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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 150

[NRC-2013-0132]

RIN 3150-AJ27

Hearings on Challenges to the Immediate Effectiveness of Orders

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations regarding challenges to the immediate effectiveness of NRC enforcement orders to clarify the burden of proof and to clarify the authority of the presiding officer to order live testimony in resolving these challenges.

DATES: This final rule is effective on November 19, 2015.

ADDRESSES: Please refer to Docket ID NRC-2013-0132 when contacting the NRC about the availability of information for this final rule. You may obtain publicly-available information related to this final rule by any of the following methods:

- *Federal rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2013-0132. 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 final rule.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS

Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room 01-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Esther Houseman, Office of the General Counsel, telephone: 301-415-2267, email: Esther.Houseman@nrc.gov; or Eric Michel, Office of the General Counsel, telephone: 301-415-1177, email: Eric.Michel2@nrc.gov; U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

Executive Summary

The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations regarding the issuance of immediately effective orders to clarify the burden of proof in proceedings on challenges to the immediate effectiveness of such orders and the authority of the presiding officer in such proceedings to order live testimony. In NRC enforcement proceedings, the recipient of an order ordinarily may challenge the validity of that order before its terms become effective at a later specified date. However, in certain circumstances, the NRC may issue orders to regulated entities or individuals that are "immediately effective," meaning the order's terms are effective upon issuance and remain in effect even during the pendency of a challenge. These amendments confirm that the recipient of the immediately effective order has the burden to initiate a challenge regarding the order's immediate effectiveness and present evidence that the order, including the need for immediate effectiveness, is not based on adequate evidence. The amendments also clarify that the NRC staff ultimately bears the burden of persuasion that immediate effectiveness is warranted. Additionally, these amendments confirm that the presiding officer in a challenge to the immediate effectiveness of an order may order live

testimony, including cross examination of witnesses, if it will assist in the presiding officer's decision. These are not substantive changes to the agency's enforcement procedures, but rather confirm existing burdens and presiding officer authority.

In this final rule, the Commission is not adopting the previously proposed amendment¹ that would have incorporated the concept of "deliberate ignorance" as an additional basis upon which the NRC could take enforcement action against an individual for violating the rule. The Commission agrees with public commenters' concern that the subjectivity of the deliberate ignorance standard makes it difficult to implement. This difficulty would make the enforcement process more complex and burdensome, and any corresponding benefits would not outweigh these disadvantages. This decision is discussed in more detail in Section IV, "Public Comment Analysis," of this document.

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I. Background

On January 4, 2006, the U.S. Nuclear Regulatory Commission (NRC) issued an immediately effective order to Mr. David Geisen, a former employee at the Davis-Besse Nuclear Power Station, barring him from employment in the nuclear industry for 5 years.² The order

¹ On February 11, 2014, the NRC published the proposed amendments in a proposed rule entitled, "Deliberate Misconduct Rule and Hearings on Challenges to the Immediate Effectiveness of Orders" (79 FR 8097). The NRC changed the title of this final rule to "Hearings on Challenges to the Immediate Effectiveness of Orders" to more clearly reflect that the proposed changes to the Deliberate Misconduct Rule were not adopted.

² *David Geisen*, LBP-09-24, 70 NRC 676 (2009), *aff'd*, CLI-10-23, 72 NRC 210 (2010).

charged Mr. Geisen with deliberate misconduct in contributing to the submission of information to the NRC that he knew was not complete or accurate in material respects. The U.S. Department of Justice (DOJ) later obtained a grand jury indictment against Mr. Geisen on charges under 18 U.S.C. 1001 for submitting false statements to the NRC.³ In the criminal case, the judge gave the jury instructions under the prosecution's two alternative theories: The jury could find Mr. Geisen guilty if he either knew that he was submitting false statements or if he acted with deliberate ignorance of their falsity. The jury found Mr. Geisen guilty on a general verdict; that is, the jury found Mr. Geisen guilty without specifying whether it found Mr. Geisen acted out of actual knowledge or deliberate ignorance. The United States Court of Appeals for the Sixth Circuit upheld Mr. Geisen's conviction on appeal.⁴

In the parallel NRC enforcement proceeding, brought under the agency's Deliberate Misconduct Rule, § 50.5 of title 10 of the *Code of Federal Regulations* (10 CFR), Mr. Geisen's criminal conviction prompted the NRC's Atomic Safety and Licensing Board (the Board) to consider whether Mr. Geisen was collaterally estopped⁵ from denying the same wrongdoing in the NRC proceeding.⁶ The Board found and the Commission upheld, on appeal, that collateral estoppel could not be applied because the NRC's Deliberate Misconduct Rule did not include deliberate ignorance and the general verdict in the criminal proceeding did not specify whether the verdict was based on actual knowledge or deliberate ignorance.⁷

³ *United States v. Geisen*, 612 F.3d 471, 485–86 (6th Cir. 2010), cert. denied, 131 S. Ct. 1813 (2011), (citing *United States v. Geisen*, 2008 WL 6124567 (N.D. Ohio May 2, 2008)).

⁴ *Id.* at 485–86.

⁵ Collateral estoppel precludes a defendant convicted in a criminal proceeding from challenging in a subsequent civil proceeding any facts that were necessary for the criminal conviction. Collateral estoppel applies to quasi-judicial proceedings such as enforcement hearings before the NRC. See, e.g., *SEC v. Freeman*, 290 F.Supp. 2d 401, 405 (S.D.N.Y. 2003) (“It is settled that a party in a civil case may be precluded from relitigating issues adjudicated in a prior criminal proceeding and that the Government may rely on the collateral estoppel effect of the conviction in support of establishing the defendant's liability in the subsequent civil action.”) (citations omitted).

⁶ *Geisen*, LBP–09–24, 70 NRC at 709–26; see 10 CFR 50.5.

⁷ The Board stated that “the [NRC] Staff flatly and unmistakably conceded that the ‘deliberate ignorance’ theory is not embraced within the ‘deliberate misconduct’ standard that governs our proceedings.” *Geisen*, LBP–09–24, 70 NRC at 715 (alteration added). In its decision, the Commission stated “[t]he distinction between the court's ‘deliberate ignorance’ standard and the [NRC's]

The lack of certainty as to the specific basis of the jury's verdict was significant, because if the verdict was based on actual knowledge, the Board could have applied collateral estoppel based on the NRC's identical actual knowledge standard and the same facts in the criminal case.⁸ However, because the general verdict could have been based on deliberate ignorance, the Board could not apply collateral estoppel, because the NRC does not recognize conduct meeting the deliberate ignorance knowledge standard as deliberate misconduct. The Commission affirmed the Board's decision.⁹ This outcome shows that the Deliberate Misconduct Rule, as presently written, does not provide for an enforcement action on the basis of deliberate ignorance and the Board cannot apply collateral estoppel where a parallel DOJ criminal prosecution proceeding may be based on a finding of deliberate ignorance.

In the Staff Requirements Memorandum (SRM) to SECY–10–0074, “David Geisen, NRC Staff Petition for Review of LBP–09–24 (Aug. 28, 2009),” dated September 3, 2010 (ADAMS Accession No. ML102460411), the Commission directed the NRC's Office of the General Counsel (OGC) to conduct a review of three issues: (1) How parallel NRC enforcement actions and DOJ criminal prosecutions affect each other, (2) the issuance of immediately effective enforcement orders in matters that DOJ is also pursuing, and (3) the degree of knowledge required for pursuing violations against individuals for deliberate misconduct. In 2011, OGC conducted the requested review and provided recommendations to the Commission for further consideration. In response, in 2012, the Commission directed OGC to develop a proposed rule that would incorporate the deliberate ignorance standard into the Deliberate Misconduct Rule. As part of this effort, the Commission directed OGC to examine the definitions of deliberate ignorance from all Federal circuit courts to aid in developing the most appropriate definition of this term for the NRC. The Commission also directed OGC to clarify two aspects of the regulations regarding challenges to immediate effectiveness of NRC orders

‘deliberate misconduct’ standard applied in this case is highly significant, indeed, decisive. The Staff, when moving for collateral estoppel, itself conceded that ‘the 6th Circuit's deliberate ignorance instruction does not meet the NRC's deliberate misconduct standard.’” *Geisen*, CLI–10–23, 72 NRC at 251 (emphasis in the original) (alteration added).

⁸ *Geisen*, CLI–10–23, 72 NRC at 249.

⁹ *Id.* at 254.

as part of this rulemaking: (1) The burden of proof and (2) the authority of the presiding officer to order live testimony in resolving such a challenge.

This final rule amends 10 CFR 2.202, which governs challenges to, and the presiding officer's review of, the immediate effectiveness of an order. Currently, the Commission may make orders immediately effective under 10 CFR 2.202(a)(5) if it finds that the public health, safety, or interest so requires or if willful conduct caused a violation of the Atomic Energy Act of 1954, as amended (AEA), an NRC regulation, license condition, or previously issued Commission order. This final rule amends the NRC's regulations by clarifying the following: (1) Which party bears the burden of proof in a hearing on a challenge to the immediate effectiveness of an order, and (2) the authority of the presiding officer to call for live testimony in a hearing on a challenge to the immediate effectiveness of an order. In developing these amendments to 10 CFR 2.202, the NRC reviewed the way in which the Board has interpreted the burden of proof in hearings on challenges to the immediate effectiveness of an order. The NRC also reviewed its current regulations and practices regarding the authority of the presiding officer to call for live testimony in hearings on challenges to the immediate effectiveness of an order.

This final rule also makes conforming amendments to 10 CFR 150.2 by adding a cross reference to 10 CFR 61.9b and replacing the cross reference to 10 CFR 71.11 with a cross reference to 10 CFR 71.8. These conforming amendments are necessary because when the NRC first promulgated the Deliberate Misconduct Rule in 1991, it failed to list 10 CFR 61.9b as a cross reference in 10 CFR 150.2; and, although the NRC listed 10 CFR 71.11, which at the time was the 10 CFR part 70 Deliberate Misconduct Rule, as a cross reference in 10 CFR 150.2, the NRC later redesignated the provision as 10 CFR 71.8 and failed to make a conforming amendment to update 10 CFR 150.2.

As discussed further in the following sections, the Commission is not adopting in this final rule the previously proposed amendment to the Deliberate Misconduct Rule to incorporate the concept of deliberate ignorance as an additional basis upon which the NRC can take enforcement action against an individual for violating the rule.

Immediately Effective Orders

The NRC's procedures to initiate formal enforcement action are found in subpart B of 10 CFR part 2. These regulations include 10 CFR 2.202,

“Orders.” An order is a written NRC directive to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or to take another action as appropriate.¹⁰ The Commission’s statutory authority to issue an order is Section 161 of the AEA.¹¹ The Commission may issue orders in lieu of or in addition to civil penalties.¹² When the Commission determines that the conduct that caused a violation was willful or that the public health, safety, or interest requires immediate action, the Commission may make orders immediately effective, meaning the subject of the order does not have an opportunity for a hearing before the order goes into effect.¹³ Making enforcement orders immediately effective has been an integral part of 10 CFR 2.202 since 1962, and Section 9(b) of the Administrative Procedure Act (APA), 5 U.S.C. 558(c), expressly authorizes immediately effective orders.

On the same day that the Commission published the 1990 proposed Deliberate Misconduct Rule, “Willful Misconduct by Unlicensed Persons,”¹⁴ it also published a related proposed rule, “Revisions to Procedures to Issue Orders,”¹⁵ that would expressly allow the Commission to issue orders to unlicensed persons. The Commission may issue these orders “when such persons have demonstrated that future control over their activities subject to the NRC’s jurisdiction is deemed to be necessary or desirable to protect public health and safety or to minimize danger to life or property or to protect the common defense and security.”¹⁶ This proposed rule concerned amendments to 10 CFR 2.202 and other 10 CFR part 2 provisions.¹⁷ At the time of these proposed rules, the Commission’s regulations only authorized the issuance of an order to a licensee. Therefore, the intent of the 1990 proposed Deliberate Misconduct Rule and its companion proposed rule was to establish a mechanism to issue “an order . . . to an unlicensed person who willfully causes a licensee to be in violation of Commission requirements or whose willful misconduct undermines, or calls into question, the adequate protection of the public health and safety in connection with activities regulated by the NRC under the [AEA].”¹⁸ These

proposed changes were adopted, with some modifications, in the 1991 final Deliberate Misconduct Rule.¹⁹ Specifically, the 1991 final Deliberate Misconduct Rule amended 10 CFR 2.202 and other provisions of 10 CFR part 2 (10 CFR 2.1, 2.201, 2.204, 2.700, and appendix C), to authorize the issuance of an order to unlicensed persons otherwise subject to the NRC’s jurisdiction.

On July 5, 1990, the Commission published another proposed rule that would make additional changes to 10 CFR 2.202.²⁰ These additional changes pertained to immediately effective orders. Primarily, the July 5, 1990, proposed rule would have required that challenges to immediately effective orders be heard expeditiously. The statement of considerations for the July 5, 1990, proposed rule noted that “the Commission believes that a proper balance between the private and governmental interests involved is achieved by a hearing conducted on an accelerated basis.”²¹ The statement of considerations also stated that a “motion to set aside immediate effectiveness must be based on one or both of the following grounds: The willful misconduct charged is unfounded or the public health, safety or interest does not require the order to be made immediately effective.”²²

In addition, the July 5, 1990, proposed rule provided the following statement regarding the respective burdens of a party filing a motion to challenge the immediate effectiveness of an immediately effective order and of the NRC staff:

The burden of going forward on the immediate effectiveness issue is with the party who moves to set aside the immediate effectiveness provision. The burden of persuasion on the appropriateness of immediate effectiveness is on the NRC staff.²³

After receiving public comments on the July 5, 1990, proposed rule, the Commission published a final rule on May 12, 1992.²⁴ The Commission acknowledged in the May 12, 1992, final rule that “an immediately effective order may cause a person to suffer loss of employment while the order is being adjudicated” but recognized that the effects of health and safety violations are paramount over an individual’s right of employment.²⁵ Accordingly, the final rule amended 10 CFR 2.202(c) “to allow

early challenges to the immediate effectiveness aspect of immediately effective orders.”²⁶ The final rule also provided for an expedited hearing on both the merits of the immediately effective order and a challenge to set aside immediate effectiveness. The presiding officer in an immediate effectiveness challenge must dispose of a person’s motion to set aside the immediate effectiveness of the order “expeditiously,” generally within 15 days.²⁷ Therefore, the Commission struck a balance between the governmental interests in protecting public health and safety and an interest in fairness by requiring that challenges to immediately effective orders be heard expeditiously.

Burden of Going Forward and Burden of Persuasion

In opposing the immediate effectiveness aspect of an order, the party subject to the order, or respondent, must initiate the proceeding by filing affidavits and other evidence that state that the order and the NRC staff’s determination that it is necessary to make the order immediately effective “is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.”²⁸ The respondent’s obligation to challenge the order is known as the “burden of going forward.”²⁹ Section 2.202, however, has been interpreted to mean that the NRC staff bears the “burden of persuasion” to demonstrate that the order itself, and the immediate effectiveness determination, are supported by “adequate evidence.”³⁰ In a 2005 proceeding, the Board described what the NRC staff must prove, stating,

[T]he staff must satisfy a two-part test: It must demonstrate that adequate evidence—*i.e.*, reliable, probative, and substantial (but not preponderant) evidence—supports a conclusion that (1) the licensee violated a Commission requirement (10 CFR 2.202(a)(1)), and (2) the violation was ‘willful,’ or the violation poses a risk to ‘the public health, safety, or interest’ that requires immediate action (*id.* § 2.202(a)(5)).³¹

Although Mr. Geisen never challenged the immediate effectiveness of the Commission’s order, one of the Board’s judges raised the concern that 10 CFR 2.202(c)(2)(i) could be interpreted to place the burden of persuasion on the

²⁶ *Id.* at 20194.

²⁷ *Id.* at 20196. See also 10 CFR 2.202(c)(2)(i).

²⁸ 10 CFR 2.202(c)(2)(i).

²⁹ *United Evaluation Servs., Inc.*, LBP-02-13, 55 NRC 351, 354 (2002).

³⁰ *Id.*

³¹ *Safety Light Corp.* (Bloomsburg, Pennsylvania Site), LBP-05-02, 61 NRC 53, 61 (2005) (emphasis in original).

¹⁰ 10 CFR 2.202(a).

¹¹ 42 U.S.C. 2201.

¹² Section 2.3.5 of the NRC Enforcement Policy (2013) (ADAMS Accession No. ML13228A199).

¹³ 10 CFR 2.202(b).

¹⁴ 55 FR 12374; April 3, 1990.

¹⁵ 55 FR 12370; April 3, 1990.

¹⁶ *Id.* at 12371.

¹⁷ *Id.* at 12373-74.

¹⁸ *Id.* at 12372.

¹⁹ 56 FR 40664; August 15, 1991.

²⁰ 55 FR 27645.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 27646.

²⁴ 57 FR 20194.

²⁵ *Id.* at 20195.

party subject to the order to show that the order is based on mere suspicion, unfounded allegations, or error.³² This final rule clarifies that the burden of persuasion is the obligation of the NRC staff, not the party subject to the order.

Authority of the Presiding Officer to Order Live Testimony

The July 5, 1990, proposed rule's statement of considerations contemplated the possibility of an evidentiary hearing as part of a challenge to immediate effectiveness:

It is expected that the presiding officer normally will decide the question of immediate effectiveness solely on the basis of the order and other filings on the record. The presiding officer may call for oral argument. However, an evidentiary hearing is to be held only if the presiding officer finds the record is inadequate to reach a proper decision on immediate effectiveness. Such a situation is expected to occur only rarely.³³

The May 12, 1992, final rule, however, simply stated that “[t]he presiding officer may call for oral argument but is not required to do so.”³⁴ Section 2.319 outlines the presiding officer's authority to “conduct a fair and impartial hearing according to law, and to take appropriate action to control the prehearing and hearing process, to avoid delay and maintain order,” including the power to examine witnesses, but this power is not specified in 10 CFR 2.202. This final rule clarifies the presiding officer's authority to order live testimony on challenges to the immediate effectiveness of orders.

II. Discussion

Immediately Effective Orders

This rule amends 10 CFR 2.202(c)(2) to clarify that in any challenge to the immediate effectiveness of an order, the NRC staff bears the burden of persuasion and the party challenging the order bears the burden of going forward.³⁵ Specifically, the rule states

³² Geisen, “Additional Views of Judge Farrar,” LBP-09-24, 70 NRC at 801 n.12 (“To succeed under the terms of [10 CFR 2.202(c)(2)(i)], the challenge brought by the Order's target must show that ‘the order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.’ In addition to having the burden on immediate effectiveness, the target is apparently expected to address the merits at that point as well, as is indicated by the next sentence, which requires the challenge to ‘state with particularity the reasons why the order is not based on adequate evidence’ and to ‘be accompanied by affidavits or other evidence relied on.’ 10 CFR 2.202(c)(2)(i). All in 20 days, unless extended. *Id.* § 2.202(a)(2).”) (emphasis in the original).

³³ 55 FR 27645-46.

³⁴ 57 FR at 20196.

³⁵ The party challenging the order has the obligation to initiate the proceeding, namely, by

that the NRC staff must show that (1) adequate evidence supports the grounds for the order and (2) immediate effectiveness is warranted.³⁶

This rule further amends 10 CFR 2.202(c)(2) to confirm the presiding officer's authority to order live testimony, including cross examination of witnesses, in hearings on challenges to the immediate effectiveness of orders if the presiding officer concludes that taking live testimony would assist in its decision on the motion. Similarly, the rule allows any party to the proceeding to file a motion requesting the presiding officer to order live testimony. The amendments allow the NRC staff, in cases where the presiding officer orders live testimony, the option of presenting its response through live testimony rather than a written response made within 5 days of its receipt of the motion. The NRC does not anticipate that permitting the presiding officer to allow live testimony would cause delay, and even if it were to cause delay, public health and safety would not be affected because the immediately effective order would remain in effect throughout the hearing on immediate effectiveness.

The rule also amends 10 CFR 2.202(c)(2) to clarify that the presiding officer shall conduct any live testimony pursuant to its powers in 10 CFR 2.319, except that no subpoenas, discovery, or referred rulings or certified questions to the Commission shall be permitted for this purpose. Finally, the rule amends 10 CFR 2.202(c)(2) by dividing the paragraph into smaller paragraphs, adding a cross reference to 10 CFR 2.202(a)(5) (the regulation that authorizes the Commission to make an order immediately effective), and making other minor edits to improve clarity and readability.

Conforming Amendments

Section 150.2, “Scope,” provides notice to Agreement State licensees conducting activities under reciprocity in areas of NRC jurisdiction that they are subject to the applicable NRC Deliberate Misconduct Rule provisions. When the NRC first promulgated the Deliberate Misconduct Rule in 1991, it failed to list 10 CFR 61.9b as a cross reference in 10 CFR 150.2. At the time, 10 CFR 150.2 listed 10 CFR 30.10, 40.10,

filing the appropriate motion under 10 CFR 2.202(c)(2)(i). This motion “must state with particularity the reasons why the order is not based on adequate evidence and must be accompanied by affidavits or other evidence relied on.” 10 CFR 2.202(c)(2)(i).

³⁶ The Administrative Procedure Act provides “[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof.” 5 U.S.C. 556(d).

and 70.10 as the Deliberate Misconduct Rule provisions applicable to Agreement State licensees conducting activities under reciprocity in areas of NRC jurisdiction.

On January 13, 1998, the NRC revised its regulations to extend the Deliberate Misconduct Rule to include applicants for or holders of certificates of compliance issued under 10 CFR part 71, “Packaging and Transportation of Radioactive Material.”³⁷ This rule designated the 10 CFR part 71 Deliberate Misconduct Rule provision as 10 CFR 71.11.³⁸ The NRC made a conforming amendment to 10 CFR 150.2 by listing 10 CFR 71.11 as a cross reference.³⁹ The NRC later redesignated the provision as 10 CFR 71.8⁴⁰ but did not make a conforming amendment to update the cross reference in 10 CFR 150.2. The current 10 CFR 150.2 rule text still lists the 10 CFR part 71 Deliberate Misconduct Rule provision as 10 CFR 71.11.

This rule makes conforming amendments to 10 CFR 150.2 by adding a cross reference to 10 CFR 61.9b and deleting the cross reference to 10 CFR 71.11 and replacing it with a cross reference to 10 CFR 71.8.

III. Opportunities for Public Participation

The proposed rule was published on February 11, 2014, for a 90-day public comment period that ended on May 12, 2014.⁴¹

IV. Public Comment Analysis

The NRC received comments from six commenters: The Nuclear Energy Institute, Inc. (NEI), the National Association of Criminal Defense Lawyers (NACDL), STARS Alliance LLC (STARS), Hogan Lovells LLP (Hogan Lovells), Troutman Sanders LLP (Troutman Sanders), and an individual, Mr. James Lieberman. All six provided comments on the proposed amendment to the Deliberate Misconduct Rule incorporating the concept of deliberate ignorance. One commenter, Mr. Lieberman, supported the amendment. The other five commenters opposed the amendment. All comments are summarized in this section, by topic. Additionally, two commenters (NEI and STARS) provided comments on the proposed amendments to 10 CFR

³⁷ 63 FR 1890.

³⁸ *Id.* at 1899.

³⁹ *Id.* at 1901.

⁴⁰ In a 2004 rulemaking amending its regulations concerning the packaging and transport of radioactive materials, the NRC renumbered 10 CFR 71.11 to 10 CFR 71.8 (69 FR 3698, 3764, 3790; January 26, 2004).

⁴¹ 79 FR 8097.

2.202(c) concerning the immediate effectiveness of orders. The NRC received no comments on the proposed amendments to 10 CFR 150.2.

Comments Concerning Deliberate Ignorance

Comment 1: Confusion and Practical Difficulties Associated With Distinguishing Between Deliberate Ignorance and Carelessness, Recklessness, or Negligence

The NEI, NACDL, STARS, Hogan Lovells, and Troutman Sanders commented that deliberate ignorance is an inherently vague and highly subjective criminal knowledge standard and that distinguishing deliberate ignorance from other, non-deliberate states of mind, such as carelessness, recklessness, or negligence, would be difficult in practice. These commenters expressed concern that adoption of the deliberate ignorance standard into the NRC's regulations may confuse NRC staff and could possibly result in enforcement action against individuals who do not commit deliberate violations.

Specifically, Hogan Lovells expressed concern that NRC staff would have difficulty assessing what an individual "subjectively believed" and whether the individual deliberately took action to "avoid learning" a material fact. The NEI commented that the "complex, legalistic deliberate ignorance standard would be difficult to apply and would promote unnecessary and wasteful litigation without a counterbalancing benefit to the public." The NACDL expressed concern that the "theoretical distinction between a person who is deliberately ignorant and one who is reckless or negligent" would be "almost impossible to maintain" in the NRC enforcement setting. As additional support for these concerns, NEI, STARS, and Hogan Lovells stated that legal scholars and courts, including the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit), have cautioned that a "deliberate ignorance" jury instruction in Federal criminal trials should only be used sparingly because of the heightened risk that defendants may be inadvertently or impermissibly convicted on a lesser basis than deliberate ignorance, such as recklessness or negligence. The NACDL, NEI, and Troutman Sanders also argued that in the majority of cases evidence used to support a finding of deliberate ignorance would also serve as circumstantial evidence of actual knowledge, thereby further diminishing the utility of the proposed rule.

One commenter, Mr. Lieberman, expressed support for the incorporation of the deliberate ignorance standard because the text of the rule "clearly" distinguished deliberate ignorance from persons who act with recklessness or careless indifference. Mr. Lieberman recommended that the Commission provide several hypothetical examples of how and under what circumstances the deliberate ignorance standard might be applied in the future to more clearly explain how the NRC staff would differentiate between deliberate ignorance and careless disregard in practice.

NRC Response: The Commission agrees with the comments expressing concern that the difficulties in implementing the deliberate ignorance standard would likely outweigh its corresponding benefits. The text of the proposed rule contains multiple subjective elements that would require NRC staff to assess and demonstrate the subjective belief for an individual's actions or inactions. The Commission believes the text of the proposed rule correctly defines "deliberate ignorance" in such a way as to distinguish it from careless disregard or other, non-deliberate standards.⁴² However, after further consideration of the difficulties in assessing the facts of a case against this separate intent standard, the Commission has decided not to adopt its proposed amendment to incorporate a deliberate ignorance standard into the Deliberate Misconduct Rule. In this regard, the NRC staff already assesses cases against two intent standards cognizable in our enforcement process—deliberateness involving actual knowledge, and all other forms of willfulness, including careless disregard. Careless disregard is different only in degree from the new standard of deliberate ignorance and could frustrate the efficiency of the enforcement process, at least initially, until guidance were issued and enforcement experience established. The Commission also anticipates that, in most NRC enforcement cases, evidence supporting deliberate ignorance would also serve as circumstantial evidence supporting actual knowledge, further diminishing the utility of the proposed rule at this time.⁴³ Multiple Federal

⁴² The proposed rule text mirrored the definition provided by the United States Supreme Court in *Global-Tech Appliances, Inc. v. SEB S.A.*, 131 S. Ct. 2060 (2011).

⁴³ See, e.g., *United States v. Arbizio*, 833 F.2d 244, 247, 248–49 (10th Cir. 1987) ("One can in fact not know many detailed facts but still have enough knowledge to demonstrate consciousness of guilty conduct sufficient to satisfy the 'knowing' element of the crime . . . Arbizio's case presents evidence

circuits have characterized deliberate ignorance jury instructions as means to properly inform juries that a "charade of ignorance" can serve as circumstantial proof of guilty knowledge.⁴⁴ Therefore, the benefits associated with the deliberate ignorance standard would likely not outweigh the practical difficulties of its implementation, particularly given that the Commission expects that cases where evidence supports a deliberate ignorance finding but not actual knowledge will be rare.

The Commission acknowledges Mr. Lieberman's support for the rule and, as previously stated, agrees that the text of the proposed rule accurately distinguishes deliberate ignorance from non-deliberate standards, including recklessness, negligence, and carelessness. However, for the reasons previously stated, the Commission is not adopting in this final rule the proposed amendment to the Deliberate Misconduct Rule.

Comment 2: Lack of a Compelling Justification

The NEI, NACDL, STARS, Hogan Lovells, and Troutman Sanders all commented that the proposed rule failed to provide a compelling justification for incorporating the deliberate ignorance standard into the Deliberate Misconduct Rule. Several of these commenters stated that the only justification that the NRC provided for expanding the scope of the rule was the NRC staff's inability to invoke collateral estoppel in the *Geisen* case. These commenters stated that expanding the Deliberate Misconduct Rule cannot be justified by a single case in the Deliberate Misconduct Rule's 25-year history and that to fashion a rule to fit a single case is both unnecessary and bad policy. The NEI commented that the Commission should not view the *Geisen* proceedings as illustrative of an additional or unfair "burden" that the NRC staff must overcome in deliberate misconduct enforcement cases. Instead, the case simply illustrated the NRC staff's responsibility in carrying its burden when issuing an enforcement order and that the NRC should not be able to dispense with this responsibility by amending the Deliberate Misconduct Rule.

The NEI and Hogan Lovells also argued that the statement in the proposed rule that "deficiencies in the

supporting both actual knowledge and deliberate avoidance of knowledge of some details of the transaction, either of which justify the [guilty] verdict . . .").

⁴⁴ See, e.g., *U.S. v. Conner*, 537 F.3d 480, 486 (5th Cir. 2008); *U.S. v. Delreal-Ordones*, 213 F.3d 1263, 1269 (10th Cir. 2000).

Deliberate Misconduct Rule became apparent” in the *Geisen* case was incorrect because the *Geisen* case was not a deliberate ignorance case. Rather, the NRC’s order only alleged that Mr. Geisen had actual knowledge of the falsity of the statements that he submitted to the NRC, and that the Atomic Safety and Licensing Board agreed that the case was only an actual knowledge case. Therefore, according to the commenters, the NRC should not use the *Geisen* case as a basis for the rule. The commenters noted that, when promulgating the original Deliberate Misconduct Rule in 1991, the Commission stated that the range of actions subject to the rule was not expected to “differ significantly” from those that might subject an individual to criminal prosecution, and the commenters noted that one case in nearly 25 years does not rise to the level of a “significant” difference.

NRC Response: The Commission disagrees with this comment. Although the Commission recognizes that the benefits of the rule would be limited because it will likely prove decisive in few cases, the Commission disagrees with the comment that the agency lacked adequate justification to consider modification of the regulations to address deliberate ignorance. When promulgating the Deliberate Misconduct Rule in 1991, the Commission stated that deliberate misconduct is a significant and serious matter that poses a distinct threat to public health and safety.⁴⁵ The NRC’s inability to invoke collateral estoppel in the *Geisen* proceeding was not the sole justification for proposing to amend the Deliberate Misconduct Rule. Rather, the Commission has always considered willful violations of NRC requirements to be of particular concern because the NRC’s regulatory program is dependent on licensees and their contractors, employees, and agents to act with integrity and communicate with candor. Therefore, the outcome of the *Geisen* proceeding prompted the Commission to reevaluate the Deliberate Misconduct Rule.

The Commission also disagrees with the comment that the *Geisen* case was not a deliberate ignorance case. While the NRC staff did allege only actual knowledge throughout the enforcement proceeding, the NRC staff did not pursue a deliberate ignorance theory because it conceded deliberate ignorance was not a basis upon which it could pursue enforcement action under the Deliberate Misconduct Rule

as currently written.⁴⁶ Conversely, DOJ’s parallel criminal prosecution of Mr. Geisen in Federal court was based on alternate theories of actual knowledge or deliberate ignorance. The district court provided the deliberate ignorance jury instruction, and Mr. Geisen was convicted on a general verdict. On appeal to the U.S. Court of Appeals for the Sixth Circuit (Sixth Circuit), Mr. Geisen challenged the district court’s decision to provide the deliberate ignorance jury instruction.⁴⁷ The Sixth Circuit reiterated that “a deliberate ignorance instruction is warranted to prevent a criminal defendant from escaping conviction merely by deliberately closing his eyes to the obvious risk that he is engaging in unlawful conduct,” but cautioned that this instruction should be used sparingly because of the heightened risk of conviction based on mere negligence, carelessness, or ignorance.⁴⁸ Under this standard, the court found the instruction to be proper because the district court’s instruction was a correct statement of the law and included a limiting instruction—that “carelessness, or negligence, or foolishness on [the defendant’s] part is not the same as knowledge and is not enough to convict” foreclosed the possibility that the jury could erroneously convict Geisen on the basis of negligence or carelessness.⁴⁹ Moreover, the court found that the evidence supported a conviction based on either actual knowledge or deliberate ignorance.⁵⁰ Had the deliberate ignorance standard been incorporated into the NRC’s Deliberate Misconduct Rule, collateral estoppel would have been available to the NRC staff in the *Geisen* matter.

