changing the term ''terminate'' to ''revoke'' in § 424.535(a)(12)(ii) to clarify that CMS revokes enrollments.

9. Extension of Revocation

We proposed in new § 424.535(i) that CMS may revoke any and all of a provider's or supplier's Medicare enrollments—including those under (1) different names, numerical identifiers, or business identities, and (2) different types (for example, an entity is enrolled as a group practice via the Form CMS–855B and a DMEPOS supplier via the Form CMS–855S—if the provider or supplier is revoked under § 424.535(a). This proposal was designed to make certain that parties that are revoked for inappropriate behavior are not permitted to remain enrolled in Medicare in any capacity. Consider the following examples:

- A physician's State X enrollment is revoked because his license in X was revoked. Under § 424.535(i), we also could revoke the physician's State Y enrollment even if he is still licensed in Y.
- An entity has two enrollments: One via the Form CMS–855A as a certified supplier, another via the Form CMS–855B as a group practice. The entity's Form CMS–855A enrollment is revoked under § 424.535(a)(4). Under § 424.535(i), CMS could also revoke the organization's Form CMS–855B enrollment, even if that enrollment is in another state.
- A non-physician practitioner is enrolled via the Form CMS–855I (OMB Control No. 0938–0685)) as an individual supplier and as a DMEPOS supplier via the Form CMS–855S. The individual's Form CMS–855I enrollment is revoked for abusive billing practices. Under § 424.535(i), CMS could also revoke her Form CMS–855S enrollment.

In determining whether to revoke a provider's or supplier's other enrollments under § 424.535(i), we proposed to consider the following factors:

- The reason for the revocation and the facts of the case.
- Whether any final adverse actions have been imposed against the provider or supplier regarding its other enrollments (for example, licensure suspensions imposed by the state, prior revocations, and/or payment suspensions).
- The number and type(s) of other enrollments (for instance, Form CMS–855B).
- Any other information that we deem relevant to our determination.

We stated that this provision would not be an ''all or nothing'' provision; that is, we would not be required to automatically revoke all of the provider's or supplier's other enrollments if we chose to invoke § 424.535(i). We would instead apply the previously listed factors to each enrollment in determining whether it should be revoked.

We received the following comments concerning this proposal:

Comment: A commenter contended that a separate justification for extending an enrollment/reactivation bar to related entities should be required. This should include, the commenter stated, a requirement that the secondary entities be found to pose an undue risk beyond the fact that the entity is related to a party that is subject to a warranted enrollment/reactivation bar. The commenter added that there should be no extension of an enrollment/reactivation bar until all appeals by the primary affected entity are concluded.

Response: We stated in the proposed rule that the factors outlined in § 424.535(i) would be individually applied to each location and enrollment. We still hold this position. However, we disagree with explicitly requiring an undue risk standard for other locations and enrollments. Secondary locations and enrollments, in our view, can pose as much (or even more) of a threat to the Medicare program as the principal ones. Accordingly, they should not be held to a different standard (via the undue risk threshold) than the primary locations and enrollments. We also do not believe that we should be required to wait until all appeals involving the principal location and enrollment have been exhausted before taking action against the secondary ones. CMS must retain

the ability to take immediate steps to protect the Medicare program, the Trust Funds, and beneficiaries. Delaying action for a potentially lengthy period due to an ongoing appeals process would hinder this objective.

After consideration of the comments received, we are finalizing § 424.535(i) as proposed.

10. Voluntary Termination Pending Revocation

As we explained in section II.A. of the proposed rule, we have seen instances of providers and suppliers failing to meet Medicare requirements or otherwise engaging in improper behavior, and then voluntarily terminating their Medicare enrollment to avoid a potential revocation of their enrollment and a consequent reenrollment bar. For instance, assume that we perform a site visit of a provider's lone location. The site does not comply with our requirements. Knowing that its Medicare enrollment may soon be revoked, the provider submits a Form CMS–855 to voluntarily terminate its enrollment; the purpose, again, is to depart Medicare to avoid a formal revocation and reenrollment bar and any other consequences stemming therefrom.

We contended in the proposed rule that such attempts to circumvent the revocation process represent a risk to the Medicare program. Not only do they reflect dishonesty on the provider's or supplier's part, but also that the provider or supplier may be deliberately taking advantage of program vulnerabilities because no reenrollment bar has been imposed. To this end, we proposed in new § 424.535(j)(1) that we may revoke a provider's or supplier's Medicare enrollment if we determine that the provider or supplier voluntarily terminated its Medicare enrollment in order to avoid a revocation under § 424.535(a) that CMS would have imposed had the provider or supplier remained enrolled in Medicare. This would prevent the provider or supplier from avoiding a re-enrollment bar.

In making our determination, we proposed to consider the following factors:

- If there is evidence to suggest that the provider knew or should have known that it was or would be out of compliance with Medicare requirements.
- If there is evidence to suggest that the provider knew or should have known that its Medicare enrollment would be revoked.
- If there is evidence to suggest that the provider voluntarily terminated its Medicare enrollment in order to circumvent such revocation.
- Any other evidence or information that CMS deems relevant to its determination.

In new paragraph (j)(2), we proposed that a revocation under § 424.535(j)(1) would be effective the day before the Medicare contractor receives the provider's or supplier's Form CMS–855 voluntary termination application. We believed this date was appropriate because the provider's or supplier's submission of the voluntary termination application is the basis for the paragraph (j)(1) revocation. Procedurally, the voluntary termination would be reversed (if the Medicare contractor processed the application to completion) and the provider's or supplier's enrollment would then be revoked.

Although we received several comments regarding voluntary terminations in the context of our proposed affiliation disclosure requirements (see section II.A of this final rule with comment period), we received no comments specifically pertaining to § 424.535(j). Therefore, we are finalizing this proposal.

11. Enrollment for Ordering/Certifying/Referring/Prescribing of All Part A and B Services, Items, and Drugs; Maintenance of Documentation

a. Background of Part A and B Enrollment Proposal

Section 6405(c) of the Affordable Care Act gives the Secretary the authority to extend the requirements of section 6405(a) and (b) of the Affordable Care Act to all other categories of items or services under title XVIII of the Act (including covered Part D drugs) that are ordered, prescribed, or referred by a physician or eligible professional enrolled under section 1866(j) of the Act. Under this authority, existing § 424.507(a) and (b) collectively state that to receive payment for ordered imaging services, clinical laboratory services, DMEPOS items, or home health services, the service or item must have been ordered or certified by a physician or, when permitted, an eligible professional who—(1) is enrolled in Medicare in an approved status; or (2) has a valid opt-out affidavit on file with an Part A/B MAC.

Section 424.507(a) and (b) were implemented via an April 27, 2012 final rule titled ''Medicare and Medicaid Programs; Changes in Provider and Supplier Enrollment, Ordering and Referring, and Documentation Requirements; and Changes in Provider Agreements'' (77 FR 25284). Also, in the previously mentioned May 23, 2014 final rule (79 FR 29843), we finalized provisions under which the prescriptions of a physician or eligible professional who is not enrolled in Medicare and does not have a valid opt-out affidavit on file with an A/B MAC would not be covered under the Part D program.

The purpose of the provider enrollment process is to ensure that providers and suppliers that furnish services and items to Medicare beneficiaries meet all Medicare requirements. We stated in the proposed rule that the importance of confirming that all physicians and eligible professionals who order, certify, refer, or prescribe Part A or B services, items, or drugs (and not simply those services and items described in § 424.507) are qualified to do so dictated that we expand the purview of § 424.507. To this end, we proposed the following changes to § 424.507(a) and (b):

The heading to paragraph (a) currently reads—''Conditions for payment of claims for ordered covered imaging and clinical laboratory services and items of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS).'' We proposed to change this to state: ''Conditions for payment of claims for ordered, certified, referred, or prescribed covered Part A or B services, items, or drugs.''

The heading to existing paragraph (a)(1) reads—''Ordered covered imaging, clinical laboratory services, and DMEPOS item claims.'' We proposed to change this to state: ''Ordered, certified, referred, or prescribed covered Part A or B services, items or drugs.''

The opening sentence in paragraph (a)(1) currently states in part: ''To receive payment for ordered imaging, clinical laboratory services, and DMEPOS items (excluding home health services described in § 424.507(b), and Part B drugs)''. We proposed to change this language to read: ''To receive payment for ordered, certified, referred, or prescribed covered Part A or B services, items or drugs''.

Paragraph (a)(1)(i) states in part: ''The ordered covered imaging, clinical laboratory services, and DMEPOS items (excluding home health services described in paragraph (b) of this section, and Part B drugs) must have been ordered by''. We proposed to change this language to: ''The ordered, certified, referred, or prescribed covered Part A or B service, item, or drug must have been ordered, certified, referred, or prescribed by''.

In paragraph (a)(2), we proposed to change the heading from ''Part B beneficiary claims'' to ''Part A and B

beneficiary claims.'' We also proposed to change the language that states ''To receive payment for ordered covered items and services listed at § 424.507(a)'' to ''To receive payment for ordered, certified, referred, or prescribed covered Part A or B services, items or drugs''.

In paragraphs (a)(1)(ii) and (iii), and (a)(2)(i), we proposed to change the language that reads ''who ordered the item or service'' to ''who ordered, certified, referred, or prescribed the Part A or B service, item, or drug''.

We proposed to change the existing language in paragraphs (a)(1)(iv) and (a)(2)(ii) that reads ''If the item or service is ordered by'' to ''If the Part A or B service, item, or drug is ordered, certified, referred, or prescribed by''.

We proposed to revise the existing language in paragraphs (a)(1)(iv)(A)(*1*) and (a)(2)(ii)(A)(*1*) from ''As the ordering supplier'' to ''As the ordering, certifying, referring or prescribing supplier''.

We proposed to change the current language in paragraphs (a)(1)(iv)(B) and (a)(2)(ii)(B) that reads ''order such items and services'' to ''order, certify, refer, or prescribe such services, items, and drugs''.

In paragraphs (a)(1)(iv)(B)(*1*) and (a)(2)(ii)(B)(*1*), we proposed to replace the word ''order'' with ''order, certify, refer, or prescribe''.

We proposed to delete the existing version of paragraph (b), which deals with home health services. Such services would be addressed in revised paragraph (a). We proposed to redesignate current paragraph (c) as revised paragraph (b). We also proposed in this paragraph to—

- Change the language that reads ''covered items and services'' to ''ordered, certified, referred, or prescribed Part A or B services, items or drugs;''
- Delete ''or (b)'' and ''and (b)'', since the existing version of paragraph (b) would be replaced;
- Change ''paragraphs (a)(1)'' to ''paragraph (a)(1)''; and
- Delete ''respectively.''

We proposed to redesignate current paragraph (d) as revised paragraph (c). We also proposed in this paragraph to:

- Change the language that reads ''covered items or services'' to ''ordered, certified, referred, or prescribed covered Part A or B services, items or drugs''.
- Change the language that states ''paragraphs (a) and (b)'' to ''paragraph (a).''
- Delete paragraph (d).

Our proposal included drugs that are covered under Part B. We believed that this, combined with § 423.120(c), would help confirm that all prescribers of Medicare drugs are thoroughly vetted for compliance with Medicare requirements.

We also proposed that our changes to § 424.507 would become effective on January 1, 2018 to give sufficient time for—(1) providers and suppliers to complete the enrollment or opt-out process; (2) stakeholders (including CMS and its contractors) to prepare for, operationalize, and implement these requirements; and (3) provider and beneficiary education.

In the April 27, 2012 final rule (77 FR 25291), we agreed with commenters that there were a number of operational issues associated with a requirement that services of a specialist be ordered or referred. We thus removed that requirement. However, with the successful implementation of the current version of § 424.507, we stated in the proposed rule that the expansion of § 424.507 to include other services can be fully operationalized.

b. Preclusion List for Medicare Advantage (MA) and Part D

In the previously mentioned May 23, 2014 final rule, we finalized provisions that would require Medicare Part D prescribers to enroll in or opt-out of the Medicare program in order to prescribe Part D drugs to Medicare beneficiaries. In a similar vein, we established provisions in a November 15, 2016 final rule (81 FR 80170) titled ''Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2017; Medicare Advantage Bid Pricing Data Release; Medicare Advantage and Part D Medical Loss Ratio Data Release; Medicare Advantage Provider Network Requirements; Expansion of Medicare Diabetes Prevention Program Model; Medicare Shared Savings Program Requirements'' requiring Medicare Advantage (MA) providers to enroll in Medicare in order to furnish MA services and items to Medicare beneficiaries. These provisions were intended to supplement those in § 424.507 by expanding the enrollment requirement to include MA and Part D, thereby strengthening the payment safeguard elements of the latter two programs.

During our preparations to implement the Part D and MA enrollment provisions by the January 1, 2019 effective date, several provider organizations expressed concerns about our forthcoming requirements. With respect to Part D, these organizations stated that—(1) most prescribers pose no risk to the Medicare program; (2) certain types of physicians and eligible professionals prescribe Part D drugs only very infrequently; and (3) the burden to the prescriber community would outweigh the program integrity benefits of the Part D enrollment requirement. Regarding MA, some stakeholders were, too, concerned about the burden of having to enroll in Medicare, particularly considering that MA organizations enrolling in Medicare must also undergo credentialing by their respective health plans. While enrolling such prescribers and providers gives Medicare a greater degree of scrutiny in determining a prescriber's or provider's qualifications, we noted that the perceived burden associated with this process could cause some prescribers and providers not to enroll in Medicare, thus possibly leading to access to care issues if such providers left MA networks as a result. As of early 2018, approximately 420,000 Part D prescribers and 120,000 MA providers remained unenrolled in Medicare.

Given these concerns, on April 16, 2018 we published in the **Federal Register** a final rule titled, ''Medicare Program; Contract Year 2019 Policy and Technical Changes to the Medicare Advantage, Medicare Cost Plan, Medicare Fee-for-Service, the Medicare Prescription Drug Benefit Programs, and the PACE Program'' (83 FR 16440) (hereafter referred to as the April 16, 2018 final rule). In that rule, we removed the MA and Part D enrollment requirements outlined in the May 23, 2014 and November 15, 2016 final rules, respectively. They were replaced with a payment-oriented (rather than an enrollment-based) approach by which we would focus on prescribers and providers that present an elevated risk to Medicare beneficiaries and the Trust Funds. Rather than require the enrollment of MA providers and Part D prescribers regardless of the level of risk they might pose, we would prevent payment for MA items or services and Part D drugs that are, as applicable, furnished or prescribed by demonstrably problematic prescribers and providers. To this end, the April 16, 2018 rule stated that—(1) such problematic parties would be placed on a ''preclusion list''; and (2) payment for Part D drugs and MA services and items prescribed or furnished by these individuals and entities would be rejected or denied, as applicable. The implementation of the MA and Part D preclusion list policies began in late 2018.

c. Comments Received on Proposed Changes to § 424.507

We received a number of comments regarding our proposed changes to

§ 424.507. They focused on several matters. First, commenters expressed concern about the burden that would be involved in enrolling in Medicare to order, certify, refer, or prescribe Part A or B services, items, or drugs. Second, several stated that our proposal would negatively impact beneficiaries who seek care and treatment in emergency departments for acute illnesses or acute exacerbations of a chronic condition. Third, commenters requested that the proposed January 1, 2018 effective date was much too soon to enable stakeholders to prepare for these requirements and should be significantly pushed back.

Given the adoption of the preclusion list approach in lieu of MA and Part D enrollment and our interest in reducing burden on the provider and supplier community, we have decided not to finalize our proposed changes to § 424.507.

d. Maintenance of Documentation

In the November 19, 2008 **Federal Register**, we published a final rule titled, ''Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2009; E-Prescribing Exemption for Computer-Generated Facsimile Transmissions; and Payment for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies'' (73 FR 69726). In that rule, we established § 424.516(f) stating that—(1) a provider or supplier is required to maintain ordering and referring documentation, including the NPI, received from a physician or eligible non-physician practitioner for 7 years from the date of service; and (2) physicians and non-physician practitioners are required to maintain written ordering and referring documentation for 7 years from the date of service.

Section 1866(a)(1) of the Act, which was amended by section 6406(b)(3) of the Affordable Care Act, require that providers and suppliers maintain and, upon request, provide to the Secretary access to written or electronic documentation relating to written orders or requests for payment for durable medical equipment, certifications for home health services, or referrals for other items or services written or ordered by the provider as specified by the Secretary. Under section 1842(h) of the Act, which was amended by section 6406(a) of the Affordable Care Act, the Secretary may revoke a physician's or supplier's enrollment if the physician or supplier fails to maintain and, upon request of the Secretary, provide access to documentation relating to written orders or requests for payment for durable medical equipment, certifications for home health services, or referrals for other items or services written or ordered by such physician or supplier, as specified by the Secretary.

Consistent with the authority given to the Secretary in sections 1866(a)(1) and 1842(h) of the Act, we revised § 424.516(f) in the previously referenced April 27, 2012 final rule to specify the following:

- Under paragraph (f)(1), a provider or supplier that furnishes covered ordered items of DMEPOS, clinical laboratory, imaging services, or covered ordered/certified home health services is required to maintain documentation for 7 years from the date of service, and provide access to that documentation upon the request of CMS or a Medicare contractor.
- Under paragraph (f)(2), a physician who orders/certifies home health services and the physician or, when permitted, other eligible professional who orders items of DMEPOS or clinical laboratory or imaging services is required to maintain documentation for 7 years from the date of service, and provide access to that documentation upon the request of CMS or a Medicare contractor.

The documentation in paragraphs (f)(1) and (2) includes written and electronic documents (including the NPI of the physician who ordered/certified the home health services and the NPI of the physician or, when permitted, other eligible professional who ordered items of DMEPOS or clinical laboratory or imaging services) relating to written orders and certifications and requests for payments for items of DMEPOS and clinical laboratory, imaging, and home health services.

We proposed to expand these requirements in § 424.516(f) to include all Part A and Part B services, items, and drugs that are ordered, certified, referred, or prescribed by a physician or, when permitted, eligible professional. Thus, the provider or supplier furnishing the Part A or B service, item, or drug, as well as the physician or, when permitted, eligible professional who ordered, certified, referred, or prescribed the service, item or drug, would have to maintain documentation for 7 years from the date of the service and furnish access to that documentation upon a CMS or Medicare contractor request. The documentation would include written and electronic documents (including the NPI of the ordering/certifying/referring/prescribing physician or, when permitted, eligible professional) relating to written orders, certifications, referrals, prescriptions, and requests for payments for a Part A or B service, item, or drug.

We stated in the proposed rule that it is important that payments for Part A and B services, items, and drugs be made correctly. Without being able to review the documentation addressed in § 424.516(f), we may be unable to confirm that the order, certification, referral, or prescription was proper and that the ordering, certifying, referring or prescribing individual was qualified. We further noted in the proposed rule our belief in the importance of revising § 424.516(f) to be consistent with our proposed changes to § 424.507. We stated that to require all persons who order, certify, refer, and prescribe Part A and B services, items, or drugs to enroll in Medicare without requiring them (or the billing provider) to retain supporting documentation would undercut the effectiveness of § 424.507. Although, as already mentioned, we are not finalizing our proposed changes to § 424.507, we maintain this view. We must be able to verify that the—(1) order, certification, referral, or prescription was appropriate; (2) ordering, certifying, referring or prescribing individual was qualified; and (3) payment at issue was correctly made.

We received the following comments regarding this proposal:

Comment: A commenter stated that the proposed 7-year documentation requirement was onerous, with seemingly no basis for such lengthy documentation retention. The commenter recommended that the proposed timeframe be reduced to 3 years, while recognizing that providers and suppliers may choose or be required (under state law) to maintain such documentation for longer periods.

Response: We believe that a 7-year period is appropriate and note that this timeframe has been in place in § 424.516(f) since its enactment in the previously mentioned November 19, 2008 final rule. We continue to believe that the timeframe must be of sufficient length to ensure that we can confirm the accuracy and legitimacy of prior orders, certifications, referrals, and prescriptions and the payments stemming therefrom. A 3-year period, in our view, would remove from our requirement certain documents that could help us execute this function.

Comment: A commenter concurred that the ordering provider should maintain the clinical justification for the imaging study. The commenter added that a radiology group—(1) need only maintain the documentation it receives from the ordering physician or non-physician practitioner; and (2) must ensure that the submitted information

on the claim accurately reflects the information it received from the ordering physician or non-physician practitioner. Further, the commenter agreed that it is the ordering professional's responsibility to provide the documentation associated with the imaging order to CMS or a Medicare contractor.

Response: Portions of this comment are outside the scope of this final rule with comment period, but we appreciate the commenter's support.

Comment: A commenter sought clarification regarding—(1) the penalty for a physician who fails to maintain documentation under § 424.516(f); and (2) whether there is any penalty for the provider that supplied the care that the physician ordered, certified, or referred.

Response: Section 424.516(f) includes document retention requirements for — (1) the ordering, certifying, referring, or prescribing physician or eligible professional; and (2) the provider or supplier furnishing the service. Currently, failure to comply with these requirements may result in the revocation of the responsible party's enrollment under § 424.535(a)(1).

Comment: A commenter was concerned that certain dentists, such as locum tenens dentists or those who were formerly employed by a government agency or group dental practice, may be unable to comply with this proposal because they do not have control over the relevant documents. The commenter recommended that CMS place the burden for any recordkeeping compliance solely on the individual or entity who controls such records.