As previously stated, the Commission is not adopting the proposed amendment to the Deliberate Misconduct Rule because the practical difficulties are expected to outweigh the potential benefits gained from the rule.

Comment 3: Previous Rejection of the Deliberate Ignorance Standard

The NEI stated that the proposed rule would conflict with the Commission’s decision in the 1991 Deliberate Misconduct Rule to exclude from the rule violations based on careless disregard and negligence. Hogan Lovells stated that the Commission rejected the deliberate ignorance standard when it

⁴⁶ See *David Geisen*, LBP–09–24, 70 NRC 676, 715 (2009); *Geisen*, CLI–10–23, 72 NRC 210, 251 (2010).

⁴⁷ *United States v. Geisen*, 612 F.3d 471, 485 (6th Cir. 2010).

⁴⁸ *Id.* at 485–86 (citations and internal quotation marks omitted).

⁴⁹ *Id.*

⁵⁰ *Id.* at 487.

promulgated the original Deliberate Misconduct Rule.

NRC Response: The Commission disagrees with the comment. Although the Commission is not adopting the proposed amendment to the Deliberate Misconduct Rule due to the practical difficulties associated with applying the deliberate ignorance standard, the Commission disagrees with comments suggesting that the deliberate ignorance standard was previously analyzed and explicitly rejected when the Commission promulgated the original Deliberate Misconduct Rule in 1991. The commenter points to a single sentence in the statement of considerations for the proposed rule that discussed “careless disregard,” which uses the phrase “a situation in which an individual blinds himself or herself to the realities of whether a violation has occurred or will occur.”⁵¹ The proposed rule and final rule did not make any other reference related to willful blindness or deliberate ignorance and did not contain detailed discussion on the standards.

The Commission eventually eliminated “careless disregard” from the final rule in response to public comments, which Hogan Lovells characterizes as the Commission’s “considered and intentional decision” to exclude deliberate ignorance from the rule. However, the Commission disagrees that this limited discussion amounts to an express rejection of the deliberate ignorance standard. In the 1991 final rule, the Commission did not focus on the applicability of collateral estoppel in a parallel criminal action, which was one of the justifications for the proposed rule. Further, rejection of a proposal under previous rulemaking would not prevent future Commissions from reconsidering the matter and reaching a different conclusion. As previously stated, the NRC is not adopting the proposed amendment to the Deliberate Misconduct Rule over concerns that practical difficulties with its implementation are expected to outweigh the potential benefits.

Comment 4: Unsettled Judicial Precedent

The NEI, Hogan Lovells, and STARS stated that the proposed rule is premature because of unsettled judicial precedent. The NEI and Hogan Lovells cited as support the D.C. Circuit’s statements in *United States v. Alston-Graves* about the use of the deliberate ignorance standard.⁵² The NEI also stated that the DC Circuit’s opinion

⁵¹ 55 FR 12375; April 3, 1990.

⁵² 435 F.3d 331 (D.C. Cir. 2006).

⁴⁵ 56 FR 40664, 40674; August 15, 1991.

should carry substantial weight in deciding whether to adopt the deliberate ignorance standard because the DC Circuit is the only Federal circuit court that always has jurisdiction and venue to consider challenges to NRC enforcement orders.

Additionally, NEI and Hogan Lovells stated that the Supreme Court case *Global-Tech Appliances, Inc. v. SEB, S.A.*, is not directly applicable because it was a patent case, not a criminal case. Therefore, as Justice Kennedy noted in his dissent in the case, the Court was not briefed on whether to endorse the deliberate ignorance standard for all criminal cases requiring the government to prove knowledge.⁵³ The NEI and Hogan Lovells also noted that Federal courts most commonly apply the deliberate ignorance standard in drug cases.

NRC Response: The Commission disagrees with the comment. Although the Commission is not adopting the proposed amendment to the Deliberate Misconduct Rule due to the practical difficulties associated with applying the deliberate ignorance standard, the Commission disagrees that judicial precedent in this area is unsettled such that the Commission's proposal to adopt the deliberate ignorance standard is premature. In the words of the Supreme Court, the doctrine of willful blindness is "well established" in the Federal courts.⁵⁴ The history of the deliberate ignorance standard is quite long—the concept has been endorsed and applied in criminal cases for more than 100 years. The Supreme Court endorsed a similar concept in 1899 in *Spurr v. United States*.⁵⁵ In 1976, the Ninth Circuit in *United States v. Jewell* crafted the modern formulation of the deliberate ignorance standard that Federal courts have since adopted and applied.⁵⁶ The concept of deliberate ignorance is now widely accepted in the Federal courts, which commonly give and uphold deliberate ignorance jury instructions.⁵⁷

In *Alston-Graves*, the D.C. Circuit ruled on the appropriateness of a deliberate ignorance instruction and found that the lower court committed harmless error giving the instruction—not because the instruction itself is

improper but because in this particular case the prosecution failed to present sufficient evidence to support it.⁵⁸ At no point in *Alston-Graves* did the D.C. Circuit reject the deliberate ignorance standard. Indeed, the court acknowledged that it had previously supported the concept of deliberate ignorance in dicta in a prior case.⁵⁹

The Commission disagrees with the comment that it should give the D.C. Circuit's opinion in *Alston-Graves* more weight relative to other Federal circuits. The Hobbs Act, which NEI cited as providing the D.C. Circuit with jurisdiction and venue over all challenges to NRC enforcement orders, also states that jurisdiction and venue is proper in any court of appeals in which the petitioner resides or has its principal office.⁶⁰ Non-licensed individuals challenging enforcement actions could file such challenges where they reside. Therefore, the Commission believes that it would be unwise to give additional weight to the D.C. Circuit's decision not to fully embrace the deliberate ignorance standard and relatively less weight to every other Federal circuit, which have each more fully embraced the deliberate ignorance standard.⁶¹

Additionally, the Commission disagrees with the comment that the Supreme Court's *Global-Tech* decision is inapplicable. The Court acknowledged that it was not briefed on the question of whether to endorse the deliberate ignorance standard for all criminal cases requiring the government to prove knowledge. In rebutting Justice Kennedy's dissent, the Court stated that it could think of no reason to "protect . . . parties who actively encourage others to violate patent rights and who take deliberate steps to remain ignorant of those rights despite a high probability that the rights exist and are being infringed."⁶² The majority's rationale applies with equal force to nuclear regulation. Moreover, although *Global-Tech* is a civil case, it relied on criminal

cases to distill a definition of deliberate ignorance and several courts of appeals have referenced or applied *Global-Tech* in criminal jury instructions and criminal sentencing.⁶³ Additionally, Federal circuits have approved application of the deliberate ignorance standard in a variety of criminal and civil cases.⁶⁴

As previously stated, the NRC is not adopting the proposed amendment to the Deliberate Misconduct Rule because the practical difficulties with its implementation would likely outweigh the potential benefits.

Comment 5: Lack of Guidance

The NEI and STARS stated that the NRC failed to issue draft guidance with the proposed rule and should not make the final rule effective until after the NRC publishes draft guidance for public comment and then finalizes that guidance. The NEI stated that NRC policy requires that the agency issue draft guidance in parallel with proposed rules, citing the SRM to SECY-11-0032, "Consideration of the Cumulative Effects of Regulation in the Rulemaking Process," dated October 11, 2011 (ADAMS Accession No. ML112840466). The NEI further stated that the final rule should require the Director of the Office of Enforcement to formally certify to the Commission that he or she has reviewed the staff's application of deliberate ignorance before issuing any violation relying on the standard. The NEI also suggested that the NRC provide examples of circumstances that are categorically excluded (*i.e.*, safe harbors) from enforcement on the basis of deliberate ignorance.

Mr. Lieberman expressed support for the proposed rule but also suggested that the NRC provide hypothetical examples of conduct that does and does

⁵³ See, e.g., *United States v. Goffer*, 721 F.3d 113, 127–28 (2d Cir. 2013); *United States v. Brooks*, 681 F.3d 678, 702 n.19 (5th Cir. 2012); *United States v. Butler*, 646 F.3d 1038, 1041 (8th Cir. 2011).

⁵⁴ See, e.g., *United States v. Goffer*, 721 F.3d 113, (2d Cir. 2013) (upholding a deliberate ignorance jury instruction in a case involving charges of conspiracy to commit securities fraud and securities fraud); *United States v. Yi*, 704 F.3d 800 (9th Cir. 2013) (upholding a deliberate ignorance jury instruction in a case involving a charge of conspiracy to violate the Clean Air Act); *United States v. Brooks*, 681 F.3d 678 (5th Cir. 2012) (affirming provision of the deliberate ignorance jury instruction in a case involving charges of false reporting of natural gas trades in violation of the Commodity Exchange Act and the federal wire fraud statute); *United States v. Jinwright*, 683 F.3d 471 (4th Cir. 2012) (finding the provision of the deliberate ignorance instruction was not an abuse of discretion in a case involving charges of a conspiracy to defraud and tax evasion); *Tommy Hilfiger Licensing, Inc. v. Goody's Family Clothing, Inc.*, 2003 WL 22331254 (N.D. Ga. 2003) (applying a deliberate ignorance standard to a Section 1117 trademark infringement claim).

⁵⁸ *Alston-Graves*, 435 F.3d at 341–42.

⁵⁹ *Id.* at 340 (citing *United States v. Mellen*, 393 F.3d 175, 181 (D.C. Cir. 2004)).

⁶⁰ 28 U.S.C. 2342(4), 2343.

⁶¹ The First, Third, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuit Courts of Appeals have incorporated willful blindness or deliberate ignorance into their pattern or model jury instructions. Pattern or model jury instructions are plain language formulations of case law that judges may provide to juries as legal explanations. These jury instructions are given legal weight through their use in trials and subsequent approval of that use on appeal. The Second Circuit, see, e.g., *United States v. Coplan*, 703 F.3d 46 (2d Cir. 2012), and Fourth Circuit, see, e.g., *United States v. Poole*, 640 F.3d 114 (4th Cir. 2011), have applied deliberate ignorance or willful blindness in case law.

⁶² *Global-Tech Appliances, Inc. v. SEB, S.A.*, 131 S. Ct. 2060, 2069 n.8 (2011).

⁵³ *Global-Tech Appliances, Inc. v. SEB, S.A.*, 131 S. Ct. 2060, 2073 (2011) (Kennedy, J., dissenting).

⁵⁴ *Id.* at 2068–69 (majority opinion).

⁵⁵ See *id.* at 2069.

⁵⁶ 532 F.2d 697 (9th Cir. 1976). See also, e.g., *United States v. Caminos*, 770 F.2d 361, 365 (3d Cir. 1985) ("The charge, known as a 'deliberate ignorance' charge, originated in *United States v. Jewell*.")

⁵⁷ *Global-Tech*, 131 S. Ct. at 2069; *Alston-Graves*, 435 F.3d at 338.

not satisfy the deliberate ignorance standard in the statement of considerations for the final rule.

NRC Response: The Commission is in general agreement that, if adopted, the rule would benefit from the development of implementing guidance. However, as stated previously, the Commission is has decided not to adopt the proposed amendments to the Deliberate Misconduct Rule. Therefore, there is no need for draft guidance as requested by the commenters.

Comment 6: Proposed Rule Would Discourage Participation in Licensed Activities and Is Not Necessary To Deter Deliberate Misconduct

The NEI commented that the proposed rule would discourage participation in licensed activities and nuclear employment and noted that the Commission acknowledged this concern in the 1991 Deliberate Misconduct Rule.

The NEI commented that the proposed rule is not necessary for deterrent effect because the risk of criminal prosecution is a sufficient deterrent. The commenter also stated that, rather than expanding the Deliberate Misconduct Rule to encompass more individual behavior, the NRC still has the option in situations where an individual engages in improper conduct beyond the reach of the current Deliberate Misconduct Rule to issue sanctions to the company to address the NRC's concerns.

NRC Response: The Commission acknowledges the commenter's concern with respect to participation and employment in the nuclear field and notes that commenters raised and the Commission responded to a similar concern with respect to the 1991 Deliberate Misconduct Rule.⁶⁵ The Commission also acknowledges that the agency continues to have the ability to take enforcement action against a licensee for an individual's conduct that results in a violation of NRC requirements but does not amount to deliberate misconduct. However, as stated previously, the Commission has decided not to adopt the proposed changes to the Deliberate Misconduct Rule because practical difficulties outweigh the potential benefits. Therefore the Commission did not reach this issue.

Comments Concerning Immediately Effective Orders

Citing statements from the *Geisen* Board majority and the additional statement from Judge Farrar, NEI and STARS stated that immediately effective

orders should be issued less frequently and be required to contain greater detail. These commenters also stated that the NRC staff should be required to release the Office of Investigations report and all evidence to the individual challenging the order in such a proceeding. The commenters also stated that the Commission should further define what constitutes "adequate evidence" for immediate effectiveness challenge purposes. The commenters suggested revising 10 CFR 2.202(a)(5) to remove the reference to "willful" violations because the NRC need not make an order immediately effective solely based on the violation's willfulness.

The NEI and STARS proposed further changes to 10 CFR 2.202(c)(2)(ii) to clarify that the person challenging an immediately effective enforcement order need not testify in such a hearing because doing so may compromise his or her Fifth Amendment right against self-incrimination. The commenters also advocated including a requirement imposing more stringent requirements and qualifications for persons testifying on behalf of the NRC staff in challenges to immediately effective orders. Additionally, the commenters stated that the final rule should include an additional sentence stating that if the presiding officer orders live testimony, the parties may cross examine witnesses when it would assist the presiding officer's decision on the motion to set aside the immediate effectiveness of the order.

The NEI and STARS commented that the revision to 10 CFR 2.202(c)(2)(iii) should also require that the NRC staff reply to a motion in writing, rather than providing the option to respond orally, in order to prevent the staff's ability to "ambush" or "sandbag" the individual challenging the order. These commenters also stated that the final rule should make clear that NRC staff cannot use this opportunity to expand the scope of arguments set forth in the original immediately effective order.

The NEI and STARS commented that the final rule should revise 10 CFR 2.202(c)(2)(viii) to require that if the presiding officer sets aside an immediately effective order, the order setting aside immediate effectiveness will not be stayed automatically and will only be stayed if the NRC staff files and the Commission grants a motion for a stay under 10 CFR 2.342.

NRC Response: The Commission disagrees with these comments and declines to adopt these changes to the NRC's process for issuing and adjudicating immediately effective orders. The proposed rule sought

comments on the changes to 10 CFR 2.202(c); however, as stated in the proposed rule, these changes were intended to clarify evidentiary burdens and the authority of the presiding officer. The final rule clarifies that the NRC staff bears the burden of persuasion in hearings challenging the immediate effectiveness of orders and clarifies that the presiding officer has authority pursuant to 10 CFR 2.319 to order live testimony. The final rule also clarifies how live testimony can be requested and in what manner it may take form. The final rule also contains non-substantive changes intended to improve the clarity and readability of 10 CFR 2.202 by dividing the lengthy paragraph (c) into shorter paragraphs.

Several of the commenters' proposed changes are either already addressed in this final rulemaking, or the current rules are adequately flexible to address their concerns without adopting their proposed changes. For example, with respect to the comment recommending that if the presiding officer orders live testimony, then the parties may cross examine witnesses when it would assist the presiding officer's decision on the motion to set aside the immediate effectiveness of the order, the presiding officer already has the power to order cross examination pursuant to 10 CFR 2.319. Additionally, 10 CFR 2.319 currently describes the duty of the presiding officer in an NRC adjudication to conduct a fair and impartial hearing and to take the necessary action to regulate the course of the hearing and the conduct of its participants. Parties can direct concerns that the NRC staff is inappropriately expanding the scope of argument to the presiding officer for resolution pursuant to this authority. The Commission does not agree with concerns that the NRC staff should reply in writing in advance of live testimony to prevent it from "ambushing" the individual challenging the order. If testimony of individuals is truthful and complete, knowing the staff's response in advance of testifying should have little bearing on its substance. Further, with respect to the commenters' constitutional concerns, it is well established that the Fifth Amendment privilege against self-incrimination can be asserted in administrative proceedings.⁶⁶ Parties have invoked the privilege in NRC enforcement proceedings, including the *Geisen* proceeding.⁶⁷ Given the availability of

⁶⁶ See *Chavez v. Martinez*, 538 U.S. 760, 770 (2003) (citing *Kastigar v. United States*, 406 U.S. 441, 453 (1972)).

⁶⁷ See *David Geisen*, LBP-06-25, 64 NRC 367, 397 n.131 (2006). See also, e.g., *Steven P. Moffitt*, LBP-06-05, 64 NRC 431, 433 n.2 (2006).

⁶⁵ 56 FR 40675; August 15, 1991.

the privilege in NRC enforcement proceedings, the Commission declines to adopt the proposed change.

As for the remaining comments, the Commission appreciates the commenters' input on its process for issuing and adjudicating immediately effective orders, but additional substantive changes to 10 CFR 2.202(c)(2) or proposals to significantly overhaul its procedures for challenging immediately effective orders are beyond the scope of this rulemaking. The Commission notes that the commenters are able to submit these recommendations as a petition for rulemaking via the 10 CFR 2.802 petition for rulemaking process. The Commission takes the commenters' concerns with fairness in its adjudicatory procedures seriously; however, the proposed changes to 10 CFR 2.202 were limited to clarifying changes to address specific concerns regarding the application of 10 CFR 2.202(c) in certain circumstances. The multiple additional procedural changes that the commenters recommend would be more appropriately addressed in the context of a comprehensive assessment of the NRC's rules of practice and procedure in 10 CFR part 2, which would ensure compliance with the NRC's obligations under the Administrative Procedure Act to allow for notice and comment on proposed rules before they are adopted. Adopting the commenters' proposed changes in this rulemaking would not allow for sufficient notice-and-comment opportunities for other interested parties, and the NRC therefore declines to do so.

V. Section-by-Section Analysis

Immediate Effectiveness of Orders Rule Changes

Section 2.202

The rule makes several changes to 10 CFR 2.202(c)(2)(i). The rule revises 10 CFR 2.202(c)(2)(i) by dividing it into several smaller paragraphs. The rule revises paragraph 10 CFR 2.202(c)(2)(i) to include only the first two sentences of the current 10 CFR 2.202(c)(2)(i), which concern the right of the party subject to an immediately effective order to challenge the immediate effectiveness of that order. The rule further revises the first sentence to add a cross reference to 10 CFR 2.202(a)(5) and make other minor, clarifying editorial changes to that sentence.

The rule adds a new paragraph 10 CFR 2.202(c)(2)(ii), which allows any party to file a motion with the presiding officer requesting that the presiding officer order live testimony. Paragraph

10 CFR 2.202(c)(2)(ii) also authorizes the presiding officer, on its own motion, to order live testimony.

The rule redesignates the third sentence of the current 10 CFR 2.202(c)(2)(i) as a new paragraph 10 CFR 2.202(c)(2)(iii), which authorizes the NRC staff to present its response through live testimony rather than a written response in those cases where the presiding officer orders live testimony.

The rule adds a new paragraph 10 CFR 2.202(c)(2)(iv), which provides that the presiding officer shall conduct any live testimony pursuant to 10 CFR 2.319.

The rule makes a minor clarifying change to 10 CFR 2.202(c)(2)(ii) and redesignates that paragraph as 10 CFR 2.202(c)(2)(v).

The rule adds a new paragraph 10 CFR 2.202(c)(2)(vi), which clarifies that the licensee or other person challenging the immediate effectiveness of an order bears the burden of going forward, whereas the NRC staff bears the burden of persuasion that adequate evidence supports the grounds for the immediately effective order and that immediate effectiveness is warranted.

The rule makes minor clarifying changes to the fourth and fifth sentences of 10 CFR 2.202(c)(2)(i), which direct the presiding officer's expeditious disposition of the motion to set aside immediate effectiveness and prohibit the presiding officer from staying the immediate effectiveness of the order, respectively, and redesignates those sentences as a new paragraph 10 CFR 2.202(c)(2)(vii).

The rule makes minor clarifying changes to the eighth sentence of 10 CFR 2.202(c)(2)(i), and redesignates the sixth, seventh, and eighth sentences of 10 CFR 2.202(c)(2)(i) as new paragraph 10 CFR 2.202(c)(2)(viii). These sentences (1) direct the presiding officer to uphold the immediate effectiveness of the order if it finds that there is adequate evidence to support immediate effectiveness, (2) address the final agency action status of an order upholding immediate effectiveness, (3) address the presiding officer's prompt referral of an order setting aside immediate effectiveness to the Commission, and (4) states that the order setting aside immediate effectiveness will not be effective pending further order of the Commission.

Conforming Amendments to 10 CFR 150.2

This rule revises the last sentence of 10 CFR 150.2 by adding a cross reference to 10 CFR 61.9b and replacing

the cross reference to 10 CFR 71.11 with a cross reference to 10 CFR 71.8.

VI. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act, as amended (5 U.S.C. 605(b)), the NRC certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule affects a number of "small entities" as defined by the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810). However, as indicated in Section VII, "Regulatory Analysis," these amendments do not have a significant economic impact on the affected small entities. The NRC received no comment submissions from an identified small entity regarding the impact of the proposed rule on small entities.

VII. Regulatory Analysis

The amendments to the rule governing hearings on challenges to immediate effectiveness of orders do not change the existing processes but merely clarify the rule. The final rule makes minor, conforming amendments to 10 CFR 150.2. These amendments do not result in a cost to the NRC or to respondents in hearings on challenges to immediate effectiveness of orders, but a benefit accrues to the extent that potential confusion over the meaning of the NRC's regulations is removed. The NRC believes that this final rule improves the efficiency of NRC enforcement proceedings without imposing costs on either the NRC or on participants in these proceedings.

VIII. Backfitting and Issue Finality

The final rule revises the immediate effectiveness provisions at 10 CFR 2.202 to state that the respondent bears the burden of going forward with evidence to challenge immediate effectiveness and the NRC staff bears the burden of persuasion on whether adequate evidence supports immediate effectiveness. The final rule also revises 10 CFR 2.202 to clarify that the presiding officer is permitted to order live testimony, either by its own motion, or upon the motion of any party to the proceeding.

The revisions to 10 CFR 2.202 clarify the agency's adjudicatory procedures with respect to challenges to immediate effectiveness of orders. These revisions do not change, modify, or affect the design, procedures, or regulatory approvals protected under the various NRC backfitting and issue finality provisions. Accordingly, the revisions to the adjudicatory procedures do not represent backfitting imposed on any

entity protected by backfitting provisions in 10 CFR parts 50, 70, 72, or 76, nor are they inconsistent with any issue finality provision in 10 CFR part 52.

IX. Cumulative Effects of Regulation

Cumulative Effects of Regulation do not apply to this final rule because it is an administrative rule. The final rule only (1) makes amendments to the NRC’s regulations regarding challenges to the immediate effectiveness of NRC enforcement orders to clarify the burden of proof and to clarify the authority of the presiding officer to order live testimony in resolving these challenges and (2) makes conforming amendments to 10 CFR 150.2.

X. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31883).

XI. National Environmental Policy Act

The NRC has determined that the issuance of this final rule relates to enforcement matters and, therefore, falls within the scope of 10 CFR 51.10(d). In addition, the NRC has determined that the issuance of this final rule is the type of action described in categorical exclusions at 10 CFR 51.22(c)(1)–(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rulemaking.

XII. Paperwork Reduction Act

This final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget (OMB), approval number 3150–0032.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

XIII. Congressional Review Act

The portion of this action amending 10 CFR 2.202 is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, OMB has not found it to be a major rule as defined in the Congressional Review Act.

XIV. Compatibility of Agreement State Regulations

Under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” approved by the Commission on June 30, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this final rule will be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among the Agreement States and the NRC requirements. The NRC staff analyzed the rule in accordance with the procedure established within Part III, “Categorization Process for NRC Program Elements,” of Handbook 5.9 to Management Directive 5.9, “Adequacy and Compatibility of Agreement State Programs” (*see http://www.nrc.gov/reading-rm/doc-collections/management-directives/*).

The NRC program elements (including regulations) are placed into four compatibility categories (See the Compatibility Table in this section). In addition, the NRC program elements can also be identified as having particular health and safety significance or as being reserved solely to the NRC. Compatibility Category A are those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner to provide uniformity in the

regulation of agreement material on a nationwide basis. Compatibility Category B are those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. Compatibility Category C are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. An Agreement State should adopt the essential objectives of the Category C program elements. Compatibility Category D are those program elements that do not meet any of the criteria of Category A, B, or C, and, therefore, do not need to be adopted by Agreement States for purposes of compatibility.

Health and Safety (H&S) are program elements that are not required for compatibility but are identified as having a particular health and safety role (*i.e.*, adequacy) in the regulation of agreement material within the State. Although not required for compatibility, the State should adopt program elements in this H&S category based on those of the NRC that embody the essential objectives of the NRC program elements because of particular health and safety considerations. Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to Agreement States under the Atomic Energy Act, as amended, or provisions of 10 CFR. These program elements are not adopted by Agreement States. The following table lists the parts and sections that will be revised and their corresponding categorization under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs.” The Agreement States have 3 years from the final rule’s effective date, as noted in the **Federal Register**, to adopt compatible regulations.

TABLE 1—COMPATIBILITY TABLE FOR FINAL RULE

Section	Change	Subject	Compatibility	
			Existing	New
Part 2				
2.202(c)	Revised	Orders	NRC	NRC.
Part 150				
150.2	Revised	Scope	D	D.

XV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. In this rule, the NRC is clarifying two aspects of challenges to the immediate effectiveness of NRC enforcement orders: (1) The burden of proof and (2) the authority of the presiding officer to order live testimony in resolving such a challenge. The NRC is also making conforming amendments to 10 CFR 150.2. This action does not constitute the establishment of a standard that contains generally applicable requirements.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Confidential business information; Freedom of information, Environmental protection, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear energy, Nuclear materials, Penalties, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2 and 150 as follows:

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 2 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42

U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note.

Section 2.205(j) also issued under Sec. 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note).

■ 2. In § 2.202, revise paragraph (c)(2) to read as follows:

§ 2.202 Orders.

* * * * *

(c) * * *

(2)(i) The licensee or other person to whom the Commission has issued an immediately effective order in accordance with paragraph (a)(5) of this section, may, in addition to demanding a hearing, at the time the answer is filed or sooner, file a motion with the presiding officer to set aside the immediate effectiveness of the order on the ground that the order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. The motion must state with particularity the reasons why the order is not based on adequate evidence and must be accompanied by affidavits or other evidence relied on.

(ii) Any party may file a motion with the presiding officer requesting that the presiding officer order live testimony. Any motion for live testimony must be made in conjunction with the motion to set aside the immediate effectiveness of the order or any party's response thereto. The presiding officer may, on its own motion, order live testimony. The presiding officer's basis for approving any motion for, or ordering on its own motion, live testimony shall be that taking live testimony would assist in its decision on the motion to set aside the immediate effectiveness of the order.

(iii) The NRC staff shall respond in writing within 5 days of the receipt of either a motion to set aside the immediate effectiveness of the order or the presiding officer's order denying a motion for live testimony. In cases in which the presiding officer orders live testimony, the staff may present its response through live testimony rather than a written response.

(iv) The presiding officer shall conduct any live testimony pursuant to its powers in § 2.319 of this part, except that no subpoenas, discovery, or referred rulings or certified questions to the Commission shall be permitted for this purpose.

(v) The presiding officer may, on motion by the staff or any other party to the proceeding, where good cause exists, delay the hearing on the

immediately effective order at any time for such periods as are consistent with the due process rights of the licensee or other person and other affected parties.

(vi) The licensee or other person challenging the immediate effectiveness of an order bears the burden of going forward with evidence that the immediately effective order is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error. The NRC staff bears the burden of persuading the presiding officer that adequate evidence supports the grounds for the immediately effective order and immediate effectiveness is warranted.

(vii) The presiding officer shall issue a decision on the motion to set aside the immediate effectiveness of the order expeditiously. During the pendency of the motion to set aside the immediate effectiveness of the order or at any other time, the presiding officer may not stay the immediate effectiveness of the order, either on its own motion, or upon motion of the licensee or other person.

(viii) The presiding officer shall uphold the immediate effectiveness of the order if it finds that there is adequate evidence to support immediate effectiveness. An order upholding immediate effectiveness will constitute the final agency action on immediate effectiveness. The presiding officer will promptly refer an order setting aside immediate effectiveness to the Commission and such order setting aside immediate effectiveness will not be effective pending further order of the Commission.

* * * * *

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

■ 3. The authority citation for part 150 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 53, 81, 83, 84, 122, 161, 181, 223, 234, 274 (42 U.S.C. 2014, 2201, 2231, 2273, 2282, 2021); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

■ 4. In § 150.2, revise the last sentence to read as follows:

§ 150.2 Scope.

* * * This part also gives notice to all persons who knowingly provide to any licensee, applicant for a license or certificate or quality assurance program approval, holder of a certificate or quality assurance program approval, contractor, or subcontractor, any components, equipment, materials, or

other goods or services that relate to a licensee's, certificate holder's, quality assurance program approval holder's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of §§ 30.10, 40.10, 61.9b, 70.10, and 71.8.

Dated at Rockville, Maryland, this 13th day of October, 2015.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.

[FR Doc. 2015-26590 Filed 10-19-15; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2015-1985; Directorate Identifier 2014-NM-214-AD; Amendment 39-18294; AD 2015-21-02]

RIN 2120-AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC-8-102, -103, -106, -201, -202, -301, -311, and -315 airplanes. This AD was prompted by reports of un-announced failures of the direct current (DC) starter generator, which caused caution indicators of the affected systems to illuminate and prompted emergency descents and landings. This AD requires replacing the DC generator control units (GCUs) with new GCUs and replacing the GCU label. We are issuing this AD to prevent a low voltage condition on the left main DC bus, which, during critical phases of flight, could result in the loss of flight management, navigation, and transponder systems, and could affect continued safe flight.

DATES: This AD becomes effective November 24, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 24, 2015.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov#!/docketDetail;D=FAA-2015-1985>; or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building

Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539; email thd.qseries@aero.bombardier.com; Internet <http://www.bombardier.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-1985.

FOR FURTHER INFORMATION CONTACT:

Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE-172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7301; fax 516-794-5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model DHC-8-102, -103, -106, -201, -202, -301, -311, and -315 airplanes. The NPRM published in the **Federal Register** on June 25, 2015 (80 FR 36493).

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF-2014-31R2, dated November 11, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Bombardier, Inc. Model DHC-8-102, -103, -106, -201, -202, -301, -311, and -315 airplanes. The MCAI states:

Four occurrences of un-announced failure of the No. 1 Direct Current (DC) Starter Generator prompted emergency descents and landings resulting from the illumination of numerous caution indications of the affected systems. The functionality of the affected systems such as Flight Management System, Navigation, and transponder systems, were reportedly reduced or lost. Investigation determined the failure was a result of a low voltage condition of the Left Main DC Bus. During critical phases of flight, the loss of these systems could affect continued safe flight.

The original issue of this [Canadian] AD mandated the modification [replacing certain DC GCUs with new GCUs and replacing

labels] which introduces generator control unit (GCU) undervoltage protection.

Revision 1 of this [Canadian] AD added a GCU part number to the applicability of Part III of this [Canadian] AD, in order to ensure that all units are fitted with a warning label.

Revision 2 of this [Canadian] AD corrects the GCU part number in the applicability of Part III of this [Canadian] AD.

You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov#!/documentDetail;D=FAA-2015-1985-0003>.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (80 FR 36493, June 25, 2015) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (80 FR 36493, June 25, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 36493, June 25, 2015).

Related Service Information Under 14 CFR Part 51

Bombardier has issued the following service information.

- Service Bulletin 8-24-84, Revision D, dated April 10, 2014, describes incorporating Bombardier Modification Summary (ModSum) 8Q101710 by replacing the GCU with a new GCU, and replacing the GCU label for airplanes having certain Phoenix DC power GCU part numbers.