Response: Consistent with long-standing CMS policy, the physician for whom the locum tenens physician is substituting is responsible for retaining and furnishing the application documentation under § 424.516(f).

After consideration of the comments received, and for reasons stated previously, we are finalizing our revisions to § 424.516(f) as proposed notwithstanding the non-finalization of our proposal to revise § 424.507.

12. Opt-Out Physicians and Practitioners

As previously referenced, no Medicare payment (either directly or indirectly) will be made for services furnished by opt-out physicians or practitioners, except as permitted in accordance with §§ 405.435(c) and 405.440. The effects of opting-out are described in § 405.425. Section 405.425(i) states that an opt-out physician or practitioner who has not been excluded under sections 1128, 1156 or 1892 of the Act may order, certify the need for, or refer a beneficiary for Medicare-covered items and services, provided he or she is not paid directly or indirectly for such services (except as provided in § 405.440). Under § 405.425(j), an excluded physician or practitioner may not order, prescribe, or certify the need for Medicare-covered items and services, except as provided in 42 CFR 1001.1901, and must otherwise comply with the terms of the exclusion in accordance with 42 CFR 1001.1901.

We proposed to revise § 405.425(i) and (j) by including opt-out physicians and practitioners who are revoked under § 424.535. Thus, a revoked opt-out physician or practitioner would be unable to order, prescribe, and certify the need for or refer a beneficiary for Medicare-covered services and items except as otherwise provided in those paragraphs. We expressed concern that revoked physicians and practitioners who have opted-out could, through inappropriate ordering and certifying practices, pose a risk to Medicare beneficiaries. Our concern is heightened because opt-out physicians and practitioners are not subject to the same stringent enrollment and verification processes that enrolled physicians and practitioners are. Therefore, we believed that these proposed changes were necessary.

We received the following comment regarding our proposal:

Comment: A commenter expressed concern that there is no publicly available list of revocations and that, other than receiving a claim denial, it is unclear how the recipient of an order, prescription, certification, or referral would be able to identify an opt-out provider's revocation status. The commenter stated that CMS should not hold hospitals to this standard until there is a viable way to determine which ordering physicians have been revoked.

Response: We appreciate the commenter's concerns. While we are finalizing this provision, we may examine means to expand the scope of revocation data that is available to the public.

After reviewing the comment received, we are finalizing our proposal with three exceptions.

First, the opening language of § 405.425(j) states: ''The physician or practitioner who is excluded . . . or whose Medicare enrollment is revoked under § 424.535 of this chapter may not order, prescribe or certify the need for Medicare-covered items and services except . . . '' We are changing the language ''items and services'' to ''items, services, and drugs . . . '' The addition of the term ''drugs'' is meant to correspond with our addition of ''prescribe'' to § 405.425(j). To ensure consistency with this addition, we are also changing the language in § 405.425(i) that reads ''may order, certify the need for, prescribe, or refer a beneficiary for Medicare-covered items and services'' to ''may order, certify the need for, prescribe, or refer a beneficiary for Medicare-covered items, services, and drugs''.

Second, the closing language of § 405.425(j) reads, '' . . . except as provided in § 1001.1901 of this title, and must otherwise comply with the terms of the exclusion in accordance with § 1001.1901 effective with the date of the exclusion.'' Because § 1001.1901 of this title only applies to excluded individuals and entities, we are clarifying that the references to § 1001.1901 in § 405.425(j) are inapplicable to revocations. We are therefore revising § 405.425(j) to read, '' . . . except, with respect to exclusions, as provided in § 1001.1901 of this title, and must otherwise comply with the terms of any exclusion in accordance with § 1001.1901 effective with the date of the exclusion.''

Third, the opening language of § 405.425(i) specifies that: ''The physician or practitioner who has not been excluded under sections 1128, 1156 or 1892 of Social Security Act or whose Medicare enrollment is not revoked under § 424.535 of this chapter may order, certify the need for, prescribe. . . .'' We are changing the phrase ''or whose Medicare enrollment'' to ''and whose Medicare enrollment.'' This is to clarify our intention that a physician or practitioner must be neither excluded nor revoked in order to conduct the activities addressed in paragraph (i).

13. Moratoria

Under § 424.570(a), CMS may impose a temporary moratorium on the enrollment of new Medicare providers and suppliers of a particular type or the establishment of new practice locations of a particular type in a particular geographic area. Per § 424.570(a)(2)(i), a moratorium is imposed when CMS determines that there is a significant potential for fraud, waste, or abuse with respect to a particular provider or supplier type, a particular geographic area, or both. Consistent with this authority, we have published several **Federal Register** documents announcing the imposition of temporary moratoria on the enrollment of HHAs and certain ambulance suppliers. (See, for example, the July 31, 2013 (78 FR 46339) and February 4, 2014 (79 FR 6475) **Federal Registers**.)

We proposed several changes to § 424.570(a).

a. Change in Practice Location

Section 424.570(a)(1)(iii) states that a temporary moratorium does not apply to changes in practice locations, changes in provider or supplier information (such as phone numbers), or changes in ownership (except changes in ownership of HHAs that would require an initial enrollment under § 424.550)).

We proposed three revisions to § 424.570(a)(1)(iii).

The first proposal divided the current version of § 424.570(a)(1)(iii) into paragraphs (a)(1)(iii)(A), (B), and (C) so that each requirement mentioned in paragraph (a)(1)(iii) could be addressed individually.

Secondly, we clarified in paragraph (a)(1)(iii)(A) (which would address practice locations) that a temporary moratorium applies to situations in which a provider or supplier is changing a practice location from a location outside the moratorium area to a location inside the moratorium area. We saw no difference between this situation and one in which a provider or supplier is opening a brand new practice location in the moratorium area. In both cases, an additional site is being established in the moratorium area, something the moratorium is designed to prevent. We thus believed this change was necessary.

Lastly, we proposed to clarify the existing policy in paragraph (a)(1)(iii)(C) by removing the language ''under § 424.550''. Under § 489.18(c), if an HHA changes ownership as specified in § 489.18(a), the existing provider agreement is automatically assigned to the new owner. However, if the new owner declines to accept the assets and liabilities of the HHA and refuses assignment of the provider agreement, § 489.18(c) does not apply and the HHA must enroll as a new provider via an initial enrollment. The existing reference to § 424.550 in paragraph (a)(1)(iii) may have caused some confusion on this point. Accordingly, we proposed to remove this reference in order to clarify current policy.

b. Application of Moratorium

Section 424.570(a)(1)(iv) currently states that a temporary enrollment moratorium does not apply to any enrollment application that has been approved by the enrollment contractor but not yet entered into PECOS at the time the moratorium is imposed. We proposed to revise this paragraph to state that a temporary moratorium does not apply to any enrollment application received by the Medicare contractor prior to the date the moratorium is imposed.

In the moratoria that have been imposed, some providers and suppliers have spent significant resources to prepare for enrollment only to have their Form CMS–855 applications denied near the end of the enrollment process because of the sudden imposition of a moratorium. This has been especially problematic for HHAs—(1) whose Form CMS–855A applications, at the time a moratorium is imposed, have been recommended for approval by the contractor; (2) that have successfully completed a state survey; and (3) whose applications and survey results have been forwarded by the state to a CMS Regional Office for final review. This entire process, much of which occurs after an application is received by the contractor but before the application is finally approved by the contractor, can take a substantial amount of time, and the considerable resources the provider or supplier may have expended by this point are effectively lost when CMS imposes a moratorium.

We stated that this has been an unintended consequence of the moratoria. In our view, the overall objective of the moratoria—the need to reduce the potential for fraud, waste, or abuse in certain geographic areas—can be equally satisfied by not applying a moratorium to applications submitted before the moratorium is imposed, irrespective of whether they have been approved. Therefore, we believed that our proposed ''prior to the moratorium date'' threshold was an appropriate balance between limiting provider burden and protecting the integrity of the Medicare program and the Trust Funds.

We also proposed in § 424.570(a)(1)(iv) to change the term ''enrollment contractor'' to ''Medicare contractor.'' We believed the latter term is more consistent with CMS' use of MACs.

We received the following comments regarding our proposed revisions to § 424.570.

Comment: A few commenters supported our proposed addition of § 424.570(a)(1)(iv).

Response: We appreciate the commenters' support.

Commenter: A commenter opposed our proposed revision to § 424.570(a)(1)(iii), stating that it would prevent an entity from relocating its office into the moratoria area while maintaining its existing service area. As a result, the moratoria would erect unnecessary barriers to enhancement of care quality and block the cost efficiencies that relocation could bring. The commenter recommended that CMS permit a practice location change from outside the moratoria area to inside the area when a provider can demonstrate that it currently has the moratoria area as a service area.

Response: We respectfully disagree with this recommendation. As we stated in the proposed rule, we see no difference between the relocation of an office into a moratorium area and the opening of a brand new practice location in the moratorium area. In both cases, an additional site is being established in the moratorium area, something the moratorium is designed to prevent. We also stress that § 424.570 is and has been focused on the specific location of the office site itself rather than on the larger area that the provider services. Therefore, we believe this change is necessary and vital to protecting the integrity of the Medicare program.

Comment: A commenter stated, for CMS' consideration, that the current prohibitions against (1) the establishment of new HHA branch offices and (2) allowing established provider organizations outside the moratorium area to expand into the moratorium area can lock in some of the providers that CMS seeks to address through its program integrity initiatives. In other words, the commenter explained, the prohibitions in some ways maintain the status quo rather than producing the desired change. . The commenter added that it could also restrict the opportunity for patients and referral sources to choose a more compliant provider organization.

Response: We appreciate the commenter's suggestion. For reasons previously stated, however, we believe that our revision of § 424.570(a)(1)(iii) is consistent with the purpose of a temporary enrollment moratorium and is warranted in order to protect the integrity of the Medicare program.

After consideration of these comments, we are finalizing our proposed revisions to § 424.570.

14. Surety Bonds

Since 2009, certain DMEPOS suppliers have been required under § 424.57(d) to obtain, submit, and maintain a surety bond in an amount of at least $50,000 as a condition of enrollment. Paragraph (d)(5)(i) states that the surety bond must guarantee that the surety will—within 30 days of receiving written notice from CMS containing sufficient evidence to establish the surety's liability under the bond of unpaid claims, CMPs, or assessments—pay CMS a total of up to

the full penal amount of the bond in the following amounts: (1) The amount of any unpaid claim, plus accrued interest, for which the DMEPOS supplier is responsible; and (2) the amount of any unpaid claims, CMPs, or assessments imposed by CMS or the OIG on the DMEPOS supplier, plus accrued interest. Paragraph (d)(5)(ii), meanwhile, states that the surety bond must provide that the surety is liable for unpaid claims, CMPs, or assessments that occur during the term of the bond.

We have specific procedures for collecting monies from sureties in accordance with § 424.57(d)(5) and have recouped several million dollars via these procedures. However, we have encountered instances where the surety has failed to submit payment to CMS, notwithstanding its obligation to do so under both § 424.57(d)(5) and the surety bond's terms. We stated in the proposed rule that CMS should not permit a DMEPOS supplier to use that particular surety when the latter has not fulfilled its legal responsibilities to us as the obligee under the surety bond. We thus proposed in new § 424.57(d)(16) that CMS may reject an enrolling or enrolled DMEPOS supplier's new or existing surety bond if the surety that issued the bond has failed to make a required payment to CMS in accordance with § 424.57(d). This means that we could reject any and all surety bonds furnished by the surety to enrolling or enrolled DMEPOS suppliers under § 424.57(d), not just the surety bond(s) on which the surety refused to make payment. If we reject a surety bond under proposed § 424.57(d)(16), the enrolling or enrolled DMEPOS supplier would have to obtain a bond from a new surety in order to enroll in or maintain its enrollment in Medicare.

We illustrated how § 424.57(d)(16) would operate with this example. Suppose a surety has issued surety bonds for DMEPOS Suppliers W, X, Y, and Z, all of which are enrolled in Medicare. CMS sought to collect from the surety on the bond issued for Supplier X, but the surety failed to make payment. We would have the discretion to—(1) reject the bonds for W, X, Y, and Z, thus requiring the suppliers to obtain new bonds from a different surety; and (2) refuse to accept future bonds issued to DMEPOS suppliers by the non-compliant surety.

In making a determination under items (1) and (2) in the previous sentence, we proposed to consider the following factors:

- The total number of Medicare-enrolled DMEPOS suppliers to which the surety has issued surety bonds.
- The total number of instances in which the surety has failed to make payment to CMS.
- The reason(s) for the surety's failure(s) to pay.
- The percentage of instances in which the surety has failed to pay.
- The total amount of money that the surety has failed to pay.
- Any other information that CMS deems relevant to its determination.

Although CMS would reserve the right to reject all of a surety's existing bonds with Medicare-enrolled DMEPOS suppliers if the surety failed to make even one required payment, CMS would take into account the circumstances surrounding the surety and its failure to make payment per the aforementioned factors.

Comment: A commenter opposed our proposed addition of § 424.57(d)(16) on several grounds. First, the commenter contended that the proposal changes the surety bond requirement under § 424.57(d) from a conditional obligation for the surety (that is, the surety must currently pay only if, for instance, (1) the DMEPOS supplier's non-payment of the claim; and (2) sufficient evidence to establish liability being presented to the surety) to a demand obligation. The commenter stated that the threat of rejection under § 424.57(d)(16) as a means of coercing sureties to pay legitimately disputed claims effectively converts the bond to a demand obligation.

Second, the commenter stated that the surety should have an opportunity before an impartial tribunal to present its defenses (and those of the DMEPOS supplier) and explain why payment is not due. Sureties are not supposed to advocate for the supplier but merely pay the bond. The imposition of § 424.57(d)(16) requires due process for the surety.

Third, the commenter stated that sureties would respond to the increased risk that § 424.57(d)(16) poses by tightening its underwriting requirements, meaning that fewer DMEPOS suppliers would be able to obtain bonds.

Fourth, the commenter explained that § 424.57(d)(16) would effectively amount to a debarment of the surety; debarment authority, however, is vested in the Department of Treasury.

Fifth, the commenter stated that § 424.57(d)(16) does not comply with the requirements of 31 CFR 223.17, which permits an agency to refuse future bonds from a surety ''for cause''; this includes failing to pay an administratively final bond obligation. Some of the commenters contentions included—(1) CMS does not articulate its procedures and ''for cause'' standards for declining to accept bonds in an agency regulation or for declining bonds in specific cases; (2) the provision does not define when a bond obligation becomes administratively final under agency procedures, establish advance notice, or give the surety an opportunity to cure or rebut; (3) the provision does not allow the surety an opportunity to be heard, to confront and cross-examine witnesses, to be represented by for counsel, to submit evidence, or to have an impartial decision-maker.

Sixth, the commenter contended that there is a strong presumption of judicial review of administrative actions; with respect to prohibiting sureties from providing bonds, Congress has actually required judicial involvement. The commenter stated that § 9305(e) prohibits a surety from providing further bonds if it has failed to pay a final judgment. The commenter concluded because the proposed regulation does not comply with 31 CFR 223.17, including rudimentary due process protection, CMS may not exercise any authority to reject bonds.

Response: We appreciate the commenter's concerns. After reviewing these comments, and given the complexity of certain operational aspects of our proposal, we are not finalizing proposed § 424.57(d)(16) in this rule.

Comment: A commenter stated that CMS should not implement § 424.57(d)(16) without several prerequisites. First, CMS must create tools to help sureties understand a supplier's history and also develop a process for issuing claims against sureties. Second, the commenter believed that since sureties likely have not seen or commented on this proposal, CMS should issue a proposed rule specific to the surety bond issues under discussion; this should include a process for filing a claim against a surety. Third, the GAO should complete a study on the entire surety bond process and its guidelines before CMS institutes the policies addressed in this final rule. Fourth, CMS should clarify that one bond can cover the requirement for both Medicare and Medicaid programs for a particular location. The commenter stated that many state Medicaid programs will not accept a supplier's bond if it shows CMS as the Obligee but will require the supplier to obtain a second bond showing Medicaid as the Obligee. Since the bonds are required to be under the Obligee of CMS, the commenter stated, one bond should cover the requirements for both programs.

Response: As previously stated, we are not finalizing proposed § 424.57(d)(16).

After consideration of the comments received, we are not finalizing proposed § 424.57(d)(16).

15. Reactivation

Under § 424.540(a), a provider's or supplier's Medicare billing privileges may be deactivated if the provider or supplier fails to—(1) submit any Medicare claims for 12 consecutive calendar months; (2) report a change to its Medicare enrollment information within 90 calendar days (or, for changes in ownership or control, within 30 days); or (3) furnish complete and accurate information and all supporting documentation within 90 calendar days of receipt of notification from CMS to submit an enrollment application and supporting documentation, or to resubmit and certify the accuracy of its enrollment information. To reactivate its billing privileges, the provider or supplier must follow the requirements of § 424.540(b). Specifically—

- Paragraph (b)(1) states that if the provider or supplier is deactivated for any reason other than non-submission of a claim, the provider or supplier must submit a new enrollment application or, when deemed appropriate, recertify that the enrollment information currently on file with Medicare is correct; and
- Paragraph (b)(2) states that if the provider or supplier is deactivated for non-submission of a claim, it must recertify that the enrollment information currently on file with Medicare is correct and furnish any missing information as appropriate.

We proposed to revise paragraph (b) in two ways. Paragraph (b)(1) would state that in order for a deactivated provider or supplier to reactivate its Medicare billing privileges, it must recertify that its enrollment information currently on file with Medicare is correct and furnish any missing information as appropriate. Paragraph (b)(2) would state that notwithstanding paragraph (b)(1), CMS may for any reason require a deactivated provider or supplier to submit a complete Form CMS–855 application as a prerequisite for reactivating its billing privileges.

There were several reasons for these proposed changes. First, the existing language in § 424.540(b)(1) had been a source of confusion for providers and suppliers because it does not articulate what the phrase ''when deemed appropriate'' means. There also is some repetition between paragraphs (b)(1) and (2), for both indicate that a recertification is acceptable. Our proposed version of paragraph (b)(1), which combined parts of existing paragraphs (b)(1) and (2), clarified that a provider or supplier may use recertification—regardless of the deactivation reason—as a means of reactivation.

Second, we believed that CMS should have the discretion to require at any time the submission of a complete Form CMS–855 reactivation application irrespective of the deactivation reason. The Form CMS–855 captures information about the provider or supplier that, in the case of a reactivation, would help us determine whether the provider or supplier is still in compliance with Medicare enrollment requirements. A recertification, meanwhile, generally only consists of a statement from the provider or supplier that the information on file is correct and, if necessary, the submission of Form CMS–855 pages containing updated information. Therefore, the Form CMS–855 collects more information than the recertification submission, and there may be situations where CMS determines that a complete application must be submitted. These could include, but are not limited to, the following:

- The provider or supplier was deactivated for failing to submit a claim for 12 consecutive months and has been deactivated for at least 6 months.
- The provider or supplier does not have access to internet-based PECOS.
- The provider or supplier was deactivated for failing to report a change of information.

In these circumstances, respectively, the provider or supplier—(1) has not submitted a claim for at least 18 months; (2) cannot view its existing enrollment data and thus may be unable to determine the accuracy of this information; and (3) previously failed to comply with Medicare requirements by not timely reporting changed enrollment data. Such instances, in our view, raise questions as to the validity of the provider's or supplier's current enrollment information and possibly its compliance with existing Medicare requirements, thus warranting a complete Form CMS–855 if we deem it necessary. We stressed that we could request a complete application in any reactivation situation, not simply those outlined in this section. We solicited comment on whether we should restrict the reasons for which CMS may request a complete reactivation application and, if so, what those reasons should be.

While we proposed to revise § 424.540(b)(1) and (2) as previously described, we did not propose any changes to § 424.540(b)(3).

We received no comments regarding our proposed changes to § 424.540 and are therefore finalizing them.

16. Changes to Definition of Enrollment

We proposed several additional changes to 42 CFR part 424 to address the general concept of enrollment as it pertains to the Form CMS–855O (OMB Control No. 0938–1135). This form is used by physicians and eligible professionals seeking to enroll in Medicare solely to order and certify certain items or services and/or prescribe Part D drugs.

We received no comments on any of the proposals outlined in this section II.B.16. Given, however, our above-referenced non-finalization of our revisions to § 424.507 and our elimination of the Part D enrollment requirement, we believe that many of these section II.B.16 proposed changes may be unnecessary. We are therefore finalizing, modifying, and/or not finalizing these provisions as follows.

a. Definition of ''Enroll/Enrollment'' (§ 424.502)

We proposed several revisions of the existing definition of ''Enroll/Enrollment'' in § 424.502.

First, the opening sentence of the definition currently specifies that enroll/enrollment means the process that Medicare uses to establish eligibility to submit claims for Medicare-covered items and services, and the process that Medicare uses to establish eligibility to order or certify Medicare-covered items and services. We proposed to change this definition to specify that enroll/enrollment means the process that Medicare uses to establish eligibility to submit claims for Medicare-covered items and services, and the process that Medicare uses to establish eligibility to order, certify, refer, or prescribe Medicare-covered Part A or B services, items or drugs or to prescribe Part D drugs.'' There were two reasons for this proposed change. One was to align this definition with the language in our proposed revisions to § 424.507(a) and (b). (See section II.A.12. of this final rule with comment period.) The second was to address in this definition the enrollment provisions in § 423.120(c)(6) relating to Part D drugs.

Second, the current version of paragraph (2) of the definition of ''Enroll/Enrollment'' specifies that except for those suppliers that complete the Form CMS–855O form, CMS-identified equivalent, successor form or process for the sole purpose of obtaining eligibility to order or certify Medicare-covered items and services, validating

the provider or supplier's eligibility to provide items or services to Medicare beneficiaries. We proposed to change this to provide that except for those suppliers that complete the Form CMS–855O, CMS-identified equivalent, successor form or process for the sole purpose of obtaining eligibility to order, certify, refer, or prescribe Medicare-covered Part A or B services, items or drugs or to prescribe Part D drugs, validating the provider's or supplier's eligibility to provide items or services to Medicare beneficiaries. This revision was to clarify that a supplier's completion of the Form CMS–855O solely to obtain eligibility to order, certify, refer, or prescribe Medicare-covered Part A or B services, items or drugs or to prescribe Part D drugs, does not convey Medicare billing privileges to the supplier.

Third, and for reasons similar to those involving our proposed change to paragraph (2) of the definition of ''Enroll/Enrollment,'' we proposed to revise paragraph (4) thereof. The new version of paragraph (4) would specify that except for those suppliers that complete the Form CMS–855O, CMS-identified equivalent, successor form or process for the sole purpose of obtaining eligibility to order, certify, refer, or prescribe Medicare-covered Part A or B services, items or drugs or to prescribe Part D drugs, granting the Medicare provider or supplier Medicare billing privileges.

As we are not finalizing our proposed revisions to § 424.507 and in light of the rescission of the Part D enrollment requirement, we do not believe these proposed changes to the definition of ''Enroll/Enrollment'' in § 424.502 are necessary. We therefore decline to finalize them.

b. Revision to § 424.505

We also proposed to replace the language in § 424.505 that states ''to order or certify Medicare-covered items and services'' with ''to order, certify, refer, or prescribe Medicare-covered Part A or B services, items or drugs or to prescribe Part D drugs.''

This was to clarify that completion of the Form CMS–855O does not convey Medicare billing privileges to the supplier. For the same reasons behind our non-finalization of our proposed revisions to the ''Enroll/Enrollment'' definition in § 424.502, we are not finalizing our proposed change to § 424.505.

c. Revision to § 424.510(a)(3)

Section 424.510(a)(3) currently specifies that to be enrolled solely to order and certify Medicare items or services, a physician or non-physician practitioner must meet the requirements specified in paragraph (d) except for paragraphs (d)(2)(iii)(B), (d)(2)(iv), (d)(3)(ii), and (d)(5), (6), and (9). We proposed to revise this to specify that to be enrolled solely to order, certify, refer, or prescribe Medicare-covered Part A or B services, items or drugs or to prescribe Part D drugs, a physician or non-physician practitioner must meet the requirements specified in paragraph (d) except for paragraphs (d)(2)(iii)(B), (d)(2)(iv), (d)(3)(ii), and (d)(5), (6), and (9). This proposal was intended to include within the purview of § 424.510(a)(3) those suppliers who are enrolling via the Form CMS–855O pursuant to § 423.120(c)(6) or pursuant to our proposed revisions to § 424.507(a) and (b).

However, for reasons similar to those discussed previously, we are not finalizing this change.

d. Revision to § 424.535(a)

We also proposed to change the term ''billing privileges'' in the opening paragraph of § 424.535(a) to ''enrollment.'' The paragraph would thus read: ''CMS may revoke a currently enrolled provider's or supplier's Medicare enrollment and any corresponding provider agreement or supplier agreement for the following reasons''. This was to clarify that the revocation reasons in § 424.535(a) apply to all enrolled parties, including suppliers who are enrolled solely to order, certify, refer, or prescribe Medicare-covered Part A or B services, items, or drugs, or to prescribe Part D drugs; the reasons are not limited to providers and suppliers that have Medicare billing privileges. Thus, for instance, a Part D prescriber's Medicare enrollment may be revoked if one of the revocation reasons in § 424.535(a) applies.

We note also that the opening paragraph of § 424.530(a), which deals with denials, uses the term ''enrollment'' as well. Our change to § 424.535(a) would achieve consistency with § 424.530(a) in this regard.

Notwithstanding the non-finalization of the proposed changes to § 424.507 and the removal of the Part D enrollment requirement, we believe that this proposed clarification to § 424.535(a) remains necessary. This is because some providers and suppliers (for example, DMEPOS suppliers; physicians who certify home health services) are still required under § 424.507(a) to enroll in Medicare to order or certify certain Medicare items or services. We are thus finalizing this revision.

In addition, we are removing the phrase ''or supplier agreement'' from § 424.535(a). We believe that the reference to ''supplier agreement'' in this paragraph has caused confusion.

17. Miscellaneous Comments

We also received the following miscellaneous comments:

Comment: A commenter questioned whether a prescriber whose enrollment has been denied or revoked and has been terminated on the Medicare Individual Provider List will still qualify for provisional fills and, if not, how they will be identified.

Response: This comment is outside the scope of this rule.

Comment: A commenter stated that there must be stricter requirements that individuals must meet before being approved for Medicare, Medicaid, or CHIP. The commenter stated that—(1) there should be a marketing committee established to go into low-income neighborhoods to educate individuals about government health insurance assistance programs and to work to enroll individuals who meet the requirements; and (2) after these individuals are enrolled into a qualified health insurance program, there should be a follow-up conducted every 3 months to ensure that the individual still meets the requirements and that there is no increase in his or her income. The commenter added that conducting daily license and background monitoring will help individuals who are misusing their access to these federal health insurance assistance programs. Moreover, the commenter stated that there should be a fine for individuals who commit fraud relating to a failure to report changes that have been made to their income or even if they no longer need the assistance of their federal health insurance.

Response: This comment is outside the scope of this rule.

Comment: A commenter commended CMS for continuing work on anti-fraud issues in the proposed rule and recommended that the agency emphasize the use of cost-effective anesthesia care provided by certified registered nurse anesthetists (CRNAs). Anesthesiologist medical direction reimbursement models, the commenter stated, contribute to increased healthcare system costs without improving access or quality. They also present fraud risk when medical direction requirements are not met by the anesthesiologist submitting a claim for such services. The commenter stated that CMS should—(1) direct Medicare, Medicaid and CHIP programs to

consider such costs in developing and carrying out their systems for anesthesia reimbursement, and to favor reimbursement systems that support the most cost-effective and safe anesthesia delivery models, such as for non-medically directed CRNA services; and (2) direct states to eliminate from their Medicaid plans such requirements for medical direction of CRNA services.

Response: This comment is outside the scope of this rule.

Comment: A commenter stated that the proposed rule does not specify how long CMS might suspend payments to wrongly accused providers. The commenter requested further clarification on the timeline CMS envisions for due process in cases where payments are suspended due to suspected fraud.

Response: This comment is outside the scope of this rule.

Comment: A commenter expressed concern about providers and suppliers repeatedly changing their names and identities to avoid sanctions. The commenter suggested that if the provider is about to be revoked due to a questionable situation, it should be allowed 30 days to change its practices or procedures. If it fails to comply with CMS regulations—(1) its enrollment should be revoked; and (2) the revoked status should apply to the name of the provider as well as everyone in management, billing, and any other identifications regarding that business. This would prevent the owners from filing for a new federal employee identification number (FEIN), a new business license from the state, and ''opening'' a new business in the same location. If CMS could develop this ability, the commenter stated, it could track this type of fraudulent activity and prevent such situations from happening.

Response: We appreciate these suggestions and will take them into consideration as we continue to explore additional means of protecting the Trust Funds from improper behavior.

Comment: A commenter stated that when seeking enrollment in Medicare, a provider should furnish supporting documentation to establish its identity and the business that it is conducting. This could include—(1) documentation of state licensure to practice and/or state business licensure; (2) federal payroll information proving that the provider has employees or is paying payroll taxes; (3) receipts of sales for services to customers that are not being billed through CMS; (4) any and all legal matters that are being investigated for fraud or misrepresentation; (5) for practicing physicians, a copy of his or her malpractice insurance, and a report of the number of malpractice cases pending or settled on his or her behalf; and (6) a background report from the OIG on all employees and managing partners that will be involved in the billing process. The commenter stated that by providing this additional information, CMS can more easily determine the nature and character of the individual or business applying for enrollment.

Response: We appreciate these suggestions and will take them into consideration as we continue to explore additional means of protecting the Trust Funds from improper behavior.

Comment: A commenter stated that the high burden of the proposed rule could force innocent providers and suppliers to downscale or close their practices altogether, which could cause access to care issues. Another commenter stated that the final rule should focus on organizations with historical integrity issues versus a ''wide swath'' approach.

Response: We appreciate these concerns. As previously explained, however, we have, among other things—(1) modified our affiliation disclosure provisions; and (2) consistently emphasized in this final rule with comment period that we will exercise our denial and revocation authorities in a cautious, careful, and judicious manner, and not as a routine matter of course.

Comment: A commenter expressed concern about the disclosure of SSNs as part of the enrollment process, citing the need to protect providers and suppliers and their owners and managers against identity theft. The commenter suggested that CMS—(1) consider the need to eliminate SSN disclosure; (2) work with key stakeholders to integrate Medicare/Medicaid/NPI enrollment into PECOS, thereby reducing the need for multiple submissions of SSNs to different programs and eliminating duplicative work for providers, CMS, contractors and the states; and/or (3) consider establishing a pseudo-identifier in lieu of the NPI.

Response: We appreciate these suggestions and will take them into consideration as we continue to explore additional means of protecting the Trust Funds from improper behavior.

Comment: A commenter stated that, with more than 60,000 DMEPOS suppliers enrolled in Medicare, CMS should discontinue its practice of allowing Medicare beneficiaries to submit claims for DMEPOS services.

Response: This comment is outside the scope of this rule.

Comment: A commenter requested that CMS clarify which NPI is entered into the ordering and referring field of the 837P by a locum tenens physician.

Response: This comment is outside the scope of this rule.

Comment: A commenter recommended that CMS discontinue permitting physicians and other practitioners who have their Medicare billing privileges suspended from ordering, certifying, or prescribing in the Medicare program during the period of said suspension.

Response: This comment is outside the scope of this rule. We also note that, under current policy, Medicare billing privileges are not ''suspended'' but are instead either denied or revoked. However, Medicare payments may be suspended under § 405.371.

Comment: A commenter recommended that CMS implement the necessary edits within its claims processing systems to link a claim with a Medicare order or certification for DMEPOS or lab services with the name and NPI of the practitioner who furnished the service. The commenter believed that this change would prevent suppliers from submitting a claim with the name and NPI of a physician that has not seen the patient.

Response: This comment is outside the scope of this rule.

Comment: A commenter requested clarification regarding the rationale for allowing Medicare beneficiaries to submit—(1) DMEPOS claims from suppliers that are not accredited; and (2) the CMS–1490 without the name and NPI of the ordering physician. With the latter, the commenter requested an explanation for why CMS does not have policies for its contractors to request that name and NPI of the physician, recommended that contractors require beneficiaries to submit this information, and that contractors verify this information before paying a Medicare claim.

Response: This comment is outside the scope of this rule.

Comment: A commenter requested clarification as to whether a beneficiary can submit a claim for a DMEPOS item when the DMEPOS supplier is not enrolled in Medicare. The commenter stated that CMS permits this practice.

Response: This comment is outside the scope of this rule.

Comment: A commenter sought clarification regarding—(1) whether a beneficiary can be paid for DMEPOS when the item or service is obtained from a non-Medicare supplier or is ordered or referred from an unenrolled physician; (2) how contractors verify whether the ordering physician is Medicare-enrolled when the information about the ordering

physician is not on the Medicare beneficiary claim form; (3) whether Medicare will pay a beneficiary for services when the DMEPOS supplier does not have a valid supplier number; (4) the number of beneficiary DMEPOS claims paid in 2015; and (5) whether CMS' new policies for Medicare beneficiaries will prevent beneficiaries from submitting claims for off-the-shelf DMEPOS or items purchased at a store that does not participate in Medicare.

Response: These comments are outside the scope of this rule.

Comment: A commenter urged CMS and its contractors to structure their teams to measure and promote continuity with provider organizations. The commenter stated that it is important for CMS and its contractors to build solid working relationships with local providers and organizations that serve Medicare beneficiaries.

Response: This comment is outside the scope of this rule.

Comment: A commenter stated that the proposed rule unfairly penalizes all providers and suppliers even when there is no risk of fraud, abuse and waste. Specifically, the proposal—(1) increases the administrative burden and complexity of the enrollment process; (2) severely penalizes providers for inadvertent errors without any recourse for them; (3) potentially exceeds and contravenes the statutory authority granted to CMS through the Affordable Care Act; (4) allows CMS to pierce to corporate veil and ignore corporate formalities; and (5) creates a de facto exclusion with no accompanying due process. In particular, the commenter stated that due process for a denied or revoked provider or supplier under the rule is impossible within the existing appeals process. The commenter contended that the current appeals process furnishes too short a timeframe for providers and suppliers to compile and submit evidence of compliance, does not permit expedited appeals (which could severely hurt cash flow), and contains no process for timely restoring a provider's or supplier's enrollment and for reversing any concomitant overpayment demand or recalling any debt referral. The commenter made two specific recommendations concerning the appeals process. First, CMS should modify its existing appeals processes so that providers and suppliers can effectively appeal denials and revocations. Second, in the case of an overpayment demand for services billed from the retroactive effective date of a revocation, the overpayment obligation should be stayed to allow providers and suppliers to utilize the appeals process.

Response: This comment is outside the scope of this rule.

Comment: A commenter recommended that CMS eliminate the 36-month rule under § 424.550(b). The commenter stated that this would enable compliance-oriented providers to make business decisions that are in the best interests of their operations, their patients and communities, and in some instances, their institutional connections.

Response: This comment is outside the scope of this rule.

Comment: A commenter stated that it strongly supported the proposed rule. The commenter explained that CMS must ensure that only qualified providers and suppliers that meet and maintain compliance with the program's participation requirements are enrolled. The screening and enrollment processes now in place because of the Affordable Care Act, the commenter added, help serve that goal, and the enhanced policies, authorities, and requirements described in the proposed rule would do even more to enhance these processes.

Response: We appreciate the commenter's support.

Comment: A commenter recommended that CMS consider sharing information with other public and private payers concerning the actions taken under this rule. For example, if CMS revokes or denies an enrollment based on a risk of fraud, waste, or abuse, it should share that information with other payers, including Medicare Part C or D contractors, state Medicaid managed care programs, and private health insurers. Such information-sharing, the commenter stated, is critical to the effective and timely prevention of health care fraud and abuse throughout America's health care system.

Response: We appreciate this comment but believe it is outside the scope of this final rule with comment period.

Comment: A commenter stated that the only factor CMS should use to determine whether an individual or organization is eligible to participate in Medicare is verifiable proof of that party's fraudulent or criminal activity.

Response: We respectfully disagree. We must take steps to protect the Medicare program, its beneficiaries, and the Trust Funds against wasteful and abusive behavior and potential threats (which can eventually materialize into very serious harm) to the same extent we do against actual fraudulent and criminal activity.

Comment: A commenter stated that this and other regulations will continue to discourage physicians from wanting to see Medicare and Medicaid patients. The commenter added that so long as physicians ''follow the rules,'' they should not have to report their personal investments to the public.

Response: We respectfully disagree that this rule will discourage physicians from seeing Medicare and Medicaid patients. We have issued other provider enrollment regulations in previous years, yet the number of enrolled physicians continues to increase. Although we are unclear which rules and personal investments the commenter is referring to, we believe that our new authorities in this final rule with comment period will aid our program integrity efforts without unduly burdening the vast majority of honest and legitimate providers and suppliers.

Comment: A commenter encouraged the streamlining of the process through which MA plans are notified about providers who are excluded, sanctioned, or opted-out of Medicare. The commenter believed this will help ensure that MA plans are not paying or including these providers in their networks. The commenter made several other recommendations. First, CMS should amend its look-back periods for both participating and non-participating providers. Participating providers should have a 1 year look-back period due to contracting constraints; non-participating providers be given a 3-year look-back period. The commenter believed these changes would replace the current 7-year look-back period. Second, if a provider opted-out of Medicare or Medicaid (or both), a private fee agreement between the provider and member should be mandated for a provider to bill the member for any services rendered. Third, CMS should make clear that a provider opting out of Medicare or Medicaid cannot otherwise bill the member without a private fee agreement and that there will consequences for doing so.

Response: This comment is outside the scope of this rule.

Comment: A commenter stated that CMS' proposed provider enrollment standards are mostly proper and effective program integrity measures, though the commenter added several recommendations and observations. First, any program integrity measure must be targeted to the fraud matter at issue; random, untargeted measures could harm to Medicare beneficiaries and all other stakeholders. Second, anti-fraud initiatives should be evidence-based with a demonstrated return on investment. Third, stakeholder support is essential to achieving success in

program integrity; program integrity measures should be developed in a transparent manner that allows for public input. Fourth, there must be clear legal authority for any program integrity activity. Fifth, anti-fraud measures should not erect a barrier to appropriate health care access. Sixth, any program integrity initiative should properly distinguish fraud from unintentional noncompliance. Finally, the outcome of program integrity measures should be reliable with no ''innocent victims'' resulting.

Response: We appreciate these suggestions and observations and will consider them as we continue our efforts to further strengthen Medicare program integrity.

Comment: CMS refers to denials, revocations, and terminations of enrollment in the rule. A commenter questioned whether these include actions that have been reversed on appeal and/or informal review. The commenter recommended that such actions be limited to those that are final and/or those that CMS has not reversed.

Response: We are unclear as to the specific provisions to which the commenter is referring, though we believe the reference is to § 424.519. For reasons previously discussed, we believe that denials, revocations, and terminations qualify as disclosable events even if they are under appeal.

Comment: A commenter noted that CMS referred in the proposed rule to § 424.535(a)(8)(ii), which permits revocation if the provider ''has a pattern or practice of submitting claims that fail to meet Medicare requirements.'' The commenter requested that CMS define a ''pattern'' of submitting noncompliant claims.

Response: We appreciate this comment but believe it is outside the scope of this final rule with comment period. We refer the commenter to our discussion of this provision in the previously mentioned December 5, 2014 final rule, which finalized § 424.535(a)(8)(ii).

Comment: A commenter requested that CMS furnish guidance on how rejected Form CMS–855 applications will be treated as opposed to Form CMS–855 application denials. The commenter did not believe that an inadvertent clerical error in leaving a data element on the Form CMS–855 incomplete should be considered a denied enrollment.

Response: We believe this comment is outside the scope of this rule, though we note that existing procedures regarding rejected and denied applications can be found in CMS Publication 100–08, Program Integrity Manual, Chapter 15.

Comment: A commenter stated that CMS should establish processes to ensure that providers and suppliers—(1) promptly receive notice of uncollected debt (for example, sending the notices to multiple addresses in the provider's or supplier's enrollment record or creating a database that providers and suppliers can query to determine whether CMS believes an uncollected debt is owed to CMS or a state Medicaid agency); and (2) are given a reasonable amount of time to repay a debt (for example, 60 days) and that the debt need not be reported as uncollected debt until that time period has elapsed.

Response: We appreciate these suggestions and observations and will consider them as we continue our efforts to further strengthen Medicare program integrity.

Comment: A commenter stated that CMS should avoid broadly painting clinicians as perpetrators of fraud, for this fundamentally damages the clinician-patient relationship. It also makes it difficult to ensure that patients will follow through on recommendations provided by their treating professional.

Response: While we appreciate this comment, we have an obligation to protect Medicare, its beneficiaries, and the Trust Funds against improper activities. This rule is, accordingly, directed towards parties that engage in such behavior.

Comment: A commenter stated that CMS should revoke all of a supplier's NPIs if an owner is convicted of fraud in a court of law.

Response: We appreciate this comment and note that several of our finalized provisions will permit CMS to expand a revocation to a provider's or supplier's other locations and enrollments.

Comment: A commenter stated that CMS should—(1) automatically terminate a supplier that has not submitted a claim in 18 months; and (2) consider requiring suppliers to maintain all enrollment records electronically via PECOS. The commenter believed that the latter would better enable suppliers to periodically review their enrollment records to ensure their accuracy.

Response: We appreciate these suggestions and observations and will consider them as we continue our efforts to further strengthen Medicare program integrity.

Comment: A commenter stated that while making certain that suppliers maintain accurate enrollment information, CMS should be similarly required to ensure that PECOS records are up to date. The commenter recommended that a timeframe (preferably 30 days) be established in which CMS must confirm that online records are up to date and accurate.

Response: We appreciate these suggestions and observations and will consider them as we continue our efforts to further strengthen Medicare program integrity.

Comment: A commenter recommended that the effective date of enrollment be the date the supplier meets accreditation and licensure requirements for a particular location. The commenter stated that because this rule may significantly increase the volume of Form CMS–855S applications received, CMS should ensure that any delays resulting therefrom are considered in establishing a date.