- Service Bulletin 8-24-89, Revision C, dated November 4, 2014, describes incorporating Bombardier ModSum 8Q101925 by replacing the GCU with a new GCU, and replacing the GCU label for airplanes having certain Goodrich DC power GCU part numbers.

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 of this AD.

Costs of Compliance

We estimate that this AD affects 92 airplanes of U.S. registry.

We also estimate that it takes about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$85 per work-hour.

Required parts will cost up to \$12,098 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be up to \$1,136,476, or up to \$12,353 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov/#!docketDetail;D=FAA-2015-1985>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone

800-647-5527) is in the **ADDRESSES** section.

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):

2015-21-02 Bombardier, Inc.: Amendment 39-18294. Docket No. FAA-2015-1985; Directorate Identifier 2014-NM-214-AD.

(a) Effective Date

This AD becomes effective November 24, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC-8-102, -103, -106, -201, -202, -301, -311, and -315 airplanes, certificated in any category, serial numbers 003 through 672 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical Power.

(e) Reason

This AD was prompted by reports of unannounced failures of the direct current (DC) starter generator, which caused caution indicators of the affected systems to illuminate and prompted emergency descents and landings. We are issuing this AD to prevent a low voltage condition on the left main DC bus which, during critical phases of flight, could result in the loss of flight management, navigation, and transponder systems, and could affect continued safe flight.

(f) Compliance

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

(g) For Airplanes Having Certain Generator Control Units (GCUs) Installed: Replacement of DC GCUs and GCU Labels

Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, accomplish the actions specified in paragraphs (g)(1) and (g)(2) of this AD, as applicable.

(1) For airplanes having Goodrich DC GCU part number 51539-008B, 51539-008C, or 51539-008D installed: Incorporate Bombardier Modification Summary (ModSum) 8Q101925 by replacing the GCU with a new GCU, and replacing the GCU label, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8-24-89, Revision C, dated November 4, 2014.

(2) For airplanes having Phoenix DC GCU part number GC-1010-24-5DIII or GC-1010-24-5DII installed: Incorporate Bombardier ModSum 8Q101710 by replacing the GCU with a new GCU, and replacing the GCU label, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8-24-84, Revision D, dated April 10, 2014.

(h) For Airplanes Having Certain Other GCUs Installed: Replacement of DC GCU Label

For airplanes having Phoenix DC GCU part number GC-1010-24-5DIV or GC-1010-24-5DV installed: Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, replace the DC GCU label with a new GCU label, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8-24-84, Revision D, dated April 10, 2014.

(i) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraph (g)(1) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraphs (i)(1)(i) through (i)(1)(iii) of this AD, as applicable. This service information is not incorporated by reference in this AD.

(i) Bombardier Service Bulletin 8-24-89, dated November 12, 2011.

(ii) Bombardier Service Bulletin 8-24-89, Revision A, dated August 8, 2012.

(iii) Bombardier Service Bulletin 8-24-89, Revision B, dated April 9, 2014.

(2) This paragraph provides credit for actions required by paragraphs (g)(2) and (h) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraphs (i)(2)(i) through (i)(2)(iv) of this AD, as applicable. This service information is not incorporated by reference in this AD.

(i) Bombardier Service Bulletin 8-24-84, dated August 22, 2008.

(ii) Bombardier Service Bulletin 8-24-84, Revision A, dated August 23, 2008.

(iii) Bombardier Service Bulletin 8-24-84, Revision B, dated October 15, 2008.

(iv) Bombardier Service Bulletin 8-24-84, Revision C, dated July 7, 2009.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE-170, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; fax 516-794-5531. 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. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE-170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF-2014-31R2, dated November 14, 2014, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-1985-0003.

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

(l) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 8-24-84, Revision D, dated April 10, 2014.

(ii) Bombardier Service Bulletin 8-24-89, Revision C, dated November 4, 2014.

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539; email thd.qseries@aero.bombardier.com; Internet <http://www.bombardier.com>.

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

(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 Renton, Washington, on October 6, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015-26218 Filed 10-19-15; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0442; Directorate Identifier 2007-SW-24-AD; Amendment 39-18291; AD 2015-20-12]

RIN 2120-AA64

Airworthiness Directives; Various Sikorsky-Manufactured Transport and Restricted Category Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 98-26-02 for certain Sikorsky Aircraft Corporation (Sikorsky) Model S-61A, D, E, L, N, NM, R, and V helicopters. AD 98-26-02 required determining whether the main rotor shaft (MRS) was used in repetitive external lift (REL) operations, performing a nondestructive inspection (NDI) for cracks, replacing any unairworthy MRS, and establishing retirement lives for each REL MRS. This new AD retains some of the requirements of AD 98-26-02 but determines a new retirement life for each MRS, expands the applicability to include additional helicopters, and requires removing from service any MRS with oversized dowel pin bores. This AD was prompted by the manufacturer's reevaluation of the retirement life for the MRS based on torque, ground-air-ground (GAG) cycle, and fatigue testing. We are issuing this AD to prevent MRS structural failure, loss of power to the main rotor, and subsequent loss of control of the helicopter.

DATES: This AD is effective November 24, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 24, 2015.

ADDRESSES: For service information identified in this AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, Connecticut, telephone (203) 383-4866, email [\[www.sikorsky.com\]\(http://www.sikorsky.com\), or at <http://www.sikorsky.com>. You may view this referenced service information at the FAA, Office of the Regional Counsel, 10101 Hillwood Pkwy, Room 6N-321, Fort Worth, TX 76177.](mailto:tsslibrary@</p>
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Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> in Docket No. FAA-2008-0442; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any incorporated-by-reference information, the economic evaluation, any comments received, and other information. The address for the Docket Office (phone: 800-647-5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Tracy Murphy, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238-7172; email tracy.murphy@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

On April 10, 2008, we issued a notice of proposed rulemaking (NPRM) (73 FR 21556, April 22, 2008) proposing to amend 14 CFR part 39 by adding an AD for Sikorsky Aircraft Corporation Model S-61A, D, E, L, N, NM, R, and V; Croman Corporation Model SH-3H; Carson Helicopters, Inc., Model S-61L; Glacier Helicopters, Inc., Model CH-3E; Robinson Air Crane, Inc., Model CH-3E, CH-3C, HH-3C and HH-3E; and Siller Helicopters Model CH-3E and SH-3A helicopters. The NPRM proposed superseding AD 98-26-02 (63 FR 69177, December 16, 1998), which required determining whether the MRS was used in REL operations, performing an NDI for cracks, replacing any unairworthy MRS, and establishing retirement lives for each REL MRS. The NPRM proposed to retain some of the requirements of AD 98-26-02 but also proposed a new retirement life determination for each MRS, removing from service any MRS with oversized dowel pin bores, and expanding the applicability to include certain restricted category models. The NPRM was prompted by the manufacturer's reevaluation of the retirement life for the MRS based on torque, GAG cycle, and fatigue testing.

Those proposals were intended to prevent MRS structural failure, loss of power to the main rotor, and subsequent loss of control of the helicopter.

On April 16, 2013, we issued a supplemental NPRM (SNPRM) (78 FR 24363, April 25, 2013) that proposed to revise the NPRM based on comments received on the NPRM and a reevaluation of the relevant data. The SNPRM proposed retaining the proposals in the NPRM but extending the hours TIS required for identifying the MRS as an REL MRS to coincide with the NDI to prevent repeated disassembly of the shaft. The SNPRM also proposed to extend the time required to replace the MRS and revise calculations for establishing the retirement life.

On September 19, 2014, we issued a second SNPRM (79 FR 60789, October 8, 2014). In addition to retaining previously-proposed requirements, the second SNPRM revised the Cost of Compliance section to reflect an increased cost for parts to replace an MRS and clarified some of the wording for complying with the AD.

Since the SNPRM (79 FR 60789, October 8, 2014) was issued, the FAA Southwest Regional Office has relocated. We have revised the physical address to reflect the new address.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the second SNPRM (79 FR 60789, October 8, 2014).

FAA's Determination

We have reviewed the relevant information and determined that an unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed except for a minor change. Sikorsky Aircraft was inadvertently omitted as one of the current type certificate holders of some of the applicable model helicopters; we are correcting that error in this AD. This change is consistent with the intent of the proposals in the SNPRM (79 FR 60789, October 8, 2014) and will not increase the economic burden on any operator nor increase the scope of the AD.

Related Service Information Under 14 CFR Part 51

Sikorsky issued Alert Service Bulletin No. 61B35-69, dated April 19, 2004, which provides procedures for determining REL and Non-REL status,

assigns new REL and Non-REL MRS retirement lives, and provides a method for marking the REL MRS. 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 of this AD.

Other Related Service Information

Sikorsky issued Customer Service Notice (CSN) No. 6135-10, dated March 18, 1987, and Service Bulletin (SB) No. 61B35-53, dated December 2, 1981, both revised with Revision A on April 19, 2004, for Model S-61L, N, and NM (serial number (S/N) 61454), and R series transport category helicopters; and S-61A, D, E, and V series restricted category helicopters. CSN 6135-10A specifies replacing the planetary assembly and MRS assembly attaching hardware with high strength hardware. CSN 6135-10A also specifies reworking the dowel retainer to increase hole chamfer and related countersink diameters. SB 61B35-53A specifies replacing the existing planetary matching plates with new steel matching plates during overhaul at the operator's discretion.

Sikorsky Aircraft Corporation also issued an All Operators Letter CCS-61-AOL-04-0005, dated May 18, 2004, which contains an example and additional information about tracking cycles and the moving average procedure.

Costs of Compliance

We estimate that this AD affects 60 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. It will take about 2.2 work-hours to NDI an REL MRS at \$85 per work-hour plus a \$50 consumable cost, for a total estimated cost of \$237 per helicopter and \$14,220 for the U.S. fleet. It will take about 2.2 work-hours to replace an MRS at \$85 per work-hour plus parts cost of \$81,216, for a total estimated cost of \$81,403 per helicopter.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in

air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska to the extent that a regulatory distinction is required, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 98-26-02, Amendment 39-10943 (63 FR 69177, December 16, 1998), and adding the following new AD:

2015-20-12 Sikorsky Aircraft Corporation; Sikorsky Aircraft; Croman Corporation; Carson Helicopters, Inc.; Glacier Helicopters, Inc.; Robinson Air Crane, Inc.; and Siller Helicopters: Amendment 39-18291; Docket No. FAA-2008-0442; Directorate Identifier 2007-SW-24-AD.

(a) Applicability

This AD applies to Model S-61A, D, E, L, N, NM (serial number (S/N) 61454), R, V, CH-3C, CH-3E, HH-3C, HH-3E, SH-3A, and SH-3H helicopters with main rotor shaft (MRS), part number S6135-20640-001, S6135-20640-002, or S6137-23040-001, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as MRS structural failure, loss of power to the main rotor, and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD supersedes AD 98-26-02, Amendment 39-10943 (63 FR 69177, December 16, 1998).

(d) Effective Date

This AD becomes effective November 24, 2015.

(e) 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.

(f) Required Actions

(1) Within 10 hours time-in-service (TIS):

(i) Create a component history card or equivalent record for each MRS.

(ii) If there is no record of the hours TIS on an individual MRS, substitute the helicopter's hours TIS or the helicopter's transmission hours TIS if both the shaft and transmission were installed new at the same time.

(iii) If the record of external lift cycles (lift cycles) on an individual MRS is incomplete, add the known number of lift cycles to a number calculated by multiplying the number of hours TIS of the individual MRS by the average lift cycles calculated according to the instructions in Section I of Appendix 1 of this AD or by a factor of 13.6, whichever is higher. An external lift cycle is defined as a flight cycle in which an external load is picked up, the helicopter is repositioned (through flight or hover), and the helicopter hovers and releases the load and departs or lands and departs.

(iv) At the end of each day's operations, record the number of lift cycles performed and the hours TIS.

(2) Within 250 hours TIS, determine whether the MRS is a repetitive external lift (REL) or Non-REL MRS.

(i) Calculate the first moving average of lift cycles by following the instructions in Section I of Appendix 1 of this AD.

(A) If the calculation results in 6 or more lift cycles per hour TIS, the MRS is an REL-MRS.

(B) If the calculation results in less than 6 lift cycles per hour TIS, the MRS is a Non-REL MRS.

(ii) If the MRS is a Non-REL MRS based on the calculation performed in accordance with paragraph (f)(2)(i) of this AD, thereafter at intervals of 50 hour TIS, recalculate the average lift cycles per hour TIS by following the instructions in Section II of Appendix 1 of this AD.

(iii) Once an MRS is determined to be an REL MRS, you no longer need to perform the 250-hour TIS moving average calculation, but you must continue to count and record the lift cycles and number of hours TIS.

(iv) If an MRS is determined to be an REL MRS, it remains an REL MRS for the rest of its service life and is subject to the retirement times for an REL MRS.

(3) Within 1,100 hours TIS:

(i) Conduct a Non-Destructive Inspection for a crack on each MRS. If there is a crack in an MRS, before further flight, replace it with an airworthy MRS.

(ii) If an MRS is determined to be an REL MRS, identify it as an REL MRS by etching "REL" on the outside diameter of the MRS near the part S/N by following the Accomplishment Instructions, paragraph 3.C., of Sikorsky Alert Service Bulletin No. 61B35-69, dated April 19, 2004.

(4) Replace each MRS with an airworthy MRS on or before reaching the revised retirement life as follows:

(i) For an REL MRS that is not modified by following Sikorsky Customer Service Notice (CSN) No. 6135-10, dated March 18, 1987, and Sikorsky Service Bulletin (SB) No. 61B35-53, dated December 2, 1981 (unmodified REL MRS), the retirement life is 30,000 lift cycles or 1,500 hours TIS, whichever occurs first.

(ii) For an REL MRS that is modified by following Sikorsky CSN No. 6135-10, dated March 18, 1987, and Sikorsky SB No. 61B35-53 dated December 2, 1981; or Sikorsky CSN No. 6135-10A and Sikorsky SB No. 61B35-53A, both Revision A, and both dated April 19, 2004 (modified REL MRS), the retirement life is 30,000 lift cycles or 5,000 hours TIS, whichever occurs first.

(iii) For a Non-REL MRS, the retirement life is 13,000 hours TIS.

(5) Establish or revise the retirement lives of the MRS as indicated in paragraphs (f)(4)(i) through (f)(4)(iii) of this AD by recording the new or revised retirement life on the MRS component history card or equivalent record.

(6) Within 50 hours TIS, remove from service any MRS with oversized (0.8860" or greater diameter) dowel pin bores.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Tracy Murphy, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238-7172; email tracy.murphy@faa.gov.

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

(h) Additional Information

Sikorsky Aircraft Corporation All Operators Letter CCS-61-AOL-04-0005,

dated May 18, 2004; Sikorsky Customer Service Notice (CSN) No. 6135-10, dated March 18, 1987; Sikorsky CSN No. 6135-10A, Revision A, dated April 19, 2004; Sikorsky Service Bulletin (SB) No. 61B35-53, dated December 2, 1981; and Sikorsky SB No. 61B35-53A, Revision A, dated April 19, 2004, which are not incorporated by reference, contain additional information about the subject of this AD. For more information about these documents, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, Connecticut, telephone (203) 383-4866, email tsslibrary@sikorsky.com, or at <http://www.sikorsky.com>. You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, 10101 Hillwood Pkwy, Room 6N-321, Fort Worth, TX 76177.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6320, Main Rotor Gearbox.

(j) 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) Sikorsky Alert Service Bulletin No. 61B35-69, dated April 19, 2004.

(ii) Reserved.

(3) For Sikorsky service information identified in this AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, Connecticut, telephone (203) 383-4866, email tsslibrary@sikorsky.com, or at <http://www.sikorsky.com>.

(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>.

Appendix 1 to AD 2015-20-12**Section I: The First Moving Average of External Lift Cycles (Lift Cycles) per Hour Time-in-Service (TIS)**

The first moving average calculation is performed on the main rotor shaft (MRS) assembly when the external lift component history card record reflects that the MRS assembly has reached its first 250 hours TIS. To perform the calculation, divide the total number of lift cycles performed during the first 250 hours TIS by 250. The result will be the first moving average calculation of lift cycles per hour TIS.

Section II: Subsequent Moving Average of Lift Cycles per Hour TIS

Subsequent moving average calculations are performed on the MRS assembly at intervals of 50 hour TIS after the first moving average calculation. Subtract the total number of lift cycles performed during the first 50-hour TIS interval used in the previous moving average calculation from the total number of lift cycles performed on the MRS assembly during the previous 300 hours TIS. Divide this result by 250. The result will be the next or subsequent moving average calculation of lift cycles per hour TIS.

Section III: Sample Calculation for Subsequent 50 Hour TIS Intervals

Assume the total number of lift cycles for the first 50 hour TIS interval used in the previous moving average calculation = 450 lift cycles and the total number of lift cycles for the previous 300 hours TIS = 2700 lift cycles. The subsequent moving average of lift cycles per hour TIS = (2700 - 450) divided by 250 = 9 lift cycles per hour TIS.

Issued in Fort Worth, Texas, on October 4, 2015.

Lance T. Gant,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2015-25976 Filed 10-19-15; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2015-1832; Airspace Docket No. 14-ACE-10]

Establishment of Class E Airspace; Wakeeney, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Wakeeney, KS. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Trego Wakeeney Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport. The airport name also is correctly noted in the airspace description.

DATES: Effective 0901 UTC, December 10, 2015. 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 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting

Points, and subsequent amendments can be viewed on line at http://www.faa.gov/air_traffic/publications. For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; 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 this material at NARA, call 202-741-6030, or go to <http://www.archives.gov/federal-register/code-of-federal-regulations/ibr-locations.html>.

FAA Order 7400.9, Airspace Designations and Reporting Points is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT:

Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 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 establishes Class E airspace at Trego Wakeeney Airport, Wakeeney, KS.

History

On June 25, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to propose Class E airspace extending upward from 700 feet above the surface at Trego Wakeeney Airport, Wakeeney, KS, (80 FR 36495). The airport name is corrected in the airspace description from Sheridan Municipal Airport to Trego Wakeeney Airport. 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 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 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 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.0-mile radius of Trego Wakeeney Airport, Wakeeney, KS, to accommodate new Standard Instrument Approach Procedures for IFR operations at the airport. The correct airport name is noted in the airspace description, changing it from Sheridan Municipal 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 affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will 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 311a. This airspace action is

not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 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 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

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

* * * * *

ACE KS E5 Wakeeney, KS [New]

Trego Wakeeney Airport, KS
(Lat. 39°00'24" N., long. 099°53'35" W.)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of Trego Wakeeney Airport.

Issued in Fort Worth, TX, October 7, 2015.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2015–26276 Filed 10–19–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–1649; Airspace Docket No. 15–AGL–6]

Amendment of Class D Airspace and Revocation of Class E Airspace; Columbus, Ohio State University Airport, OH, and Amendment of Class E Airspace; Columbus, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D and Class E airspace and removes Class E airspace in the Columbus, OH, area. Decommissioning of the non-directional radio beacon (NDB) and/or cancellation of NDB approaches at Ohio State University Airport, Columbus, OH, has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport. Also, the geographic coordinates of the airport, as well as the Port Columbus International Airport, are updated.

DATES: Effective 0901 UTC, December 10, 2015. 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 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at <http://www.faa.gov/airtraffic/publications/>. For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 29591; 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 this material at NARA, call 202–741–6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jim Pharmakis, Operations Support Group, Central Service Center, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: (817) 222–5855.

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 Class D and Class E airspace and removes Class E airspace in the Columbus, OH, area.

History

On July 17th, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class D and Class E airspace and remove Class E airspace in the Columbus, OH, area. (80 FR 42434). 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 7400.9Z dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 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 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z 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 Class D and E airspace in the Columbus, OH, area. Decommissioning of the Dan Scott NDB navigation aid and cancellation of the NDB approach at Ohio State University Airport has made this action necessary. Class E airspace designated as an extension to Class D is removed as it is no longer required. Class E airspace extending upward from 700 feet above the surface at Port Columbus International Airport is reconfigured due to the Dan Scott NDB decommissioning. The geographic coordinates of Ohio State University Airport and Port Columbus International Airport are updated to coincide with the FAA's aeronautical database.

Class D and E airspace designations are published in Paragraphs 5000, 6004, and 6005, respectively, of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, 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.

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 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists 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 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, effective

September 15, 2015, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AGL OH D Columbus, Ohio State University Airport, OH [Amended]

Columbus, Ohio State University Airport, OH (Lat. 40°04'47" N., long. 83°04'23" W.)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4-mile radius of Ohio State University Airport, excluding that airspace within the Port Columbus International Airport, OH, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E Airspace Areas Designated as a Surface Area.

* * * * *

AGL OH E4 Columbus, Ohio State University Airport, OH [Removed]

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

* * * * *

AGL OH E5 Columbus, OH [Amended]

Columbus, Port Columbus International Airport, OH

(Lat. 39°59'49" N., long. 82°53'32" W.)

Columbus, Rickenbacker International Airport, OH

(Lat. 39°48'50" N., long. 82°55'40" W.)

Columbus, Ohio State University Airport, OH

(Lat. 40°04'47" N., long. 83°04'23" W.)

Columbus, Bolton Field Airport, OH

(Lat. 39°54'04" N., long. 83°08'13" W.)

Columbus, Darby Dan Airport, OH

(Lat. 39°56'31" N., long. 83°12'18" W.)

Lancaster, Fairfield County Airport, OH

(Lat. 39°45'20" N., long. 82°39'26" W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Port Columbus International Airport, and within 3.3 miles either side of the 094° bearing from Port Columbus International Airport extending from the 7-mile radius to 12.1 miles east of the airport, and within a 7-mile radius of Rickenbacker International Airport, and within 4 miles either side of the 045° bearing from Rickenbacker International Airport extending from the 7-mile radius to 12.5 miles northeast of the airport, and within a 6.5-mile radius of Ohio State University Airport, and within a 7.4-mile radius of Bolton Field Airport, and within a 6.4-mile radius of Fairfield County Airport, and within a 6.5-mile radius of Darby Dan Airport, excluding that airspace within the London, OH, Class E airspace area.

Issued in Fort Worth, TX, on October 8, 2015.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2015–26280 Filed 10–19–15; 8:45 am]

BILLING CODE 4910–13–P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

32 CFR Part 1701

Privacy Act Systems of Records

AGENCY: Office of the Director of National Intelligence.

ACTION: Final rule.

SUMMARY: The Office of the Director of National Intelligence (ODNI) is issuing a final rule exempting two (2) new systems of records from subsections (c)(3); (d)(1),(2),(3),(4); (e)(1) and (e)(4)(G),(H),(I); and (f) of the Privacy Act, and invoking subsection (k)(2) as an additional basis for exempting records from these provisions of the Act with respect to one (1) existing system of records. The ODNI published a notice and a proposed rule implementing these exemptions on May 27, 2015. The enumerated exemptions will be invoked on a case by case basis, as necessary to preclude interference with investigatory, intelligence and counterterrorism functions and responsibilities of the ODNI. The ODNI received no comments regarding the proposed rule.

DATES: This final rule is effective October 20, 2015.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Hudson, Director, Information Management Division, 703–874–8085.

SUPPLEMENTARY INFORMATION:

Background

On May 27, 2015, the Office of the Director of National Intelligence (ODNI) published notice of two new Privacy Act systems of records: Counterintelligence Trends Analyses Records (ODNI/NCSC–002) and Insider Threat Program Records (ODNI–22). These systems of records contain records that range from Unclassified to Top Secret. Accordingly, in conjunction with publication of these systems notices, and pursuant to exemption authority afforded the head of the agency by the Privacy Act, the ODNI initiated a rulemaking to exempt the systems in relevant part from provisions identified at subsection (k) of the Act (enumerated above). The proposed rulemaking also sought to amend the system of records entitled Information Technology Systems Activity and Access Records (ODNI–19), originally published at 76 FR 42742 (July 19, 2011), by adding subsection (k)(2) of the Privacy Act as a basis for exempting records covered by that system from the provisions noted. The affected systems notices and proposed exemption rule

are published at 80 FR 30271 and 30187.

This final rule differs from the proposed rule in that it deletes from 32 CFR 1701.24 a list of ODNI Systems of Records Notices (SORNs). The proposed rule would have added the newly published SORNs to this listing. In lieu of revising the ODNI Privacy Act Regulation as SORNs are published or rescinded, ODNI will periodically publish a consolidated list of new, updated or deleted SORNs.

Public Comments

None.

Final Rule: Implementation of Exemption Rule and Systems Notices

Absent comment or objection from any member of the public, the ODNI has determined to issue the proposed exemption rule in final form and to implement the new and amended systems of records as described. The exemptions proposed are necessary and appropriate to protect intelligence equities undergirding ODNI's mission and functions and, narrowly applied, they do so consistent with privacy principles. By restrictively construing the exemptions to apply only to records that satisfy thresholds articulated in subsection (k), ODNI achieves the goal of balancing intelligence-related equities with fair information principles and values.

Regulatory Flexibility Act

This rule affects only the manner in which ODNI collects and maintains information about individuals. ODNI certifies that this rulemaking does not impact small entities and that analysis under the Regulatory Flexibility Act, 5 U.S.C. 601-612, is not required.

Small Entity Inquiries

The Small Business Regulatory enforcement Fairness Act (SBREFA) of 1996 requires the ODNI to comply with small entity requests for information and advice about compliance with statutes and regulations within the ODNI jurisdiction. Any small entity that has a question regarding this document may address it to the information contact listed above. Further information regarding SBREFA is available on the Small Business Administration's Web page at <http://www.sba.gov/advo/laws/law-lib.html>.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 944 U.S.C. 3507(d) requires that the ODNI consider the impact of paperwork and other burdens imposed on the public associated with the collection of

information. There are no information collection requirements associated with this rule and therefore no analysis of burden is required.

Executive Order 12866, Regulatory Planning and Review

This rule is not a "significant regulatory action," within the meaning of Executive Order 12866. This rule will not adversely affect the economy or a sector of the economy in a material way; will not create inconsistency with or interfere with other agency action; will not materially alter the budgetary impact of entitlements, grants, fees or loans or the right and obligations of recipients thereof; or raise legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order. Accordingly, further regulatory evaluation is not required.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, 109 Stat. 48 (Mar. 22, 1995), requires Federal agencies to assess the effects of certain regulatory actions on State, local and tribal governments, and the private sector. This rule imposes no Federal mandate on any State, local or tribal government or on the private sector. Accordingly, no UMRA analysis of economic and regulatory alternatives is required.

Executive Order 13132, Federalism

Executive Order 13132 requires agencies to examine the implications for the distribution of power and responsibilities among the various levels of government resulting from their rules. ODNI concludes that this rule does not affect the rights, roles and responsibilities of the States, involves no preemption of State law and does not limit state policymaking discretion. This rule has no federalism implications as defined by the Executive Order.

Environmental Impact

This rulemaking will not have a significant effect on the human environment under the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321-4347.

Energy Impact

This rulemaking is not a major regulatory action under the provisions of the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163 as amended, 42 U.S.C. 6362.

List of Subjects in 32 CFR Part 1701

Administrative practice and procedure, Privacy.

For the reasons set forth above, ODNI amends 32 CFR part 1701 as follows:

PART 1701—ADMINISTRATION OF RECORDS UNDER THE PRIVACY ACT OF 1974

■ 1. The authority citation for part 1701 continues to read as follows:

Authority: 50 U.S.C. 401-442; 5 U.S.C. 552a.

Subpart B—[AMENDED]

■ 2. Amend § 1701.24 by revising paragraphs (a) to read as follows:

§ 1701.24 Exemption of Office of the Director of National Intelligence (ODNI) systems of records.

(a) The ODNI may invoke its authority to exempt systems of records from the requirements of subsections (c)(3); (d)(1), (2), (3) and (4); (e)(1); (e)(4)(G), (H), (I); and (f) of the Privacy Act to the extent that records covered by the systems are subject to exemption pursuant subsection (k) of the Act.

* * * * *

Dated: August 27, 2015.

Mark W. Ewing,
Chief Management Officer.

[FR Doc. 2015-24398 Filed 10-19-15; 8:45 am]

BILLING CODE 9500-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2015-0925]

Drawbridge Operation Regulation; Arthur Kill, Staten Island, New York

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Arthur Kill (AK) Railroad Bridge across Arthur Kill, mile 11.6, between Staten Island, New York and Elizabeth, New Jersey. Under this temporary deviation the bridge may remain in the closed position to facilitate scheduled maintenance. This deviation is necessary to facilitate tie and miter rail replacement on the lift span.

DATES: This deviation is effective from 6 a.m. on October 23, 2015 to 2:48 p.m. on December 13, 2015.

ADDRESSES: The docket for this deviation, [USCG-2015-0925] is

available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Joe Arca, Project Officer, First Coast Guard District, telephone (212) 514-4336, email joe.m.arca@uscg.mil.

SUPPLEMENTARY INFORMATION: The AK Railroad Bridge, across Arthur Kill, mile 11.6, between Staten Island, New York and Elizabeth, New Jersey has a vertical clearance in the closed position of 31 feet at MHW and 35 feet at MLW. The existing drawbridge operation regulations are listed at 33 CFR 117.702.

The waterway supports both commercial and recreational navigation of various vessel sizes. The operator of the bridge, Conrail, requested a temporary deviation to facilitate scheduled maintenance, tie and miter rail replacement at the bridge. The bridge must remain in the closed position to perform this maintenance.

Under this temporary deviation the draw may remain in the closed position as follows:

On October 23, 2015 from 6 a.m. to 10:26 a.m. and from 12:26 p.m. to 4:11 p.m.

On October 24, 2015 from 7:00 a.m. to 11:22 a.m. and from 1:32 p.m. to 5:13 p.m.

On October 25, 2015 from 7:46 a.m. to 12:17 p.m. and from 2:17 p.m. to 6:09 p.m.

On October 30, 2015 from 5:51 a.m. to 9:58 a.m. and from 11:58 a.m. to 4:36 p.m.

On October 31, 2015 from 6:41 a.m. to 10:56 a.m. and from 12:56 p.m. to 5:28 p.m.

On November 1, 2015 from 6:30 a.m. to 10:54 a.m. and from 12:54 p.m. to 5:25 p.m.

On November 6, 2015, 5:17 a.m. to 9:28 a.m. and from 11:28 a.m. to 3:32 p.m.

On November 7, 2015, from 6:07 a.m. to 10:15 a.m. and from 12:15 p.m. to 4:21 p.m.

On November 8, 2015 from 6:51 a.m. to 11:00 a.m. and from 1:00 p.m. to 5:06 p.m.

On November 13, 2015, from 3:49 a.m. to 7:40 a.m., from 9:40 a.m. to 2:28 p.m., and from 4:28 p.m. to 8:04 p.m.

On November 14, 2015, from 4:24 a.m. to 8:11 a.m. and from 10:11 a.m. to 3:07 p.m.

On November 15, 2015, from 4:59 a.m. to 8:50 a.m. and from 10:50 a.m. to 3:48 p.m.

On November 20, 2015 from 3:24 a.m. to 8:07 a.m., from 10:07 a.m. to 1:42 p.m., and from 3:42 p.m. to 8:36 p.m.

On November 21, 2015 from 4:27 a.m. to 9:09 a.m. and from 11:09 a.m. to 2:49 p.m.

On November 22, 2015 from 5:29 a.m. to 10:06 a.m. and from 12:06 p.m. to 3:53 p.m.

On December 4, 2015 from 3:07 a.m. to 7:23 a.m., from 9:23 a.m. to 1:14 p.m., and from 3:14 p.m. to 7:54 p.m.

On December 5, 2015 from 3:54 a.m. to 8:20 a.m. and from 10:20 a.m. to 2:06 p.m.

On December 6, 2015 from 4:48 a.m. to 9:10 a.m. and from 11:10 a.m. to 3:00 p.m.

On December 11, 2015 from 2:45 a.m. to 6:44 a.m., from 8:44 a.m. to 1:26 p.m., and from 3:26 p.m. to 7:08 p.m.

On December 12, 2015 from 3:26 a.m. to 7:17 a.m. and from 9:17 a.m. to 2:07 p.m.

On December 13, 2015 from 4:06 a.m. to 7:54 a.m. and from 9:54 a.m. to 2:48 p.m.

Vessels able to pass through the bridge in the closed positions may do so at anytime.