Response: We believe that the commenter's first comment is outside the scope of this final rule with comment period. Regarding the second comment, we understand the concerns about workload, and we will take steps to ensure that applications are processed as promptly as possible.

Commenter: A commenter stated that CMS and its contractors should have a defined timeframe in which various processes related to enrollment applications must be completed; the commenter cited, as examples, a new application being processed within 60 days and a change of information or ownership being processed in 90 days. The commenter stated that such requirements should extend to Medicaid programs, adding that—(1) some state Medicaid programs take up to 9 months to process a change of address; and (2) suppliers are not usually notified that their application has been processed and approved and that state programs should be required to do this.

Response: We appreciate this comment but believe it is outside the scope of this final rule with comment period.

Comment: A commenter stated that CMS should (1) clarify how it will treat health care professionals whose Medicare payments were improperly suspended because they did not actually commit fraud; and (2) make certain that health care professionals whose Medicare enrollment is revoked or denied have the opportunity to discuss their matter with CMS.

Response: We appreciate this comment but believe it is outside the scope of this final rule with comment period.

Comment: A commenter stated that the costs associated with implementing and forcing adherence to the proposed rule outweigh the potential benefits to CMS. The vast majority of information will be useless to CMS, the commenter

contended, and not worth the time it takes for CMS to review the data. The commenter added that the rule's requirements—(1) could push more physicians away from CMS; and (2) are impossible to comply with, difficult to enforce, and most likely unconstitutional.

Response: We disagree that the costs associated with this rule will outweigh the benefits to CMS. CMS has an obligation to protect the Medicare program, the Trust Funds, and beneficiaries, and we believe this rule will go far towards achieving these objectives. Also, and for reasons stated previously, we do not believe this rule—(1) will discourage physicians from enrolling and remaining in Medicare; or (2) lack legal authority. As we are unclear which provisions the commenter believes are impossible to comply with and difficult to enforce, we are unable to address this particular comment.

Comment: A commenter recommended that CMS either—(1) incorporate data collected by the Council for Affordable Quality Healthcare (CAQH) ProView portal system for enrollment; or (2) adopt a system that has usability similar to the CAQH portal. CMS could use the CAQH data as a starting point (subject to review by the physician and a CMS credential verification contractor) to reduce the amount of information doctors must provide to CMS. The commenter stated that CMS' adoption of such a system would—(1) enable physicians and their practices to spend less time and resources on enrollment, focus more on accurately disclosing information that may help CMS discover fraud and abuse, and spend more time treating patients; and (2) improve the overall enrollment process by simplifying and increasing the usability of the current enrollment system.

Response: We appreciate this comment but believe it is outside the scope of this final rule with comment period.

Comment: A commenter stated that the proposed rule did not specify whom within CMS or its contractors will apply the outlined factors and, if applicable, deny or revoke enrollment. Given the potential consequences of a denial or revocation, the commenter continued, CMS should require contractors to escalate cases to the CMS Regional Office for assessment of the factors and final denial or revocation actions.

Response: We appreciate the commenter's concern. This information may be issued via subregulatory guidance.

Comment: A commenter stated that there should be a ''phase-in period'' or a stay on edits within CMS' systems to enable providers to come into compliance with the proposed requirements.

Response: We respectfully disagree that the implementation of this rule's provisions should be delayed beyond the timeframes prescribed therein. This is particularly true concerning our new denial and revocation reasons, which are necessary for the protection for the Medicare program, its beneficiaries, and the Trust Funds.

Comment: A commenter stated that CMS should clarify—(1) which penalties would apply to specific types of offenses; and (2) the amount of time a potential ban from the Medicare program would be.

Response: We are unable to provide such specifics in this final rule with comment period. The imposition of a denial, revocation, or termination and the length of any subsequent reenrollment bar will depend upon the particular facts of the situation.

Comment: A commenter stated that it agreed that some of the proposed denial and revocation reasons regarding affiliations may be appropriate, but urged CMS implement a materiality threshold to avoid denials and revocations for immaterial deficiencies that do not adversely affect program integrity.

Response: We are unclear as to the specific denial and revocation reasons to which the commenter believes a materiality standard should be applied. Nonetheless, we emphasize that many of our existing and proposed denial and revocation reasons contained regulatory-prescribed criteria that CMS must carefully take into account before taking action; generally speaking, the degree of the provider's or supplier's conduct is considered in each case.

Comment: Several commenters stated that if CMS plans to use contractors to implement this rule, it should avoid creating a ''bounty system'' that inappropriately incentivizes contractors (for example, based on the volume or percentage of providers whose enrollments or revalidations they deny or revoke).

Response: CMS contractors are not rewarded or otherwise given financial contractual incentives for denying or revoking provider or supplier enrollments or a percentage thereof.

Comment: A commenter stated that publicly-traded companies should not be required to report any direct or indirect ownership interests held by mutual funds or other large investment or stock-holding vehicles on the Form CMS–855. Since the exact percentage of such interests can fluctuate daily and because this data can be very difficult to obtain, it is unreasonable and burdensome for publicly-traded providers or suppliers to track and report such changes.

Response: We appreciate this comment but believe it is outside the scope of this final rule with comment period.

Comment: A commenter recommended that CMS consider implementing similar reporting obligations under Medicare and Medicaid. The commenter believed that consistency between the Medicare and Medicaid programs would—(1) help ensure that the enhanced program integrity protections in this rule apply to both programs; and (2) reduce providers' compliance burden through uniform reporting requirements, even if said requirements reflects the regulatory schemes of the more stringent state Medicaid agencies.

Response: We appreciate this comment but believe it is outside the scope of this final rule with comment period.

Comment: A commenter suggested that CMS specifically include notification given to the state confirming the provider's compliance with the conditions of participation as a mitigating circumstance in determining whether a revocation under § 424.535 is warranted. Inclusion of this factor would reduce the concerns of compliant home care organizations regarding the proposed rule.

Response: We appreciate this comment but believe it is outside the scope of this rule.

III. Provisions of the Final Rule With Comment Period

This final rule with comment period incorporates the provisions of the proposed rule. Those provisions of this final rule with comment period that differ from the proposed rule are as follows:

- We are not finalizing our proposed changes to §§ 424.505, 424.507, 424.510, or to the definition of Enroll/enrollment in § 424.502.
- Changes to ''Disclosure of affiliations'' (Medicare § 424.519 and Medicaid § 455.107):

++ We are adding a definition of ''disclosable event'' to §§ 424.502 and 455.101 that will apply to, respectively, §§ 424.519 and 455.107. A ''disclosable event'' under these definitions means any of the following:

—Currently has an uncollected debt to Medicare, Medicaid, or CHIP, regardless of: the amount of the debt;

whether the debt is currently being repaid (for example, as part of a repayment plan); or whether the debt is currently being appealed;

—Has been or is subject to a payment suspension under a federal health care program (as that latter term is defined in section 1128B(f) of the Act), regardless of when the payment suspension occurred or was imposed;

—Has been or is excluded by the OIG from participation in Medicare, Medicaid, or CHIP, regardless of whether the exclusion is currently being appealed or when the exclusion occurred or was imposed; or

—Has had its Medicare, Medicaid, or CHIP enrollment denied, revoked or terminated, regardless of: (i) The reason for the denial, revocation, or termination; (ii) whether the denial, revocation, or termination is currently being appealed; or (iii) when the denial, revocation, or termination occurred or was imposed.

++ We are adding the following language to the end of the opening paragraph of § 424.519(a): ''to the definition of disclosable event in § 424.502:'' We are making a similar change to the opening paragraph of § 455.107(a) with respect to § 455.101.

++ Proposed §§ 424.519(a)(1)(ii) and 455.107(a)(1)(ii) are being finalized as ''Civil money penalties imposed under this title''.

++ Proposed §§ 424.519(a)(1)(iii) and 455.107(a)(1)(iii) are being finalized as ''Assessments imposed under this title.''

++ We are revising the entirety of § 424.519(b) to now read as set out in the regulatory text.

—In §§ 424.519(f) and 455.107(f), we are changing the term ''action'' to ''disclosable event.''

—We are not finalizing proposed § 424.519(h)(1) and (h)(2)(i).

—Proposed § 424.519(h)(2)(ii) is being finalized as new paragraph (h) ''Duplicate data''.

++ We are revising 455.107(b) to specify the following:

++ Under paragraph (b)(1)(i), a state, in consultation with CMS, must select one of the two options identified in paragraph (b)(2) for requiring the disclosure of affiliation information.

++ Under paragraph (b)(1)(ii), a state may not change its selection under paragraph (b) after it has been made.

++ Paragraph (b)(2)(i) describes the first option. Specifically, in a state that has selected this option, a provider that is not enrolled in Medicare but is initially enrolling in Medicaid or CHIP (or is revalidating its Medicaid or CHIP enrollment information) must disclose any and all affiliations that it or any of its owning or managing employees or organizations (consistent with the terms ''person with an ownership or control interest'' and ''managing employee'' as defined in § 455.101) has or, within the previous 5 years, had with a currently or formerly enrolled Medicare, Medicaid, or CHIP provider or supplier that has a disclosable event (as defined in § 455.101).—

++ Paragraph (b)(2)(ii) describes the second option. Specifically, in a state that has selected this option, upon request by the state, a provider that is not enrolled in Medicare but is initially enrolling in Medicaid or CHIP (or is revalidating its Medicaid or CHIP enrollment information) must disclose any and all affiliations that it or any of its owning or managing employees or organizations (consistent with the terms ''person with an ownership or control interest'' and ''managing employee'' as defined in § 455.101) has or, within the previous 5 years, had with a currently or formerly enrolled Medicare, Medicaid, or CHIP provider or supplier that has a disclosable event (as defined in § 455.101). The state will request such disclosures when it, in consultation with CMS, has determined that the initially enrolling or revalidating provider may have at least one such affiliation.

++ In § 455.107(d), we are adding the language ''in consultation with the Secretary'' at the end thereof.

++ We are not finalizing proposed § 455.107(h) and are redesignating § 455.107(i) as § 455.107(h). We are changing the heading of § 424.530(a)(13) from ''Affiliation that poses undue risk of fraud'' to simply ''Affiliation that poses an undue risk''.

• In § 424.530(a)(14), we are changing the phrase ''particular State Medicaid program'' to ''State Medicaid program''. We are also adding ''(as that term is defined in § 424.502)'' to § 424.530(a)(14)(i)(B) as a reference to the regulatory definition of final adverse actions.

• In § 424.535(a)(12), we are changing ''particular Medicaid program'' to ''State Medicaid program''. Also, we are changing the term ''terminate'' to ''revoke'' in § 424.535(a)(12)(ii) to clarify that CMS revokes enrollments.

• In § 424.535(a)(17), we are adding the word ''appropriately'' before ''refers''. Also, we are adding the language ''(to the extent this can be determined)'' to the end of the factors enumerated in § 424.535(a)(17)(ii) and (iii).

• In § 424.535(a)(20), we are modifying the beginning of the section to read as set out in the regulatory text.

• We are revising § 405.425(i) to state that the physician or practitioner who has not been excluded under sections 1128, 1156 or 1892 of the Act and whose Medicare enrollment is not revoked under § 424.535 of this chapter may order, certify the need for, prescribe, or refer a beneficiary for Medicare-covered items, services, and drugs, provided the physician or practitioner is not paid, directly or indirectly, for such services (except as provided in § 405.440).

• In § 405.425(j), we are changing the language ''items and services'' to ''items, services, and drugs''. Also, we are revising the closing language of § 405.425(j) by revising the last clause of the paragraph to clarify the compliance with and the effective date of the exclusion.

• We are not finalizing proposed § 424.57(d)(16).

• We are adding a new paragraph (c) to § 405.800 that discusses additional years applied to a provider's or supplier's existing reenrollment bar under § 424.535(c)(2)(i) and the notification requirements associated therewith. These requirements apply only to the years added to the existing reenrollment bar under § 424.535(c)(2)(i) and not to the original length of the reenrollment bar, which is not subject to appeal.

• We are revising § 498.3(b)(17) as follows:

++ The existing version of paragraph (b)(17) will be redesignated as paragraph (17)(i).

++ New paragraph (b)(17)(ii) will address the addition of years to a provider's or supplier's existing reenrollment bar;

++ New paragraph (b)(17)(iii) will address appeals concerning § 424.535(c)(3).

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicited comment on the following issues:

• The need for the information collection and its usefulness in carrying out the proper functions of our agency.

• The accuracy of our estimate of the information collection burden.

• The quality, utility, and clarity of the information to be collected.

• Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

In the proposed rule, we estimated a total information collection burden of $285 million in each of the first 3 years of this rule. Most of this cost stemmed from our affiliation proposal (§§ 424.519 and 455.107), the principal burden of which would come from—(1) all initially enrolling and revalidating providers and suppliers having to completion of the applicable enrollment application sections; and (2) the time involved in researching data. We solicited public comment and feedback regarding these burdens.

This collection of information section will address the costs associated with this rule. The regulatory impact analysis section of this final rule with comment period will analyze the rule's savings.

A. ICRs Related to Affiliations (§§ 424.519 and 455.107)

Proposed §§ 424.519 and 455.107 required that a Medicare, Medicaid, or CHIP provider or supplier disclose information about present and past affiliations with certain currently or formerly enrolled Medicare, Medicaid, or CHIP providers and suppliers. Medicare providers and suppliers will furnish this information via the paper or internet-based version of the Form CMS–855 applications, which will be updated to collect this data.

Though the specific vehicle for collecting affiliation information a from Medicaid and CHIP providers and suppliers is left to the state's discretion, we anticipate that the information will be provided on an existing enrollment form or through a separate form created by the state. The principal burden involved with this collection will be the time and effort needed to—(1) obtain this information; and (2) complete and submit the appropriate section of the applicable form.

We proposed that the data would be submitted upon initial enrollment and revalidation; new affiliations and changes in current affiliations would also have to be reported. As discussed in section II.A. of this final rule with comment period, and with the exception of the first option under § 455.107(b), we are now restricting the reporting requirements to instances where CMS or the state, as applicable, requests the information. The following estimates in section V.A. of this final rule with comment period reflect our final policies for §§ 424.519 and 455.107.

1. Medicare

We estimated in the proposed rule that it would take each provider or supplier an average of 10 hours to obtain and furnish this information. Although some commenters, as described later in section, expressed concern with the 10-hour estimate for obtaining and furnishing this data after a CMS request, we are retaining our estimate of 10 hours. We believe that a typical provider or supplier's effort to secure the data, coupled with furnishing the information on the appropriate Form CMS–855 application, will require, on average, 10 hours or less in most cases. It is true that for large providers or suppliers, the average time expenditure may be higher than 10 hours; for small providers and suppliers, however, the average time expenditure will likely be considerably less than 10 hours. Therefore, we believe that 10 hours remains a reasonable estimate for purposes of the information collection requirement (ICR) cost burden projection.

We cannot conclusively predict the number of instances in which CMS will request the reporting of disclosable affiliations under § 424.519 in each of the first 3 years of the rule. However, for purposes of this information collection request only, and as we indicated previously in this rule, we believe that average of 2,500 requests per year is a reasonable projection. This results in an estimated annual hour burden of 25,000 hours.

Per our experience, we believe that the reporting provider's or supplier's administrative staff (for example, officer managers and support staff) will be responsible for securing and listing affiliation data on the Form CMS–855. According to the most recent wage data provided by the Bureau of Labor Statistics (BLS) for May 2018, the mean hourly wage for the general category of ''Office and Administrative Support Occupations'' is $18.75 per hour (see *http://www.bls.gov/oes/current/oes_nat.htm#430000*). With fringe benefits and overhead, the per hour rate is $37.50. Given the foregoing, and using this per hour rate, we estimate the annual ICR burden for initially enrolling and revalidating providers and suppliers from § 424.519 to be 25,000 hours (2,500 requests × 10 hours) at a cost of $937,500 (25,000 hours × $37.50).

2. Medicaid and CHIP

We cannot project the number of instances in which states will request the reporting of disclosable affiliations under § 455.107. This is particularly true given that, under revised § 455.107(b)—(1) states will have two options for requesting affiliation information, and we do not know which states will select which alternatives; and (2) we do not know when each state will update its applicable data collection mechanism to reflect the § 455.107(b) requirements.

3. Collection of Information From States

As we stated in the proposed rule, it is possible that states may eventually be required to report to CMS certain information regarding its processing of data submitted under § 455.107. This may include, for example, the number of applications in which an affiliation was reported and the number of cases in which the state determined that an affiliation posed an undue risk. However, we are unable to estimate the possible ICR burden because we do not know whether, to what extent, and by what vehicle data concerning § 455.107 will be reported to CMS.

4. Total Burden

We estimate a total annual ICR burden of our affiliation disclosure requirements of 25,000 hours at a cost of $937,500.

B. ICRs Related to Our Proposed and Finalized Denial Reasons in § 424.530 and Revocation Reasons in § 424.535

We do not anticipate any collection burden resulting from our revisions to the denial authorities in § 424.530 or the revocation authorities in § 424.535. An appeal from a denial of enrollment or an appeal from a revocation of enrollment are both exempt from the PRA. There are no other potential sources of ICR that would result from the final rule's changes to the denial or revocation authorities.

C. ICRs Related to Changes in Maximum Reenrollment Bars (§ 424.535(c)) and the Establishment of Reapplication Bars (§ 424.530(f))

We do not anticipate any collection burden resulting from our revisions to § 424.535(c). The burden, in fact, may actually decrease because certain providers and suppliers may be barred from Medicare for a longer period of time and thus will submit Form CMS–855 applications less frequently. In addition, we do not anticipate any collection burden resulting from our addition of § 424.530(f). Additional applications will not be submitted because of this provision.

D. Documentation

We revised § 424.516(f) to state that a provider or supplier furnishing a Part A

or B service, item, or drug, as well as the physician or, when permitted, eligible professional who ordered, certified, referred, or prescribed the Part A or B service, item, or drug must maintain documentation for 7 years from the date of the service and furnish access to that documentation upon a CMS or Medicare contractor request.

The burden associated with the requirements in § 424.516(f) will be the time and effort necessary to both maintain documentation on file and to furnish the information upon request to CMS or a Medicare contractor. While the requirement is subject to the PRA, we believe the associated burden is negligible. As discussed in the previously referenced November 19, 2008 final rule (73 FR 69915) and the April 27, 2012 final rule (77 FR 25313), we believe the burden associated with maintaining documentation and furnishing it upon request is a usual and customary business practice.

E. ICRs Related to Temporary Moratorium (§ 424.570)

We were unable in the proposed rule to estimate the number of applications that will be approved or denied as a result of our changes to § 424.570, for we had insufficient data on which to base a precise projection. To enhance our ability to formulate such an estimate, we solicited comment on—(1) whether an annual figure of 2,000 potentially impacted providers and suppliers could serve as a reasonable approximation; and (2) the potential cost burden to providers and suppliers. We received no specific comments on either issue and remain unable to provide a reasonable estimate because we do not have adequate information with which to do so.

F. ICRs Related to Reactivations (§ 424.540(b))

We were unable in the proposed rule to project the number of certifications that will be submitted versus the number of complete Form CMS–855 applications. To enhance our ability to formulate a projection of the ICR burden associated with this provision, we solicited comment on—(1) whether an annual figure of 10,000 instances in which a Form CMS–855 will be requested could serve as a reasonable approximation; and (2) the potential cost burden to providers and suppliers. We received no comments and remain unable to formulate a reasonable estimate due to the lack of sufficient data.

G. Revision to Definition of Enrollment (§ 424.535(a))

As this revision is primarily technical in nature, we do not foresee an associated ICR burden.

H. Total ICR Overall Burden

Based on the foregoing, we estimate an annual ICR burden over each of the first 3 years of the rule of 25,000 hours at a cost of $937,500. These costs are limited to our affiliation provisions, for, as discussed above, we do not anticipate costs associated with any of our other provisions. We note that the annual ICR burden in this final rule with comment period is significantly less than the predicted $285 million dollar annual ICR burden in the proposed rule based on our election to pursue a phased-in approach for Medicare, Medicaid, and CHIP affiliation disclosures.

I. Comments Received on Our ICR Estimates in the Proposed Rule

The following is a summary of the comments we received on our ICR estimates in the proposed rule:

Comment: Several commenters contended that the $289.8 million cost estimate and the 10-hour estimate in the proposed rule associated with reporting disclosable affiliations were too low. They generally stated that these projections did not account for lost productivity to physician practices, including diversion of staff from clinical and related duties that directly impact and support patient care. A commenter stated that the rule's cost does not justify the value of any benefits accruing from the rule.

Response: We disagree. As stated previously, we will be taking a phased-in approach with the affiliations provisions. The overwhelming majority of enrolling and revalidating providers will not be requested to provide affiliations disclosures upon the effective date of this rule. Accordingly, consistent with our earlier discussion, the annual costs over the first 3 years of this rule will be less than $1 million because far fewer providers and suppliers than estimated in the proposed rule will be required to disclose affiliation data.

The 10-hour estimate, which formed the basis of our initial $289.8 projection in the proposed rule, accounts for the fact that many providers and suppliers are small in nature (for example, solo practitioners and small group practices) and will accordingly have few, if any, affiliations. It is true that larger providers and suppliers may need to spend more than 10 hours in researching affiliation information. Insofar as any diversion from patient care, we do not believe that reporting affiliation data upon initial enrollment and once every 3 or 5 years thereafter (depending on provider or supplier type) will negatively impact beneficiary services. Finally, and as shown in Table 2, we believe that the prevention of problematic providers and suppliers from accessing the Trust Funds will more than offset the costs associated with this rule.