There are no alternate routes for vessel traffic. The bridge can be opened in an emergency.

The Coast Guard will also inform the users of the waterway through our Local Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: October 7, 2015.

C.J. Bisignano,
Supervisory Bridge Management Specialist,
First Coast Guard District.

[FR Doc. 2015-26609 Filed 10-19-15; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2014-0259; FRL-9935-68-Region 6]

Clean Air Act Redesignation Substitute for the Houston-Galveston-Brazoria 1-Hour Ozone Nonattainment Area; Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a redesignation substitute demonstration provided by the State of Texas that the Houston-Galveston-Brazoria 1-hour ozone nonattainment area (HGB area) has attained the revoked 1-hour ozone National Ambient Air Quality Standards (NAAQS) due to permanent and enforceable emission reductions, and that it will maintain that NAAQS for ten years from the date of the EPA's approval of this demonstration.

DATES: This final rule is effective on November 19, 2015.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2014-0259. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Tracie Donaldson, (214) 665-6633, Donaldson.tracie@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

I. Background

The background for today's action is discussed in detail in our August 18, 2015 proposal (80 FR 49970). In that notice, we proposed to approve the "Redesignation Substitute Report for the Houston-Galveston-Brazoria One-Hour Standard Nonattainment Area" (redesignation substitute report) submitted by TCEQ to EPA on July 22, 2014, that demonstrated attainment with the revoked 1-hour ozone standard. We did not receive any comments regarding our proposal.

II. Final Action

Based on the Clean Air Act's criteria for redesignation to attainment (CAA section 107(d)(3)(E)) and the regulation for a redesignation substitute (40 CFR 51.1105(b)), EPA is finding that Texas has successfully demonstrated it has met the requirements for a redesignation substitute. In this final action we are

approving the redesignation substitute for the HGB area based on our evaluation that the demonstration provided by the State of Texas that shows that the HGB area has attained the revoked 1-hour ozone NAAQS due to permanent and enforceable emission reductions, and that it will maintain that NAAQS for ten years from the date of this final action. In addition, this final action is based on the proposal¹ and the accompanying Technical Support Document (TSD).

With this final action, Texas is no longer required to adopt any additional applicable 1-hour ozone NAAQS requirements for the area which have not already been approved into the SIP. Generally, final action would also allow the state to remove or revise the 1-hour ozone NAAQS nonattainment NSR provisions in the SIP and, upon a showing of consistency with the anti-backsliding checks in CAA sections 110(1) and 193 (if applicable), shift 1-hour ozone NAAQS requirements which are contained in the active portion of the SIP to the contingency measures portion of the SIP. We note that because the HGB area was classified as severe nonattainment for the 1997 ozone NAAQS the severe classification NSR requirement would still apply (October 1, 2008, 73 FR 56983).

III. Statutory and Executive Order Reviews

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves a demonstration provided by the State of Texas and finds that the HGB area is no longer subject to the anti-backsliding obligations for additional measures for the revoked 1-hour ozone NAAQS; and imposes no additional requirements. Accordingly, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duties, it 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). This rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a demonstration provided by the State of Texas and finds that the HGB area is no longer subject to the anti-backsliding obligations for additional measures for the revoked 1-hour ozone NAAQS; and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

The rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Additionally, this rule does not involve establishment of technical standards, and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The rulemaking does not affect the level of protection provided to human health or the environment because approving the demonstration provided by Texas and finding that the HGB area is no longer subject to the anti-backsliding

obligations for additional measures for the revoked 1-hour ozone NAAQS does not alter the emission reduction measures that are required to be implemented in the HGB area, which was classified as Severe nonattainment for the 1997 8-hour ozone standard. See 73 FR 56983, October 1, 2008, and 40 CFR 51.1105. Additionally, the rule is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 21, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

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

Dated: September 30, 2015.

Ron Curry,
Regional Administrator, Region 6.

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.*

¹ Proposal, Redesignation Substitute for Houston 1 hour ozone Standard, (80 FR 49970), August 18, 2015 and normally we would include in our basis for the final action comments and Comment Response Summary, but we received no comments on the cited proposal.

Subpart SS—Texas

■ 2. Section 52.2275 is amended by adding paragraph (j) to read as follows:

§ 52.2275 Control strategy and regulations: Ozone.

* * * * *

(j) *Approval of Redesignation Substitute for the Houston-Galveston-Brazoria 1-hour Ozone Nonattainment Area.* EPA has approved the redesignation substitute for the Houston-Galveston-Brazoria 1-hour ozone nonattainment area submitted by the State of Texas on July 22, 2014. The State is no longer being required to adopt any additional applicable 1-hour ozone NAAQS requirements for the area.

[FR Doc. 2015-26302 Filed 10-19-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R06-OAR-2013-0614; FRL-9935-53-Region 6]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County; Revisions to State Boards and Conflict of Interest Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Albuquerque/Bernalillo County, New Mexico State Implementation Plan (SIP). These revisions add administrative updates and clarifying changes to the state board and conflict of interest provisions in Albuquerque/Bernalillo County. The EPA is approving these revisions pursuant to section 110 of the Clean Air Act (CAA).

DATES: This rule is effective on December 21, 2015 without further notice unless EPA receives relevant adverse comments by November 19, 2015. If EPA receives such comments, EPA will publish a timely withdrawal in the *Federal Register* informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-OAR-2013-0614, by one of the following methods:

- www.regulations.gov. Follow the on-line instructions.
- Email: Mr. John Walser at walser.john@epa.gov. Please also send a copy by email to the person listed in the

FOR FURTHER INFORMATION CONTACT section below.

- Mail or Delivery: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2013-0614. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or email, information that you consider to be CBI or otherwise protected. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at www.epa.gov/epahome/dockets.htm.

Docket: All documents in the docket are listed in the www.regulations.gov index and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Mr. John Walser (6PD-L), (214) 665-7128, walser.john@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" means EPA.

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I. Background**A. What is a SIP?**

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that air quality meets the National Ambient Air Quality Standards (NAAQS) established by EPA. The NAAQS are established under section 109 of the CAA and currently address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. A SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the state, to ensure that air quality in the state meets the NAAQS. It is required by section 110 and other provisions of the CAA. A SIP protects air quality primarily by addressing air pollution at its point of origin. SIPs can be extensive, containing state regulations or other enforceable documents, and supporting information such as city and county ordinances, monitoring networks, and modeling demonstrations. Each state must submit any SIP revision to EPA for approval and incorporation into the federally-enforceable SIP.

The New Mexico SIP includes a variety of control strategies, including the regulations that outline general provisions applicable to Albuquerque/Bernalillo County Air Quality Control Board (AQCB) regulations and state boards/conflict of interest requirements.

B. State Boards

The Act, section 128(a) entitled State Boards, requires each SIP to contain provisions which ensure that: (1) Any board or body which approves permits or enforcement orders under the Act shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the Act, and (2) any potential conflicts of interest by members of such board or body, or the head of an executive agency with similar powers, be adequately disclosed.

A state may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of

paragraphs (1) and (2), and the Administrator shall approve any such more stringent requirements submitted as part of an implementation plan.¹

The New Mexico Air Quality Control Act (section 74–2–4) authorizes Albuquerque/Bernalillo County to locally administer and enforce the State Air Quality Control Act by providing for a local air quality control program. Thus, State law views Albuquerque/Bernalillo County and the remainder of the State of New Mexico as distinct air quality control entities. Therefore, each entity is required to submit its own SIP revision in order to completely satisfy the requirements of section 128(a) of the Clean Air Act for the entire State of New Mexico.

The EPA approved the SIP revision for Board composition and conflict of interest disclosure requirements on June 1, 1999 (see 64 FR 29235). Since that time the supporting city and county ordinances have been revised.

II. Overview of the June 13, 2013 State Submittal

The revisions we are approving address City of Albuquerque and

Bernalillo County, Code of Ordinances governing Air Quality Control Board (AQCB) composition and conflict of interest provisions required to meet the requirements of section 128(a) of the CAA. These revisions are mostly administrative in nature and/or add clarifying language to the City of Albuquerque and Bernalillo County Ordinances already contained in the SIP. These ordinances and revisions do not apply to Indian lands over which the AQCB lacks jurisdiction. We have prepared a Technical Support Document (TSD) for this action which details our evaluation. Our TSD may be accessed in the docket for this action, at <http://www.regulations.gov>, Docket No. EPA–R06–OAR–2013–0614.

We are also approving a ministerial change to the Code of Federal Regulations (CFR) at 40 CFR 52.1620(e). The entry titled “City of Albuquerque request for redesignation” was mistakenly placed in the first table of 40 CFR 52.1620(e) under the heading “EPA Approved city of Albuquerque and Bernalillo County Ordinances for State Board Composition and Conflict of Interest Provisions” and belongs in the

second table of 40 CFR 52.1620(e) under the heading “EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP.”

On June 13, 2013, New Mexico submitted revisions to the Albuquerque/Bernalillo County SIP. The submittal was adopted consistent with the public notice SIP requirements of CAA section 110(l). The revisions modified various chapters to the City of Albuquerque and Bernalillo County ordinances for the Air Quality Control Board and the Metropolitan Environmental Health Advisory Board. The revisions include all the adopted changes to the ordinances since the last EPA SIP approval in June of 1999. Changes to the ordinances include adding clarifying text regarding conflict of interest, renumbering to account for changes to subsections and other ministerial changes that reflect the correct citations to currently effective versions of the ordinances in use today. Other minor amendments are added or deleted for further clarification. Please see Table 1 below for the list of ordinances, and the TSD for further details:

TABLE 1—CITY OF ALBUQUERQUE AND BERNALILLO COUNTY ORDINANCES FOR STATE BOARD COMPOSITION AND CONFLICT OF INTEREST PROVISIONS

Exhibit	Description
Exhibit 2c	Metropolitan Environmental Health Advisory Board, City of Albuquerque, Chapter 9, Article 5, Part 6.
Exhibit 3c	Metropolitan Environmental Health Advisory Board, Bernalillo County Code of Ordinances, Chapter 42, Article II, Sections 42–36 to 42–39.
Exhibit 4c	Metropolitan Environmental Health Advisory Board, Bernalillo County Code of Ordinances, Chapter 42, Article II, Sections 42–36 through 42–40.
Exhibit 5c	Joint Air Quality Control Board Ordinance, City of Albuquerque, Chapter 9, Article 5, Part 1.
Exhibit 6c	Joint Air Quality Control Board Ordinance, Bernalillo County Code of Ordinances, Chapter 30, Article II.
Exhibit 7c	Public Boards, City of Albuquerque Chapter 1, Article XII Sections 1–12–1 to 3.
Exhibit 8c	Conflict of Interest, City of Albuquerque Chapter 2, Article III Sections 3–3–1 to 13.
Exhibit 9c	Code of Ethics, City of Albuquerque Charter, Article XII, Section 4.
Exhibit 10c	Code of Ethics, Bernalillo County Code of Ordinances, Chapter 2, Article III, Division 4—Code of Ethics, Sections 2–126 to 2–136.
Exhibit 11c	City Code of Conduct, City of Albuquerque, Personnel Rules & Regulations.

The Governor’s letter dated June 26, 2013 accompanying the submittal indicated that only those portions or sections of the ordinances dealing with state boards or conflict of interest are being submitted for EPA review and action. Therefore, the following revisions, as shown in Table 1 above, are not being considered before EPA for review as they do not address board composition or conflict of interest provisions. The ordinances not being proposed include Exhibit 7c—Article 6: Public Boards, Commissions and

Committees and Exhibit 11c—City Code of Conduct, City of Albuquerque, as these ordinances involve personnel rules and regulations, conditions of employment, the conduct and organizational structure of a board, commission or committee and do not specifically address board composition and conflict of interest pursuant to CAA section 128.

Additionally, since the Metropolitan Environmental Health Advisory Board (MEHAB) has effectively ceased to function for over 25 years, as confirmed

with the City of Albuquerque,² the MEHAB ordinances are not legally required or practicably necessary for the continued operation of the AQCB or the City of Albuquerque Environmental Health Department. Therefore, Exhibits 2c, 3c and 4c, dealing with the MEHAB (see Table 1 above), are not applicable to the AQCB and are not considered as a basis for this action.

The remaining Exhibits 5c (only Section 9–5–1–3), 6c (only section 30–32), 8c, 9c, and 10c all involve state

¹ Also see Pages 39 through 43 of EPA guidance, dated September 13, 2013 entitled “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1)

and 110(a)(2),” which may be accessed in the docket for this rulemaking at <http://www.regulations.gov>, Docket No. EPA–R06–OAR–2013–0614.

² Emails from Ed Merta, City of Albuquerque, Environmental Health Department, dated August 28, 2015 and September 10, 2015 may be accessed in the docket for this action.

boards or conflict of interest and are being considered part of this action.

Our evaluation of the submittal finds that the submitted SIP revisions were adopted by Albuquerque/Bernalillo County after reasonable notice, a public comment period, a corresponding public hearing, and that approval of the revisions would not interfere with any CAA requirement, are consistent with the requirements of section 128 of the CAA (see background section of this notice), and are approvable, as discussed below.

III. EPA's Evaluation of the Submittal

Our primary consideration for determining the approvability of the New Mexico submittal is whether these proposed revisions comply with CAA section 110(l) and 128 of the CAA. Section 110(l) of the Act provides that a SIP revision must be adopted by a State after reasonable notice and public hearing. The submitted revisions address the City of Albuquerque and Bernalillo County, Code of Ordinances governing Air Quality Control Board (AQCB) composition and conflict of interest provisions that address the requirements of Section 128 of the CAA. Please see the TSD for our detailed evaluation.

The submitted revisions update the currently the SIP approved versions, and includes revisions that are ministerial in nature and mostly involve renumbering and additions/deletions that add further clarity.

Revisions to Ordinances for the Joint Air Quality Control Board, Conflict of Interest and Code of Ethics

The AQCB is submitting revisions to update the SIP to incorporate the latest City of Albuquerque and Bernalillo County Ordinances and policies regarding board composition and conflict of interest as it applies to the Air Board. The previous SIP-approval dates back to 1999. The proposed revisions incorporate into the SIP with the most current versions of affected ordinances and policies concerning state board composition and conflict of interest.

For Exhibit 5c, the ordinance that deals with the Joint Air Quality Control Board, the revisions in section 9-5-1-3 highlight the requirements for state boards and conflict of interest provisions consistent with federal requirements found in CAA section 128(a)(1). Section 9-5-1-3(B)(4)(a) of Exhibit 5c states that "at least a majority of the membership of the Board shall be individuals who represent the public interest and meet the requirements of the state and federal guidelines set forth

in the New Mexico Air Quality Control Act, as amended, and the federal CAA, 42 U.S.C.A. Section 7401, *et seq.*, as amended." Section 9-5-1-3(E) states "any member of the Board who has a conflict of interest regarding a matter before the Board shall disqualify himself or herself from the discussion and shall abstain from the vote on such matter. A conflict of interest means any interest which may yield, directly or indirectly any monetary or other material benefit to the Board member or the member's spouse or minor child." These sections are wholly consistent with the requirements found in CAA section 128(a)(1) and (2) as outlined in Section I(B) of this document titled "State Boards." Further analysis and details of the revisions are included in the TSD for this rulemaking.

Therefore, EPA finds that these revisions are consistent with federal requirements, and also are consistent with what is currently in the New Mexico SIP for Albuquerque/Bernalillo County (see 40 CFR 52.1620, paragraph (e)—EPA Approved Nonregulatory Provisions).

For Exhibit 6c, only Section 30-32 of the Exhibit—Joint Air Quality Control Board, is part of the State Boards submittal. The revisions in Exhibit 6c, specifically section 30-32—Joint Air Quality Control Board, establish the creation and authority of the Board, also include the provisions regarding conflict of interest (as discussed above for Exhibit 5c), and are consistent with federal requirements and what is currently in the New Mexico SIP for Albuquerque/Bernalillo County.

For Exhibit 8c, Article 3: Conflict of Interest Ordinance, the revisions to the SIP include renumbering and clarification of the purpose of definitions, meaning that for the purpose of the ordinance, the definitions contained in the ordinance shall apply unless the context clearly indicates or requires a different meaning. The Conflict of Interest Ordinance is already contained in the SIP, therefore, these revisions add clarity and are approvable by EPA. For example, the Conflict of Interest Ordinance (Exhibit 8c) outlines conflict of interest provisions for employees and former employees, and includes details on the prohibition on nepotism and restrictions on outside employment. The 1985 version of this ordinance is currently SIP-approved (see 64 FR 29235).

For Exhibit 9c, Charter of the City of Albuquerque, Article XII: Code of Ethics, Section 4—Conflict of Interest, the ordinance clearly outlines conflict of interest provisions for officials, and

includes details on the prohibition on gifts and private financial interest. The previous version of this ordinance (Article XII: Code of Ethics, adopted in 1989) is currently SIP-approved. Therefore, only redlines and strikeouts to Section 4 of that ordinance are submitted as revisions (please see the TSD for this action). The addition of Section 4(b) to the ordinance outlines the prohibition on a member of the City Council from participating in any debate or vote on any matter which will likely result in any benefit to the member which benefit is greater than the benefit to the public in general. The other key revision adds specific criteria for disqualifications as presented in Section 4(c). Both the addition of subsections 4(b) and 4(c) enhance the ordinance by adding further clarity and stringency to the conflict of interest requirements. Section 128 of the CAA states that a State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, which are more stringent, and the Administrator shall approve any such requirement as submitted. Other revisions are ministerial in nature and mostly involve renumbering and additions/deletions that add clarity (please see the TSD for details).

For Exhibit 10c, Bernalillo County, New Mexico, Code of Ordinances, Chapter 2—Administration, Article III—Officers and Employees, Division 4—Code of Ethics, the Bernalillo County Commission Ordinance, revises the SIP-approved version (previously Ordinance 85-3) to further enhance the requirements pursuant to section 128 of the CAA. This Code of Ethics Ordinance establishes a code of ethics for all elected officials and employees and volunteers of county government, including members of boards, committees and commissions. For example, in Section 2-130—Standards of conduct, the ordinance clearly indicates that the standards of conduct apply to elected officials, employees and volunteers at all times. Section 128 of the CAA does not require volunteers to be subject to the conflict of interest provisions, and adding them makes the ordinance more stringent. Additionally, the ordinance requires such candidates, elected officials, employees, and volunteers to disclose personal interests, financial or otherwise, in matters of the county. Other revisions include establishing a declaration of policy section, (Section 2-127), standards of conduct including conflict of interest (Section 2-130), disclosure of certain financial interests (Section 2-131), reporting violations of code of ethics

(Section 2–132), and Ethics Board requirements. These revisions enhance the current SIP-approved version, which focused on elected officials and employees and did not specifically identify volunteers as well. EPA considers these revisions more stringent than the requirements pursuant to section 128 of the CAA, and are approvable.

Additionally, CAA section 110(l) states that the EPA cannot approve a SIP revision if that revision would interfere with any applicable requirement regarding attainment, reasonable further progress (RFP) or any requirement established in the CAA. The revisions do not interfere with any applicable requirement, but enhance the current SIP-approved version as discussed above. Additionally, approvability of these actions are also based upon EPA's guidance for state boards and conflict of interest provisions as discussed in the TSD for this rulemaking.

EPA approves the revisions and updates for Exhibits 5c, 6c, 8c, 9c and 10c pursuant to section 110 of the CAA, and has determined they are consistent with the requirements in section 128(a) of the CAA.

IV. Final Action

Pursuant to section 110 of the Act, EPA is approving through a direct final action, revisions to the New Mexico SIP that were submitted on June 12, 2013. We evaluated the state's submittal and determined that they meet the applicable requirements of the CAA section 128(a). Also, in accordance with CAA section 110(l), the proposed revisions will not interfere with attainment of the NAAQS, reasonable further progress, or any other applicable requirement of the CAA.

EPA is publishing this rule without prior proposal because we view these as non-controversial amendments and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on December 21, 2015 without further notice unless we receive relevant adverse comments by November 19, 2015. If we receive relevant adverse comments, we will publish a timely withdrawal of this direct final rulemaking in the **Federal Register** informing the public that the direct final rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action.

Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

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

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

methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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 rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 21, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 30, 2015.

Ron Curry,

Regional Administrator, Region 6.

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 GG—New Mexico

■ 2. In § 52.1620(e):

- a. The first table entitled “EPA-Approved New Mexico Statutes in the Current New Mexico SIP” is amended by revising all entries in the table under the heading “EPA Approved City of Albuquerque and Bernalillo County Ordinances for State Board Composition and Conflict of Interest Provisions”; and
- b. The second table entitled “EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New

Mexico SIP” is amended by adding entry “City of Albuquerque request for redesignation” before the entry entitled “Waiver of NO_x control requirements.”.

The addition and revisions read as follows:

§ 52.1620 Identification of plan.

* * * * *
(e) * * *

EPA-APPROVED NEW MEXICO STATUTES IN THE CURRENT NEW MEXICO SIP

State citation	Title/subject	State approval/ effective date	EPA approval date	Comments
*	*	*	*	*
EPA Approved City of Albuquerque and Bernalillo County Ordinances for State Board Composition and Conflict of Interest Provisions				
City of Albuquerque, Chapter 9, Article 5, Part 1: Air Quality Control Board, Sections 9–5–1–1 to 9–5–1–15, and 9–5–1–98.	Joint Air Quality Control Board.	06/12/2013	10/20/2015, [Insert Federal Register citation.]	Section 9–5–1–3 Joint Air Quality Control Board only.
Bernalillo County, Code of Ordinances, Chapter 30, Article II, Air Pollution; Section 30–31 to 30–47.	Joint Air Quality Control Board.	06/12/2013	10/20/2015, [Insert Federal Register citation.]	Section 30–32—Joint Air Quality Control Board only.
City of Albuquerque, Chapter 2, Article III, Sections 3–3–1 to 3–3–13.	Conflict of Interest	06/12/2013	10/20/2015, [Insert Federal Register citation.]	
City of Albuquerque Charter, Article XII, Section 4—Conflict of Interest.	Code of Ethics	06/12/2013	10/20/2015, [Insert Federal Register citation.]	
Bernalillo County Ordinance, Chapter 2, Administration, Article III, Officers and Employees, Division 4, Code of Ethics, Sections 2–126 to 2–136.	Code of Ethics	06/12/2013	10/20/2015, [Insert Federal Register citation].	

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

Name of SIP provision	Applicable geographic or non-attainment area	State submittal/ effective date	EPA approval date	Explanation
*	*	*	*	*
City of Albuquerque request for redesignation.	Carbon monoxide maintenance plan and motor vehicle emission budgets.	06/22/1998	5/24/2000, 65 FR 33460	
*	*	*	*	*

[FR Doc. 2015–26306 Filed 10–19–15; 8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2014-0503; FRL-9935-17-Region 5]

Air Plan Approval; Minnesota; Infrastructure SIP Requirements for the 2008 Ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve some elements and disapprove other elements of state implementation plan (SIP) submissions from Minnesota regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 ozone, 2010 nitrogen dioxide (NO₂), 2010 sulfur dioxide (SO₂), and 2012 fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. EPA is disapproving certain elements of Minnesota's submissions relating to Prevention of Significant Deterioration (PSD) requirements. Minnesota already administers Federally promulgated regulations that address the disapprovals described in this rulemaking. Therefore, the state is not obligated to submit any new or additional regulations as a result of this disapproval. The proposed rulemaking associated with this final action was published on June 26, 2015, and EPA received one comment letter during the comment period, which ended on July 27, 2015.

DATES: This final rule is effective on November 19, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2014-0503. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Environmental Protection Agency,

Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Eric Svingen, Environmental Engineer, at (312) 353-4489 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4489, svingen.eric@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

- I. What is the background of these SIP submissions?
- II. What is our response to comments received on the proposed rulemaking?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

I. What is the background of these SIP submissions?

A. What state submissions does this rulemaking address?

This rulemaking addresses June 12, 2014, submissions and a February 3, 2015, clarification from the Minnesota Pollution Control Agency (MPCA) intended to address all applicable infrastructure requirements for the 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS.

B. Why did the state make these SIP submissions?

Under section 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA has highlighted this statutory requirement in multiple guidance documents. The most recent, entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA Sections 110(a)(1) and (2)," was published on September 13, 2013.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submissions from Minnesota that

address the infrastructure requirements of CAA section 110(a)(1) and (2) for the 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS. The requirement for states to make SIP submissions of this type arises out of CAA section 110(a)(1), which states that states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA section 110(a)(1) and (2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as SIP submissions that address the nonattainment planning requirements of part D and the PSD requirements of part C of title I of the CAA, and "regional haze SIP" submissions required to address the visibility protection requirements of CAA section 169A.

This rulemaking will not cover three substantive areas because they are not integral to acting on a state's infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction ("SSM") at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emissions limits with limited public notice or without requiring further approval by EPA, that may be contrary to the CAA; and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Instead, EPA has the authority to address each one of these

substantive areas in separate rulemakings. A detailed history, interpretation, and rationale as they relate to infrastructure SIP requirements can be found in EPA's May 13, 2014, proposed rule entitled, "Infrastructure SIP Requirements for the 2008 Lead NAAQS" in the section, "What is the scope of this rulemaking?" (see 79 FR 27241 at 27242–27245).

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

The public comment period for EPA's proposed actions with respect to Minnesota's satisfaction of the infrastructure SIP requirements for the 2008 ozone NAAQS closed on July 27, 2015. EPA received one comment letter, which was from the Sierra Club. A synopsis of the comments contained in this letter and EPA's responses are provided below.

Comment 1: The Sierra Club states that, on its face, the CAA "requires ISIPs [infrastructure SIPs] to be adequate to prevent exceedances of the NAAQS." In support, the commenter quotes the language in section 110(a)(1) that requires states to adopt a plan for implementation, maintenance, and enforcement of the NAAQS and the language in section 110(a)(2)(A) that requires SIPs to include enforceable emissions limitations as may be necessary to meet the requirements of the CAA and which the commenter claims include the maintenance plan requirement. Sierra Club notes the CAA definition of "emission limit" and reads these provisions together to require "enforceable emission limits on sources that are sufficient to ensure maintenance of the NAAQS."

Response 1: EPA disagrees that section 110 must be interpreted in the manner suggested by Sierra Club. Section 110 is only one provision that is part of the complex structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of not only that structure, but also of the historical evolution of that structure. In light of the revisions to section 110 since 1970 and the later-promulgated and more specific planning requirements of the CAA, EPA interprets the requirement in section 110(a)(2)(A) that the plan provide for "implementation, maintenance and enforcement" to mean that the infrastructure SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such

as adequate state personnel and an enforcement program.

Our interpretation that infrastructure SIPs are more general planning SIPs is consistent with the statute as understood in light of its history and structure. When Congress enacted the CAA in 1970, it did not include provisions requiring states and the EPA to label areas as attainment or nonattainment. Rather, states were required to include all areas of the state in "air quality control regions" (AQCRs) and section 110 set forth the core substantive planning provisions for these AQCRs. At that time, Congress anticipated that states would be able to address air pollution quickly pursuant to the very general planning provisions in section 110 and could bring all areas into compliance with the NAAQS within five years. Moreover, at that time, section 110(a)(2)(A)(i) specified that the section 110 plan provide for "attainment" of the NAAQS and section 110(a)(2)(B) specified that the plan must include "emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance [of the NAAQS]."

In 1977, Congress recognized that the existing structure was not sufficient and many areas were still violating the NAAQS. At that time, Congress for the first time added provisions requiring states and EPA to identify whether areas of the state were violating the NAAQS (*i.e.*, were nonattainment) or were meeting the NAAQS (*i.e.*, were attainment) and established specific planning requirements in section 172 for areas not meeting the NAAQS.

In 1990, many areas still had air quality not meeting the NAAQS and Congress again amended the CAA and added yet another layer of more prescriptive planning requirements for each of the NAAQS, with the primary provisions for ozone in section 182. At that same time, Congress modified section 110 to remove references to the section 110 SIP providing for attainment, including removing pre-existing section 110(a)(2)(A) in its entirety and renumbering subparagraph (B) as section 110(a)(2)(A).

Additionally, Congress replaced the clause "as may be necessary to insure [sic] attainment and maintenance [of the NAAQS]" with "as may be necessary or appropriate to meet the applicable requirements of this chapter." Thus, the CAA has significantly evolved in the more than 40 years since it was originally enacted. While at one time section 110 did provide the only detailed SIP planning provisions for

states and specified that such plans must provide for attainment of the NAAQS, under the structure of the current CAA, section 110 is only the initial stepping-stone in the planning process for a specific NAAQS. And, more detailed, later-enacted provisions govern the substantive planning process, including planning for attainment of the NAAQS.

With regard to the requirement for emission limitations, EPA has interpreted this to mean that, for purposes of section 110, the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. As EPA stated in "Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA Sections 110(a)(1) and 110(a)(2)," dated September 13, 2013 (Infrastructure SIP Guidance), "[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both. Overall, the infrastructure SIP submission process provides an opportunity . . . to review the basic structural requirements of the air agency's air quality management program in light of each new or revised NAAQS." Infrastructure SIP Guidance at p. 2.

Comment 2: Sierra Club cites two excerpts from the legislative history of the CAA Amendments of 1970 asserting that they support an interpretation that SIP revisions under CAA section 110 must include emissions limitations sufficient to show maintenance of the NAAQS in all areas of Minnesota. Sierra Club also contends that the legislative history of the CAA supports its interpretation that infrastructure SIPs under section 110(a)(2) must include enforceable emission limitations, citing the Senate Committee Report and the subsequent Senate Conference Report accompanying the 1970 CAA.

Response 2: The CAA, as enacted in 1970, including its legislative history, cannot be interpreted in isolation from the later amendments that refined that structure and deleted relevant language from section 110 concerning demonstrating attainment. In any event, the two excerpts of legislative history the commenter cites merely provide that states should include enforceable emission limits in their SIPs; they do not mention or otherwise address whether states are required to include

maintenance plans for all areas of the state as part of the infrastructure SIP.

Comment 3: Sierra Club cites to 40 CFR 51.112(a), which provides that each plan must “demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the [NAAQS].” The commenter asserts that this regulation requires all SIPs to include emissions limits necessary to ensure attainment of the NAAQS. The commenter states that “[a]lthough these regulations were developed before the Clean Air Act was amended to separate Infrastructure SIPs from nonattainment SIPs—a process that began with the 1977 amendments and was completed by the 1990 amendments—the regulations nonetheless apply to ISIPs.” The commenter relies on a statement in the preamble to the 1986 action restructuring and consolidating provisions in part 51, in which EPA stated that “[i]t is beyond the scope of th[is] rulemaking to address the provisions of Part D of the Act. . . .” 51 FR 40656 (November 7, 1986).

Response 3: The commenter’s reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits “adequate to prohibit NAAQS violations” and adequate or sufficient to ensure the maintenance of the NAAQS is not supported. As an initial matter, EPA notes and the commenter recognizes this regulatory provision was initially promulgated and “restructured and consolidated” prior to the CAA Amendments of 1990, in which Congress removed all references to “attainment” in section 110(a)(2)(A). In addition, it is clear on its face that 40 CFR 51.112 applies to plans specifically designed to attain the NAAQS. EPA interprets these provisions to apply when states are developing “control strategy” SIPs such as the detailed attainment and maintenance plans required under other provisions of the CAA, as amended in 1977 and again in 1990, such as section 175A and 182.

The commenter suggests that these provisions must apply to section 110 SIPs because in the preamble to EPA’s action “restructuring and consolidating” provisions in part 51, EPA stated that the new attainment demonstration provisions in the 1977 Amendments to the CAA were “beyond the scope” of the rulemaking. It is important to note, however, that EPA’s action in 1986 was not to establish new substantive planning requirements, but rather to consolidate and restructure provisions that had previously been promulgated. EPA noted that it had already issued

guidance addressing the new “Part D” attainment planning obligations. Also, as to maintenance regulations, EPA expressly stated that it was not making any revisions other than to re-number those provisions. *Id.* at 40657.

Although EPA was explicit that it was not establishing requirements interpreting the provisions of new “part D” of the CAA, it is clear that the regulations being restructured and consolidated were intended to address control strategy plans. In the preamble, EPA clearly stated that 40 CFR 51.112 was replacing 40 CFR 51.13 (“Control strategy: SO_x and PM (portion)”), 51.14 (“Control strategy: CO, HC, Ox and NO₂ (portion)”), 51.80 (“Demonstration of attainment: Pb (portion)”), and 51.82 (“Air quality data (portion)”). *Id.* at 40660. Thus, the present-day 40 CFR 51.112 contains consolidated provisions that are focused on control strategy SIPs, and the infrastructure SIP is not such a plan.

Comment 4: The Sierra Club references two prior EPA rulemaking actions where EPA disapproved or proposed to disapprove SIPs, and claims that they were actions in which EPA relied on section 110(a)(2)(A) and 40 CFR 51.112 to reject infrastructure SIPs. It first points to a 2006 partial approval and partial disapproval of revisions to Missouri’s existing plan addressing the SO₂ NAAQS (71 FR 12623, March 13, 2006). In that action, EPA cited section 110(a)(2)(A) of the CAA as a basis for disapproving a revision to the state plan on the basis that the State failed to demonstrate the SIP was sufficient to ensure maintenance of the SO₂ NAAQS after revision of an emission limit and cited to 40 CFR 51.112 as requiring that a plan demonstrates the rules in a SIP are adequate to attain the NAAQS. Second, Sierra Club cites a 2013 disapproval of a revision to the SO₂ SIP for Indiana, where the revision removed an emission limit that applied to a specific emissions source at a facility in the State (78 FR 78721, December 27, 2013). In its proposed disapproval, EPA relied on 40 CFR 51.112(a) in proposing to reject the revision, stating that the State had not demonstrated that the emission limit was “redundant, unnecessary, or that its removal would not result in or allow an increase in actual SO₂ emissions.” EPA further stated in that proposed disapproval that the State had not demonstrated that removal of the limit would not “affect the validity of the emission rates used in the existing attainment demonstration.”

The Sierra Club also asserts that EPA stated in its Infrastructure SIP Guidance that states could postpone specific

requirements for startup, shutdown, and malfunction (SSM), but did not specify the postponement of any other requirements. The commenter concludes that emissions limits ensuring attainment of the standard cannot be delayed.

Response 4: EPA does not agree that the two prior actions referenced by the Sierra Club establish how EPA reviews infrastructure SIPs. It is clear from both the final Missouri rulemaking and the proposed and final Indiana rulemakings that EPA was not reviewing initial infrastructure SIP submissions under section 110 of the CAA, but rather revisions that would make an already approved SIP designed to demonstrate attainment of the NAAQS less stringent. EPA’s partial approval and partial disapproval of revisions to restrictions on emissions of sulfur compounds for the Missouri SIP addressed a control strategy SIP and not an infrastructure SIP. Similarly, the Indiana action does not provide support for the Sierra Club’s position (78 FR 78720, December 27, 2013). The review in that rule was of a completely different requirement than the section 110(a)(2)(A) SIP. In that case, the State had an approved SO₂ attainment plan and was seeking to remove from the SIP provisions relied on as part of the modeled attainment demonstration. EPA proposed that the State had failed to demonstrate under section 110(l) of the CAA why the SIP revision would not result in increased SO₂ emissions and thus interfere with attainment of the NAAQS. Nothing in that rulemaking addresses the necessary content of the initial infrastructure SIP for a new or revised NAAQS. Rather, it is simply applying the clear statutory requirement that a state must demonstrate why a revision to an approved attainment plan will not interfere with attainment of the NAAQS.

EPA also does not agree that any requirements related to emission limits have been postponed. As stated in a previous response, EPA interprets the requirements under 110(a)(2)(A) to include enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. With regard to the requirement for emission limitations, EPA has interpreted this to mean, for purposes of section 110, that the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. Emission limits providing for attainment of a new standard are

triggered by the designation process and have a different schedule in the CAA than the submittal of infrastructure SIPs.

As discussed in detail in the proposed rules, EPA finds that the Minnesota SIPs meet the appropriate and relevant structural requirements of section 110(a)(2) of the CAA that will aid in attaining and/or maintaining the NAAQS, and that Minnesota has demonstrated that they have the necessary tools to implement and enforce a NAAQS.

Comment 5: Sierra Club discusses several cases applying to the CAA which it claims support its contention that courts have been clear that section 110(a)(2)(A) requires enforceable emissions limits in infrastructure SIPs to prevent violations of the NAAQS and demonstrate maintenance throughout the area. Sierra Club first cites to language in *Train v. NRDC*, 421 U.S. 60, 78 (1975), addressing the requirement for “emission limitations” and stating that emission limitations “are specific rules to which operators of pollution sources are subject, and which if enforced should result in ambient air which meet the national standards.” Sierra Club also cites to *Pennsylvania Dept. of Env'tl. Resources v. EPA*, 932 F.2d 269, 272 (3d Cir. 1991) for the proposition that the CAA directs EPA to withhold approval of a SIP where it does not ensure maintenance of the NAAQS and *Mision Industrial, Inc. v. EPA*, 547 F.2d 123, 129 (1st Cir. 1976), which quoted section 110(a)(2)(B) of the CAA of 1970. The commenter contends that the 1990 Amendments do not alter how courts have interpreted the requirements of section 110, quoting *Alaska Dept. of Env'tl. Conservation v. EPA*, 540 U.S. 461, 470 (2004) which in turn quoted section 110(a)(2)(A) of the CAA and also stated that “SIPs must include certain measures Congress specified” to ensure attainment of the NAAQS. The commenter also quotes several additional opinions in this vein. *Mont. Sulphur & Chem. Co. v. EPA*, 666 F.3d 1174, 1180 (9th Cir. 2012) (“The Clean Air Act directs states to develop implementation plans—SIPs—that ‘assure’ attainment and maintenance of [NAAQS] through enforceable emissions limitations”); *Hall v. EPA* 273 F.3d 1146, 1153 (9th Cir. 2001) (“Each State must submit a [SIP] that specifies the manner in which [NAAQS] will be achieved and maintained within each air quality control region in the state”). The commenter also cites *Mich. Dept. of Env'tl. Quality v. Browner*, 230 F.3d 181 (6th Cir. 2000) for the proposition that EPA may not approve a SIP revision that does not demonstrate how the rules

would not interfere with attainment and maintenance of the NAAQS.

Response 5: None of the cases the commenter cites supports the commenter’s contention that section 110(a)(2)(A) requires that infrastructure SIPs include detailed plans providing for attainment and maintenance of the NAAQS in all areas of the state, nor do they shed light on how section 110(a)(2)(A) may reasonably be interpreted. With the exception of *Train*, 421 U.S. 60, none of the cases the commenter cites concerned the interpretation of CAA section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 Act). Rather, in the context of a challenge to an EPA action, revisions to a SIP that were required and approved as meeting other provisions of the CAA or in the context of an enforcement action, the court references section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 CAA) in the background section of its decision.

In *Train*, a case that was decided almost 40 years ago, the court was addressing a state revision to an attainment plan submission made pursuant to section 110 of the CAA, the sole statutory provision at that time regulating such submissions. The issue in that case concerned whether changes to requirements that would occur before attainment was required were variances that should be addressed pursuant to the provision governing SIP revisions or were “postponements” that must be addressed under section 110(f) of the CAA of 1970, which contained prescriptive criteria. The court concluded that EPA reasonably interpreted section 110(f) not to restrict a state’s choice of the mix of control measures needed to attain the NAAQS and that revisions to SIPs that would not impact attainment of the NAAQS by the attainment date were not subject to the limits of section 110(f). Thus, the issue was not whether a section 110 SIP needs to provide for attainment or whether emissions limits are needed as part of the SIP; rather the issue was which statutory provision governed when the state wanted to revise the emission limits in its SIP if such revision would not impact attainment or maintenance of the NAAQS. To the extent the holding in the case has any bearing on how section 110(a)(2)(A) might be interpreted, it is important to realize that in 1975, when the opinion was issued, section 110(a)(2)(B) (the predecessor to section 110(a)(2)(A)) expressly referenced the requirement to attain the NAAQS, a reference that was removed in 1990.

The decision in *Pennsylvania Dept. of Env'tl. Resources* was also decided based

on the pre-1990 provision of the CAA. At issue was whether EPA properly rejected a revision to an approved plan where the inventories relied on by the state for the updated submission had gaps. The court quoted section 110(a)(2)(B) of the pre-1990 CAA in support of EPA’s disapproval, but did not provide any interpretation of that provision. Yet, even if the court had interpreted that provision, EPA notes that it was modified by Congress in 1990; thus, this decision has little bearing on the issue here.

At issue in *Mision Industrial*, 547 F.2d 123, was the definition of “emissions limitation” not whether section 110 requires the state to demonstrate how all areas of the state will attain and maintain the NAAQS as part of their infrastructure SIPs. The language from the opinion the commenter quotes does not interpret but rather merely describes section 110(a)(2)(A). The commenters do not raise any concerns about whether the measures relied on by the state in the infrastructure SIP are “emissions limitations” and the decision in this case has no bearing here.

In *Mont. Sulphur & Chem. Co.*, 666 F.3d 1174, the court was reviewing a Federal implementation plan that EPA promulgated after a long history of the state failing to submit an adequate state implementation plan. The court cited generally to sections 107 and 110(a)(2)(A) of the CAA for the proposition that SIPs should assure attainment and maintenance of NAAQS through emission limitations but this language was not part of the court’s holding in the case.

The commenter suggests that *Alaska Dept. of Env'tl. Conservation*, 540 U.S. 461, stands for the proposition that the 1990 CAA Amendments do not alter how courts interpret section 110. This claim is inaccurate. Rather, the court quoted section 110(a)(2)(A), which, as noted previously, differs from the pre-1990 version of that provision and the court makes no mention of the changed language. Furthermore, the commenter also quotes the court’s statement that “SIPs must include certain measures Congress specified” but that statement specifically referenced the requirement in section 110(a)(2)(C), which requires an enforcement program and a program for the regulation of the modification and construction of new sources. Notably, at issue in that case was the state’s “new source” permitting program, not its infrastructure SIP.

Two of the cases the commenter cites, *Mich. Dept. of Env'tl. Quality*, 230 F.3d 181, and *Hall*, 273 F.3d 1146, interpret CAA section 110(l), the provision

governing “revisions” to plans, and not the initial plan submission requirement under section 110(a)(2) for a new or revised NAAQS, such as the infrastructure SIP at issue in this instance. In those cases, the courts cited to section 110(a)(2)(A) solely for the purpose of providing a brief background of the CAA.

Comment 6: Sierra Club asserts that EPA cannot approve Minnesota’s infrastructure submittals for the 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS because Minnesota has not incorporated the standards into their SIP. The commenter points out that the Minnesota Administrative Rules section 7009.0800 does list previous standards but does not yet include the ones listed above and is therefore out of compliance with the CAA.

Response 6: There is not a CAA requirement for states to incorporate the NAAQS updates into their SIPs. Therefore, EPA disagrees with the commenter that by not doing so, Minnesota is out of compliance with the CAA. The states are required to comply with the NAAQS regardless of whether or not they are in the SIP and Minnesota Statute 116.07 gives MPCA broad authority to implement rules and standards as needed for the purpose of controlling air pollution.

Comment 7: Citing section 110(a)(2)(A) of the CAA, Sierra Club contends that EPA may not approve the proposed infrastructure SIP because it does not include enforceable 1-hour SO₂ emission limits for sources that show NAAQS exceedances through modeling. Sierra Club asserts the proposed infrastructure SIP fails to include enforceable 1-hour SO₂ emissions limits or other required measures to ensure attainment and maintenance of the SO₂ NAAQS in areas not designated nonattainment as required by section 110(a)(2)(A). Sierra Club asserts that emission limits are especially important for meeting the 2010 SO₂ NAAQS because SO₂ impacts are strongly source-oriented. Sierra Club states that coal-fired electric generating units (EGUs) are large contributors to SO₂ emissions but contends that Minnesota did not demonstrate that emissions allowed by the proposed infrastructure SIPs from such large sources of SO₂ will ensure compliance with the 2010 SO₂ NAAQS. Sierra Club claims that the proposed infrastructure SIP would allow major sources to continue operating with present emission limits. Sierra Club then refers to air dispersion modeling it conducted for four coal-fired EGUs in Minnesota including the Minnesota Power Boswell Coal Plant (“Boswell Plant”), Otter Tail Hoot Lake

Coal Plant (“Hoot Lake Coal Plant”), Xcel Energy Sherburne County Coal Plant (“Sherco Coal Plant”), and Taconite Harbor Energy Center (“Taconite Harbor Plant”). Sierra Club asserts that the results of the air dispersion modeling it conducted employing EPA’s AERMOD program for modeling used the plants’ allowable and actual emissions, and showed that the plants could cause exceedances of the 2010 SO₂ NAAQS with either allowable emissions at all four facilities or actual emissions at the Sherco Plant and Taconite Harbor Plant.¹

Based on the modeling, Sierra Club asserts that the Minnesota SO₂ infrastructure SIP submittals authorizes these EGUs to cause exceedances of the NAAQS with allowable and actual emission rates, and therefore that the infrastructure SIP fails to include adequate enforceable emission limitations or other required measures for sources of SO₂ sufficient to ensure attainment and maintenance of the 2010 SO₂ NAAQS. As a result, Sierra Club claims EPA must disapprove Minnesota’s proposed SIP revisions. In addition, Sierra Club asserts that additional emission limits should be imposed on the plants that ensure attainment and maintenance of the NAAQS at all times.

Response 7: EPA believes that section 110(a)(2)(A) of the CAA is reasonably interpreted to require states to submit SIPs that reflect the first step in their planning for attainment and maintenance of a new or revised NAAQS. These SIP revisions, also known as infrastructure SIPs, should contain enforceable control measures and a demonstration that the state has the available tools and authority to develop and implement plans to attain and maintain the NAAQS. In light of the structure of the CAA, EPA’s long-standing position regarding infrastructure SIPs is that they are general planning SIPs to ensure that the state has adequate resources and authority to implement a NAAQS in general throughout the state and not detailed attainment and maintenance plans for each individual area of the state. As mentioned above, with regard to the requirement for emission limitations, EPA has interpreted this to mean that states may rely on measures already in place to address the pollutant at issue or any new control measures that *the state* may choose to submit.

¹ Sierra Club asserts its modeling followed protocols pursuant to 40 CFR part 50, appendix W, EPA’s March 2011 guidance for implementing the 2010 SO₂ NAAQS, and EPA’s December 2013 SO₂ NAAQS Designation Technical Assistance Document.

EPA’s interpretation that infrastructure SIPs are more general planning SIPs is consistent with the CAA as understood in light of its history and structure. When Congress enacted the CAA in 1970, it did not include provisions requiring states and the EPA to label areas as attainment or nonattainment. Rather, states were required to include all areas of the state in AQCRs and section 110 set forth the core substantive planning provisions for these AQCRs. At that time, Congress anticipated that states would be able to address air pollution quickly pursuant to the very general planning provisions in section 110 and could bring all areas into compliance with a new NAAQS within five years. Moreover, at that time, section 110(a)(2)(A)(i) specified that the section 110 plan provide for “attainment” of the NAAQS and section 110(a)(2)(B) specified that the plan must include “emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance [of the NAAQS].” In 1977, Congress recognized that the existing structure was not sufficient and that many areas were still violating the NAAQS. At that time, Congress for the first time added provisions requiring states and EPA to identify whether areas of a state were violating the NAAQS (*i.e.*, were nonattainment) or were meeting the NAAQS (*i.e.*, were attainment) and established specific planning requirements in section 172 for areas not meeting the NAAQS. In 1990, many areas still had air quality not meeting the NAAQS, and Congress again amended the CAA and added yet another layer of more prescriptive planning requirements for each of the NAAQS. At that same time, Congress modified section 110 to remove references to the section 110 SIP providing for attainment, including removing pre-existing section 110(a)(2)(A) in its entirety and renumbering subparagraph (B) as section 110(a)(2)(A). Additionally, Congress replaced the clause “as may be necessary to insure attainment and maintenance [of the NAAQS]” with “as may be necessary or appropriate to meet the applicable requirements of this chapter.” Thus, the CAA has significantly evolved in the more than 40 years since it was originally enacted. While at one time section 110 of the CAA did provide the only detailed SIP planning provisions for states and specified that such plans must provide for attainment of the NAAQS, under the structure of the current CAA, section

110 is only the initial stepping-stone in the planning process for a specific NAAQS. In addition, more detailed, later-enacted provisions govern the substantive planning process, including planning for attainment of the NAAQS, depending upon how air quality status is judged under other provisions of the CAA, such as the designations process under section 107.

As stated in response to a previous comment, EPA asserts that section 110 of the CAA is only one provision that is part of the complicated structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of not only that structure, but also of the historical evolution of that structure. In light of the revisions to section 110 since 1970 and the later-promulgated and more specific planning requirements of the CAA, EPA reasonably interprets the requirement in section 110(a)(2)(A) of the CAA that the plan provide for “implementation, maintenance and enforcement” to mean that the infrastructure SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state must demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as an adequate monitoring network and an enforcement program. As discussed above, EPA has interpreted the requirement for emission limitations in section 110 to mean that the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. Finally, as EPA stated in the Infrastructure SIP Guidance which specifically provides guidance to states in addressing the 2010 SO₂ NAAQS, “[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency’s SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both.” Infrastructure SIP Guidance at p. 2. On April 12, 2012, EPA explained its expectations regarding the 2010 SO₂ NAAQS infrastructure SIPs via letters to each of the states. EPA communicated in the April 2012 letters that all states were expected to submit SIPs meeting the “infrastructure” SIP requirements under section 110(a)(2) of the CAA by June 2013. At the time, the EPA was undertaking a stakeholder outreach process to continue to develop possible

approaches for determining attainment status with the SO₂ NAAQS and implementing this NAAQS. EPA was abundantly clear in the April 2012 letters to states that EPA did not expect states to submit substantive attainment demonstrations or modeling demonstrations showing attainment for potentially unclassifiable areas in infrastructure SIPs due in June 2013, as EPA had previously suggested in its 2010 SO₂ NAAQS preamble based upon information available at the time and in prior draft implementation guidance in 2011 while EPA was gathering public comment. The April 2012 letters to states recommended states focus infrastructure SIPs due in June 2013, such as Minnesota’s SO₂ infrastructure SIP, on “traditional infrastructure elements” in section 110(a)(1) and (2) rather than on modeling demonstrations for future attainment for potentially unclassifiable areas.²

Therefore, EPA continues to believe that the elements of section 110(a)(2) which address SIP revisions for nonattainment areas including measures and modeling demonstrating attainment are due by the dates statutorily prescribed under subparts 2 through 5 under part D of title I. The CAA directs

² In EPA’s final SO₂ NAAQS preamble (75 FR 35520, June 22, 2010) and subsequent draft guidance in March and September 2011, EPA had expressed its expectation that many areas would be initially designated as unclassifiable due to limitations in the scope of the ambient monitoring network and the short time available before which states could conduct modeling to support their designations recommendations due in June 2011. In order to address concerns about potential violations in these potentially unclassifiable areas, EPA initially recommended that states submit substantive attainment demonstration SIPs based on air quality modeling by June 2013 (under section 110(a)) that show how their unclassifiable areas would attain and maintain the NAAQS in the future. *Implementation of the 2010 Primary 1-Hour SO₂ NAAQS, Draft White Paper for Discussion*, May 2012 (for discussion purposes with Stakeholders at meetings in May and June 2012), available at <http://www.epa.gov/airquality/sulfurdioxide/implementation.html>. However, EPA clearly stated in this 2012 Draft White Paper its clarified implementation position that it was no longer recommending such attainment demonstrations for unclassifiable areas for June 2013 infrastructure SIPs. *Id.* EPA had stated in the preamble to the NAAQS and in the prior 2011 draft guidance that EPA intended to develop and seek public comment on guidance for modeling and development of SIPs for sections 110 and 191 of the CAA. Section 191 of the CAA requires states to submit SIPs in accordance with section 172 for areas designated nonattainment with the SO₂ NAAQS. After seeking such comment, EPA has now issued guidance for the nonattainment area SIPs due pursuant to sections 191 and 172. *See Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions*, Stephen D. Page, Director, EPA’s Office of Air Quality Planning and Standards, to Regional Air Division Directors Regions 1–10, April 23, 2014. In September 2013, EPA had previously issued specific guidance relevant to infrastructure SIP submissions due for the NAAQS, including the 2010 SO₂ NAAQS. *See Infrastructure SIP Guidance.*

states to submit these 110(a)(2) elements for nonattainment areas on a separate schedule from the “structural requirements” of 110(a)(2) which are due within three years of adoption or revision of a NAAQS. The infrastructure SIP submission requirement does not move up the date for any required submission of a part D plan for areas designated nonattainment for the new NAAQS. Thus, elements relating to demonstrating attainment for areas not attaining the NAAQS are not necessary for states to include in the infrastructure SIP submission, and the CAA does not provide explicit requirements for demonstrating attainment for areas potentially designated as “unclassifiable” (or that have not yet been designated) regarding attainment with a particular NAAQS.

As stated previously, EPA believes that the proper inquiry at this juncture is whether Minnesota has met the basic structural SIP requirements appropriate at the point in time EPA is acting upon the infrastructure submittal. Emissions limitations and other control measures needed to attain the NAAQS in areas designated nonattainment for that NAAQS are due on a different schedule from the section 110 infrastructure elements. States, like Minnesota, may reference pre-existing SIP emission limits or other rules contained in part D plans for previous NAAQS in an infrastructure SIP submission. For example, Minnesota submitted lists of existing emission reduction measures in the SIP that control emissions of SO₂ as discussed above in response to a prior comment and discussed in detail in our proposed rulemakings. Minnesota’s SIP revisions reflect several provisions that have the ability to reduce SO₂. Although the Minnesota SIP relies on measures and programs used to implement previous SO₂ NAAQS, these provisions will provide benefits for the 2010 SO₂ NAAQS. The identified Minnesota SIP measures help to reduce overall SO₂ and are not limited to reducing SO₂ levels to meet one specific NAAQS.

Additionally, as discussed in EPA’s proposed rule, Minnesota has the ability to revise its SIPs when necessary (*e.g.*, in the event the Administrator finds its plans to be substantially inadequate to attain the NAAQS or otherwise meet all applicable CAA requirements) as required under element H of section 110(a)(2).

EPA believes the requirements for emission reduction measures for an area designated nonattainment to come into attainment with the 2010 primary SO₂ NAAQS are in sections 172 and 192 of the CAA, and, therefore, the appropriate time for implementing requirements for

necessary emission limitations for demonstrating attainment with the 2010 SO₂ NAAQS is through the attainment planning process contemplated by those sections of the CAA. On August 5, 2013, EPA designated as nonattainment most areas in locations where existing monitoring data from 2009–2011 indicated violations of the 2010 SO₂ standard. EPA did not designate any portions of Minnesota as nonattainment areas for the 2010 SO₂ NAAQS (78 FR 47191, August 5, 2013). In separate future actions, EPA will address the designations for all other areas for which the Agency has yet to issue designations. *See, e.g.*, 79 FR 27446 (May 13, 2014) (proposing process and timetables by which state air agencies would characterize air quality around SO₂ sources through ambient monitoring and/or air quality modeling techniques and submit such data to the EPA for future attainment status determinations under the 2010 SO₂ NAAQS). For the areas designated nonattainment in August 2013, attainment SIPs were due by April 4, 2015, and must contain demonstrations that the areas will attain as expeditiously as practicable, but no later than October 4, 2018, pursuant to sections 172, 191 and 192, including a plan for enforceable measures to reach attainment of the NAAQS. EPA believes it is not appropriate to bypass the attainment planning process by imposing separate requirements outside the attainment planning process. Such actions would be disruptive and premature absent exceptional circumstances and would interfere with a state's planning process. *See In the Matter of EME Homer City Generation LP and First Energy Generation Corp.*, Order on Petitions Numbers III–2012–06, III–2012–07, and III–2013–01 (July 30, 2014) (hereafter, *Homer City/Mansfield Order*) at 10–19 (finding Pennsylvania SIP did not require imposition of SO₂ emission limits on sources independent of the part D attainment planning process contemplated by the CAA). EPA believes that the history of the CAA and intent of Congress for the CAA as described above demonstrate clearly that it is within the section 172 and general part D attainment planning process that Minnesota must include additional SO₂ emission limits on sources in order to demonstrate future attainment, where needed.

The Sierra Club's reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits adequate to provide for timely attainment and maintenance of

the standard is also not supported. As explained previously in response to the background comments, EPA notes this regulatory provision clearly on its face applies to plans specifically designed to attain the NAAQS and not to infrastructure SIPs which show the states have in place structural requirements necessary to implement the NAAQS. Therefore, EPA finds 40 CFR 51.112 inapplicable to its analysis of the Minnesota SO₂ infrastructure SIP.

As noted in EPA's preamble for the 2010 SO₂ NAAQS, determining compliance with the SO₂ NAAQS will likely be a source-driven analysis, and EPA has explored options to ensure that the SO₂ designations process realistically accounts for anticipated SO₂ reductions at sources that we expect will be achieved by current and pending national and regional rules. *See* 75 FR 35520 (June 22, 2010). As mentioned previously above, EPA has proposed a process to address additional areas in states which may not be attaining the 2010 SO₂ NAAQS. *See* 79 FR 27446 (May 13, 2014) (proposing process to gather further information from additional monitoring or modeling that may be used to inform future attainment status determinations). In addition, in response to lawsuits in district courts seeking to compel EPA's remaining designations of undesignated areas under the NAAQS, EPA has been placed under a court order to complete the designations process under section 107. However, because the purpose of an infrastructure SIP submission is for more general planning purposes, EPA does not believe Minnesota was obligated during this infrastructure SIP planning process to account for controlled SO₂ levels at individual sources. *See Homer City/Mansfield Order* at 10–19.

Minnesota currently has the ability to control emissions of SO₂. MPCA identified enforceable permits and administrative orders with SO₂ emission limits. In previous rulemakings, EPA has approved these permits and orders into Minnesota's SIP (see 59 FR 17703, April 14, 1994; 59 FR 17703, 64 FR 5936, February 8, 1999; 66 FR 14087, March 9, 2001; 67 FR 8727, February 26, 2002; 72 FR 68508, December 5, 2007; 74 FR 18138, April 21, 2009; 74 FR 18634, April 24, 2009; 74 FR 18638, April 24, 2009; 74 FR 63066, December 2, 2009; 75 FR 45480, August 3, 2010; 75 FR 48864, August 12, 2010; 75 FR 81471, December 28, 2010; and 78 FR 28501, May 15, 2013). Also, an administrative order issued as part of Minnesota's Regional Haze SIP includes SO₂ limits. Additionally, state rules that have been incorporated into

Minnesota's SIP (at Minn. R. 7011.0500 to 7011.0553, 7011.0600 to 7011.0625, 7011.1400 to 7011.1430, 7011.1600 to 7011.1605, and 7011.2300) contain SO₂ emission limits. Also, Minn. R. 7011.0900 to 7011.0909 include fuel sulfur content restrictions that can limit SO₂ emissions. These regulations support compliance with and attainment of the 2010 SO₂ NAAQS.

Regarding the air dispersion modeling conducted by Sierra Club pursuant to AERMOD for the coal-fired EGUs, EPA is not at this stage prepared to opine on whether it demonstrates violations of the NAAQS, and does not find the modeling information relevant at this time for review of an infrastructure SIP. While EPA has extensively discussed the use of modeling for attainment demonstration purposes and for designations and other actions in which areas' air quality status is determined, EPA has recommended that such modeling was not needed for the SO₂ infrastructure SIPs needed for the 2010 SO₂ NAAQS. *See* April 12, 2012, letters to states regarding SO₂ implementation and *Implementation of the 2010 Primary 1-Hour SO₂ NAAQS, Draft White Paper for Discussion*, May 2012, available at <http://www.epa.gov/airquality/sulfurdioxide/implement.html>. In contrast, EPA recently discussed modeling for designations in our May 14, 2014, proposal at 79 FR 27446 and for nonattainment planning in the April 23, 2014, *Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions*.

In conclusion, EPA disagrees with Sierra Club's statements that EPA must disapprove Minnesota's infrastructure SIP submission because it does not establish at this time specific enforceable SO₂ emission limits either on coal-fired EGUs or other large SO₂ sources in order to demonstrate attainment with the NAAQS.

Comment 8: Sierra Club asserts that modeling is the appropriate tool for evaluating adequacy of infrastructure SIPs and ensuring attainment and maintenance of the 2010 SO₂ NAAQS. The commenter refers to EPA's historic use of air dispersion modeling for attainment designations as well as "SIP revisions." The commenter cites to prior EPA statements that the Agency has used modeling for designations and attainment demonstrations, including statements in the 2010 SO₂ NAAQS preamble, EPA's 2012 Draft White Paper for Discussion on Implementing the 2010 SO₂ NAAQS, and a 1994 SO₂ Guideline Document, as modeling could better address the source-specific impacts of SO₂ emissions and historic challenges from monitoring SO₂

emissions.³ The commenter also discusses MPCA's previous use and support of SO₂ modeling, specifically citing a Letter from the MPCA Commissioner to the EPA and their use of modeling for setting title V limits.

The commenter discusses statements made by EPA staff discussing use of modeling and monitoring in setting emission limitations or determining ambient concentrations resulting from sources, discussing performance of AERMOD as a model, and discussing that modeling is capable of predicting whether the NAAQS is attained and whether individual sources contribute to SO₂ NAAQS violations. The commenter cites to EPA's history of employing air dispersion modeling for increment compliance verifications in the permitting process for the PSD program required in part C of the CAA. The commenter claims the Boswell Plant, Hoot Lake Coal Plant, Sherco Coal Plant, and Taconite Harbor Plant are examples of sources in elevated terrain where the AERMOD model functions appropriately in evaluating ambient impacts.

The commenter asserts EPA's use of air dispersion modeling was upheld in *GenOn REMA, LLC v. EPA*, 722 F.3d 513 (3rd Cir. 2013) where an EGU challenged EPA's use of CAA section 126 to impose SO₂ emission limits on a source due to cross-state impacts. The commenter claims the Third Circuit in *GenOn REMA* upheld EPA's actions after examining the record which included EPA's air dispersion modeling of the one source as well as other data.

The commenter cites to *Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29,43 (1983) and *NRDC v. EPA*, 571 F.3d 1245, 1254 (D.C. Cir. 2009) for the general proposition that it would be arbitrary and capricious for an agency to ignore an aspect of an issue placed before it and for the statement that an agency must consider information presented during notice-and-comment rulemaking.

Finally, the commenter claims that Minnesota's proposed SO₂ infrastructure SIP lacks emission limitations informed by air dispersion modeling and therefore fails to ensure Minnesota will achieve and maintain the 2010 SO₂ NAAQS. Sierra Club claims EPA must require adequate, 1-hour SO₂ emission limits in the

infrastructure SIP that show no exceedances of NAAQS when modeled.

Response 8: EPA agrees with the commenter that air dispersion modeling, such as AERMOD, can be an important tool in the CAA section 107 designations process and in the attainment SIP process pursuant to sections 172 and 192, including supporting required attainment demonstrations. EPA agrees that prior EPA statements, EPA guidance, and case law support the use of air dispersion modeling in the designations process and attainment demonstration process, as well as in analyses of whether existing approved SIPs remain adequate to show attainment and maintenance of the SO₂ NAAQS. However, EPA disagrees with the commenter that EPA must disapprove the Minnesota SO₂ infrastructure SIP for its alleged failure to include source-specific SO₂ emission limits that show no exceedances of the NAAQS when modeled.