Comment: A commenter stated that providers and suppliers would need to (1) develop systems to track and monitor all identified affiliation relationships; and (2) rely on higher paid, more sophisticated employees or an outside consultant or attorney, at a rate substantially higher than $34 per hour.

Response: We disagree. We believe that our removal of proposed §§ 424.519(h)(1) and (h)(2)(i) and 455.107(h) will effectively eliminate the burden of regularly tracking disclosable affiliation data. Also, it has been our experience that the researching and reporting of ownership and managerial information on the Form CMS–855 is typically performed by the provider's or supplier's administrative staff. We believe that providers and suppliers will use this same approach with disclosable affiliation data.

Comment: Several commenters stated that the 30-minute estimate for reporting a new affiliation or a change to an existing affiliation is too low.

Response: As previously stated, we are not finalizing proposed §§ 424.519(h)(1) and (h)(2)(i) and 455.107(h).

Comment: A commenter stated that CMS (1) underestimated the time necessary to complete the Form CMS–855O, (2) underestimated the value of the doctors' time at $93.74 (or $187.48 with fringe benefits and overhead), (3) did not account for the cost to patients and society of diverting so many hours of doctors' time away from patient care for the completion of government forms, and (4) unrealistically limited the ICR cost to the rule's first 3 years.

Response: We disagree with these comments. Our estimated time for completing the Form CMS–855O is consistent with our prior public projections as well as with feedback we have received from the provider community. Also, our projection regarding physician wages and our use of the 3-year ICR estimate are consistent with policies established by the Office of Management and Budget. Regarding the third comment, and as alluded to earlier, we do not believe that—(1) reporting affiliation data upon initial

enrollment and once every 3 or 5 years thereafter; or (2) completing the Form CMS–855O will negatively affect patient care. However, we note that we are not finalizing our proposed changes to § 424.507, which we believe would alleviate further the burden on the physician community.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this final rule with comment period; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Attention: CMS Desk Officer, CMS–6058–P

Fax: (202) 395–6974; or

Email: *OIRA_submission@omb.eop.gov*

V. Regulatory Impact Analysis

A. Statement of Need

As previously stated, this final rule with comment period is necessary to implement sections 1866(j)(5) and 1902(kk)(3) of the Act, which require providers and suppliers to disclose information related to any current or previous affiliation with a provider or supplier that has uncollected debt; has been or is subject to a payment suspension under a federal health care program; has been excluded from participation under Medicare, Medicaid, or CHIP; or has had its billing privileges denied or revoked. This final rule with comment period is also necessary to address other program integrity issues that have arisen. We believe that our finalized provisions will—(1) enable CMS and the states to better track current and past relationships involving different providers and suppliers; and (2) assist our efforts to stem fraud, waste, and abuse, hence protecting the Medicare Trust Funds. Failure to publish this rule, we believe, would continue to enable certain parties engaging in fraud, waste, and abuse to bill the Medicare program, endangering both the Trust Funds and Medicare beneficiaries.

B. Savings and Impact

1. Background

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4) and Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)) and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule—(1) having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We explained in section IV. of this final rule with comment period that the costs of our provisions will not exceed $100 million in any of the first 3 years of this final rule with comment period. However, as discussed we expect that annual federal budget savings over this 3-year period will exceed $100 million. Therefore, we estimate that this rulemaking is economically significant as measured by the $100 million threshold and thus is a major rule under the Congressional Review Act. We have accordingly prepared this RIA.

2. Savings

a. Affiliations (§§ 424.519 and 455.107)

As explained in Section I. of this rule, over the last 5 years, $51.9 billion dollars (with adjusted factors applied) has been paid to 2,097 entities with affiliations stemming from the revoked Medicare enrollment of an associated individual or other entity. If the affiliations/undue risk revocation authority we are finalizing had been in place during that period, we project that CMS would have taken revocation action in approximately 40 percent of identified prior affiliation cases (or approximately 838 cases) based on a determination of undue risk of fraud, waste, or abuse. Accordingly, we would not have paid those problematic providers who we know are at the core of the ongoing fraud risk we face. As a result, over the last 5 years the program would have seen a resulting $20.7 billion in cost-avoidance savings, or an average of $4.14 billion per year. We project for purposes of this final rule with comment period that similar savings could be achieved once our affiliation provisions become effective.

We believe it is appropriate, however, to outline a range of savings estimates for our affiliation provisions, given the potential for fluctuations. We thus restate the projections we outlined in Table 1, based on figures of 20 percent, 40 percent, and 60 percent:

TABLE 2—RANGE OF PROJECTED SAVINGS RELATED TO AFFILIATIONS PROVISIONS

Percentage	5-Year affiliations authority total	Annual affiliations authority total (billion)
60% of the 5-year adjusted factor total of $51.9 billion	$31.1 billion over 5 years	$6.22
40% of the 5-year adjusted factor total of $51.9 billion	$20.7 billion over 5 years	4.14
20% of the 5-year adjusted factor total of $51.9 billion	$10.3 billion over 5 years	2.06

We plan to begin updating our enrollment applications within 1 year of publication of the final rule with comment. Once all of the enrollment forms are completed and have gone through the PRA process (during which we will solicit public comment on our burden estimates for completing and submitting affiliation data via the Form CMS–855), and subregulatory guidance has been disseminated to the states regarding phase one, we will begin the process of entering phase two of the affiliations disclosure process. As we have stated throughout this rule, the initial period of the affiliation requirement will enable CMS to carefully monitor and analyze the progress and operational components of the phased-in approach in preparation for the subsequent future rulemaking.

b. New Denial Reasons in § 424.530 and Revocation Reasons in § 424.535

In section IV. of the proposed rule, we explained the difficulty in predicting the number of denials and revocations that would result from our proposed revisions. Considering that these would be new provisions, there were no historical statistics upon which we could base adequate estimates. Nonetheless, we outlined the following tentative estimates strictly for purposes of soliciting public comment on the number of denials or revocations that CMS was likely to undertake each year:

TABLE 3—PROJECTED DENIALS/REVOCATIONS IN PROPOSED RULE

Denial/revocation authority	Projected number of denials/revocations for purposes of comment solicitation
Different Name, Numerical Identifier or Business Identity (§§ 424.530(a)(12) and 424.535(a)(18))	8,000
Billing for Non-Compliant Location (§ 424.535(a)(20))	(*)
Abusive Ordering, Certifying, Referring or Prescribing of Part A or B Services, Items or Drugs (§ 424.535(a)(21))	4,000
Referral of Debt to the United States Department of Treasury (§ 424.535(a)(17))	2,000
Reporting Requirements (§ 424.535(a)(9))	10,000
Payment Suspensions (§ 424.530(a)(7) and § 405.371)	1,000
Denials and Revocations for Other Federal Program Termination or Suspension (§ 424.530(a)(14))	2,500
Extension of Revocation (§ 424.535(i))	**12,000
Voluntary Termination Pending Revocation (§ 424.535(j))	2,000

* We were and remain unable to devise a concrete estimate for this revocation reason. While there is data concerning the number of locations that are terminated from Medicare for non-compliance each year, we cannot predict the number of additional locations that will be terminated due to § 424.535(a)(20). In other words, if a provider or supplier has five locations and one is terminated for non-compliance, we have no means of predicting whether any or all of the remaining four locations will be terminated. This is because each provider's and supplier's circumstances are different.

** The 12,000 figure represents revoked enrollments. We projected (for purposes of comment solicitation only) that this would involve 5,000 providers and suppliers.

We received no comments on these estimates. After careful consideration, and for several reasons, we believe that said projections were too high and that a smaller, uniform number encompassing all of the denial and revocation reasons listed earlier is more appropriate. First, and as we explain throughout this final rule with comment period, we do not intend to deny and revoke providers and suppliers as a routine matter of course. We recognize the legal significance of such actions and the effect it can have on the provider or supplier in question. We reiterate that we will only exercise our authority under these new denial and revocations very cautiously and only after the most careful and thorough consideration of—(1) the regulatorily-outlined factors associated with each reason; and (2) the circumstances surrounding the particular case. This warrants, in our view, significantly smaller estimates than what we proposed for public comment. Second, while we made tentative estimates in the proposed rule for comment solicitation purposes, we made clear that we did not, and indeed could not, know how many instances in which each denial and revocation authority would be exercised. These were entirely new provisions for which there was no historical data upon which to base reasonable estimates. We continue to hold this view and accordingly believe that the best approach for projecting the number of denials and revocations is to establish a single figure encompassing all of the authorities identified in Table 1.

We project that our new revocation authorities will lead to 2,600 new revocations per year, which we believe is a conservative and, as explained previously, a necessarily cautious estimate. This will result in 10-year savings to the federal government of $4.16 billion, a figure predicated on internal CMS data indicating a per provider annual payment amount of $160,000 (2,600 × $160,000). The average annual savings to the federal government will thus be $416 million.

c. Maximum Reenrollment Bars (§ 424.535(c)) and the Establishment of Reapplication Bars (§ 424.530(f))

We estimate that our reenrollment and reapplication bar provisions will annually impact 400 Medicare revocations, leading to savings above and beyond that which CMS experiences today based on the current three-year maximum reenrollment bar.

We project that this would result in estimated actual savings of $1.79 billion over 10 years based on our earlier project per provider amount of $160,000. The following example illustrates the rationale behind this calculation. The year 1 batch of 400 revocations would have 7 years of actualized savings during the first 10 year period. The first 3 years would not generate new savings because the previous maximum reenrollment bar was 3 years. Thus, savings from this rule would begin in year 4 and run through year 10 yielding a savings of $448 million for the year 1 batch of revocations ($160,000 × 400 × 7). Additionally, the year 2 batch of 400 revocations would have 6 years of actualized savings during the first 10 year period. In year 1 these entities were not revoked and years 2 through 4 did not generate new savings. Thus, savings for the year 2 batch of 400 revocations would begin in year 5 and run through year 10 resulting in a savings of $384 million ($160 × 400 × 6). This pattern would continue for each year's batch of 400 revocations. The total 10 year

savings is, accordingly, anticipated to be $1.79 billion.

Furthermore, we project that this would result in a ''caused savings'' of $4.48 billion based on our earlier projected per provider amount of $160,000 (400 × 10 × 7 × $160,000). As noted above, ''caused savings'' refers to the full amount of money that will be saved based on the new reenrollment and reapplication bars over a 10-year period; a large portion of the savings will be made after the first 10-year period of interest and will not be fully actualized until year 20.

The following example illustrates the rationale behind this calculation. In year 1, 400 revocations would occur. Currently, and until the provisions in this rule are effective, CMS may impose a reenrollment bar of 1 to 3 years. Thus, the year 1 batch of 400 revocations mentioned earlier will not have actualized savings derived from this rule until year 4 in the 10-year period following revocation. The 7 years of savings associated with the year 1 batch of 400 revocations would be actualized over the next 10 years, with all 7 of those years falling within the initial 10-year period. Additionally, the average annual actualized savings during the initial 10-year period would be $179 million (the total actualized savings during the first 10-year period of interest would be $1.79 billion). This is because each year's batch of 400 revocations will have 1 less year of actualized savings during the first 10-year period. For instance, the year 1 batch of 400 revocations will have all 7 years of savings actualized within the first 10-year period, the year 2 batch will only have 6 of its 7 years of savings actualized within the first 10-year period, etc.

d. Totals

Table 4 outlines the projected annual savings to the federal government for the applicable provisions described previously. (For affiliations, we are using the aforementioned 40 percent figure, which we believe is the most accurate notwithstanding our establishment of a projected range in Tables 1 and 2).

TABLE 4—PROJECTED ANNUAL SAVINGS TO THE FEDERAL GOVERNMENT

Provision	Savings per year ($)
Affiliation-Based Revocations	4,140,000,000
Other new Revocation Authorities	416,000,000
Reenrollment and Reapplication Bars	179,000,000
Total	4,735,000,000

Given, therefore, our annual savings estimates for affiliation-based revocations (using our median 40 percent figure), revocations from other new authorities, and reenrollment and reapplication bars, we project a total savings over a 10-year period of $47.35 billion.

2. Impact

We believe there will be three principal impacts associated with our finalized provisions. First, denied and revoked suppliers could incur costs associated with potential lost billings due to denials and revocations. Second, we estimate that the denial, revocation, reenrollment bar, and reapplication bar provisions described earlier will result in approximately $4.735 billion dollars of annual savings to the federal government and, by extension, the Medicare Trust Funds and the taxpayers. Third, we believe that CMS, Medicare contractors, and the states may incur costs, in implementing and enforcing our affiliation disclosure provision. These could include information technology system changes and provider education. We estimate total costs of $937,500 in each year following implementation of the proposed rule.

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. It requires that the costs associated with significant new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. This final rule with comment period is considered an E.O. 13771 regulatory action. We estimate that this rule generates $0.73 million in annualized costs in 2016 dollars, discounted at 7 percent relative to year 2016, over a perpetual time horizon. Details on the estimated costs of this rule can be found in the preceding analyses.

In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget.

Finally, we do not anticipate any significant impact on beneficiary access to care from the provisions in this final rule with comment period. Only a minute fraction of providers and suppliers, when compared to the entire population of providers and suppliers enrolled in Medicare, will be revoked or denied as a result of these new and revised revocation and denial authorities.

C. Anticipated Effects

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organization, and small governmental jurisdictions. Most entities and most other providers and suppliers are small entities, either by nonprofit status or by having revenues less than $7.5 million to $38.5 million in any 1 year. Individuals and states are not included in the definition of a small entity.

For several reasons, we do not believe that this final rule with comment period will have a significant economic impact on a substantial number of small businesses. First, the furnishing of affiliation data will be required very infrequently, for example, once every 5 years for non-DMEPOS suppliers. The cost burden per provider or supplier (10 hours for affiliation data) will likely be less than $1,000, which should not be a significant burden on a provider or supplier. Second, it is true that some small businesses could be denied enrollment or have their enrollments revoked under our provisions. Yet the number of denials and revocations per year is currently—and will continue to be under our new provisions —very small when compared to the total number of enrolled providers and suppliers nationwide. Therefore, we do not believe that our new denial and revocation reasons will have a significant impact on a substantial number of small businesses.

D. Effects on Small Rural Hospitals

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and therefore the Secretary has determined, that this final rule with comment period will not have a significant impact on the operations of a substantial number of small rural hospitals.

E. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before

issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2018, that is approximately $150 million. This rule does not mandate any requirements for state, local or tribal governments or for the private sector.

F. Executive Order 13132

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law or otherwise has federalism implications. Since this regulation does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

G. Accounting Statement and Table

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a0004/a-4/pdf*), in Table 5 we have prepared an accounting statement showing estimates, over the first 3 years of the rule's implementation, of the total cost burden to providers and suppliers for reporting data using, respectively, 7 percent and 3 percent annualized discount rates.

TABLE 5—ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED COSTS AND FEDERAL BUDGET SAVINGS

[$ in millions]

Category	Estimates	Units		
		Year dollar	Discount rate (%)	Period covered
Costs: *				
Annualized Monetized ($million/year)	0.9	2017	7	FY 2019–FY 2021.
	0.9	2017	3	FY 2019–FY 2021.
Savings to the Federal Government:				
Annualized Monetized ($million/year)	4,735	2017	7	FY 2019–FY 2021.
	4,735	2017	3	FY 2019–FY 2021.

* Cost associated with the information collection requirements.

H. Alternatives Considered

We considered and have finalized several alternatives to reduce the overall burden of our provisions.

First, we contemplated a 10-year timeframe for the affiliation lookback period but proposed to limit the timeframe to 5 years. We believed this would ease the burden on Medicare, Medicaid, and CHIP providers and suppliers by restricting the volume of information that must be reported. Similarly, we proposed that changed data regarding past affiliations need not be reported. We have finalized the 5-year lookback period and have eliminated altogether the requirement to report new and changed affiliations as part of a change of information request. Although we are unable to calculate the financial savings that would accrue to providers and suppliers from not having to (1) research and report affiliation data from 6 to 10 years ago, and (2) regularly monitor and disclose new or changed affiliation information, we believe that the burden on providers and suppliers would be reduced.

Second, and more generally, we have incorporated a phased-in approach for our affiliation disclosure requirements. As previously explained, this would dramatically reduce the annual costs to providers and suppliers over the first three years of this rule to less than $1 million. We believe that a phased-in approach is a sounder alternative than an immediate, full-blown implementation not only because of the burden reduction but also because it would: (1) Give the provider and supplier community at large more time to prepare for our affiliation provisions; and (2) enable CMS to carefully monitor and analyze the progress and operational components of the phased-in approach in preparation for the subsequent future rulemaking.

Third, and for reasons already discussed, we have elected not to finalize our proposed changes to § 424.507. We estimated in the proposed rule that the annual cost burden to affected providers and suppliers of these changes (over the first 3 years of the rule) would be approximately $4.5 million. Our non-finalization of these changes will eliminate said costs.

Fourth, regarding our extension of the maximum re-enrollment bar to 10 years, we considered shorter alternative timeframes. However, we settled on 10 years because we believe it was imperative to keep demonstrably problematic providers and suppliers out of the Medicare program for an extended period. We believe similarly with respect to the maximum 20-year period for twice-revoked providers and suppliers. Although we contemplated briefer maximum periods, repeated improper conduct potentially warranted, in our view, a very long bar.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medical devices, Medicare Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 455

Fraud, Grant programs—health, Health facilities, Health professions, Investigations, Medicaid Reporting and recordkeeping requirements.

42 CFR Part 457

Administrative practice and procedure, Grant programs—health, Health insurance, Reporting and recordkeeping requirements.

42 CFR Part 498

Appeals.

For the reasons stated in the preamble of this final rule with comment period, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

■ 1. The authority for part 405 is revised to read as follows:

Authority: 42 U.S.C. 263a, 405(a), 1302, 1320b–12, 1395x, 1395y(a), 1395ff, 1395hh, 1395kk, 1395rr, and 1395ww(k).

■ 2. Section 405.371 is amended——
■ a. By revising paragraph (a) introductory text;
■ b. In paragraph (a)(1) by removing the semicolon at the end of the paragraph and adding in its place a period.
■ c. In paragraph (a)(2) by removing ''; or'' at the end of paragraph and adding in its place a period; and
■ d. By adding paragraph (a)(4).

The revision and addition read as follows.

§ 405.371 Suspension, offset, and recoupment of Medicare payments to providers and suppliers of services.

(a) *General rules*—Medicare payments to providers and suppliers, as authorized under this subchapter (excluding payments to beneficiaries), may be one of the following:

* * * * *

(4) Suspended, in whole or in part, by CMS or a Medicare contractor if the provider or supplier has been subject to a Medicaid payment suspension under § 455.23(a)(1) of this chapter.

* * * * *

■ 3. Section 405.425 is amended by revising paragraphs (i) and (j) to read as follows:

§ 405.425 Effects of opting-out of Medicare.

* * * * *

(i) The physician or practitioner who has not been excluded under sections 1128, 1156 or 1892 of the Act and whose Medicare enrollment is not revoked under § 424.535 of this chapter may order, certify the need for, prescribe, or refer a beneficiary for Medicare-covered items, services, and drugs, provided the physician or practitioner is not paid, directly or indirectly, for such services (except as provided in § 405.440).

(j) The physician or practitioner who is excluded under sections 1128, 1156 or 1892 of the Act or whose Medicare enrollment is revoked under § 424.535 of this chapter may not order, prescribe or certify the need for Medicare-covered items, services, and drugs except, with respect to exclusions, as provided in § 1001.1901 of this title, and must otherwise comply with the terms of any exclusion in accordance with § 1001.1901 of this title effective with the date of the exclusion.

■ 4. Section 405.800 is amended by adding paragraph (c) to read as follows:

§ 405.800 Appeals of CMS or a CMS contractor.

* * * * *

(c) *Additional years applied to a reenrollment bar.* (1) If, under § 424.535(c)(2)(i) of this chapter, CMS or a CMS contractor applies additional years to a provider's or supplier's existing reenrollment bar, CMS or the CMS contractor notifies the provider or supplier by certified mail. The notice includes the following:

(i) The reason for the application of additional years in sufficient detail to allow the provider or supplier to understand the nature of the action.

(ii) The right to appeal in accordance with part 498 of this chapter.

(iii) The address to which the written appeal must be mailed.

(2) Paragraph (c)(1) of this section applies only to the years added to the existing reenrollment bar under § 424.535(c)(2)(i) of this chapter and not to the original length of the reenrollment bar, which is not subject to appeal.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

■ 5. The authority for part 424 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 6. Section 424.502 is amended by adding the definitions for ''Affiliation'', ''Disclosable event'', ''NPI'', and ''PECOS'' in alphabetical order to read as follows:

§ 424.502 Definitions.

* * * * *

Affiliation means, for purposes of applying § 424.519, any of the following:

(1) A 5 percent or greater direct or indirect ownership interest that an individual or entity has in another organization.

(2) A general or limited partnership interest (regardless of the percentage) that an individual or entity has in another organization.