As discussed previously above and in the Infrastructure SIP Guidance, EPA believes the conceptual purpose of an infrastructure SIP submission is to ensure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS and that the infrastructure SIP submission process provides an opportunity to review the basic structural requirements of the air agency's air quality management program in light of the new or revised NAAQS. See Infrastructure SIP Guidance at p. 2. EPA believes the attainment planning process detailed in part D of the CAA, including attainment SIPs required by sections 172 and 192 for areas not attaining the NAAQS, is the appropriate place for the state to evaluate measures needed to bring nonattainment areas into attainment with a NAAQS and to impose additional emission limitations such as SO₂ emission limits on specific sources. While EPA had initially suggested in the final 2010 SO₂ NAAQS preamble (75 FR 35520) and subsequent draft guidance in March and September 2011 that EPA recommended states submit substantive attainment demonstration SIPs based on air quality modeling in section 110(a) SIPs due in June 2013 to show how areas expected to be designated as unclassifiable would attain and maintain the NAAQS, these initial statements in the preamble and 2011 draft guidance were based on EPA's initial expectation that most areas would by June 2012 be initially designated as unclassifiable due to limitations in the scope of the ambient monitoring network and the short time available before which states could conduct modeling to support

designations recommendations in 2011. However, after receiving comments from the states regarding these initial statements and the timeline for implementing the NAAQS, EPA subsequently stated in the April 12, 2012 letters to the states and in the May 2012 *Implementation of the 2010 Primary 1-Hour SO₂ NAAQS, Draft White Paper for Discussion* that EPA was clarifying its implementation position and that EPA was no longer recommending such attainment demonstrations supported by air dispersion modeling for unclassifiable areas (which had not yet been designated) for June 2013 infrastructure SIPs. EPA reaffirmed this position that EPA did not expect attainment demonstrations for areas not designated nonattainment for infrastructure SIPs in its February 6, 2013, memorandum, "Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard."⁴ As previously mentioned, EPA had stated in the preamble to the 2010 SO₂ NAAQS and in the prior 2011 draft guidance that EPA intended to develop and seek public comment on guidance for modeling and development of SIPs for sections 110, 172 and 191–192 of the CAA. After receiving such further comment, EPA has now issued guidance for the nonattainment area SIPs due pursuant to sections 191–192 and 172 and proposed a process for further designations for the 2010 SO₂ NAAQS, which could include use of air dispersion modeling. See April 23, 2014 *Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions* and 79 FR 27446 (May 13, 2014) (proposing process and timetables for additional SO₂ designations informed through ambient monitoring and/or air quality modeling). While the EPA guidance for attainment SIPs and the proposed process for additional designations discusses use of air dispersion modeling, EPA's 2013 Infrastructure SIP Guidance did not require use of air dispersion modeling to inform emission limitations for section 110(a)(2)(A) to ensure no exceedances of the NAAQS when sources are modeled. Therefore, as discussed previously, EPA believes the Minnesota SO₂ infrastructure SIP submittal contains the structural requirements to address elements in section 110(a)(2) as discussed in detail in our TSD

³ The commenter also cites to a 1983 EPA Memorandum on section 107 designations policy regarding use of modeling for designations and to the 2012 *Mont. Sulphur & Chem. Co.* case where EPA had designated an area in Montana as nonattainment due to modeled violations of the NAAQS.

⁴ The February 6, 2013 "Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard," one of the April 12, 2012 state letters, and the May 2012 *Draft White Paper* are available at <http://www.epa.gov/airquality/sulfurdioxide/implementation.html>.

supporting our proposed approval and in our Response to a prior comment. EPA believes infrastructure SIPs are general planning SIPs to ensure that a state has adequate resources and authority to implement a NAAQS. Infrastructure SIP submissions are not intended to act or fulfill the obligations of a detailed attainment and/or maintenance plan for each individual area of the state that is not attaining the NAAQS. While infrastructure SIPs must address modeling authorities in general for section 110(a)(2)(K), EPA believes 110(a)(2)(K) requires infrastructure SIPs to provide the state's authority for air quality modeling and for submission of modeling data to EPA, not specific air dispersion modeling for large stationary sources of pollutants such as SO₂ in a SO₂ infrastructure SIP.

EPA finds Sierra Club's discussion of case law, guidance, and EPA staff statements regarding advantages of AERMOD as an air dispersion model to be irrelevant to our analysis here of the Minnesota infrastructure SIP, as this SIP for section 110(a) is not an attainment SIP required to demonstrate attainment of the NAAQS pursuant to section 172. EPA also finds Sierra Club's comments relating to MPCA's current use of modeling to be likewise irrelevant. In addition, Sierra Club's comments relating to EPA's use of AERMOD or modeling in general in designations pursuant to section 107, are likewise irrelevant as EPA's present approval of Minnesota's infrastructure SIP is unrelated to the section 107 designations process. Nor is our action on this infrastructure SIP related to any new source review (NSR) or PSD permit program issue. As outlined in the August 23, 2010 clarification memo, "Applicability of Appendix W Modeling Guidance for the 1-hour SO₂ National Ambient Air Quality Standard" (U.S. EPA, 2010a), AERMOD is the preferred model for single source modeling to address the 1-hour SO₂ NAAQS as part of the NSR/PSD permit programs. Therefore, as attainment SIPs, designations, and NSR/PSD actions are outside the scope of a required infrastructure SIP for the 2010 SO₂ NAAQS for section 110(a), EPA provides no further response to the commenter's discussion of air dispersion modeling for these applications. If Sierra Club resubmits its air dispersion modeling for the Minnesota EGUs or updated modeling information in the appropriate context, EPA will address the resubmitted modeling or updated modeling in the appropriate future context when an analysis of whether Minnesota's

emissions limits are adequate to show attainment and maintenance of the NAAQS is warranted. The commenter correctly noted that the Third Circuit upheld EPA's Section 126 Order imposing SO₂ emissions limitations on an EGU pursuant to CAA section 126. *GenOn REMA, LLC v. EPA*, 722 F.3d 513. Pursuant to section 126, any state or political subdivision may petition EPA for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(D)(i)(I) which relates to significant contributions to nonattainment or maintenance in another state. The Third Circuit upheld EPA's authority under section 126 and found EPA's actions neither arbitrary nor capricious after reviewing EPA's supporting docket which included air dispersion modeling as well as ambient air monitoring data showing violations of the NAAQS. The commenter appears to have cited to this matter to demonstrate again EPA's use of modeling for certain aspects of the CAA. EPA agrees with the commenter regarding the appropriate role air dispersion modeling has for designations, attainment SIPs, and demonstrating significant contributions to interstate transport. However, EPA's approval of Minnesota's infrastructure SIP is based on our determination that Minnesota has the required structural requirements pursuant to section 110(a)(2) in accordance with our explanation of the intent for infrastructure SIPs as discussed in the 2013 Infrastructure SIP Guidance. Therefore, while air dispersion modeling may be appropriate for consideration in certain circumstances, EPA does not find air dispersion modeling demonstrating no exceedances of the NAAQS to be a required element before approval of infrastructure SIPs for section 110(a) or specifically for 110(a)(2)(A). Thus, EPA disagrees with the commenter that EPA must require additional emission limitations in the Minnesota SO₂ infrastructure SIP informed by air dispersion modeling and demonstrating attainment and maintenance of the 2010 NAAQS. In its comments, Sierra Club relies on *Motor Vehicle Mfrs. Ass'n and NRDC v. EPA* to support its comments that EPA *must* consider the Sierra Club's modeling data on the Boswell Plant, Hoot Lake Coal Plant, Sherco Coal Plant, and Taconite Harbor Plant based on administrative law principles regarding consideration of comments provided during a rulemaking process. EPA asserts that it has considered the modeling submitted

by the commenter as well as all the submitted comments of Sierra Club. As discussed in detail in the Responses above, however, EPA does not believe the infrastructure SIPs required by section 110(a) are the appropriate place to require emission limits demonstrating future attainment with a NAAQS. Part D of the CAA contains numerous requirements for the NAAQS attainment planning process including requirements for attainment demonstrations in section 172 supported by appropriate modeling. As also discussed previously, section 107 supports EPA's use of modeling in the designations process. In *Catawba County v. EPA*, 571 F.3d 20 (D.C. Cir. 2009), the DC Circuit upheld EPA's consideration of data or factors for designations other than ambient monitoring. EPA does not believe state infrastructure SIPs must contain emission limitations informed by air dispersion modeling in order to meet the requirements of section 110(a)(2)(A). Thus, EPA has not evaluated the persuasiveness of the commenter's submitted modeling in finding that it is not relevant to the approvability of Minnesota's proposed infrastructure SIP for the 2010 SO₂ NAAQS.

Comment 9: Sierra Club asserts that EPA may not approve the Minnesota proposed SO₂ infrastructure SIP because it fails to include enforceable emission limitations with a 1-hour averaging time that applies at all times. The commenter cites to CAA section 302(k) which requires emission limits to apply on a continuous basis. The commenter claims EPA has stated that 1-hour averaging times are necessary for the 2010 SO₂ NAAQS citing to a February 3, 2011, EPA Region 7 letter to the Kansas Department of Health and Environment regarding need for 1-hour SO₂ emission limits in a PSD permit, an EPA Environmental Hearing Board (EHB) decision rejecting use of 3-hour averaging time for a SO₂ limit in a PSD permit, and EPA's disapproval of a Missouri SIP which relied on annual averaging for SO₂ emission rates.⁵ Sierra Club also contends EPA must include monitoring of SO₂ emission limits on a continuous basis using a continuous emission monitor system or systems (CEMs) and cites to section 110(a)(2)(F) which requires a SIP to establish a system to monitor emissions from stationary sources and to require submission of periodic emission reports.

⁵ Sierra Club cited to *In re: Mississippi Lime Co.*, PSDAPLPEAL 11-01, 2011 WL 3557194, at * 26-27 (EPA Aug. 9, 2011) and 71 FR 12623, 12624 (March 13, 2006) (EPA disapproval of a control strategy SO₂ SIP).

Sierra Club contends infrastructure SIPs must require such SO₂ CEMs to monitor SO₂ sources regardless of whether sources have control technology installed to ensure limits are protective of the NAAQS. Thus, Sierra Club contends EPA must require enforceable emission limits, applicable at all times, with 1-hour averaging periods, monitored continuously by large sources of SO₂ emissions and must disapprove Minnesota's infrastructure SIP which fails to require emission limits with adequate averaging times.

Response 9: EPA disagrees that EPA must disapprove the proposed Minnesota infrastructure SIP because the SIP does not contain enforceable SO₂ emission limitations with 1-hour averaging periods that apply at all times and with required CEMs. These issues are not appropriate for resolution at this stage. As explained in detail in previous Responses, the purpose of the infrastructure SIP is to ensure that a state has the structural capability to attain and maintain the NAAQS and thus additional SO₂ emission limitations to ensure attainment and maintenance of the NAAQS are not required for such infrastructure SIPs.⁶ Likewise, EPA need not address for the purpose of approving Minnesota's infrastructure SIP whether CEMs or some other appropriate monitoring of SO₂ emissions is necessary to demonstrate compliance with emission limits to show attainment of the 2010 NAAQS as EPA believes such SO₂ emission limits and an attainment demonstration when applicable are not a prerequisite to our approval of Minnesota's infrastructure SIP.⁷ Therefore, because EPA finds Minnesota's SO₂ infrastructure SIP approvable without the additional SO₂ emission limitations showing

attainment of the NAAQS, EPA finds the issues of appropriate averaging periods and monitoring requirements for such future limitations not relevant at this time for our approval of the infrastructure SIP. Sierra Club has cited to prior EPA discussion on emission limitations required in PSD permits (from an EHB decision and EPA's letter to Kansas' permitting authority) pursuant to part C of the CAA which is not relevant nor applicable to section 110 infrastructure SIPs. In addition, as discussed previously, the EPA disapproval of the 2006 Missouri SIP was a disapproval relating to a control strategy SIP required pursuant to part D attainment planning and is likewise not relevant to our analysis of infrastructure SIP requirements.

Comment 10: Sierra Club states that enforceable emission limits in SIPs or permits are necessary to avoid nonattainment designations in areas where modeling or monitoring shows SO₂ levels exceed the 1-hour SO₂ NAAQS and cites to a February 6, 2013 EPA document, "Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard," which Sierra Club contends discussed how states could avoid future nonattainment designations. The commenter asserts EPA must disapprove the Minnesota infrastructure SIP to ensure large sources of SO₂ do not cause exceedances of the 2010 SO₂ NAAQS which would avoid nonattainment designations.

Response 10: EPA appreciates the commenter's concern with assisting Minnesota in avoiding nonattainment designations with the 2010 SO₂ NAAQS and with assisting coal-fired EGUs in achieving regulatory certainty as EGUs make informed decisions on how to comply with CAA requirements. However, Congress designed the CAA such that states have the primary responsibility for assuring air quality within their geographic area by submitting SIPs which will specify how the state will achieve and maintain the NAAQS within the state. Pursuant to section 107(d), the states make initial recommendations of designations for areas within each state and EPA then promulgates the designations after considering the state's submission and other information. EPA promulgated initial designations for the 2010 SO₂ NAAQS in August 2013. EPA proposed on May 14, 2014 an additional process for further designations of additional areas in each state for the 2010 SO₂ NAAQS. 79 FR 27446. EPA has also entered a settlement to resolve deadline suits regarding the remaining

designations that will impose deadlines for three more rounds of designations. Under these schemes, Minnesota would have the initial opportunity to propose additional areas for designations for the 2010 SO₂ NAAQS. While EPA appreciates Sierra Club's comments, further designations will occur pursuant to the section 107(d) process, and in accordance with any applicable future court orders addressing the designations deadline suits and, if promulgated, future EPA rules addressing additional monitoring or modeling to be conducted by states. Minnesota may on its own accord decide to impose additional SO₂ emission limitations to avoid future designations to nonattainment. However, such considerations are not required of Minnesota to consider at the infrastructure SIP stage of NAAQS implementation, as this action relates to our approval of Minnesota's SO₂ infrastructure SIP submittal pursuant to section 110(a) of the CAA, and Sierra Club's comments regarding designations under section 107 are neither relevant nor germane to EPA's approval of Minnesota's SO₂ infrastructure SIP. See *Commonwealth of Virginia, et al. v. EPA*, 108 F.3d 1397, 1410 (D.C. Cir. 1997) (citing *Natural Resources Defense Council, Inc. v. Browner*, 57 F.3d 1122, 1123 (D.C. Cir. 1995)) (discussing that states have primary responsibility for determining an emission reductions program for its areas subject to EPA approval dependent upon whether the SIP as a whole meets applicable requirements of the CAA). Thus, EPA does not believe it is appropriate or necessary to condition approval of Minnesota's infrastructure SIP upon inclusion of a particular emission reduction program as long as the SIP otherwise meets the requirements of the CAA. EPA disagrees that we must disapprove the infrastructure SIP for not including enforceable emissions limitations to prevent future nonattainment designations.

Comment 11: Sierra Club contends that EPA cannot approve the section 110(a)(2)(A) portion of Minnesota's 2008 ozone infrastructure SIP revision because an infrastructure SIP should include enforceable emission limits to prevent NAAQS violations in areas not designated nonattainment. The commenter alleges that Minnesota is threatened by high concentrations of ozone, and on the edge of exceeding the ozone NAAQS.

Response 11: We disagree with the commenter that infrastructure SIPs must include detailed attainment and maintenance plans for all areas of the state and must be disapproved if air quality data that became available late

⁶ For a discussion on emission averaging times for emissions limitations for SO₂ attainment SIPs, see the April 23, 2014 *Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions*. EPA explained that it is possible, in specific cases, for states to develop control strategies that account for variability in 1-hour emissions rates through emission limits with averaging times that are longer than 1-hour, using averaging times as long as 30-days, but still provide for attainment of the 2010 SO₂ NAAQS as long as the limits are of at least comparable stringency to a 1-hour limit at the critical emission value. EPA has not yet evaluated any specific submission of such a limit, and so is not at this time prepared to take final action to implement this concept. If and when a state submits an attainment demonstration that relies upon a limit with such a longer averaging time, EPA will evaluate it then.

⁷ EPA believes the appropriate time for application of monitoring requirements to demonstrate continuous compliance by specific sources is when such 1-hour emission limits are set for specific sources whether in permits issued by a state pursuant to the SIP or in attainment SIPs submitted in the part D planning process.

in the process or after the SIP was due and submitted changes the status of areas within the state. We believe that section 110(a)(2)(A) is reasonably interpreted to require states to submit SIPs that reflect the first step in their planning for attaining and maintaining a new or revised NAAQS and that they contain enforceable control measures and a demonstration that the state has the available tools and authority to develop and implement plans to attain and maintain the NAAQS.

The suggestion that the infrastructure SIP must include measures addressing violations of the standard that did not occur until shortly before or even after the SIP was due and submitted cannot be supported. The CAA provides states with three years to develop infrastructure SIPs and states cannot reasonably be expected to address the annual change in an area's design value for each year over that period. Moreover, the CAA recognizes and has provisions to address changes in air quality over time, such as an area slipping from attainment to nonattainment or changing from nonattainment to attainment. These include provisions providing for redesignation in section 107(d) and provisions in section 110(k)(5) allowing EPA to call on the state to revise its SIP, as appropriate.

We do not believe that section 110(a)(2)(A) requires detailed planning SIPs demonstrating either attainment or maintenance for specific geographic areas of the state. The infrastructure SIP is triggered by promulgation of the NAAQS, not designation. Moreover, infrastructure SIPs are due three years following promulgation of the NAAQS and designations are not due until two years (or in some cases three years) following promulgation of the NAAQS. Thus, during a significant portion of the period that the state has available for developing the infrastructure SIP, it does not know what the designation will be for individual areas of the state.⁸ In light of the structure of the CAA, EPA's long-standing position regarding infrastructure SIPs is that they are general planning SIPs to ensure that the state has adequate resources and authority to implement a NAAQS in general throughout the state and not detailed attainment and maintenance

plans for each individual area of the state.

For all of the above reasons, we disagree with the commenter that EPA must disapprove an infrastructure SIP revision if there are or may be future monitored violations of the standard in the state and the section 110(a)(2)(A) revision does not have detailed plans for demonstrating how the state will bring that area into attainment. Rather, EPA believes that the proper inquiry at this juncture is whether the state has met the basic structural SIP requirements appropriate when EPA is acting upon the submittal.

Comment 12: Sierra Club suggests that the state adopt specific controls that they contend are cost-effective for reducing nitrogen oxides (NO_x), a precursor to ozone.

Response 12: Minnesota currently has the ability to control emissions of NO_x. NO_x emissions are limited by Minn. R. 7011.0500 to 7011.0553 and 7011.1700 to 7011.1705, as well as an administrative order issued as part of Minnesota's Regional Haze SIP. Minnesota relies on measures and programs used to implement previous ozone NAAQS. Because there is no substantive difference between the previous ozone NAAQS and the more recent ozone NAAQS, other than the level of the standard, the provisions relied on by Minnesota will provide benefits for the new NAAQS; in other words, the measures reduce *overall* ground-level ozone and its precursors and are not limited to reducing ozone levels to meet one specific NAAQS. Further, in approving Minnesota's infrastructure SIP revision, EPA is affirming that Minnesota has sufficient authority to take the types of actions required by the CAA in order to bring any potential nonattainment areas back into attainment. The commenter has not provided any information to demonstrate that emissions will be affected by the infrastructure SIP submission.

Comment 13: The commenter alleges that EPA cannot approve the infrastructure SIP for the 2010 NO₂ NAAQS unless Minnesota includes adequately stringent emission limits that address the 1-hour NO₂ NAAQS. The commenter points to a news article summarizing research by Clark, Millet, and Marshall showing patterns in environmental justice for NO₂ concentrations in Minnesota and elsewhere.

Response 13: As stated in a previous response, EPA interprets the requirements under 110(a)(2)(A) to include enforceable emission limits that will aid in attaining and/or maintaining

the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. With regard to the requirement for emission limitations, EPA has interpreted this to mean, for purposes of section 110, that the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. Emission limits providing for attainment of a new standard are triggered by the designation process and have a different schedule in the CAA than the submittal of infrastructure SIPs.

Minnesota currently has the ability to control emissions of NO₂, NO_x emissions are limited by Minn. R. 7011.0500 to 7011.0553 and 7011.1700 to 7011.1705, as well as an administrative order issued as part of Minnesota's Regional Haze SIP. Because NO₂ is a subcategory of NO_x, controls relating to NO_x can be expected to limit emissions of NO₂. These regulations support compliance with and attainment of the 2010 NO₂ NAAQS. While EPA employs multiple mechanisms for strengthening environmental justice communities, EPA believes it is inappropriate to address this issue through section 110(a)(2) of the CAA or the infrastructure SIP submittal process. The commenter does not attempt to demonstrate how environmental justice might be lawfully considered as part of Minnesota's infrastructure SIP under CAA section 110(a)(2).

Comment 14: The commenter points to a 2013 MPCA report showing PM_{2.5} monitoring data, and also points out sources of PM_{2.5} emissions including the Sherco Plant, Taconite Harbor Plant, and Silica mining industry, and alleges that Minnesota is close to exceeding the NAAQS. The commenter concludes that EPA cannot approve the infrastructure SIP for the 2012 PM_{2.5} NAAQS unless Minnesota includes enforceable emission limitations.

Response 14: As stated in a previous response, EPA interprets the requirements under 110(a)(2)(A) to include enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. With regard to the requirement for emission limitations, EPA has interpreted this to mean, for purposes of section 110, that the state may rely on measures already in place to address the pollutant at issue or any new control

⁸ While it is true that there may be some monitors within a state with values so high as to make a nonattainment designation of the county with that monitor almost a certainty, the geographic boundaries of the nonattainment area associated with that monitor would not be known until EPA issues final designations.

measures that the state may choose to submit. Emission limits providing for attainment of a new standard are triggered by the designation process and have a different schedule in the CAA than the submittal of infrastructure SIPs.

Minnesota currently has the ability to control emissions of PM_{2.5}. MPCA identified enforceable permits and administrative orders with SO₂ emission limits. In previous rulemakings, EPA has approved these permits and orders into Minnesota's SIP (see 59 FR 7218, February 15, 1994; 60 FR 31088, June 13, 1995; 62 FR 39120, July 22, 1997; 65 FR 42861, July 12, 2000; 69 FR 51371, August 19, 2004; 72 FR 51713, September 11, 2007; 74 FR 23632, May 20, 2009; 74 FR 63066, December 2, 2009; 75 FR 11461, March 11, 2010; and 75 FR 78602, December 16, 2010). Additionally, state rules that have been incorporated into Minnesota's SIP (at Minn. R. 7011.0150, 7011.0500 to 7011.0553, 7011.0600 to 7011.0625, 7011.0710 to 7011.0735, 7011.0850 to 7011.0859, 7011.0900 to 7011.0922, 7011.1000 to 7011.1015, 7011.1100 to 7011.1125, 7011.1300 to 7011.1325, and 7011.1400 to 7011.1430) contain PM emission limits. These regulations support compliance with and attainment of the 2012 PM_{2.5} NAAQS.

Comment 15: Throughout its letter, Sierra Club alleges that Minnesota's infrastructure SIP must include provisions for monitoring of emissions of the various NAAQS.

Response 15: As discussed previously, EPA need not address for the purpose of approving Minnesota's infrastructure SIPs whether monitoring of emissions is necessary to demonstrate compliance with emission limits to show attainment of any NAAQS as EPA believes such emission limits and an attainment demonstration when applicable are not a prerequisite to our approval of Minnesota's infrastructure SIP. Therefore, because EPA finds Minnesota's infrastructure SIPs approvable without the additional emission limitations showing attainment of the NAAQS, EPA finds the issues of monitoring requirements not relevant at this time for our approval of the infrastructure SIP.

Comment 16: Sierra Club alleges that Minnesota's infrastructure SIPs contain no emission limits for the 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS. The commenter states that it provided modeling and other evidence showing that any limits currently in place are insufficient, and that Minnesota is taking little to no action to address any NAAQS exceedances. Sierra Club alleges that standards contained within the infrastructure SIPs

were created for earlier NAAQS, and must be revised to reflect the new standards.

Sierra Club asserts that Minnesota's infrastructure SIP must not allow for ambient air incremental increases, variances, exceptions, or exclusions with regard to limits placed on sources of pollutants. The commenter asserts that Minnesota's rules allow exceptions from enforcement, and points to Minn. Stat. 116.07, Minn. R. 7000.7000, and Minn. R. 7007.1850 as examples of methods by which MPCA may grant variances or undermine emission limits.

Additionally, the commentator alleges that Minnesota excludes major sources of emissions from its major permitting program, allowing these sources to emit pollution under fewer restrictions.

Response 16: As stated in a previous response, EPA interprets the requirements under 110(a)(2)(A) to include enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. With regard to the requirement for emission limitations, EPA has interpreted this to mean, for purposes of section 110, that the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. Emission limits providing for attainment of a new standard are triggered by the designation process and have a different schedule in the CAA than the submittal of infrastructure SIPs.

EPA disagrees with the commenter's claim that Minnesota's infrastructure SIP fails to meet any requirements regarding variances. As an initial matter, Minn. Stat. 116.07 and Minn. R. 7000.7000 are not regulations that have been approved into the SIP. Minn. R. 7007.1850 grants the source the right to prove a circumstance beyond its control, but does not limit Minnesota's enforcement authority. Thus, any variance granted by the state pursuant to this provision would not modify the requirements of the SIP. Furthermore, for a variance from the state to be approved into the SIP, a demonstration must be made under CAA section 110(l) showing that the revision does not interfere with any requirements of the CAA including attainment or maintenance of a NAAQS. We disagree that the existence of this provision as solely a matter of state law means that the state does not have adequate authority to carry out the implementation plan.

Finally, we find that there is nothing in the record to support the commenter's assertion that Minnesota excludes major sources of emissions from the major permitting requirements required under title I of the CAA, which is the focus of this action. This action is governed by section 110(a)(2), which falls under title I of the CAA and governs the implementation, maintenance, and enforcement of the NAAQS. As noted above, Minnesota implements the Federal major source PSD program through delegated authority from EPA. Since Minnesota already administers Federally promulgated PSD regulations through delegation, it applies the Federal promulgated regulations in 40 CFR 52.21—not the regulations cited in the comment, or any exclusions they may contain—in determining the major sources subject to title I permitting requirements. We also note that the regulations cited in the comment apply to part 70 operating permits issued under title V of the CAA and certain state permits (see MAR section 7007.0200 and section 7007.0250, respectively). Thus, any evaluation of these regulations must be done pursuant to CAA section 502 and 40 CFR part 70 and state law, respectively, and are not subject to our review under section 110(a)(2).

Comment 17: The commenter alleges that the proposed infrastructure SIP does not address sources significantly contributing to nonattainment or interfering with maintenance of the NAAQS in other states as required by section 110(a)(2)(D)(i)(I) of the CAA, and states EPA must therefore disapprove the infrastructure SIP. Sierra Club states that the CAA requires infrastructure SIPs to address cross-state air pollution within three years of the NAAQS promulgation. The commenter references the recent Supreme Court decision, *EPA v. EME Homer City Generation, L.P. et al.*, 134 S. Ct. 1584 (2014), which supports the states' mandatory duty to address cross-state pollution under section 110(a)(2)(D)(i)(I).

Sierra Club additionally alleges that Minnesota cannot rely on the absence of nonattainment areas within the state, when determining whether Minnesota is contributing to nonattainment or interference with maintenance of the NAAQS in downwind states. The commenter also alleges that Minnesota cannot rely on a Federal implementation plan (FIP) for PSD and an approved NSR permitting program when determining that Minnesota is not contributing to nonattainment or interference with maintenance of the

NAAQS in downwind states. Sierra Club additionally alleges that PSD and NSR programs address only new sources, and also apply only in nonattainment areas. The commenter notes that Minnesota has no nonattainment areas for the 2008 ozone, 2010 SO₂, 2010 NO₂, and 2012 PM_{2.5} NAAQS.

Response 17: EPA disagrees with Sierra Club's statement that EPA must disapprove the submitted infrastructure SIPs due to Minnesota's failure to address section 110(a)(2)(D)(i)(I). In EPA's NPR proposing to approve Minnesota's infrastructure SIP for the 2008 ozone, 2010 SO₂, 2010 NO₂, and 2012 PM_{2.5} NAAQS, EPA clearly stated that it was not taking any final action with respect to the good neighbor provision in section 110(a)(2)(D)(i)(I) which addresses emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state for the 2008 ozone, 2010 SO₂, and 2012 PM_{2.5} NAAQS. Minnesota did not make a SIP submission to address the requirements of section 110(a)(2)(D)(i)(I) for the 2008 ozone, 2010 SO₂, and 2012 PM_{2.5} NAAQS, and thus there is no such submission upon which EPA could take action under section 110(k) of the CAA. EPA cannot act under section 110(k) to disapprove a SIP submission that has not been submitted to EPA. EPA also disagrees with the commenter that EPA cannot approve an infrastructure SIP submission without the good neighbor provision. EPA additionally believes there is no basis for the contention that EPA has triggered its obligation to issue a FIP addressing the good neighbor obligation under section 110(c), as EPA has neither found that Minnesota failed to timely submit a required 110(a)(2)(D)(i)(I) SIP submission as to the 2008 ozone, 2010 SO₂, and 2012 PM_{2.5} NAAQS or made such a submission that was incomplete, nor has EPA disapproved a SIP submission addressing 110(a)(2)(D)(i)(I) with respect to the 2008 ozone, 2010 SO₂, and 2012 PM_{2.5} NAAQS.

EPA acknowledges the commenter's concern for the interstate transport of air pollutants and agrees in general with the commenter that sections 110(a)(1) and (a)(2) of the CAA generally require states to submit, within three years of promulgation of a new or revised NAAQS, a plan which addresses cross-state air pollution under section 110(a)(2)(D)(i)(I). However, EPA disagrees with the commenter's argument that EPA cannot approve an infrastructure SIP submission without the good neighbor provision. Section 110(k)(3) of the CAA authorizes EPA to

approve a plan in full, disapprove it in full, or approve it in part and disapprove it in part, depending on the extent to which such plan meets the requirements of the CAA. This authority to approve state SIP revisions in separable parts was included in the 1990 Amendments to the CAA to overrule a decision in the Court of Appeals for the Ninth Circuit holding that EPA could not approve individual measures in a plan submission without either approving or disapproving the plan as a whole. *See* S. Rep. No. 101-228, at 22, 1990 U.S.C.C.A.N. 3385, 3408 (discussing the express overruling of *Abramowitz v. EPA*, 832 F.2d 1071 (9th Cir. 1987)). EPA interprets its authority under section 110(k)(3) of the CAA, as affording EPA the discretion to approve or conditionally approve individual elements of Minnesota's infrastructure SIP submission for the various NAAQS, separate and apart from any action with respect to the requirements of section 110(a)(2)(D)(i)(I) of the CAA with respect to each NAAQS. EPA views discrete infrastructure SIP requirements, such as the requirements of 110(a)(2)(D)(i)(I), as severable from the other infrastructure elements and interprets section 110(k)(3) as allowing it to act on individual severable measures in a plan submission. In short, EPA believes that even if Minnesota had made a SIP submission for section 110(a)(2)(D)(i)(I) of the CAA for the 2008 ozone, 2010 SO₂, and 2012 PM_{2.5} NAAQS, which to date it has not, EPA would still have discretion under section 110(k) of the CAA to act upon the various individual elements of the state's infrastructure SIP submission, separately or together, as appropriate.

The commenter raises no compelling legal or environmental rationale for an alternate interpretation. Nothing in the Supreme Court's April 2014 decision in *EME Homer City* alters our interpretation that we may act on individual severable measures, including the requirements of section 110(a)(2)(D)(i)(I), in a SIP submission. *See EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (affirming a state's obligation to submit a SIP revision addressing section 110(a)(2)(D)(i)(I) independent of EPA's action finding significant contribution or interference with maintenance). In sum, the concerns raised by the commenter do not establish that it is inappropriate or unreasonable for EPA to approve the portions of Minnesota's June 12, 2014, infrastructure SIP submission for the 2010 SO₂ NAAQS.

Furthermore, as discussed above, EPA has no obligation to issue a FIP pursuant

to 110(c)(1) to address Minnesota's obligations under section 110(a)(2)(D)(i)(I) until EPA first either finds Minnesota failed to make the required submission addressing the element or the State has made such a submission but it is incomplete, or EPA disapproves a SIP submittal addressing that element. Until either occurs, EPA does not have the authority to issue a FIP pursuant to section 110(c) with respect to the good neighbor provision. Therefore, EPA disagrees with the commenter's contention that it must issue a FIP for Minnesota to address 110(a)(2)(D)(i)(I) at this time.

Sierra Club claims that Minnesota may not rely on the absence of nonattainment areas within the state, a FIP for PSD, or an approved nonattainment NSR permitting program when determining that Minnesota is not contributing to nonattainment or interference with maintenance of the NAAQS in downwind states. In fact, EPA is not taking action on 110(a)(2)(D)(i)(I) at this time for the 2008 ozone, 2010 SO₂, and 2012 PM_{2.5} NAAQS, and therefore these comments are not relevant to this rulemaking. EPA is indeed addressing the transport provisions of Minnesota's infrastructure SIP for the 2010 NO₂ NAAQS, but here EPA is making this determination in part because no state has a nonattainment area for the 2010 NO₂ NAAQS, and it is impossible for any state to contribute to nonattainment when no nonattainment areas actually exist. Sierra Club's comments are not relevant for a NAAQS with no nonattainment areas in any state.

Comment 18: The commenter contends that Minnesota does not have the adequate personnel, funding, and authority, required by section 110(a)(2)(E) of the CAA, to properly implement the SIP, shown by overdue permits and improper reissuing of expired permits. The commenter contends that permits for the Taconite Harbor Plant and Boswell Plant have expired, and this may allow these plants to "exceed the 2010 SO₂ NAAQS."

Response 18: EPA disagrees that the issue raised by the commenter implies that MPCA does not meet the criteria of section 110(a)(2)(E). Although title V programs are not a component of the SIP, EPA fully approved Minnesota's title V program on December 4, 2001 (66 FR 62967). Minnesota has funding for its program through title V fees, and has the authority to implement the programs though a number of state rules to implement 40 CFR part 70, and dedicated staff for implementation of their title V program.

Comment 19: Sierra Club alleges that section 110(a)(2)(J) of the CAA requires states to provide for public notification of exceedances of the NAAQS. Sierra Club further asserts that section 110(a)(2)(J) requires states to satisfy section 127 of the CAA, which mandates that each SIP must contain provisions for notifying the public of instances or areas of primary NAAQS exceedances, and additionally advise the public of associated health hazards. Sierra Club further alleges that Minnesota's SIP cites provisions that in fact do not require public notification procedures. Sierra Club notes that Minnesota's infrastructure SIP states that a portion of the MPCA Web site is dedicated to enhancing public awareness of measures that can be taken to prevent exceedances for the NAAQS.

Response 19: Sierra Club correctly notes that 110(a)(2)(J) of the CAA requires states to satisfy the requirements of section 127 of the CAA. Section 127 requires a state's infrastructure SIP to contain measures allowing the state to notify the public upon the exceedance of a NAAQS, to advise the public of the health hazards, and to enhance public awareness. The CAA, which was last amended in 1990, further states that "[s]uch measures may include the posting of warning signs on interstate highway access points to metropolitan areas or television, radio,

or press notices or information." Here in the year 2015, Minnesota has a Web site. This Web site contains much more information than, for example, a warning sign on a highway. MPCA's Web site allows Minnesotans to learn about air quality issues, view a current air quality index, review reports to the legislature, and access air quality alerts for ozone. As Sierra Club noted, MPCA submitted a link to this Web site as part of its infrastructure SIP. The Web site does contain sections dedicated to enhancing public awareness of measures that can be taken to prevent exceedances for the NAAQS. EPA believes Minnesota has fully satisfied its public notification requirements under section 110(a)(2)(J) of the CAA.

Comment 20: Sierra Club asserts that EPA must disapprove Minnesota's infrastructure SIP because it does not address the visibility protection provisions of section 110(a)(2)(J).

Response 20: The visibility requirements in part C of the CAA that are referenced in section 110(a)(2)(J) are not affected by the establishment or revision of a NAAQS. As a result, there are no "applicable" visibility protection obligations associated with the promulgation of a new or revised NAAQS. Because there are no applicable requirements, states are not required to address section 110(a)(2)(J) in their infrastructure SIP.

III. What action is EPA taking?

EPA is taking final action to approve most elements of submissions from Minnesota certifying that its current SIP is sufficient to meet the required infrastructure elements under section 110(a)(1) and (2) for the 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS. We are also disapproving some elements of the state's submission as they relate to its PSD program. As described above, Minnesota already administers Federally promulgated PSD regulations through delegation, and therefore no practical effect is associated with this disapproval of those elements.

The proposed rulemaking associated with this final action was published on June 26, 2015 (75 FR 36743), and EPA received one comment during the comment period, which ended on July 27, 2015. For the reasons discussed in the proposed rulemaking and in the above response to the public comment, EPA is therefore taking final action to approve most elements and disapprove certain elements, as proposed, of Minnesota's submissions. EPA's actions for the state's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) and NAAQS, are contained in the table below.

Element	2008 Ozone	2010 NO ₂	2010 SO ₂	2012 PM _{2.5}
(A)—Emission limits and other control measures	A	A	A	A
(B)—Ambient air quality monitoring/data system	A	A	A	A
(C)1—Program for enforcement of control measures	A	A	A	A
(C)2—PSD	D	D	D	D
(D)1—I Prong 1: Interstate transport—significant contribution	NA	A	NA	NA
(D)2—I Prong 2: Interstate transport—interfere with maintenance	NA	A	NA	NA
(D)3—II Prong 3: Interstate transport—prevention of significant deterioration.	D	D	D	D
(D)4—II Prong 4: Interstate transport—protect visibility	NA	NA	NA	NA
(D)5—Interstate and international pollution abatement	D	D	D	D
(E)1—Adequate resources	A	A	A	A
(E)2—State board requirements	NA	NA	NA	NA
(F)—Stationary source monitoring system	A	A	A	A
(G)—Emergency power	A	A	A	A
(H)—Future SIP revisions.	A	A	A	A
(I)—Nonattainment planning requirements of part D	*	*	*	*
(J)1—Consultation with government officials	A	A	A	A
(J)2—Public notification	A	A	A	A
(J)3—PSD	D	D	D	D
(J)4—Visibility protection	*	*	*	*
(K)—Air quality modeling/data	A	A	A	A
(L)—Permitting fees	A	A	A	A
(M)—Consultation and participation by affected local entities	A	A	A	A

In the above table, the key is as follows:

A	Approve.
D	Disapprove.
NA	No Action/Separate Rulemaking.
*	Not germane to infrastructure SIPs.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices,

provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under

Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
 - Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
 - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, the SIP is not approved to apply on any Indian reservation land

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 21, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not

be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 23, 2015.
Susan Hedman,
 Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1220, the table in paragraph (e) is amended by adding entries at the end of the table for “Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS,” “Section 110(a)(2) Infrastructure Requirements for the 2010 nitrogen dioxide (NO₂) NAAQS,” “Section 110(a)(2) Infrastructure Requirements for the 2010 sulfur dioxide (SO₂) NAAQS,” and “Section 110(a)(2) Infrastructure Requirements for the 2012 fine particulate matter (PM_{2.5}) NAAQS” to read as follows:

§ 52.1220 Identification of plan.

* * * * *
 (e) * * *

EPA-APPROVED MINNESOTA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Comments
* Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS.	* Statewide	* 6/12/2014 (submittal date).	* 10/20/2015, [insert Federal Register citation].	* This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). We are not taking action on (D)(i)(I), the visibility portion of (D)(i)(II), or the state board requirements of (E)(ii). We will address these requirements in a separate action. EPA is disapproving the elements related to the prevention of significant deterioration, specifically as they pertain to section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J); however, Minnesota continues to implement the Federally promulgated rules for this purpose.

EPA-APPROVED MINNESOTA NONREGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Comments
Section 110(a)(2) Infrastructure Requirements for the 2010 nitrogen dioxide (NO ₂) NAAQS.	Statewide	6/12/2014 (submittal date).	10/20/2015, [insert Federal Register citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). We are not taking action on the visibility portion of (D)(i)(II) or the state board requirements of (E)(ii). We will address these requirements in a separate action. EPA is disapproving the elements related to the prevention of significant deterioration, specifically as they pertain to section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J); however, Minnesota continues to implement the Federally promulgated rules for this purpose.
Section 110(a)(2) Infrastructure Requirements for the 2010 sulfur dioxide (SO ₂) NAAQS.	Statewide	6/12/2014 (submittal date).	10/20/2015, [insert Federal Register citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). We are not taking action on (D)(i)(I), the visibility portion of (D)(i)(II), or the state board requirements of (E)(ii). We will address these requirements in a separate action. EPA is disapproving the elements related to the prevention of significant deterioration, specifically as they pertain to section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J); however, Minnesota continues to implement the Federally promulgated rules for this purpose.
Section 110(a)(2) Infrastructure Requirements for the 2012 fine particulate matter (PM _{2.5}) NAAQS.	Statewide	6/12/2014 (submittal date).	10/20/2015, [insert Federal Register citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). We are not taking action on (D)(i)(I), the visibility portion of (D)(i)(II), or the state board requirements of (E)(ii). We will address these requirements in a separate action. EPA is disapproving the elements related to the prevention of significant deterioration, specifically as they pertain to section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J); however, Minnesota continues to implement the Federally promulgated rules for this purpose.

[FR Doc. 2015–25969 Filed 10–19–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2014–0657; FRL–9935–63–Region 5]

Air Plan Approval; Michigan; 2006 PM_{2.5} and 2008 Lead NAAQS State Board Infrastructure SIP Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of state implementation plan (SIP)

submissions from Michigan regarding state board requirements of section 110 of the Clean Air Act (CAA) for the 2006 fine particulate matter (PM_{2.5}) and 2008 lead National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: This direct final rule will be effective December 21, 2015, unless EPA receives adverse comments by November 19, 2015. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2014–0657 by one of the following methods:

1. *www.regulations.gov*: Follow the online instructions for submitting comments.
2. *Email*: aburano.douglas@epa.gov.
3. *Fax*: (312) 408–2279.
4. *Mail*: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery*: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted

during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID. EPA-R05-OAR-2014-0657. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra, Environmental Scientist, at (312) 886-9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-9401, arra.sarah@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the background of these SIP submissions?
- II. What is EPA's review of these SIP submissions?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

I. What is the background of these SIP submissions?

This rulemaking addresses submissions from the Michigan Department of Environmental Quality (MDEQ) for the 2006 PM_{2.5} and 2008 lead NAAQS. MDEQ submitted its infrastructure SIPs on the following dates: 2006 PM_{2.5}—August 15, 2011, supplemented on July 9, 2012; 2008 lead—April 3, 2012, supplemented August 9, 2013. On July 10, 2014, MDEQ requested that new rules related to state board requirements which it had submitted to be incorporated into the SIP also apply to its 2006 PM_{2.5} and 2008 lead NAAQS infrastructure SIPs.

The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

This specific rulemaking is taking action only on the state board element of the Michigan submission. The majority of the other infrastructure elements for the 2006 PM_{2.5} NAAQS were addressed on October 29, 2012 (77 FR 65478). The other infrastructure elements for the 2008 lead NAAQS were addressed on July 16, 2014 (79 FR 41439). The infrastructure element for state board requirements is found in CAA

110(a)(2)(E). For further discussion on the background of infrastructure submissions, see 77 FR 45992.

II. What is EPA's review of these SIP submissions?

On September 13, 2013, EPA issued "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)" (2013 Memo). As noted in the 2013 Memo, pursuant to CAA section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. MDEQ provided public comment opportunities on both submissions on which EPA is acting in this direct final rule. MDEQ provided a detailed synopsis of how various components of its SIP meet each of the applicable requirements in section 110(a)(2) for the 2006 PM_{2.5} and 2008 lead NAAQS, as applicable. The following review only evaluates the state's submissions for CAA section 110(a)(2)(E)(ii) requirements.

Section 110(a)(2)(E)(ii) requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (1) That any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (2) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed. The 2013 Memo specifies that the provisions that implement CAA section 128 must be contained within the SIP. "EPA would not approve an infrastructure SIP submission that only provides a narrative description of existing air agency laws, rules, and regulations that are not approved into the SIP to address CAA section 128 requirements." 2013 Memo at 42.

On July 10, 2014, MDEQ submitted Civil Service Rule 2-8.3(a)(1) for incorporation into the SIP, pursuant to section 128 of the CAA. EPA approved this rule as satisfying CAA section 128 requirements on August 31, 2015 (see 80 FR 52399). On July 10, 2014, MDEQ requested that these rules satisfy not only the applicable requirements of section 128 of the CAA, but that they satisfy any applicable requirements of section 110(a)(2)(E) for the 2006 PM_{2.5} and 2008 lead NAAQS. Therefore, EPA finds that MDEQ has satisfied the applicable infrastructure SIP

requirements for this section of 110(a)(2)(E) for the 2006 PM_{2.5} and 2008 lead NAAQS.

III. What action is EPA taking?

EPA is approving the state board related infrastructure requirement for Michigan's 2006 PM_{2.5} and 2008 lead NAAQS submittals as satisfying the infrastructure SIP requirements in CAA sections 110(a)(2)(E)(ii).

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective December 21, 2015 without further notice unless we receive relevant adverse written comments by November 19, 2015. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective December 21, 2015.

IV. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in

the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 21, 2015. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 5, 2015.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

- 2. In § 52.1170, the table in paragraph (e) is amended by revising the entries for "Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour PM_{2.5} NAAQS" and "Section 110(a)(2) Infrastructure Requirements for the 2008 lead (Pb) NAAQS" to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
* Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour PM _{2.5} NAAQS.	* Statewide	* 8/15/2011, 7/9/2012, 7/10/2014	* 10/20/2015, [Insert Federal Register citation].	* This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). We are not taking action on the visibility protection requirements of (D)(i)(II). We will address this requirements in a separate action.
* Section 110(a)(2) Infrastructure Requirements for the 2008 lead (Pb) NAAQS.	* Statewide	* 4/3/2012, 8/9/2013, 7/10/2014	* 10/20/2015, [insert Federal Register citation].	* This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2015-26312 Filed 10-19-15; 8:45 am]
BILLING CODE 6560-50-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 1206, 1210, 1211, 1216, 1217, 1218, 1220, 1222, 1226, and 2556
RIN 3045-AA36

Volunteers in Service to America

AGENCY: Corporation for National and Community Service.
ACTION: Final rule.

SUMMARY: The Corporation for National and Community Service (CNCS) publishes new regulations under the Domestic Volunteer Service Act of 1973, as amended, and the National and Community Service Act of 1990, as amended, for the Volunteers in Service to America (VISTA) program, including certain changes to update existing regulations.

DATES: This rule is effective January 19, 2016.

FOR FURTHER INFORMATION CONTACT: Calvin Dawson, AmeriCorps VISTA, at the Corporation for National and Community Service, 1201 New York Avenue NW., Washington, DC 20525, phone 202-606-6897. The TDD/TTY number is 800-833-3722.

SUPPLEMENTARY INFORMATION:

I. Background

The Economic Opportunity Act of 1964 created the Volunteers in Service to America (VISTA) program. The VISTA program, sometimes referred to as the domestic Peace Corps, has operated since the first VISTA volunteers (VISTAs or VISTA members)

were placed in service in December 1964.

In 1971, the VISTA program was transferred from the Office of Economic Opportunity to the former Federal agency, ACTION (the Federal Domestic Volunteer Agency). In 1973, Congress enacted the Domestic Volunteer Service Act of 1973 (DVSA), the VISTA program’s enabling legislation. The VISTA program continues to retain its purpose, as stated in the DVSA, “to strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling individuals from all walks of life, all geographical areas, and all age groups, including low-income individuals, elderly and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by individuals afflicted with such problems.”

In 1994, the Corporation for National and Community Service (CNCS) was established pursuant to the National and Community Service Trust Act of 1993; at this time, the operations of all service programs previously administered by ACTION, including the VISTA program, began to be administered by CNCS. The VISTA program also became known as the AmeriCorps VISTA program, one of three AmeriCorps programs now administered by CNCS. The other two programs were, and continue to be: (1) The AmeriCorps State and National program; and (2) the AmeriCorps National Civilian Community Corps (NCCC). Since 1994, the VISTA program

continues to be primarily operated and administered under the DVSA. The other two AmeriCorps programs are operated under the National and Community Service Act of 1990 (NCSA).

In 2009, Congress enacted the Edward M. Kennedy Serve America Act of 2009 (Serve America Act), which contained certain amendments to both the DVSA and the NCSA. With regard to the VISTA program, the Serve America Act amendments largely related to the Segal AmeriCorps Education Award, a type of end-of-service award for which a VISTA member may be eligible upon successful completion of a term of VISTA service.

II. Scope of Final Rule

This rule covers core aspects of the VISTA program: (a) Entities that are sponsors for VISTA projects; and (b) individuals who are applicants, candidates, and VISTAs (including VISTA leaders and VISTA summer associates), serving at project sites. This rule has four purposes.

First, it conforms the existing regulations to the fact that CNCS administers the VISTA program. References in the existing regulations to the former Federal agency, ACTION, and the administrative structure of ACTION are changed to reflect CNCS and its administrative structure.

Second, this rule codifies the VISTA rules in the same location as the rules for CNCS’s other programs. The existing VISTA regulations are codified at 45 CFR parts 1206, 1210, 1211, 1216-1220, 1222, and 1226. This rule places the VISTA regulations within the regulations for CNCS and the other CNCS programs at 45 CFR parts 2505-2556.

On a related note, existing program regulations at 45 CFR parts 1206, 1216,

1220, and 1226, currently apply both to the VISTA program, and to CNCS's National Senior Service Corps programs. This rule places existing program regulations, as they apply to the VISTA program, at 45 CFR parts 2505–2556. Existing program regulations as they apply to the National Senior Service Corps programs will remain, at this time, at 45 CFR parts 1206, 1216, 1220, and 1226. To accommodate the relocation of the existing program regulations as applied to the VISTA program, certain technical changes to the existing program regulations, as applied to the National Senior Service Corps programs, are warranted. These technical changes are not substantive, but are necessary to address the removal of references to the VISTA program and to reflect CNCS and its current administrative structure.

Third, this rule addresses regulations on the VISTA program's elements. The existing regulations cover a limited range of topics. This rule covers a wide range of topics, and updates the topics covered under existing regulations, including: VISTA application and termination processes, volunteer grievance procedures, competitive service eligibility, payment of volunteer legal expenses, nondisplacement of workers, VISTA leaders and summer associates, restrictions for VISTAs on certain political activities under the Hatch Act and other federal laws, and participation of program beneficiaries. Subpart A gives general program information: Purpose, basic program design, definitions used in the rule, and waiver. Subpart B sets out requirements for a VISTA sponsor, and for a sponsor to support a VISTA. Subpart C pertains to being a VISTA, and the requirements for applying to become a VISTA. Subpart D provides the service terms, protections, and benefits that apply to a VISTA. Subpart E addresses termination for cause procedures. Subparts F and G, concern, respectively, VISTA projects with summer associates, and VISTA projects with VISTA leaders. Subpart H gives restrictions and prohibitions on certain political activities for all VISTAs, sponsors, and project sites.

Fourth, this rule updates the provisions of the existing regulations. These changes are described here:

As it applies to the VISTA program, 45 CFR part 1206, which deals with project suspension and termination, is moved to 45 CFR part 2556, subpart B with most substantive provisions remaining unchanged. Under this final rule, the provisions for suspension remain unchanged, except that the provisions for summary suspension are eliminated and the provisions for

suspension on notice are retained. This has the effect of giving notice to sponsors for all suspensions. Under the final rule the provisions for termination remain unchanged, except that a second CNCS review has been eliminated. Experience has shown that a lengthy termination review process is not beneficial to VISTAs at the project in question, unduly consumes the sponsor's staff time and other resources, creates uncertainty for project beneficiaries, and exhausts VISTA resources that could be put to use for the benefit of project beneficiaries.

The regulations at 45 CFR part 1210, which deal chiefly with early termination of a VISTA, are moved to 45 CFR part 2556, subpart E and changed to improve the cost-effectiveness of the provisions and increase efficiency of VISTA program functions. The new provisions for early termination remain substantively the same in many respects. However, the early termination for cause process is modified. While the process retains more than sufficient due process in the form of written notification and appeals at two levels, the inclusion of a hearing examiner in that process is removed. Experience has shown that a multi-layered termination process is protracted, unduly burdensome, and incompatible with a service term that can last no more than a year's time. Such a process creates potential harm to the operations of the project and its beneficiaries where the VISTA had been assigned, prolongs uncertainty for the VISTA subject to the process, and inordinately consumes VISTA program resources that could be put to use for the benefit of project beneficiaries.

Regulations in 45 CFR part 1211 on grievance procedures for VISTAs are moved to 45 CFR 2556.345–2556.365 and updated to reflect the use of electronic communication technology and the speed at which it can operate. At §§ 2556.345 through 2556.365, the rule clarifies when a VISTA may present a grievance, what matters are considered grievances, and specific steps for bringing a grievance and appealing a response, while eliminating the inclusion of a grievance examiner in the process. Longstanding experience has shown that CNCS has used its administrative review and oversight to afford complaining parties more than sufficient due process, and has effectively remedied inappropriate conditions leading to grievances, without need of grievance examiner services. When grievance examiner services have been invoked, the time, resources and expense incurred by the VISTA program have substantially

outweighed the value provided to the parties involved.

Regulations at 45 CFR part 1216 on non-displacement of employed workers and non-impairment of contracts for service are moved to 45 CFR 2556.150(b) through (e), and the substantive provisions remain unchanged.

Regulations at 45 CFR part 1217 on leaders are moved to 45 CFR part 2556, subpart G, and clarify primary aspects of the leader position in a project.

Regulations at 45 CFR part 1219 on non-competitive eligibility for VISTAs are moved to 45 CFR 2556.340, and their substantive provisions remain unchanged.

Regulations at 45 CFR part 1220 on payment of legal expenses resulting from service activities are moved to 45 CFR 2556.325 through 2556.335, and their substantive provisions remain unchanged.

Regulations at 45 CFR part 1222 on participation of project beneficiaries are moved to 45 CFR 2556.120, and their substantive provisions remain unchanged.

Regulations at 45 CFR part 1226 on prohibitions and restrictions on certain political activities are moved to 45 CFR part 2556, subpart H and are revised to complement the current limitations and permitted political activities under the Hatch Act, 5 U.S.C. chapter 73, subchapter III. As provided in the DVSA, VISTAs are subject to the requirements of the Hatch Act because they are considered federal employees for purposes of the Hatch Act, 42 U.S.C. 5055(b)(1).

III. Comments and Responses

On Tuesday, May 5, 2015, CNCS published a notice of proposed rulemaking. 80 FR 25637. We received fewer than 25 comments on the rule, all of which are addressed below.

We received comments from individuals currently serving as VISTAs, current and former VISTA leaders, staff of VISTA sponsors, a state non-profit association and State Commissions on National and Community Service. We appreciate the thoughtful input provided by these individuals and organizations.

Comment: We received comments about our proposal to expand the eligibility to be a VISTA leader to include those who have had prior Peace Corps experience, or have had prior national service experience in AmeriCorps, regardless of whether the prior experience was through the AmeriCorps VISTA program or another AmeriCorps program.

Response: We appreciate the support commenters expressed for the expansion of eligibility criteria to be a VISTA leader. While two commenters thought that the expansion did not adequately recognize the value of the VISTA experience, the majority of commenters articulated support for the expansion that mirrored our reasons for proposing it: Better recruitment opportunities for programs; a wider pool of excellent prospective candidates; and recognition and leveraging of the leadership skills earned through other national service programs. Moreover, in our view, expanding the scope of individuals who may be eligible does not in any way diminish the value placed on the VISTA experience in particular.

Comment: We received several comments on VISTA health care coverage and requests to change the health care coverage options offered to VISTAs serving in the program.

Response: The health care options available to AmeriCorps VISTA members are outlined at <http://www.vistacampus.gov/resources/vista-healthcare-options>. The proposed rule did not propose any changes to VISTA health care coverage and doing so is beyond the scope of this rulemaking.

Comment: We received two comments regarding the Segal AmeriCorps Education Award (Education Award) that suggested changes to the statutory requirements placed on VISTAs regarding their use of the Education Award, namely transferability and use of the Education Award at VA-eligible institutions.

Response: We appreciate the commenters identifying how the Education Award would be more useful to VISTAs. In accordance with current legislation, individuals who successfully serve in the AmeriCorps State and National program may transfer their Education Awards to certain third party individuals as long as those individuals meet certain statutory conditions. However, VISTAs who receive Education Awards are unable to transfer them to anyone else. Until the legislation changes, we are bound by the statutory requirements on the use of the Education Award by VISTAs. Similarly, until the legislation changes, we are restricted from expanding the use of the Education Award by non-veterans to study at VA-eligible educational institutions.

Accordingly, we have made only technical edits to the proposed rule for clarity in the use of the terms “sponsor,” “project,” and “subrecipient.” Additionally, we

clarified the applicability of sections 2556.125 and 2556.130.

IV. Effective Date

This rule is effective January 19, 2016.

V. Regulatory Procedures

Executive Order 12866

CNCS has determined that the rule is not an “economically significant” rule within the meaning of E.O. 12866 because it is not likely to result in: (1) An annual effect on the economy of \$100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in E.O. 12866.

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605 (b)), CNCS certifies that this rule will not have a significant economic impact on a substantial number of small entities. This regulatory action will not result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, CNCS has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Unfunded Mandates

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding \$100 million on the private sector.

Paperwork Reduction Act

This rule addresses the requirement that entities that wish to apply to be VISTA sponsors complete an application to be a VISTA sponsor that manages at least one VISTA project. Consistent with this requirement is a document: The VISTA program’s Project Application (<http://www.nationalservice.gov/programs/ameriCorps/ameriCorps-vista/sponsor-vista-project>). Additionally this rule addresses the requirement that individuals who wish to apply to serve as VISTAs in the federal VISTA program complete an application to serve as a VISTA. This document is called an AmeriCorps Member Application and can be found online at <http://www.nationalservice.gov/programs/ameriCorps/ameriCorps-vista>.

These requirements constitute two sets of information under the Paperwork Reduction Act (PRA), 44 U.S.C. 507 *et seq.* OMB, in accordance with the Paperwork Reduction Act, has previously approved these information collections for use. The OMB Control Number for the two collections of the Project Application and AmeriCorps Application are 3045–0038 and 3045–0054, respectively.

Under the PRA, an agency may not conduct or sponsor a collection of information unless the collections of information displays valid control numbers. This rule’s collections of information are contained in 45 CFR 2556.120 and 2556.205 for the Project Application and AmeriCorps Application, respectively.

This information is necessary to ensure that only eligible and qualified entities serve as VISTA sponsors. This information is also necessary to ensure that only eligible and suitable individuals are approved by the VISTA program to serve as VISTAs in the VISTA program.

The likely respondents to these collections of information are entities interested in or seeking to become VISTA sponsors, current VISTA sponsors, and current and prospective VISTAs.

Executive Order 13132, Federalism

Executive Order 13132, *Federalism*, prohibits an agency from publishing any rule that has Federalism implications if the rule imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. The rule does not have any Federalism implications, as described above.

List of Subjects

45 CFR Parts 1206, 1210, 1211, 1216
Through 1218, 1220, and 1222

Volunteers.

45 CFR Part 1226

Elections, Lobbying, Volunteers.

45 CFR Part 2556

VISTA program, Volunteers.

For the reasons discussed in the preamble, under the authority of 42 U.S.C. 12651c(c), the Corporation for National and Community Service amends chapters XII and XXV, title 45 of the Code of Federal Regulations as follows:

PART 1206—GRANTS AND CONTRACTS—SUSPENSION AND TERMINATION AND DENIAL OF APPLICATION FOR REFUNDING

■ 1. The authority citation for part 1206 continues to read as follows:

Authority: 42 U.S.C. 5052.

■ 2. In § 1206.1–1, revise paragraph (a) to read as follows:

§ 1206.1–1 Purpose and scope.

(a) This subpart establishes rules and review procedures for the suspension and termination of assistance of National Senior Service Corps grants of assistance provided by the Corporation for National and Community Service pursuant to sections of title II of the Domestic Volunteer Service Act of 1973, Public Law 93–113, 87 Stat. 413 (hereinafter the DVSA) because a recipient failed to materially comply with the terms and conditions of any grant or contract providing assistance under these sections of the DVSA, including applicable laws, regulations, issued program guidelines, instructions, grant conditions or approved work programs.

* * * * *

■ 3. Revise § 1206.1–2 to read as follows:

§ 1206.1–2 Application of this part.

This subpart applies to programs authorized under title II of the DVSA.

■ 4. In § 1206.1–3, revise paragraphs (c) through (f) to read as follows:

§ 1206.1–3 Definitions.

* * * * *

(c) The term *responsible Corporation official* means the CEO, Chief Financial Officer, the Director of the National Senior Service Corps programs, the appropriate Service Center Director and any Corporation for National and Community Service (CNCS)

Headquarters or State office official who is authorized to make the grant or assistance in question. In addition to the foregoing officials, in the case of the suspension proceedings described in § 1206.1–4, the term “responsible Corporation official” shall also include a designee of a CNCS official who is authorized to make the grant of assistance in question.

(d) The term *assistance* means assistance under title II of the DVSA in the form of grants or contracts involving Federal funds for the administration for which the Director of the National Senior Service Corps programs has responsibility.

(e) The term *recipient* means a public or private agency, institution or organization or a State or other political jurisdiction which has received assistance under title II of the DVSA. The term “recipient” does not include individuals who ultimately receive benefits under any DVSA program of assistance or National Senior Service Corps volunteers participating in any program.

(f) The term *agency* means a public or private agency, institution, or organization or a State or other political jurisdiction with which the recipient has entered into an arrangement, contract or agreement to assist in its carrying out the development, conduct and administration of part of a project or program assisted under title II of the DVSA.

* * * * *

■ 5. Revise § 1206.2–1 to read as follows:

§ 1206.2–1 Applicability of this subpart.

This subpart applies to grantees and contractors receiving financial assistance under title II of the DVSA. The procedures in the subpart do not apply to review of applications for sponsors who receive VISTA members under the DVSA.

■ 6. Revise § 1206.2–3 to read as follows:

§ 1206.2–3 Definitions.

As used in this subpart, “Corporation”, “CEO”, and “recipient” are defined in accordance with § 1206.1–3.

Financial assistance and *assistance* include the services of National Senior Service Corps volunteers supported in whole or in part with CNCS funds under the DVSA.

Program account includes assistance provided by CNCS to support a particular program activity; for example, Foster Grandparent Program, Senior Companion Program and Retired Senior Volunteer Program.

Refunding includes renewal of an application for the assignment of National Senior Service Corps volunteers.

■ 7. In § 1206.2–4, revise paragraph (g) to read as follows:

§ 1206.2–4 Procedures.

* * * * *

(g) If the recipient’s budget period expires prior to the final decision by the deciding official, the recipient’s authority to continue program operations shall be extended until such decision is made and communicated to the recipient. If a National Senior Service Corps volunteer’s term of service expires after receipt by a sponsor of a tentative decision not to refund a project, the period of service of the volunteer may be similarly extended. No volunteers may be reenrolled for a period of service while a tentative decision not to refund is pending. If program operations are so extended, CNCS and the recipient shall provide, subject to the availability of funds, operating funds at the same levels as in the previous budget period to continue program operations.

PART 1210—[REMOVED AND RESERVED]

■ 8. Remove and reserve part 1210.

PART 1211—[REMOVED AND RESERVED]

■ 9. Remove and reserve part 1211.

PART 1216—NONDISPLACEMENT OF EMPLOYED WORKERS AND NONIMPAIRMENT OF CONTRACTS FOR SERVICE

■ 10. The authority citation for part 1216 is revised to read as follows:

Authority: 42 U.S.C. 5044(a).

■ 11. Revise § 1216.1–1 to read as follows:

§ 1216.1–1 Purpose.

This part establishes rules to assure that the services of volunteers in the Foster Grandparent Program, the Senior Companion Program, and The Retired and Senior Volunteer Program (RSVP), are limited to activities which would not otherwise be performed by employed workers and which will not supplant the hiring of, or result in the displacement of employed workers or impair existing contracts for service. This part implements section 404(a) of the Domestic Volunteer Service Act of 1973, Public Law 93–113 (the “Act”).

■ 12. In § 1216.1–2, revise paragraph (a) to read as follows:

§ 1216.1-2 Applicability of this part.

(a) All volunteers in either the Foster Grandparent Program, the Senior Companion Program, or The Retired and Senior Volunteer Program (RSVP), who are assigned, referred or serving pursuant to grants, contracts, or agreements made pursuant to the Act.

* * * * *

PART 1217—[REMOVED AND RESERVED]

- 13. Remove and reserve part 1217.

PART 1218—[REMOVED AND RESERVED]

- 14. Remove and reserve part 1218.

PART 1219—[REMOVED AND RESERVED]

- 15. Remove and reserve part 1219.

PART 1220—PAYMENT OF VOLUNTEER LEGAL EXPENSES

- 16. The authority citation for part 1220 is revised to read as follows:

Authority: 42 U.S.C. 5059.