(3) An interest in which an individual or entity exercises operational or managerial control over, or directly or indirectly conducts, the day-to-day operations of another organization (including, for purposes of this paragraph (3), sole proprietorships), either under contract or through some other arrangement, regardless of whether or not the managing individual or entity is a W–2 employee of the organization.

(4) An interest in which an individual is acting as an officer or director of a corporation.

(5) Any reassignment relationship under § 424.80.

* * * * *

Disclosable event means, for purposes of § 424.519, any of the following:

(1) Currently has an uncollected debt to Medicare, Medicaid, or CHIP, regardless of—

(i) The amount of the debt;

(ii) Whether the debt is currently being repaid (for example, as part of a repayment plan); or

(iii) Whether the debt is currently being appealed;

(2) Has been or is subject to a payment suspension under a federal health care program (as that latter term is defined in section 1128B(f) of the Act), regardless of when the payment suspension occurred or was imposed;

(3) Has been or is excluded by the OIG from participation in Medicare, Medicaid, or CHIP, regardless of whether the exclusion is currently being appealed or when the exclusion occurred or was imposed; or

(4) Has had its Medicare, Medicaid, or CHIP enrollment denied, revoked, or terminated, regardless of—

(i) The reason for the denial, revocation, or termination;

(ii) Whether the denial, revocation, or termination is currently being appealed; or

(iii) When the denial, revocation, or termination occurred or was imposed.

* * * * *

NPI stands for National Provider Identifier.

* * * * *

PECOS stands for Internet-based Provider Enrollment, Chain, and Ownership System.

* * * * *

■ 7. Section 424.516 is amended by revising paragraphs (f)(1)(i) introductory text, (f)(1)(ii), (f)(2)(i) introductory text, and (f)(2)(ii) to read as follows:

§ 424.516 Additional provider and supplier requirements for enrolling and maintaining active enrollment status in the Medicare program.

* * * * *

(f) * * *

(1)(i) A provider or a supplier that furnishes covered ordered, certified, referred, or prescribed Part A or B services, items or drugs is required to—

* * * * *

(ii) The documentation includes written and electronic documents (including the NPI of the physician or, when permitted, other eligible professional who ordered, certified, referred, or prescribed the Part A or B service, item, or drug) relating to written orders, certifications, referrals, prescriptions, and requests for payments for Part A or B services, items or drugs.

(2)(i) A physician or, when permitted, an eligible professional who orders, certifies, refers, or prescribes Part A or

B services, items or drugs is required to—

* * * * *

(ii) The documentation includes written and electronic documents (including the NPI of the physician or, when permitted, other eligible professional who ordered, certified, referred, or prescribed the Part A or B service, item, or drug) relating to written orders, certifications, referrals, prescriptions or requests for payments for Part A or B services, items, or drugs.

■ 8. Section 424.519 is added to read as follows:

§ 424.519 Disclosure of affiliations.

(a) *Definitions.* For purposes of this section only, the following terms apply to the definition of disclosable event in § 424.502:

(1) ''Uncollected debt'' only applies to the following:

(i) Medicare, Medicaid, or CHIP overpayments for which CMS or the state has sent notice of the debt to the affiliated provider or supplier.

(ii) Civil money penalties imposed under this title.

(iii) Assessments imposed under this title.

(2) ''Revoked,'' ''Revocation,'' ''Terminated,'' and ''Termination'' include situations where the affiliated provider or supplier voluntarily terminated its Medicare, Medicaid, or CHIP enrollment to avoid a potential revocation or termination.

(b) *General.* Upon a CMS request, an initially enrolling or revalidating provider or supplier must disclose any and all affiliations that it or any of its owning or managing employees or organizations (consistent with the terms ''owner'' and ''managing employee'' as defined in § 424.502) has or, within the previous 5 years, had with a currently or formerly enrolled Medicare, Medicaid, or CHIP provider or supplier that has a disclosable event (as defined in § 424.502). CMS will request such disclosures when it has determined that the initially enrolling or revalidating provider or supplier may have at least one such affiliation.

(c) *Information.* The provider or supplier must disclose the following information about each reported affiliation:

(1) General identifying data about the affiliated provider or supplier. This includes the following:

(i) Legal name as reported to the Internal Revenue Service or the Social Security Administration (if the affiliated provider or supplier is an individual).

(ii) ''Doing business as'' name (if applicable).

(iii) Tax identification number.

(iv) NPI.

(2) Reason for disclosing the affiliated provider or supplier.

(3) Specific data regarding the affiliation relationship, including the following:

(i) Length of the relationship.

(ii) Type of relationship.

(iii) Degree of affiliation.

(4) If the affiliation has ended, the reason for the termination.

(d) *Mechanism.* The information required to be disclosed under paragraphs (b) and (c) of this section must be furnished to CMS or its contractors via the Form CMS–855 application (paper or the internet-based PECOS enrollment process).

(e) *Denial or revocation.* The failure of the provider or supplier to fully and completely disclose the information specified in paragraphs (b) and (c) of this section when the provider or supplier knew or should reasonably have known of this information may result in either of the following:

(1) The denial of the provider's or supplier's initial enrollment application under § 424.530(a)(1) and, if applicable, § 424.530(a)(4).

(2) The revocation of the provider's or supplier's Medicare enrollment under § 424.535(a)(1) and, if applicable, § 424.535(a)(4).

(f) *Undue risk.* Upon receiving the information described in paragraphs (b) and (c) of this section, CMS determines whether any of the disclosed affiliations poses an undue risk of fraud, waste, or abuse by considering the following factors:

(1) The duration of the affiliation.

(2) Whether the affiliation still exists and, if not, how long ago it ended.

(3) The degree and extent of the affiliation.

(4) If applicable, the reason for the termination of the affiliation.

(5) Regarding the affiliated provider's or supplier's disclosable event under paragraph (b) of this section:

(i) The type of disclosable event.

(ii) When the disclosable event occurred or was imposed.

(iii) Whether the affiliation existed when the disclosable event occurred or was imposed.

(iv) If the disclosable event is an uncollected debt:

(A) The amount of the debt.

(B) Whether the affiliated provider or supplier is repaying the debt.

(C) To whom the debt is owed.

(v) If a denial, revocation, termination, exclusion, or payment suspension is involved, the reason for the disclosable event.

(6) Any other evidence that CMS deems relevant to its determination.

(g) *Determination of undue risk.* A determination by CMS that a particular affiliation poses an undue risk of fraud, waste, or abuse will result in, as applicable, the denial of the provider's or supplier's initial enrollment application under § 424.530(a)(13) or the revocation of the provider's or supplier's Medicare enrollment under § 424.535(a)(19).

(h) *Duplicate data.* A provider or supplier is not required to report affiliation data in that portion of the Form CMS–855 application that collects affiliation information if the same data is being reported in the ''owning or managing control'' (or its successor) section of the Form CMS–855 application.

(i) *Undisclosed affiliations.* CMS may apply § 424.530(a)(13) or § 424.535(a)(19) to situations where a disclosable affiliation (as described in § 424.519(b) and (c)) poses an undue risk of fraud, waste or abuse, but the provider or supplier has not yet reported or is not required at that time to report the affiliation to CMS.

■ 9. Section 424.530 is amended by revising paragraph (a)(7) and adding paragraphs (a)(12) through (14) and (f) to read as follows:

§ 424.530 Denial of enrollment in the Medicare program.

(a) * * *

(7) *Payment suspension.* (i) The provider or supplier, or any owning or managing employee or organization of the provider or supplier, is currently under a Medicare or Medicaid payment suspension as defined in §§ 405.370 through 405.372 or in § 455.23 of this chapter.

(ii) CMS may apply the provision in this paragraph (a)(7) to the provider or supplier under any of the provider's, supplier's, or owning or managing employee's or organization's current or former names, numerical identifiers, or business identities or to any of its existing enrollments.

(iii) In determining whether a denial is appropriate, CMS considers the following factors:

(A) The specific behavior in question.

(B) Whether the provider or supplier is the subject of other similar investigations.

(C) Any other information that CMS deems relevant to its determination.

* * * * *

(12) *Revoked under different name, numerical identifier or business identity.* The provider or supplier is currently revoked under a different name, numerical identifier, or business identity, and the applicable reenrollment bar period has not expired.

In determining whether a provider or supplier is a currently revoked provider or supplier under a different name, numerical identifier, or business identity, CMS investigates the degree of commonality by considering the following factors:

(i) Owning and managing employees and organizations (regardless of whether they have been disclosed on the Form CMS–855 application).

(ii) Geographic location.

(iii) Provider or supplier type.

(iv) Business structure.

(v) Any evidence indicating that the two parties are similar or that the provider or supplier was created to circumvent the revocation or reenrollment bar.

(13) *Affiliation that poses undue risk.* CMS determines that the provider or supplier has or has had an affiliation under § 424.519 that poses an undue risk of fraud, waste, or abuse to the Medicare program.

(14) *Other program termination or suspension.* (i) The provider or supplier is currently terminated or suspended (or otherwise barred) from participation in a State Medicaid program or any other federal health care program, or the provider's or supplier's license is currently revoked or suspended in a State other than that in which the provider or supplier is enrolling. In determining whether a denial under this paragraph (a)(14) is appropriate, CMS considers the following factors:

(A) The reason(s) for the termination, suspension, or revocation.

(B) Whether, as applicable, the provider or supplier is currently terminated or suspended (or otherwise barred) from more than one program (for example, more than one State's Medicaid program), has been subject to any other sanctions during its participation in other programs or by any other State licensing boards or has had any other final adverse actions (as that term is defined in § 424.502) imposed against it.

(C) Any other information that CMS deems relevant to its determination.

(ii) CMS may apply paragraph (a)(14)(i) of this section to the provider or supplier under any of its current or former names, numerical identifiers or business identities, and regardless of whether any appeals are pending.

* * * * *

(f) *Reapplication bar.* CMS may prohibit a prospective provider or supplier from enrolling in Medicare for up to 3 years if its enrollment application is denied because the provider or supplier submitted false or misleading information on or with (or omitted information from) its application in order to gain enrollment in the Medicare program.

(1) The reapplication bar applies to the prospective provider or supplier under any of its current, former, or future names, numerical identifiers or business identities.

(2) CMS determines the bar's length by considering the following factors:

(i) The materiality of the information in question.

(ii) Whether there is evidence to suggest that the provider or supplier purposely furnished false or misleading information or deliberately withheld information.

(iii) Whether the provider or supplier has any history of final adverse actions or Medicare or Medicaid payment suspensions.

(iv) Any other information that CMS deems relevant to its determination.

■ 10. Section 424.535 is amended—

■ a. In paragraph (a) introductory text, by removing the term ''billing privileges'' and adding in its place the word ''enrollment'';

■ b. By revising paragraphs (a)(9) and (12);

■ c. By adding reserved paragraphs (a)(15) and (16);

■ d. By adding paragraphs (a)(17) through (21);

■ e. By revising paragraph (c); and

■ f. By adding paragraphs (i) and (j).

The additions and revisions read as follows:

§ 424.535 Revocation of enrollment in the Medicare program.

(a) * * *

(9) *Failure to report.* The provider or supplier did not comply with the reporting requirements specified in § 424.516(d) or (e), § 410.33(g)(2) of this chapter, or § 424.57(c)(2). In determining whether a revocation under this paragraph (a)(9) is appropriate, CMS considers the following factors:

(i) Whether the data in question was reported.

(ii) If the data was reported, how belatedly.

(iii) The materiality of the data in question.

(iv) Any other information that CMS deems relevant to its determination.

* * * * *

(12) *Other program termination.* (i) The provider or supplier is terminated, revoked or otherwise barred from participation in a State Medicaid program or any other federal health care program. In determining whether a revocation under this paragraph (a)(12) is appropriate, CMS considers the following factors:

(A) The reason(s) for the termination or revocation.

(B) Whether the provider or supplier is currently terminated, revoked or otherwise barred from more than one program (for example, more than one State's Medicaid program) or has been subject to any other sanctions during its participation in other programs.

(C) Any other information that CMS deems relevant to its determination.

(ii) Medicare may not revoke unless and until a provider or supplier has exhausted all applicable appeal rights.

(iii) CMS may apply paragraph (a)(12)(i) of this section to the provider or supplier under any of its current or former names, numerical identifiers or business identities.

* * * * *

(15)–(16) [Reserved]

(17) *Debt referred to the United States Department of Treasury.* The provider or supplier has an existing debt that CMS appropriately refers to the United States Department of Treasury. In determining whether a revocation under this paragraph (a)(17) is appropriate, CMS considers the following factors:

(i) The reason(s) for the failure to fully repay the debt (to the extent this can be determined).

(ii) Whether the provider or supplier has attempted to repay the debt (to the extent this can be determined).

(iii) Whether the provider or supplier has responded to CMS' requests for payment (to the extent this can be determined).

(iv) Whether the provider or supplier has any history of final adverse actions or Medicare or Medicaid payment suspensions.

(v) The amount of the debt.

(vi) Any other evidence that CMS deems relevant to its determination.

(18) *Revoked under different name, numerical identifier or business identity.* The provider or supplier is currently revoked under a different name, numerical identifier, or business identity, and the applicable reenrollment bar period has not expired. In determining whether a provider or supplier is a currently revoked provider or supplier under a different name, numerical identifier, or business identity, CMS investigates the degree of commonality by considering the following factors:

(i) Owning and managing employees and organizations (regardless of whether they have been disclosed on the Form CMS–855 application).

(ii) Geographic location.

(iii) Provider or supplier type.

(iv) Business structure.

(v) Any evidence indicating that the two parties are similar or that the provider or supplier was created to

circumvent the revocation or reenrollment bar.

(19) *Affiliation that poses an undue risk.* CMS determines that the provider or supplier has or has had an affiliation under § 424.519 that poses an undue risk of fraud, waste, or abuse to the Medicare program.

(20) *Billing from non-compliant location.* CMS may revoke a provider's or supplier's Medicare enrollment or enrollments, even if all of the practice locations associated with a particular enrollment comply with Medicare enrollment requirements, if the provider or supplier billed for services performed at or items furnished from a location that it knew or should have known did not comply with Medicare enrollment requirements. In determining whether and how many of the provider's or supplier's enrollments, involving the non-compliant location or other locations, should be revoked, CMS considers the following factors:

(i) The reason(s) for and the specific facts behind the location's non-compliance.

(ii) The number of additional locations involved.

(iii) Whether the provider or supplier has any history of final adverse actions or Medicare or Medicaid payment suspensions.

(iv) The degree of risk that the location's continuance poses to the Medicare Trust Funds.

(v) The length of time that the non-compliant location was non-compliant.

(vi) The amount that was billed for services performed at or items furnished from the non-compliant location.

(vii) Any other evidence that CMS deems relevant to its determination.

(21) *Abusive ordering, certifying, referring, or prescribing of Part A or B services, items or drugs.* The physician or eligible professional has a pattern or practice of ordering, certifying, referring, or prescribing Medicare Part A or B services, items, or drugs that is abusive, represents a threat to the health and safety of Medicare beneficiaries, or otherwise fails to meet Medicare requirements. In making its determination as to whether such a pattern or practice exists, CMS considers the following factors:

(i) Whether the physician's or eligible professional's diagnoses support the orders, certifications, referrals or prescriptions in question.

(ii) Whether there are instances where the necessary evaluation of the patient for whom the service, item or drug was ordered, certified, referred, or prescribed could not have occurred (for example, the patient was deceased or out of state at the time of the alleged office visit).

(iii) The number and type(s) of disciplinary actions taken against the physician or eligible professional by the licensing body or medical board for the state or states in which he or she practices, and the reason(s) for the action(s).

(iv) Whether the physician or eligible professional has any history of final adverse actions (as that term is defined in § 424.502).

(v) The length of time over which the pattern or practice has continued.

(vi) How long the physician or eligible professional has been enrolled in Medicare.

(vii) The number and type(s) of malpractice suits that have been filed against the physician or eligible professional related to ordering, certifying, referring or prescribing that have resulted in a final judgment against the physician or eligible professional or in which the physician or eligible professional has paid a settlement to the plaintiff(s) (to the extent this can be determined).

(viii) Whether any State Medicaid program or any other public or private health insurance program has restricted, suspended, revoked, or terminated the physician's or eligible professional's ability to practice medicine, and the reason(s) for any such restriction, suspension, revocation, or termination.

(ix) Any other information that CMS deems relevant to its determination.

* * * * *

(c) *Reapplying after revocation.* (1) After a provider or supplier has had their enrollment revoked, they are barred from participating in the Medicare program from the effective date of the revocation until the end of the reenrollment bar. The reenrollment bar—

(i) Begins 30 days after CMS or its contractor mails notice of the revocation and lasts a minimum of 1 year, but not greater than 10 years (except for the situations described in paragraphs (c)(2) and (3) of this section), depending on the severity of the basis for revocation.

(ii) Does not apply in the event a revocation of Medicare enrollment is imposed under paragraph (a)(1) of this section based upon a provider's or supplier's failure to respond timely to a revalidation request or other request for information.

(2)(i) CMS may add up to 3 more years to the provider's or supplier's reenrollment bar (even if such period exceeds the 10-year period identified in paragraph (c)(1) of this section) if it determines that the provider or supplier is attempting to circumvent its existing reenrollment bar by enrolling in Medicare under a different name, numerical identifier or business identity.

(ii) A provider's or supplier's appeal rights regarding paragraph (c)(2)(i) of this section—

(A) Are governed by part 498 of this chapter; and

(B) Do not extend to the imposition of the original reenrollment bar under paragraph (c)(1) of this section; and

(C) Are limited to any additional years imposed under paragraph (c)(2)(i) of this section.

(3) CMS may impose a reenrollment bar of up to 20 years on a provider or supplier if the provider or supplier is being revoked from Medicare for the second time. In determining the length of the reenrollment bar under this paragraph (c)(3), CMS considers the following factors:

(i) The reasons for the revocations.

(ii) The length of time between the revocations.

(iii) Whether the provider or supplier has any history of final adverse actions (other than Medicare revocations) or Medicare or Medicaid payment suspensions.

(iv) Any other information that CMS deems relevant to its determination.

(4) A reenrollment bar applies to a provider or supplier under any of its current, former or future names, numerical identifiers or business identities.

* * * * *

(i) *Extension of revocation.* (1) If a provider's or supplier's Medicare enrollment is revoked under paragraph (a) of this section, CMS may revoke any and all of the provider's or supplier's Medicare enrollments, including those under different names, numerical identifiers or business identities and those under different types.

(2) In determining whether to revoke a provider's or supplier's other enrollments under this paragraph (i), CMS considers the following factors:

(i) The reason for the revocation and the facts of the case.

(ii) Whether any final adverse actions have been imposed against the provider or supplier regarding its other enrollments.

(iii) The number and type(s) of other enrollments.

(iv) Any other information that CMS deems relevant to its determination.

(j) *Voluntary termination.* (1) CMS may revoke a provider's or supplier's Medicare enrollment if CMS determines that the provider or supplier voluntarily terminated its Medicare enrollment in

order to avoid a revocation under paragraph (a) of this section that CMS would have imposed had the provider or supplier remained enrolled in Medicare. In making its determination, CMS considers the following factors:

(i) Whether there is evidence to suggest that the provider knew or should have known that it was or would be out of compliance with Medicare requirements.

(ii) Whether there is evidence to suggest that the provider knew or should have known that its Medicare enrollment would be revoked.

(iii) Whether there is evidence to suggest that the provider voluntarily terminated its Medicare enrollment in order to circumvent such revocation.

(iv) Any other evidence or information that CMS deems relevant to its determination.

(2) A revocation under paragraph (j)(1) of this section is effective the day before the Medicare contractor receives the provider's or supplier's Form CMS–855 voluntary termination application.

■ 11. Section 424.540 is amended by revising paragraphs (b)(1) and (2) to read as follows:

§ 424.540 Deactivation of Medicare billing privileges.

* * * * *

(b) * * *

(1) In order for a deactivated provider or supplier to reactivate its Medicare billing privileges, the provider or supplier must recertify that its enrollment information currently on file with Medicare is correct and furnish any missing information as appropriate.

(2) Notwithstanding paragraph (b)(1) of this section, CMS may, for any reason, require a deactivated provider or supplier to, as a prerequisite for reactivating its billing privileges, submit a complete Form CMS–855 application.

* * * * *

■ 12. Section 424.570 is amended by revising paragraphs (a)(1)(iii) and (iv) to read as follows:

§ 424.570 Moratoria on newly enrolling Medicare providers and suppliers.

(a) * * *

(1) * * *

(iii) The temporary moratorium does not apply to any of the following:

(A) Changes in practice location (except if the location is changing from a location outside the moratorium area to a location inside the moratorium area).

(B) Changes in provider or supplier information, such as phone numbers.

(C) Changes in ownership (except changes in ownership of home health agencies that would require an initial enrollment).

(iv) A temporary moratorium does not apply to any enrollment application that has been received by the Medicare contractor prior to the date the moratorium is imposed.

* * * * *

PART 455—PROGRAM INTEGRITY: MEDICAID

■ 13. The authority citation for part 455 is revised to read as follows:

Authority: 42 U.S.C. 1302.

■ 14. Section 455.101 is amended by adding the definitions for ''Affiliation'' and Disclosable event'' in alphabetical order to read as follows:

§ 455.101 Definitions.

Affiliation means, for purposes of applying § 455.107, any of the following:

(1) A 5 percent or greater direct or indirect ownership interest that an individual or entity has in another organization.

(2) A general or limited partnership interest (regardless of the percentage) that an individual or entity has in another organization.

(3) An interest in which an individual or entity exercises operational or managerial control over, or directly or indirectly conducts, the day-to-day operations of another organization (including, for purposes of this paragraph (3), sole proprietorships), either under contract or through some other arrangement, regardless of whether or not the managing individual or entity is a W–2 employee of the organization.

(4) An interest in which an individual is acting as an officer or director of a corporation.

(5) Any payment assignment relationship under § 447.10(g) of this chapter.

* * * * *

Disclosable event means, for purposes of § 455.107, any of the following:

(1) Currently has an uncollected debt to Medicare, Medicaid, or CHIP, regardless of—

(i) The amount of the debt;

(ii) Whether the debt is currently being repaid (for example, as part of a repayment plan); or

(iii) Whether the debt is currently being appealed;

(2) Has been or is subject to a payment suspension under a federal health care program (as that latter term is defined in section 1128B(f) of the Act), regardless of when the payment suspension occurred or was imposed;

(3) Has been or is excluded by the OIG from participation in Medicare, Medicaid, or CHIP, regardless of whether the exclusion is currently being appealed or when the exclusion occurred or was imposed; or

(4) Has had its Medicare, Medicaid, or CHIP enrollment denied, revoked or terminated, regardless of—

(i) The reason for the denial, revocation, or termination;

(ii) Whether the denial, revocation, or termination is currently being appealed; or

(iii) When the denial, revocation, or termination occurred or was imposed.

* * * * *

■ 15. Section 455.103 is revised to read as follows:

§ 455.103 State plan requirement.

A State plan must provide that the requirements of §§ 455.104 through 455.107 are met.

■ 16. Section 455.107 is added to subpart B to read as follows:

§ 455.107 Disclosure of affiliations.

(a) *Definitions.* For purposes of this section only, the following terms apply to the definition of disclosable event in § 455.101:

(1) ''Uncollected debt'' only applies to the following:

(i) Medicare, Medicaid, or CHIP overpayments for which CMS or the State has sent notice of the debt to the affiliated provider or supplier.

(ii) Civil money penalties imposed under this title.

(iii) Assessments imposed under this title.

(2) ''Revoked,'' ''Revocation,'' ''Terminated,'' and ''Termination'' include situations where the affiliated provider or supplier voluntarily terminated its Medicare, Medicaid, or CHIP enrollment to avoid a potential revocation or termination.

(b) *General.* (1)(i) *Selection of option.* A State, in consultation with CMS, must select one of the two options identified in paragraph (b)(2) of this section for requiring the disclosure of affiliation information.

(ii) *Change of selection.* A State may not change its selection under paragraph (b) of this section after it has been made.

(2)(i) *First option.* In a State that has selected the option in this paragraph (b)(2)(i), a provider that is not enrolled in Medicare but is initially enrolling in Medicaid or CHIP (or is revalidating its Medicaid or CHIP enrollment information) must disclose any and all affiliations that it or any of its owning or managing employees or organizations (consistent with the terms ''person with an ownership or control interest'' and ''managing employee'' as defined in

§ 455.101) has or, within the previous 5 years, had with a currently or formerly enrolled Medicare, Medicaid, or CHIP provider or supplier that has a disclosable event (as defined in § 455.101).

(ii) *Second option.* In a State that has selected the option in this paragraph (b)(2)(ii), and upon request by the State, a provider that is not enrolled in Medicare but is initially enrolling in Medicaid or CHIP (or is revalidating its Medicaid or CHIP enrollment information) must disclose any and all affiliations that it or any of its owning or managing employees or organizations (consistent with the terms ''person with an ownership or control interest'' and ''managing employee'' as defined in § 455.101) has or, within the previous 5 years, had with a currently or formerly enrolled Medicare, Medicaid, or CHIP provider or supplier that has a disclosable event (as defined in § 455.101). The State will request such disclosures when it, in consultation with CMS, has determined that the initially enrolling or revalidating provider may have at least one such affiliation.

(c) *Information.* The initially enrolling or revalidating provider must disclose the following information about each affiliation:

(1) General identifying information about the affiliated provider or supplier, which includes the following:

(i) Legal name as reported to the Internal Revenue Service or the Social Security Administration (if the affiliated provider or supplier is an individual).

(ii) ''Doing business as'' name (if applicable).

(iii) Tax identification number.

(iv) National Provider Identifier (NPI).

(2) Reason for disclosing the affiliated provider or supplier.

(3) Specific data regarding the affiliation relationship, including the following:

(i) Length of the relationship.

(ii) Type of relationship.

(iii) Degree of affiliation.

(4) If the affiliation has ended, the reason for the termination.

(d) *Mechanism.* The information described in paragraphs (b) and (c) of this section must be furnished to the State in a manner prescribed by the State in consultation with the Secretary.

(e) *Denial or termination.* The failure of the provider to fully and completely report the information required in this section when the provider knew or should reasonably have known of this information may result in, as applicable, the denial of the provider's initial enrollment application or the termination of the provider's enrollment in Medicaid or CHIP.

(f) *Undue risk.* Upon receipt of the information described in paragraphs (b) and (c) of this section, the State, in consultation with CMS, determines whether any of the disclosed affiliations poses an undue risk of fraud, waste, or abuse by considering the following factors:

(1) The duration of the affiliation.

(2) Whether the affiliation still exists and, if not, how long ago the affiliation ended.

(3) The degree and extent of the affiliation.

(4) If applicable, the reason for the termination of the affiliation.

(5) Regarding the affiliated provider's or supplier's disclosable event under paragraph (b) of this section, all of the following:

(i) The type of disclosable event.

(ii) When the disclosable event occurred or was imposed.

(iii) Whether the affiliation existed when the disclosable event occurred or was imposed.

(iv) If the disclosable event is an uncollected debt—

(A) The amount of the debt;

(B) Whether the affiliated provider or supplier is repaying the debt; and

(C) To whom the debt is owed.

(v) If a denial, revocation, termination, exclusion, or payment suspension is involved, the reason for the disclosable event.

(6) Any other evidence that the State, in consultation with CMS, deems relevant to its determination.

(g) *Determination of undue risk.* A determination by the State, in consultation with CMS, that a particular affiliation poses an undue risk of fraud, waste, or abuse will result in, as applicable, the denial of the provider's initial enrollment in Medicaid or CHIP or the termination of the provider's enrollment in Medicaid or CHIP.

(h) *Undisclosed affiliations.* The State, in consultation with CMS, may apply paragraph (g) of this section to situations where a reportable affiliation (as described in paragraphs (b) and (c) of this section) poses an undue risk of fraud, waste, or abuse, but the provider has not yet disclosed or is not required at that time to disclose the affiliation to the State.

PART 457—ALLOTMENTS AND GRANTS TO STATES

■ 17. The authority citation for part 457 is revised to read as follows:

Authority: 42 U.S.C. 1302.

■ 18. Section 457.990 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c) and adding a new paragraph (a) to read as follows:

§ 457.990 Provider and supplier screening, oversight, and reporting requirements.

* * * * *

(a) Section 455.107.

* * * * *

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFs/IID AND CERTAIN NFs IN THE MEDICAID PROGRAM

■ 19. The authority citation for part 498 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7j, and 1395hh.

■ 20. Section 498.3 is amended by revising paragraph (b)(17) to read as follows:

§ 498.3 Scope and applicability.

* * * * *

(b) * * *

(17)(i) Whether to deny or revoke a provider's or supplier's Medicare enrollment in accordance with § 424.530 or § 424.535 of this chapter;

(ii) Whether, under § 424.535(c)(2)(i) of this chapter, to add years to a provider's or supplier's existing reenrollment bar; or

(iii) Whether, under § 424.535(c)(3) of this chapter, an individual or entity other than the provider or supplier that is the subject of the second revocation was the actual subject of the first revocation.

* * * * *

Dated: April 4, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: April 9, 2019.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2019–19208 Filed 9–5–19; 11:15 am]

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Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2019–0001, Sequence No. 5]

Federal Acquisition Regulation; Federal Acquisition Circular 2019–06; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2019–06. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the internet at *http://www.regulations.gov.*

DATES: For effective date see the separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755.

RULES LISTED IN FAC 2019–06

Item	Subject	FAR case	Analyst
I	Use of Products and Services Of Kaspersky Lab	2018–010	Francis.
II	Update of ''Affiliates'' and Section 8(a) Clauses	2019–006	Chambers.
III	Update to Contractor Performance Assessment Reporting System (CPARS)	2019–005	Glover.
IV	New World Trade Organization Government Procurement Agreement Country-Australia	2019–011	Davis.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2019–06 amends the FAR as follows:

Item I—Use of Products and Services of Kaspersky Lab (FAR Case 2018–010

This final rule adopts an interim rule published on June 15, 2018, without changes. The interim rule implemented section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91), which prohibited the use of hardware, software, and services developed or provided, in whole or in part, by Kaspersky Lab or related entities by the Federal Government, on or after October 1, 2018. The interim rule also required contractors to report any such hardware, software, or services discovered during contract performance. This rule is being implemented as a national security measure to protect Government information and information systems.

Item II—Update of ''Affiliates'' and Section 8(a) Clauses (FAR Case 2019–006)

This final rule amends the FAR to revise the definition of ''affiliates'' at FAR 19.101 and 2.101. This rule amends the clauses at FAR 52.219–12, Special 8(a) Subcontract Conditions, and 52.219–17, Section 8(a) Award, to remove an obsolete requirement for 8(a) contractors to obtain written approval from the Small Business Administration and the contracting officer before subcontracting the performance of any contract requirements. This final rule is expected to result in savings for Federal contractors who are participants in the 8(a) Program.

Item III—Update to Contractor Performance Assessment Reporting System (CPARS) (FAR Case 2019–005)

This final rule amends the FAR at FAR 42.1501 and 42.1503 to establish the Contractor Performance Assessment Reporting System (CPARS) as the official system for past performance information. The rule makes conforming changes in FAR parts 9, 13, 15, and 25 to remove all references to Past Performance Information Retrieval System (PPIRS) and adds CPARS for past performance information. The final rule is not expected to have a significant economic impact on small entities, because the rule merely designates an existing system, CPARS, as the single official repository for recording and maintaining contractor performance information.

Item IV—New World Trade Organization Government Procurement Agreement Country—Australia (FAR Case 2019–011)

DoD, GSA, and NASA are issuing a final rule amending the FAR to add Australia as a new World Trade Organization Government Procurement Agreement (WTO GPA) country. Australia is already a designated country, because it is a Free Trade Agreement country.

This final rule has no significant impact on the Government and contractors, including small business entities.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2019–06 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2019–06 is effective September 10, 2019 except for Items II, III, and IV, which are effective October 10, 2019.

Linda W. Neilson,
Director, Defense Pricing and Contracting, Defense Acquisition Regulations System, Department of Defense.

Jeffrey A. Koses,
Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

William G. Roets, II,
Acting Assistant Administrator, Office of Procurement, National Aeronautics and Space Administration.

[FR Doc. 2019–19359 Filed 9–9–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 13, 39, and 52

[FAC 2019–06; FAR Case 2018–010; Item I; Docket No. FAR–2018–0010, Sequence No. 1]

RIN 9000–AN64

Federal Acquisition Regulation: Use of Products and Services of Kaspersky Lab

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are adopting as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018.

DATES: *Effective* September 10, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Camara Francis, Procurement Analyst, at 202–550–0935 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2019–06, FAR Case 2018–010.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 83 FR 28141 on June 15, 2018, to revise the FAR to implement section 1634 of Division A of the NDAA for FY 2018 (Pub. L. 115–91). Section 1634 of this law prohibits the use of products or services of Kaspersky Lab and its related entities by the Federal Government on or after October 1, 2018.

The interim rule amended FAR part 4, adding a new subpart 4.20, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab, with a corresponding new contract clause at 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities. The interim rule also added text in subpart 13.2, Actions at or Below the Micro-Purchase Threshold, to address section 1634 with regard to micro-purchases. To implement section 1634, the clause at 52.204–23 prohibits contractors from providing any hardware, software, or services developed or provided by Kaspersky Lab or its related entities, or using any such hardware, software, or services in the development of data or deliverables first produced in the performance of the contract. The contractor must also report any such hardware, software, or services discovered during contract performance; this requirement flows down to subcontractors. For clarity, the rule defines ''covered entity'' and ''covered article''. A covered entity includes the entities described in section 1634. A covered article includes hardware, software, or services that the Federal Government will use on or after October 1, 2018. The public comment period ended August 14, 2018.

II. Discussion and Analysis

Three respondents submitted public comments, one of which was outside the scope of the rule. There are no changes made to the final rule as a result of the public comments. Responses to comments received follow below.

Comment: A respondent stated, ''To reduce burden on contractors, a specific list or definition around 'covered article' or 'covered entity' are requested. It is also requested to share how and when an entity or article would be added to this list and incorporated into this clause.''

Response: The rule defines ''covered article'' and ''covered entity'' in FAR 4.2001, Definitions. With respect to use of a products list, the preamble to the interim rule included a series of detailed questions designed to elicit feedback on how a list might be developed and maintained, as well as other steps that might be taken to reduce burden, but no public input was offered. Due to the continually evolving nature of technological product and service offerings, including third-party products that may either add or eliminate inclusion of elements such as Kaspersky Lab software, and the lack of suggestions for how this challenge might be managed, DoD, GSA, and NASA have concluded that providing a definitive list of hardware, software, or services subject to the definition of ''covered article'' is impractical, particularly in regulation. Similar challenges regarding the shifting nature of ownership, affiliate and subsidiary relationships also apply to the definition of ''covered entity.'' DoD, GSA, and NASA intend to confer with the Federal Acquisition Security Council staff as it considers issues related to the appropriate sharing of information to support management decisions associated with supply chain risk management.

Comment: A respondent indicated that the prohibition should be effective immediately to prevent continued use and additional risk to the Government. The respondent had similar concerns that existing contracts would not be modified to incorporate the clause unless the period of performance was being extended for six or more months.

Response: The statutory prohibition in section 1634 took effect on October 1, 2018, and the interim rule was published in advance of the effective date in order to provide sufficient time for both Government and industry to identify any current use or planned procurements of covered articles from covered entities. Publication of the FAR rule was one tool to help agencies in their implementation of section 1634, but the rule did not impact or impair any other planned or ongoing efforts agencies undertook to address the presence of covered articles.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This rule applies the requirements of section 1634 of the NDAA for FY 2018 to contracts at or below the SAT, to include contracts for the acquisition of commercial items, including COTS items.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the simplified acquisition threshold (SAT). Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law if: (i) the law contains criminal or civil penalties; (ii) the law specifically refers to 41 U.S.C. 1905 and states that the law applies to contracts and subcontracts in amounts not greater than the SAT; or (iii) the FAR Council makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including COTS Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is

intended to limit the applicability of laws to contracts for the acquisition of commercial items. Section 1906 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items.

Finally, 41 U.S.C. 1907 states that acquisitions of COTS items will be exempt from a provision of law unless the law (i) contains criminal or civil penalties; (ii) specifically refers to 41 U.S.C. 1907 and states that the law applies to acquisitions of COTS items; (iii) concerns authorities or responsibilities under the Small Business Act (15 U.S.C. 644) or bid protest procedures developed under the authority of 31 U.S.C. 3551 *et seq.,* 10 U.S.C. 2305(e) and (f), or 41 U.S.C. 3706 and 3707; or (iv) the Administrator for Federal Procurement Policy makes a written determination and finding that would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items from the provision of law.

C. Determinations

With the publication of the interim rule the FAR Council has determined it was in the best interest of the Government to apply the rule to contracts at or below the SAT and for the acquisition of commercial items. Likewise, the Administrator for Federal Procurement Policy determined it was in the best interest of the Government to apply this rule to contracts for the acquisition of COTS items.

While the law does not specifically address acquisitions of commercial items, including COTS items, there is an unacceptable level of risk for the Government in buying hardware, software, or services developed or provided in whole or in part by Kaspersky Lab. This level of risk is not alleviated by the fact that the item being acquired has been sold or offered for sale to the general public, either in the same form or a modified form as sold to the Government (*i.e.,* that it is a commercial item or COTS item), nor by the small size of the purchase (*i.e.,* at or below the SAT). As a result, agencies may face increased exposure for violating the law and unknowingly acquiring a covered article absent coverage of these types of acquisitions by this rule.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

A final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* was prepared. The FRFA is summarized below.

This final rule implements section 1634 of Division A of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91). The objective of the rule is to prescribe appropriate policies and procedures to enable agencies to determine that they are not purchasing articles that section 1634 prohibits for use by the Government on or after October 1, 2018.

There were no significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis provided in the interim rule.

The rule applies to all contractors and subcontractors, regardless of size. Data from the Federal Procurement Data System (FPDS) indicates that the Government awarded contracts to an average of 93,792 unique entities in FY 2017 and FY 2018, of which an average of 68,778 (73 percent) were small entities. It is estimated that reports will be submitted by 5 percent of contractors, or 3,439 small entities.

The rule requires contractors and subcontractors that are subject to the clause to report to the contracting officer, or for DoD, to the website listed in the clause, any discovery of a covered article during the course of contract performance.

Because of the nature of the prohibition enacted by section 1634, it is not possible to establish different compliance or reporting requirements or timetables that take into account the resources available to small entities or to exempt small entities from coverage of the rule, or any part thereof. DoD, GSA, and NASA were unable to identify any alternatives that would reduce the burden on small entities and still meet the objectives of section 1634.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VII. Paperwork Reduction Act

This rule contains information collection requirements that have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). This information collection requirement has been assigned OMB Control Number 9000–0197, entitled ''Use of Products and Services of Kaspersky Lab''.

List of Subjects in 48 CFR Parts 1, 4, 13, 39, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 1, 4, 13, 39, and 52 which was published in the **Federal Register** at 83 FR 28141 on June 15, 2018, is adopted as a final rule without change.

[FR Doc. 2019–19360 Filed 9–9–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 19, and 52

[FAC 2019–06; FAR Case 2019–006; Item II; Docket No. FAR–2019–0006, Sequence No. 1]

RIN 9000–AN89

Federal Acquisition Regulation: Update of ''Affiliates'' and Section 8(a) Clauses

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to update the definition of ''affiliates'' in the FAR, including references to that definition, and to delete an obsolete requirement for contractors who are 8(a) Program participants.

DATES: *Effective* October 10, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn E. Chambers, Procurement Analyst, at 202–285–7380 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2019–06, FAR Case 2019–006.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are amending the FAR to revise the definition of ''affiliates'' at FAR 19.101, as well as references to this definition at FAR 2.101, 19.001, 19.1303, 19.1403, and in the clause at FAR 52.219–27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside. The clauses at FAR 52.219–12, Special 8(a) Subcontract Conditions, and 52.219–17, Section 8(a) Award, currently require contractors who are 8(a) Program participants to obtain written approval from the Small Business Administration (SBA) and the contracting officer before subcontracting the performance of any contract requirements. SBA has removed this requirement from their regulations on the 8(a) Program at 13 CFR part 124. Therefore, DoD, GSA, and NASA are removing this obsolete requirement from the FAR.

II. Discussion and Analysis

A. Definition of ''affiliates'' in parts 2 and 9.

Subpart 2.1, Definitions, is amended to revise the definition of ''affiliates'' to include references to the unique definitions of that term in 9.403 and 19.101.

B. Definition of ''concern''. Section 19.001, Definitions, is amended to delete a reference to section 19.101 regarding affiliation and to replace it with a reference to SBA's regulations at 13 CFR 121.105.

C. Definition of ''affiliates'' in part 19. Subpart 19.1, Size Standards, is amended to revise the definition of ''affiliates'' by deleting existing language and replacing it with a reference to SBA's regulations on determining affiliation at 13 CFR 121.103. Editorial changes are made in 19.1303(c), 19.1403(c)(3), and paragraph (e)(3) of the clause at 52.219–27 to remove references to the definition of ''affiliates'' in 19.101 and 52.219–27 and to replace them with references to the applicable SBA regulation.

D. Removal of obsolete requirement for 8(a) contractors. The clauses at FAR 52.219–12 and 52.219–17 are amended to delete from each clause the paragraph requiring 8(a) contractors to obtain approval from SBA and the contracting officer prior to subcontracting the performance of any contract requirements. These paragraphs are obsolete.

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. While this final rule relates to the expenditure of appropriated funds, it is not required to be published for public comment, because it does not have a significant effect or impose any requirements on contractors or offerors. The rule makes minor revisions to the definition of ''affiliates'' that have no bearing on the meaning of the term and replaces FAR coverage that is redundant of SBA regulations with references to SBA's rules. Additionally, this rule eliminates a requirement that no longer exists in SBA's regulations on the 8(a) Business Development Program at 13 CFR part 124.

IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This rule amends the FAR to update the definition of ''affiliates,'' as well as a reference to this definition in the clause at 52.219–27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside. Additionally, this rule removes an obsolete requirement from the clauses at FAR 52.219–12, Special 8(a) Subcontract Conditions, and 52.219–17, Section 8(a) Award, for contractors who are 8(a) Program participants to obtain written approval from SBA and the contracting officer before subcontracting the performance of any contract requirements. This rule does not change the applicability of these clauses, which currently apply to solicitations and contracts below the SAT and to the acquisition of commercial items, including COTS items.

V. Expected Cost Savings

This rule impacts only 8(a) Program participants who do business with the Government. Currently, 8(a) Program participants who have Federal contracts must obtain written approval from SBA and the contracting officer before subcontracting the performance of any contract requirements in accordance with FAR clauses 52.219–12 and 52.219–17. Removal of the requirement to obtain this approval is expected to result in savings for contractors who are 8(a) Program participants. The following is a summary of the estimated public and Government cost savings calculated in perpetuity in 2016 dollars at a 7-percent discount rate:

Summary	Public	Government	Total
Present Value	−$14,595,843	−$7,297,914	−$21,893,757
Annualized Costs	−1,021,709	−510,854	−1,532,563
Annualized Value Costs (as of 2016 if Year 1 is 2020)	−799,457	−389,728	−1,189,185

To access the full Regulatory Cost Analysis for this rule, go to the Federal eRulemaking Portal at *www.regulations.gov,* search for ''FAR Case 2019–006'', click ''Open Docket,'' and view ''Supporting Documents''.

VI. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant

regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VII. Executive Order 13771

This final rule is considered to be an E.O. 13771 deregulatory action. The total annualized value of the cost savings is $1,189,185. Details on the estimated cost savings can be found in section V. of this preamble.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule, because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble). Accordingly, no regulatory flexibility analysis is required and none has been prepared.

IX. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 2, 19, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 19, and 52 as set forth below:

■ 1. The authority citation for parts 2, 9, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101, in paragraph (b)(2), by revising the definition of ''Affiliates'' to read as follows:

2.101 Definitions.

(b) * * *

(2) * * *

Affiliates means associated business concerns or individuals if, directly or indirectly either one controls or can control the other; or third party controls or can control both, except as follows:

(1) For the use in subpart 9.4, see the definition at 9.403.

(2) For the use in subpart 19.1, see the definition at 19.101.

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

19.001 [Amended]

■ 3. Amend section 19.001, in the defined term ''Concern'' by removing the last sentence and adding ''For more information, see 13 CFR 121.105.'' in its place.

■ 4. Amend section 19.101 by revising the section heading and the definition of ''Affiliates'' to read as follows:

19.101 Definitions.

* * * * *

Affiliates means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

* * * * *

19.1303 [Amended]

■ 5. Amend section 19.1303, in paragraph (c) by removing ''the explanation of affiliates (see 19.101)'' and adding ''13 CFR 121.103(h)'' in its place.

19.1403 [Amended]

■ 6. Amend section 19.1403, in paragraph (c)(3), by removing ''of paragraph 7 of the explanation of Affiliates in 19.101'' and adding ''in 13 CFR 121.103(h)'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(21) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items Oct 2019)

* * * * *

(b) * * *

(21) 52.219–27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Oct 2019) (15 U.S.C. 657f).

* * * * *

■ 8. Amend section 52.219–12 by—

■ a. Revising the date of the clause;

■ b. Removing paragraph (b)(3);

■ c. Redesignating paragraph (b)(4) as (b)(3); and

■ d. Removing from newly redesignated paragraph (b)(3) ''That is'' and adding ''That it'' in its place.

The revision reads as follows:

52.219–12 Special 8(a) Subcontract Conditions.

* * * * *

Special 8(a) Subcontract Conditions (Oct 2019)

* * * * *

■ 9. Amend section 52.219–17 by revising the date of the clause and paragraph (a)(2) and removing paragraph (c).

The revisions read as follows:

52.219–17 Section 8(a) Award.

* * * * *

Section 8(a) Award (Oct 2019)

(a) * * *

(2) Except for novation agreements, delegates to the ___ [*insert name of contracting activity*] the responsibility for administering the contract with complete authority to take any action on behalf of the Government under the terms and conditions of the contract; provided, however that the contracting agency shall give advance notice to the SBA before it issues a final notice terminating the right of the subcontractor to proceed with further performance, either in whole or in part, under the contract.

* * * * *

■ 10. Amend section 52.219–27 by revising the date of the clause and removing from paragraph (e)(3) ''paragraph 7 of the explanation of Affiliates in 19.101 of the Federal Acquisition Regulation'' and adding ''13 CFR 121.103(h)'' in its place.

The revision reads as follows:

52.219–27 Notice of Service-Disabled Veteran-Owned Small Business Set-Aside.

* * * * *

Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Oct 2019)

* * * * *

[FR Doc. 2019–19361 Filed 9–9–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9, 13, 15, 25, and 42

[FAC 2019–06; FAR Case 2019–005; Item III; Docket No. FAR–2019–0005, Sequence No. 1]

RIN 9000–AN88

Federal Acquisition Regulation: Update to Contractor Performance Assessment Reporting System (CPARS)

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement changes regarding the retirement of the Past Performance Information Retrieval System and establishment of the Contractor Performance Assessment Reporting System as the official system for past performance information.

DATES: *Effective* October 10, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, at 202–501–1448 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2019–06, FAR Case 2019–005.

SUPPLEMENTARY INFORMATION:

I. Background

Effective January 15, 2019, the Past Performance Information Retrieval System (PPIRS) was retired, concluding its merger with the Contractor Performance Assessment Reporting System (CPARS). All data from PPIRS has been merged into CPARS.gov. The transition to a single system provides one location and one account to perform functions such as creating and editing performance and integrity records, changes to administering users, running reports, generating performance records, and viewing/managing performance records.

II. Discussion and Analysis

This final rule amends FAR 42.1501 and 42.1503, to establish CPARS as the official system for contractor past performance information. Conforming changes are also made in parts 9, 13, 15, and 25 to remove all references to PPIRS and add CPARS.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This final rule does not create any new provisions or clauses, nor does it change the applicability or burden of any existing provisions or clauses included in solicitations and contracts valued at or below the SAT, or for commercial items, including COTS items.

IV. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. While this final rule relates to the expenditure of appropriated funds, it is not required to be published for public comment because it does not have a significant effect on contractors or offerors (*i.e.,* this action is administrative—it does not require contractors to take any action, affect the way in which contractors retrieve or provide information regarding their performance, or otherwise change policies addressing the assessment or recording of contractor performance). The rule merely reflects the merger of PPIRS into an existing system, CPARS, which now serves as the single official repository for recording and maintaining contractor performance information.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section IV of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0142, Past Performance Information.

List of Subjects in 48 CFR Parts 9, 13, 15, 25, and 42

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 9, 13, 15, 25, and 42 as set forth below:

■ 1. The authority citation for parts 9, 13, 15, 25, and 42 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 9—CONTRACTOR QUALIFICATIONS

9.104–6 [Amended]

■ 2. Amend section 9.104–6, in paragraph (a)(1), by removing ''*www.ppirs.gov,* then select FAPIIS'' and ''Past Performance Information Retrieval System (PPIRS)'' and adding ''*https://www.cpars.gov*'' and ''Contractor Performance Assessment Reporting System (CPARS)'' in their places, respectively.

9.105–1 [Amended]

■ 3. Amend section 9.105–1, in paragraph (c) introductory text, by removing ''PPIRS'' and adding ''CPARS'' in its place.

9.105–2 [Amended]

■ 4. Amend section 9.105–2, in paragraph (b)(2)(i) introductory text, by removing ''*www.cpars.gov,* then select FAPIIS'' and adding ''*https://www.cpars.gov*'' in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.106–2 [Amended]

■ 5. Amend section 13.106–2, in paragraph (b)(3)(ii)(C) by removing ''Governmentwide Past Performance Information Retrieval System (PPIRS) at *www.ppirs.gov*'' and adding ''Contractor Performance Assessment Reporting System (CPARS) at *https://www.cpars.gov*'' in its place.

PART 15—CONTRACTING BY NEGOTIATION

15.407–1 [Amended]

■ 6. Amend section 15.407–1, in paragraph (d) introductory text, by removing ''PPIRS'' and adding ''Contractor Performance Assessment Reporting System (CPARS)'' in its place.

PART 25—FOREIGN ACQUISITION

25.702–4 [Amended]

■ 7. Amend section 25.702–4, in paragraph (c)(3)(vi), by removing ''Past Performance Information Retrieval System'' and ''*www.ppirs.gov*'' and adding ''Contractor Performance Assessment Reporting System (CPARS)'' and ''*https://www.cpars.gov*'' in their places, respectively.

25.703–4 [Amended]

■ 8. Amend section 25.703–4, in paragraph (c)(6), by removing ''Past Performance Information Retrieval System'' and ''*www.ppirs.gov*'' and adding ''Contractor Performance Assessment Reporting System (CPARS)'' and ''*https://www.cpars.gov*'' in their places, respectively.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 9. Amend section 42.1501 by revising paragraph (b) to read as follows:

42.1501 General.

* * * * *

(b) Agencies shall monitor their compliance with the past performance evaluation requirements (see 42.1502), and use the Contractor Performance Assessment Reporting System (CPARS) metric tools to measure the quality and timely reporting of past performance information. CPARS is the official source for past performance information.

■ 10. Amend section 42.1503 by—

■ a. Removing from paragraph (a)(1)(iii) ''PPIRS'' and adding ''CPARS'' in its place;

■ b. Revising paragraph (f);

■ c. Removing from paragraph (g) ''PPIRS'' and adding ''CPARS'' in its place; and

■ d. Removing from paragraph (h)(3) ''*http://www.cpars.gov/,* then select FAPIIS'' and adding ''*https://www.cpars.gov*'' in its place.

The revision reads as follows:

42.1503 Procedures.

* * * * *

(f) Agencies shall prepare and submit all past performance evaluations electronically in CPARS at *https://www.cpars.gov.* These evaluations, including any contractor-submitted information (with indication whether agency review is pending), become available for source selection officials not later than 14 days after the date on which the contractor is notified of the evaluation's availability for comment. The Government shall update CPARS with any contractor comments provided after 14 days, as well as any subsequent agency review of comments received. Past performance evaluations for classified contracts and special access programs shall not be reported in CPARS, but will be reported as stated in this subpart and in accordance with agency procedures. Agencies shall ensure that appropriate management and technical controls are in place to ensure that only authorized personnel have access to the data and the information safeguarded in accordance with 42.1503(d).

* * * * *

[FR Doc. 2019–19362 Filed 9–9–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2019–06; FAR Case 2019–011; Item IV; Docket No. FAR–2019–0011; Sequence No. 1]

RIN 9000–AN93

Federal Acquisition Regulation: New World Trade Organization Government Procurement Agreement Country—Australia

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to add Australia as a World Trade Organization Government Procurement Agreement (WTO GPA) country.

DATES: *Effective:* October 10, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2019–06, FAR Case 2019–011.

SUPPLEMENTARY INFORMATION:

I. Background

On May 5, 2019, Australia became a party to the World Trade Organization Government Procurement Agreement (WTO GPA). The Trade Agreements Act (19 U.S.C. 2501 *et seq.*) provides the authority for the President to waive the Buy American Act and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States (such as the WTO GPA). The President has delegated this authority to the U.S. Trade Representative.

The U.S. Trade Representative has determined that Australia will provide appropriate reciprocal competitive Government procurement opportunities to United States products and services. The U.S. Trade Representative published a notice in the **Federal Register** (84 FR 18110, April 29, 2019) waiving the Buy American Act and other discriminatory provisions for eligible products from Australia.

II. Discussion and Analysis

This rule adds Australia to the list of WTO GPA countries wherever the list appears in the FAR, whether as a separate definition, part of the definition of ''designated country'' or ''Recovery Act designated country,'' or as part of the list of countries exempt from the prohibition of acquisition of products produced by forced or indentured child labor (FAR 22.1503, 25.003, 52.222–19, 52.225–5, 52.225–11, and 52.225–23).

Conforming changes were required to FAR 52.212–5, Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items, and 52.213–4, Terms and Conditions-Simplified Acquisitions (Other Than Commercial Items).

Australia is already a designated country because it is a Free Trade Agreement Country.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This rule is not statutory and is not subject to 41 U.S.C. 1905 through 1907. The rule adds Australia to the list of WTO GPA countries to reflect the U.S. Trade Representative's determination. It applies to acquisitions over the WTO GPA threshold, as well as to acquisitions for commercial items and COTS items.

IV. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it has no significant cost or administrative impact on contractors or offerors. It is just updating the lists of designated countries, in order to conform to the determination by the U.S. Trade Representative.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section IV of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) does apply. However, this rule does not affect the response of an offeror that is offering a product of Australia to the information collection requirements in the provisions at FAR 52.212–3(g)(5), 52.225–6, and 52.225–11. Australia is already a designated country because it is a Free Trade Agreement country. These information collection requirements are currently approved under OMB Control Numbers 9000–0136 and 9000–0024, respectively.

List of Subjects in 48 CFR Parts 22, 25, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 25, and 52 as set forth below:

■ 1. The authority citation for parts 22, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1503 [Amended]

■ 2. Amend section 22.1503 by removing from paragraph (b)(4) the words ''Aruba, Austria,'' and adding ''Aruba, Australia, Austria,'' in their place.

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

■ 3. Amend section 25.003 by—

■ a. Removing from the definition ''Designated country'', paragraph (1), the words ''Aruba, Austria'' and adding ''Aruba, Australia, Austria,'' in their place; and

■ b. Removing from the definition ''World Trade Organization Government Procurement Agreement (WTO GPA) country'' the words ''Aruba, Austria,'' and adding ''Aruba, Australia, Austria,'' in their place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.212–5 by revising the date of the clause and paragraphs (b)(26) and (48) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Oct 2019)

* * * * *

(b) * * *

(26) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (Oct 2019) (E.O. 13126).

* * * * *

(48) 52.225–5, Trade Agreements (Oct 2019) (19 U.S.C. 2501, *et seq.,* 19 U.S.C. 3301 note).

* * * * *

■ 5. Amend section 52.213–4 by revising the date of the clause and paragraph (b)(1)(ii) to read as follows:

52.213–4 Terms and Conditions-Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions-Simplified Acquisitions (Other Than Commercial Items) (Oct 2019)

* * * * *

(b) * * *

(1) * * *

(ii) 52.222–19, Child Labor-Cooperation with Authorities and Remedies (Oct 2019) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold).

* * * * *

■ 6. Amend section 52.222–19 by revising the date of the clause and removing from paragraph (a)(4) the words ''Aruba, Austria,'' and adding ''Aruba, Australia, Austria,'' in their place.

The revision reads as follows:

52.222–19 Child Labor—Cooperation with Authorities and Remedies.

* * * * *

Child Labor—Cooperation With Authorities and Remedies (Oct 2019)

* * * * *

■ 7. Amend section 52.225–5 by revising the date of the clause; and in paragraph (a) by removing from the definition ''Designated country'', in paragraph (1), the words ''Aruba, Austria,'' and adding ''Aruba, Australia, Austria,'' in their place.

The revision reads as follows:

52.225–5 Trade Agreements.

* * * * *

Trade Agreements (Oct 2019)

* * * * *

■ 8. Amend section 52.225–11 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (a), in the definition ''Designated country'', paragraph (1), the words ''Aruba, Austria,'' and adding ''Aruba, Australia, Austria,'' in their place.

The revision reads as follows:

52.225–11 Buy American Act—Construction Materials under Trade Agreements.

* * * * *

Buy American Act —Construction Materials Under Trade Agreements (Oct 2019)

* * * * *

■ 9. Amend section 52.225–23 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (a), in the definition ''Designated country'', paragraph (1), the words ''Aruba, Austria,'' and adding ''Aruba, Australia, Austria,'' in their place; and

■ c. Removing from paragraph (a), in the definition ''Recovery Act designated country'', paragraph (1), the words ''Aruba, Austria,'' and adding ''Aruba, Australia, Austria,'' in their place.

The revision reads as follows:

52.225–23 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements.

* * * * *

Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements (Oct 2019)

* * * * *

[FR Doc. 2019–19363 Filed 9–9–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2019–0001, Sequence No. 5]

Federal Acquisition Regulation; Federal Acquisition Circular 2019–06; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2019–06, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2019–06, which precedes this document. These documents are also available via the internet at *http://www.regulations.gov.*

DATES: September 10, 2019.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2019–06 and the FAR Case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755.

RULES LISTED IN FAC 2019–06

Item	Subject	FAR case	Analyst
*I	Use of Products and Services of Kaspersky Lab	2018–010	Francis.
II	Update of ''Affiliates'' and Section 8(a) Clauses	2019–006	Chambers.
III	Update to Contractor Performance Assessment Reporting System (CPARS)	2019–005	Glover.
IV	New World Trade Organization Government Procurement Agreement Country—Australia.	2019–011	Davis.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2019–06 amends the FAR as follows:

Item I—Use of Products and Services of Kaspersky Lab (FAR Case 2018–010

This final rule adopts an interim rule published on June 15, 2018, without changes. The interim rule implemented section 1634 of Division A of the

National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91), which prohibited the use of hardware, software, and services developed or provided, in whole or in part, by Kaspersky Lab or related entities by the Federal Government, on or after October 1, 2018. The interim rule also required contractors to report any such hardware, software, or services discovered during contract performance. This rule is being implemented as a national security measure to protect Government information and information systems.

Item II—Update of ''Affiliates'' and Section 8(a) Clauses (FAR Case 2019–006)

This final rule amends the FAR to revise the definition of ''affiliates'' at FAR 19.101 and 2.101. This rule amends the clauses at FAR 52.219–12, Special 8(a) Subcontract Conditions, and 52.219–17, Section 8(a) Award, to remove an obsolete requirement for 8(a) contractors to obtain written approval from the Small Business Administration and the contracting officer before subcontracting the performance of any contract requirements. This final rule is expected to result in savings for Federal contractors who are participants in the 8(a) Program.

Item III—Update to Contractor Performance Assessment Reporting System (CPARS) (FAR Case 2019–005)

This final rule amends the FAR at FAR 42.1501 and 42.1503 to establish the Contractor Performance Assessment Reporting System (CPARS) as the official system for past performance information. The rule makes conforming changes in FAR parts 9, 13, 15, and 25 to remove all references to Past Performance Information Retrieval System (PPIRS) and adds CPARS for past performance information. The final rule is not expected to have a significant economic impact on small entities, because the rule merely designates an existing system, CPARS, as the single official repository for recording and maintaining contractor performance information.

Item IV—New World Trade Organization Government Procurement Agreement Country—Australia (FAR Case 2019–011)

DoD, GSA, and NASA are issuing a final rule amending the FAR to add Australia as a new World Trade Organization Government Procurement Agreement (WTO GPA) country. Australia is already a designated country, because it is a Free Trade Agreement country.

This final rule has no significant impact on the Government and contractors, including small business entities.

William F. Clark,

Director, Office of Government-wide Acquisition Policy,Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2019–19364 Filed 9–9–19; 8:45 am]

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Part V

The President

Proclamation 9921—National Days of Prayer and Remembrance, 2019

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Presidential Documents

Title 3—

The President

Proclamation 9921 of September 5, 2019

National Days of Prayer and Remembrance, 2019

By the President of the United States of America

A Proclamation

During these National Days of Prayer and Remembrance, we come together to honor the memory of the nearly 3,000 men, women, and children who perished in the terrorist attacks of September 11, 2001. The passage of time will never diminish the magnitude of the loss or the courage, compassion, strength, and unity displayed during one of our darkest hours.

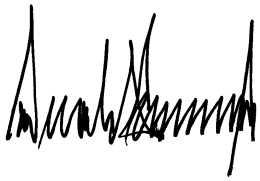
The horrific events of that September morning shook our Nation to its core as we watched in disbelief as the chaos unfolded. Yet in the midst of loss and destruction, a renewed pride, patriotism, and appreciation for the precious blessings of life and liberty filled our soul. We pause, therefore, to remember not merely our pain and sorrow from that day but also our will, our fortitude, and our reinvigorated unity and love for our fellow Americans.

Since the founding of our Republic, we have proclaimed reliance on Almighty God. Prayer has sustained and guided the leaders and citizens of this great Nation in times of peace and prosperity and in times of conflict and disaster. Thus, it is fitting that we again turn to our Creator for wisdom, comfort, and peace on this somber occasion, praying for those who lost loved ones at the World Trade Center, at the Pentagon, and in Shanksville, Pennsylvania, and for all who bear the wounds, seen and unseen, of these tragedies. We also pray for our first responders who risk their own lives to rescue others in peril, and continue to do so day in and day out, as well as for our men and women in the military who protect our homeland, serving a cause greater than themselves.

The United States has endured many trials, yet few events have challenged our resolve as the events of September 11, 2001. On that fateful day, our faith was challenged, but never lost; our Nation wept, but could not be defeated. Through the devastation, we emerged stronger. During these commemorative days, may we unite in prayer and remembrance and do our part to ensure that future generations never forget this immeasurable tragedy or ever doubt this Nation's extraordinary resilience.

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 Friday, September 6, through Sunday, September 8, 2019, as National Days of Prayer and Remembrance. I ask that the people of the United States mark these National Days of Prayer and Remembrance with prayer, contemplation, memorial services, the visiting of memorials, the ringing of bells, and evening candlelight remembrance vigils. I invite all people around the world to share in these Days of Prayer and Remembrance.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of September, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-fourth.



[FR Doc. 2019–19726
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