- 17. Revise § 1220.1-1 to read as follows:

§ 1220.1-1 Purpose.

This part implements section 419 of the Domestic Volunteer Service Act of 1973, Public Law 93-113 (the "Act"). This part provides rules to ensure that the Corporation for National and Community Service, which administers the three federal programs, the Foster Grandparent Program (FGP), the Senior Companion Program (SCP), and The Retired and Senior Volunteer Program (RSVP), pays the expenses incurred in judicial and administrative proceedings for the defense of those volunteers serving in those programs. Payment of such expenses by CNCS for those volunteers include payment of counsel fees, court costs, bail or other expenses incidental to the volunteer's defense.

- 18. In § 1220.2-1, revise paragraphs (a)(1) and (c) to read as follows:

§ 1220.2-1 Full-time volunteers.

(a)(1) The Corporation for National and Community Service will pay all reasonable expenses for defense of full-time volunteers up to and including the arraignment of Federal, state, and local criminal proceedings, except in cases where it is clear that the charged offense results from conduct which is not related to his service as a volunteer.

* * * * *

(c) Notwithstanding the foregoing, there may be situations in which the

criminal proceeding results from a situation which could give rise to a civil claim under the Federal Tort Claims Act. In such situations, the Justice Department may agree to defend the volunteer. In those cases, unless there is a conflict between the volunteer's interest and that of the government, the Corporation for National and Community Service will not pay for additional private representation for the volunteer.

- 19. In § 1220.2-2, revise paragraph (a) introductory text, (a)(2), and (b) to read as follows:

§ 1220.2-2 Part-time volunteers.

(a) With respect to a part-time volunteer, the Corporation for National and Community Service will reimburse a sponsor for the reasonable expense it incurs for the defense of the volunteer in Federal, state and local criminal proceedings, including arraignment, only under the following circumstances:

* * * * *

(2) The volunteer receives, or is eligible to receive, compensation, including allowances, stipend, or reimbursement for out-of-pocket expenses, under a Corporation for National and Community Service grant project; and

* * * * *

(b) In certain circumstances volunteers who are ineligible for reimbursement of legal expenses by the Corporation for National and Community Service may be eligible for representation under the Criminal Justice Act (18 U.S.C. 3006A).

- 20. In § 1220.2-3, revise paragraphs (a), (b), and (d) to read as follows:

§ 1220.2-3 Procedure.

(a) Immediately upon the arrest of any volunteer under circumstances in which the payment or bail to prevent incarceration or other serious consequences to the volunteer or the retention of an attorney prior to arraignment is necessary and is covered under § 1220.2-1 or § 1220.2-2, sponsors shall immediately notify the appropriate Corporation for National and Community Service state office or if the state office cannot be reached, the appropriate Area Manager.

(b) Immediately after notification of the appropriate state office, and with the approval thereof, the sponsor shall advance up to \$500 for the payment of bail or such other legal expenses as are necessary prior to arraignment to prevent the volunteer from being incarcerated. In the event it is subsequently determined that the Corporation for National and

Community Service or a sponsor is not responsible under this policy for the volunteer's defense, any such advance may be recovered directly from the volunteer or from allowances, stipends, or out-of-pocket expenses which are payable or become payable to the volunteer. In the case of a grassroots sponsor of full-time volunteers that is not able to provide the \$500, the Corporation for National and Community Service state office or Area Manager shall immediately make such sum available to the sponsor.

* * * * *

(d) The General Counsel shall, upon notification by the state office or Area Manager, determine the extent to which the Corporation for National and Community Service will provide funds for the volunteer's defense or reimburse a sponsor for funds it spends on the volunteer's behalf. Included in this responsibility shall be the negotiation of fees and approval of other costs and expenses. State offices and Area Managers are not authorized to commit the Corporation for National and Community Service to the payment of volunteers' legal expenses or to reimburse a sponsor except as provided in this section, without the express consent of the General Counsel. Additionally, the General Counsel shall, in cases arising directly out of the performance of authorized project activities, ascertain whether the services of the United States Attorney can be made available to the volunteer.

* * * * *

- 21. In § 1220.3-1, revise the introductory text and paragraph (a) to read as follows:

§ 1220.3-1 Full-time volunteers.

The Corporation for National and Community Service will pay reasonable expenses incurred in the defense of full-time volunteers in Federal, state, and local civil judicial and administrative proceedings where:

(a) The complaint or charge against the volunteer is directly related to his volunteer service and not to his personal activities or obligations.

* * * * *

- 22. Revise § 1220.3-2 as follows:

§ 1220.3-2 Part-time volunteers.

The Corporation for National and Community Service will reimburse sponsors for the reasonable expenses incidental to the defense of part-time volunteers in Federal, state, and local civil judicial and administrative proceedings where:

(a) The proceeding arises directly out of the volunteer's performance of activities pursuant to the Act;

(b) The volunteer receives or is eligible to receive compensation, including allowances, stipend, or reimbursement for out-of-pocket expenses under the Corporation for National and Community Service grant; and

(c) The conditions specified in § 1220.3–1(b) and (c) are met.

■ 23. Revise § 1220.3–3 as follows:

§ 1220.3–3 Procedure.

Immediately upon the receipt by a volunteer of any court papers or administrative orders making a party to any proceeding covered under § 1220.3–1 or § 1220.3–2, the volunteer shall immediately notify his sponsor who in turn shall notify the appropriate Corporation for National and Community Service state office. The procedures referred to in § 1220.2–3(c) through (e) shall thereafter be followed as appropriate.

PART 1222—[REMOVED AND RESERVED]

■ 24. Remove and reserve part 1222.

PART 1226—PROHIBITIONS ON ELECTORAL AND LOBBYING ACTIVITIES

■ 25. The authority citation for part 1226 is revised to read as follows:

Authority: 42 U.S.C. 5043.

■ 26. Revise § 1226.1 to read as follows:

§ 1226.1 Purpose.

This part implements sections 403(a) and (b) of the Domestic Volunteer Service Act of 1973, Public Law 93–113, as amended, hereinafter referred to as the Act, pertaining to the prohibited use of Federal funds or involvement by certain Corporation for National and Community Service programs and volunteers in electoral and lobbying activities. This part implements those provisions of the Act, as they apply to agency programs and volunteers authorized under title II of the Act.

■ 27. Revise § 1226.2 to read as follows:

§ 1226.2 Scope.

This part applies to all volunteers serving in a program authorized by title II of the Act, including the Foster Grandparent Program, the Senior Companion Program, and The Retired and Senior Volunteer Program (RSVP). This part also applies to employees or sponsoring organizations, whose salaries, or other compensation, are

paid, in whole or in part, with agency funds.

■ 28. In § 1226.7, revise the introductory text and paragraph (a) to read as follows:

§ 1226.7 Scope.

The provisions in this subpart are applicable to full time volunteers as described in § 1226.3(c), and to such part-time volunteers as may be otherwise specified herein. Full time volunteers are deemed to be acting in their capacity as volunteers:

(a) When they are actually engaged in their volunteer assignments; or

* * * * *

§§ 1226.10 and 1226.11 [Removed]

■ 29. Remove §§ 1226.10 and 1226.11.

§§ 1226.12 and 1226.13 [Redesignated as §§ 1226.10 and 1226.11]

■ 30. Redesignate §§ 1226.12 and 1226.13 as §§ 1226.10 and 1226.11, respectively, and assign them to subpart D.

■ 31. Revise newly redesignated § 1226.10 to read as follows:

§ 1226.10 Sponsor employees.

Sponsor employees whose salaries or other compensation are paid, in whole or in part, with agency funds are subject to the restrictions described in § 1226.8 and the exceptions in § 1226.9:

(a) Whenever they are engaged in an activity which is supported by Corporation for National and Community Service funds; or

(b) Whenever they identify themselves as acting in their capacity as an official of a project which receives Corporation for National and Community Service funds, or could reasonably be perceived by others as acting in such capacity.

■ 32. Add part 2556 to read as follows:

PART 2556—VOLUNTEERS IN SERVICE TO AMERICA

Subpart A—General Information

Sec.

2556.1 What is the purpose of the VISTA program?

2556.3 Who should read this part?

2556.5 What definitions apply in this part?

2556.7 Are waivers of the regulations in this part allowed?

Subpart B—VISTA Sponsors

2556.100 Which entities are eligible to apply to become VISTA sponsors?

2556.105 Which entities are prohibited from being VISTA sponsors?

2556.110 What VISTA assistance is available to a sponsor?

2556.115 Is a VISTA sponsor required to provide a cash or in-kind match?

2556.120 How does a VISTA sponsor ensure the participation of people in the communities to be served?

2556.125 May CNCS deny or reduce VISTA assistance to an existing VISTA project?

2556.130 What is the procedure for denial or reduction of VISTA assistance to an existing VISTA project?

2556.135 What is suspension and when may CNCS suspend a VISTA project?

2556.140 What is termination and when may CNCS terminate a VISTA project?

2556.145 May CNCS pursue other remedies against a VISTA project for a sponsor's material failure to comply with any other requirement not set forth in this subpart?

2556.150 What activities are VISTA members not permitted to perform as part of service?

2556.155 May a sponsor manage a project through a subrecipient?

2556.160 What are the sponsor's requirements for cost share projects?

2556.165 What Fair Labor Standards apply to VISTA sponsors and subrecipients?

2556.170 What nondiscrimination requirements apply to sponsors and subrecipients?

2556.175 What limitations are VISTA sponsors subject to regarding religious activities?

Subpart C—VISTA Members

2556.200 Who may apply to serve as a VISTA?

2556.205 What commitments and agreements must an individual make to serve in the VISTA program?

2556.210 Who reviews and approves an application for VISTA service?

Subpart D—Terms, Protections, and Benefits of VISTA Members

2556.300 Is a VISTA considered a Federal employee and is a VISTA considered an employee of the sponsor?

2556.305 What is the duration and scope of service for a VISTA?

2556.310 What are the lines of supervision or oversight of a VISTA, a VISTA sponsor, and CNCS during a VISTA's term of service?

2556.315 What are terms and conditions for official travel for a VISTA?

2556.320 What benefits may a VISTA receive during VISTA service?

2556.325 May a VISTA be provided coverage for legal defense expenses related to VISTA service?

2556.330 When may a VISTA be provided coverage for legal defense expenses related to criminal proceedings?

2556.335 When may a VISTA be provided coverage for legal defense expenses related to civil or administrative proceedings?

2556.340 What is non-competitive eligibility and who is eligible for it?

2556.345 Who may present a grievance?

2556.350 What matters are considered grievances?

2556.355 May a VISTA have access to records as part of the VISTA grievance procedure?

2556.360 How may a VISTA bring a grievance?

2556.365 May a VISTA appeal a grievance?

Subpart E—Termination for Cause Procedures

2556.400 What is termination for cause and what are the criteria for termination for cause?

2556.405 Who has sole authority to remove a VISTA from a VISTA project and who has sole authority to terminate a VISTA from a VISTA project or the VISTA program?

2556.410 May a sponsor request that a VISTA be removed from its project?

2556.415 May CNCS remove a VISTA from a project without the sponsor's request for removal?

2556.420 What are termination for cause proceedings?

2556.425 May a VISTA appeal his or her termination for cause?

2556.430 Is a VISTA who is terminated early from the VISTA program for other than cause entitled to appeal under these procedures?

Subpart F—Summer Associates

2556.500 How is a position for a summer associate established in a project?

2556.505 How do summer associates differ from other VISTAs?

Subpart G—VISTA Leaders

2556.600 How is a position for a leader established in a project, or in multiple projects within a contiguous geographic region?

2556.605 Who is eligible to apply to serve as a leader?

2556.610 What is the application process to apply to become a leader?

2556.615 Who reviews a leader application and who approves or disapproves a leader application?

2556.620 How does a leader differ from other VISTAs?

2556.625 What are terms and conditions of service for a leader?

Subpart H—Restrictions and Prohibitions on Political Activities and Lobbying

2556.700 Who is covered by this subpart?

2556.705 What is prohibited political activity?

2556.710 What political activities are VISTAs prohibited from engaging in?

2556.715 What political activities may a VISTA participate in?

2556.720 May VISTAs participate in political organizations?

2556.725 May VISTAs participate in political campaigns?

2556.730 May VISTAs participate in elections?

2556.735 May a VISTA be a candidate for public office?

2556.740 May VISTAs participate in political fundraising activities?

2556.745 Are VISTAs prohibited from soliciting or discouraging the political participation of certain individuals?

2556.750 What restrictions and prohibitions are VISTAs subject to who campaign for a spouse or family member?

2556.755 May VISTAs participate in lawful demonstrations?

2556.760 May a sponsor or subrecipient approve the participation of a VISTA in a demonstration or other political meeting?

2556.765 What disciplinary actions are VISTAs subject to for violating restrictions or prohibitions on political activities?

2556.770 What are the requirements of VISTA sponsors or subrecipients regarding political activities?

2556.775 What prohibitions and restrictions on political activity apply to employees of VISTA sponsors and subrecipients?

2556.780 What prohibitions on lobbying activities apply to VISTA sponsors and subrecipients?

Subpart A—General Information

Authority: 42 U.S.C. 4951–4953; 5 CFR part 734.

§ 2556.1 What is the purpose of the VISTA program?

(a) The purpose of the VISTA program is to strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems throughout the United States and certain U.S. territories. To effect this purpose, the VISTA program encourages and enables individuals from all walks of life to join VISTA to perform, on a full-time basis, meaningful and constructive service to assist in the solution of poverty and poverty-related problems and secure opportunities for self-advancement of persons afflicted by such problems.

(b) The VISTA program objectives are to:

- (1) Generate private sector resources;
- (2) Encourage volunteer service at the local level;
- (3) Support efforts by local agencies and community organizations to achieve long-term sustainability of projects; and
- (4) Strengthen local agencies and community organizations to carry out the purpose of the VISTA program.

§ 2556.3 Who should read this part?

This part may be of interest to:

(a) Private nonprofit organizations, public nonprofit organizations, state government agencies, local government agencies, federal agencies, and tribal government agencies who are participating in the VISTA program as sponsors, or who are interested in participating in the VISTA program as sponsors.

(b) Individuals 18 and older who are serving as a VISTA, or who are interested in serving as a VISTA.

§ 2556.5 What definitions apply in this part?

Act or *DVSA* means the Domestic Volunteer Service Act of 1973, as amended, Public Law 93–113 (42 U.S.C. 4951 *et seq.*).

Alternative oath or affirmation means a pledge of VISTA service taken by an individual who legally resides within a State, but who is not a citizen or national of the United States, upon that individual's enrollment into the VISTA program as a VISTA.

Applicant for VISTA service means an individual who is in the process of completing, or has completed, an application for VISTA service as prescribed by CNCS, but who has been not been approved by CNCS to be a candidate.

Application for VISTA service means the materials prescribed by CNCS to ascertain information on an individual's eligibility and suitability for VISTA service.

Area Manager means a CNCS official who is head of a designated, regional set, or cluster of CNCS State Offices, or equivalent CNCS official.

Assistance means VISTAs, leaders, or summer associates. "Assistance" also means technical assistance or training of VISTAs, leaders, summer associates, candidates, sponsors, or supervisors that are provided from funds appropriated by Congress for the purpose of supporting activities under the DVSA. "Assistance" also means grant funds.

Candidate, when used in the context of an individual who has applied for VISTA service, means an individual whose application for VISTA service has been approved by CNCS, but who has not taken an oath, alternative oath or affirmation to serve in the VISTA program. Candidates may include those who were enrolled in the VISTA program at a prior time.

Cost share means when an entity, such as a VISTA sponsor, reimburses CNCS part or all of the expenses associated with the operation of a VISTA project, such as the costs for one or more VISTAs, leaders, or summer associates placed in a VISTA project.

CNCS means the Corporation for National and Community Service, established pursuant to section 191 of the National and Community Service Act of 1990, as amended, 42 U.S.C. 12651. CNCS is also sometimes referred to as "the Corporation."

Education award or *Segal AmeriCorps Education Award* means an end-of-service monetary benefit from CNCS's National Service Trust that is directed to designated educational institutions and is awarded to certain qualifying VISTAs who successfully complete an established term of VISTA service.

Enroll, enrolled, or enrollment, when used in the context of VISTA service, refers to the status of an individual admitted to serve in the VISTA program. The enrollment period commences

when the Oath to serve in the VISTA program is taken by the candidate and ends upon termination from a term of service in the VISTA program. The enrollment period may commence on a date earlier than the first day of a service assignment of an enrolled VISTA member.

Full-time, when used in the context of VISTA service means service in which a VISTA, leader, or summer associate remains available for service without regard to regular working hours.

Leader, a leader, or a VISTA leader means a VISTA member who is enrolled for full-time VISTA service, and who is also subject to the terms of subpart G of this part.

Living allowance or living allowance payment means a monetary benefit paid for subsistence purposes to a VISTA member during VISTA service.

Memorandum of Agreement means a written agreement between CNCS and a sponsor regarding the terms of the sponsor's involvement and responsibilities in the VISTA program.

Nonpartisan election means:

(1) An election in which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected; or

(2) An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any question or issue of a similar character.

Oath means an avowal to VISTA service, taken in accordance with 5 U.S.C. 3331, by an individual who is a U.S. citizen or national. The taking of the Oath effects an individual's enrollment into the VISTA program.

On-duty or during service time means when a VISTA is either performing VISTA service or scheduled to do so.

Project or VISTA project means a set of VISTA activities operated and overseen by, and the responsibility of, a sponsor, and assisted under this Part to realize the goals of title I of the DVSA.

Project applicant or VISTA project applicant means an entity that submits an application to CNCS to operate, oversee, and be responsible for a VISTA project.

Project application or VISTA project application means the application materials prescribed by CNCS to ascertain information on an applying entity's eligibility and suitability to operate, oversee, and be responsible for, a VISTA project.

Project director or VISTA project director means a staff person, of legal age, of the sponsor, who has been assigned by the sponsor the overall responsibility for the management of the VISTA project.

Sponsor, VISTA sponsor, or VISTA project sponsor means a public agency or private non-profit organization that receives assistance under title I of the DVSA, and is responsible for operating and overseeing a VISTA project. A public agency may be a federal, state, local or tribal government.

State, when used as a noun, means one of the several states in the United States of America, District of Columbia, Virgin Islands, Puerto Rico, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State Program Director means a CNCS official who reports to an Area Manager or equivalent CNCS official, and who is the head of a CNCS State Office.

Stipend or end-of-service stipend means an end-of-service lump-sum monetary benefit from CNCS that is awarded to certain qualifying VISTAs, who successfully complete an established term of VISTA service.

Subrecipient means a public agency or private non-profit organization that enters into an agreement with a VISTA sponsor to receive one or more VISTAs, and to carry out a set of activities, assisted under this Part, to realize the goals of title I of the DVSA. A public agency may be a federal, state, local or tribal government.

Summer associate means a VISTA member who is enrolled for VISTA service, during a period between May 1 and September 15, and who is also subject to the terms of subpart H of this part. A summer associate must be available to provide continuous full-time service for a period of at least eight weeks and a maximum of ten weeks.

Supervisor or VISTA Supervisor means a staff member, of legal age, of the sponsor or a subrecipient, who has been assigned by the sponsor or the subrecipient, the responsibility for the day-to-day oversight of one or more VISTAs.

Tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village or regional village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized by the United States or the State in which it resides as eligible for special programs and services provided to Indians because of their status as Indians.

VISTA member, a VISTA, or the VISTA means an individual enrolled

full-time for VISTA service in the VISTA program, as authorized under title I of the DVSA.

VISTA program means the Federal government program named Volunteers in Service to America and authorized under title I of the Domestic Volunteer Service Act of 1973, as amended, 42 U.S.C. 4950 *et seq.*

VISTA service means VISTA service activities performed by a VISTA member while enrolled in the VISTA program.

§ 2556.7 Are waivers of the regulations in this part allowed?

Upon a determination of good cause, the Chief Executive Officer of CNCS may, subject to statutory limitations, waive any provisions of this part.

Subpart B—VISTA Sponsors

Authority: 42 U.S.C. 4953(a), (f), 4954(b), (e), 4955(b), 4956, 5043(a)–(c), 5044(a)–(c), (e), 5046, 5052, 5056, and 5057; 42 U.S.C. 12651b (g)(10); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 2156.

§ 2556.100 Which entities are eligible to apply to become VISTA sponsors?

The following entities are eligible to apply to become VISTA sponsors, and thereby undertake projects in the U.S. and certain U.S. territories:

- (a) Private nonprofit organization.
- (b) Public nonprofit organization.
- (c) State government or state government agency.
- (d) Local government or local government agency.
- (e) Tribal government or tribal government agency.

§ 2556.105 Which entities are prohibited from being VISTA sponsors?

(a) An entity is prohibited from being a VISTA sponsor or from otherwise receiving VISTA assistance if a principal purpose or activity of the entity includes any of the following:

(1) *Electoral activities*. Any activity designed to influence the outcome of elections to any public office, such as actively campaigning for or against, or supporting, candidates for public office; raising, soliciting, or collecting funds for candidates for public office; or preparing, distributing, providing funds for campaign literature for candidates, including leaflets, pamphlets, and material designed for the print or electronic media.

(2) *Voter registration activities*. Any voter registration activity, such as providing transportation of individuals to voter registration sites; providing assistance to individuals in the process of registering to vote, including determinations of eligibility; or

disseminating official voter registration material.

(3) *Transportation to the polls.* Providing voters or prospective voters with transportation to the polls or raising, soliciting, or collecting funds for such activities.

(b) Any organization that, subsequent to the receipt of VISTA assistance, makes as one of its principal purposes or activities any of the activities described in paragraph (a) of this section shall be subject to the procedures in §§ 2556.125 through 2556.145.

§ 2556.110 What VISTA assistance is available to a sponsor?

(a) A sponsor may be approved for one or more VISTA positions.

(b) A sponsor, upon review and approval by CNCS to establish a leader position or positions, and in accordance with criteria set forth at subpart G of this part, may be approved for one or more leader positions.

(c) A sponsor, upon approval by CNCS to establish a summer associate position or positions, and in accordance with criteria set forth at subpart F of this part, may be approved for one or more summer associate positions.

(d) A sponsor may be eligible to receive certain grant assistance under the terms determined and prescribed by CNCS.

(e) A sponsor may receive training and technical assistance related to carrying out purposes of title I of the DVSA.

§ 2556.115 Is a VISTA sponsor required to provide a cash or in-kind match?

(a) A sponsor is not required to provide a cash match for any of the assistance listed in § 2556.110.

(b) A sponsor must provide supervision, work space, service-related transportation, and any other materials necessary to operate and complete the VISTA project and support the VISTA.

§ 2556.120 How does a VISTA sponsor ensure the participation of people in the communities to be served?

(a) To the maximum extent practicable, the people of the communities to be served by VISTA members shall participate in planning, developing, and implementing programs.

(b) The sponsor shall articulate in its project application how it will engage or continue to engage relevant communities in the development and implementation of programs.

§ 2556.125 May CNCS deny or reduce VISTA assistance to an existing VISTA project?

(a) CNCS may deny or reduce VISTA assistance where a denial or reduction is based on:

- (1) Legislative requirement;
- (2) Availability of funding;

(3) Failure to comply with applicable term(s) or condition(s) of a contract, grant agreement, or an applicable Memorandum of Agreement;

(4) Ineffective management of CNCS resources;

(5) Substantial failure to comply with CNCS policy and overall objectives under a contract, grant agreement, or applicable Memorandum of Agreement; or

(6) General policy.

(b) In instances where the basis for denial or reduction of VISTA assistance may also be the basis for the suspension or termination of a VISTA project under this subpart, CNCS shall not be limited to the use of this section to the exclusion of the procedures for suspension or termination in this subpart.

§ 2556.130 What is the procedure for denial or reduction of VISTA assistance to an existing VISTA project?

(a) CNCS shall notify the sponsor in writing, at least 75 calendar days before the anticipated denial or reduction of VISTA assistance, that CNCS proposes to deny or reduce VISTA assistance. CNCS's written notice shall state the reasons for the decision to deny or reduce assistance and shall provide an opportunity period for the sponsor to respond to the merits of the proposed decision. CNCS retains sole authority to make the final determination whether the VISTA assistance at issue shall be denied or reduced, as appropriate.

(b) Where CNCS's notice of proposed decision is based upon a specific charge of the sponsor's failure to comply with the applicable term(s) or condition(s) of a contract, grant agreement, or an applicable Memorandum of Agreement, the notice shall offer the sponsor an opportunity period to respond in writing to the notice, with any affidavits or other supporting documentation, and to request an informal hearing before a mutually agreed-upon impartial hearing officer. The authority of such a hearing officer shall be limited to conducting the hearing and offering recommendations to CNCS. Regardless of whether or not an informal hearing takes place, CNCS shall retain full authority to make the final determination whether the VISTA assistance is denied or reduced, as appropriate.

(c) If the recipient requests an informal hearing, in accordance with paragraph (b) of this section, such hearing shall be held at a date specified by CNCS and held at a location convenient to the sponsor.

(d) If CNCS's proposed decision is based on ineffective management of resources, or on the substantial failure to comply with CNCS policy and overall objectives under a contract, grant agreement, or an applicable Memorandum of Agreement, CNCS shall inform the sponsor in the notice of proposed decision of the opportunity to show cause why VISTA assistance should not be denied or reduced, as appropriate. CNCS shall retain full authority to make the final determination whether the VISTA assistance at issue shall be denied or reduced, as appropriate.

(e) The recipient shall be informed of CNCS's final determination on whether the VISTA assistance at issue shall be denied or reduced, and the basis for the determination.

(f) The procedure in this section does not apply to a denial or reduction of VISTA assistance based on legislative requirements, availability of funding, or on general policy.

§ 2556.135 What is suspension and when may CNCS suspend a VISTA project?

(a) Suspension is any action by CNCS temporarily suspending or curtailing assistance, in whole or in part, to all or any part of a VISTA project, prior to the time that the project term is concluded. Suspension does not include the denial or reduction of new or additional VISTA assistance.

(b) In an emergency situation for up to 30 consecutive days, CNCS may suspend assistance to a sponsor, in whole or in part, for the sponsor's material failure or threatened material failure to comply with an applicable term(s) or condition(s) of the DVSA, the regulations in this part, VISTA program policy, or an applicable Memorandum of Agreement. Such suspension in an emergency situation shall be pursuant to notice and opportunity to show cause why assistance should not be suspended.

(c) To initiate suspension proceedings, CNCS shall notify the sponsor in writing that CNCS is suspending assistance in whole or in part. The written notice shall contain the following:

(1) The grounds for the suspension and the effective date of the commencement of the suspension;

(2) The sponsor's right to submit written material in response to the suspension to show why the VISTA

assistance should not be suspended, or should be reinstated, as appropriate; and

(3) The opportunity to adequately correct the deficiency, or deficiencies, which led to CNCS's notice of suspension.

(d) In deciding whether to continue or lift the suspension, as appropriate, CNCS shall consider any timely material presented in writing, any material presented during the course of any informal meeting, as well as any showing that the sponsor has adequately corrected the deficiency which led to the initiation of suspension.

(e) During the period of suspension of a sponsor, no new expenditures, if applicable, shall be made by the sponsor's VISTA project at issue and no new obligations shall be incurred in connection with the VISTA project at issue except as specifically authorized in writing by CNCS.

(f) CNCS may, in its discretion, modify the terms, conditions, and nature of the suspension or rescind the suspension action at any time on its own initiative or upon a showing that the sponsor has adequately corrected the deficiency or deficiencies which led to the suspension and that repetition is not foreseeable.

§ 2556.140 What is termination and when may CNCS terminate a VISTA project?

(a) Termination means any action by CNCS permanently terminating or curtailing assistance to all or any part of a sponsor's VISTA project prior to the time that the project term is concluded.

(b) CNCS may terminate assistance to a sponsor in whole or in part for the sponsor's material failure to comply with an applicable term(s) or condition(s) of the DVSA, the regulations in this part, VISTA program policy, or an applicable Memorandum of Agreement.

(c) To initiate termination proceedings, CNCS shall notify the sponsor in writing that CNCS is proposing to terminate assistance in whole or in part. The written notice shall contain the following:

(1) A description of the VISTA assistance proposed for termination, the grounds that warrant such proposed termination, and the proposed date of effective termination;

(2) Instructions regarding the sponsor's opportunity, within 21 calendar days from the date of issuance of the notice, to respond in writing to the merits of the proposed termination and instructions regarding the sponsor's right to request a full and fair hearing before a mutually agreed-upon impartial hearing officer; and

(3) Invitation of voluntary action by the sponsor to adequately correct the deficiency or deficiencies which led to CNCS's notice of proposed termination.

(d) In deciding whether to effect termination of VISTA assistance, CNCS shall consider any relevant, timely material presented in writing; any relevant material presented during the course of any full and fair hearing; as well as, any showing that the sponsor has adequately corrected the deficiency which led to the initiation of termination proceedings.

(e) Regardless of whether or not a full and fair hearing takes place, CNCS shall retain all authority to make the final determination as to whether the termination of VISTA assistance is appropriate.

(f) The sponsor shall be informed of CNCS's final determination on the proposed termination of VISTA assistance, and the basis or bases for the determination.

(g) CNCS may, in its discretion, modify the terms, conditions, and nature of a termination action or rescind a termination action at any time on its own initiative or upon a showing that the sponsor has adequately corrected the deficiency which led to the termination, or the initiation of termination proceedings, and that repetition is not threatened.

§ 2556.145 May CNCS pursue other remedies against a VISTA project for a sponsor's material failure to comply with any other requirement not set forth in this subpart?

The procedures established by this subpart shall not preclude CNCS from pursuing any other remedies authorized by law.

§ 2556.150 What activities are VISTA members not permitted to perform as part of service?

(a) A VISTA may not perform any activities in the project application that do not correspond with the purpose of the VISTA program, as described in § 2556.1, or that the Director has otherwise prohibited.

(b) A VISTA may not perform services or duties as a VISTA member that would otherwise be performed by employed workers or other volunteers (not including participants under the DVSA and the National and Community Service Act of 1990, as amended).

(c) A VISTA may not perform any services or duties, or engage in activities as a VISTA member, that supplant the hiring of or result in the displacement of employed workers or other volunteers (not including participants under the DVSA or the National and Community Service Act of 1990, as amended).

(d) A VISTA may not perform any services or duties, or engage in activities as a VISTA member, which impair existing contracts for service.

(e) The requirements of paragraphs (b) through (d) of this section do not apply when the sponsor requires the service in order to avoid or relieve suffering threatened by, or resulting from, a disaster, civil disturbance, terrorism, or war.

(f) A sponsor or subrecipient shall not request or receive any compensation from a VISTA; from a beneficiary of VISTA project services; or any other source for services of a VISTA.

§ 2556.155 May a sponsor manage a VISTA project through a subrecipient?

(a) A sponsor may carry out a VISTA project through one or more subrecipients that meet the eligibility criteria of § 2556.100.

(b) The sponsor must enter into a subrecipient agreement with each subrecipient. A subrecipient agreement must have at least the following elements:

(1) A project plan to be implemented by the subrecipient;

(2) Records to be kept and reports to be submitted;

(3) Responsibilities of the parties and other program requirements; and

(4) Suspension and termination policies and procedures.

(c) The sponsor retains the responsibility for compliance with a Memorandum of Agreement; the applicable regulations in this Part; and all applicable policies, procedures, and guidance issued by CNCS regarding the VISTA program.

(d) A sponsor shall not request or receive any compensation from a subrecipient for services performed by a VISTA.

(e) A sponsor shall not receive payment from, or on behalf of, the subrecipient for costs of the VISTA assistance, except in two limited circumstances:

(1) For reasonable and actual costs incurred by the sponsor directly related to the subrecipient's participation in a VISTA project; and

(2) For any cost share related to a VISTA placed with the subrecipient in the VISTA project.

§ 2556.160 What are the sponsor's requirements for cost share projects?

(a) A sponsor shall enter into a written agreement for cost share as prescribed by CNCS.

(b) A sponsor shall make timely cost share payments as prescribed by CNCS and applicable federal law and regulations.

(c) In addition to other sources of funds, a sponsor may use funds from federal, state, or local government agencies, provided the requirements of those agencies and their programs are met.

(d) Subject to review and approval by CNCS, CNCS may enter into an agreement with another entity to receive and utilize funds to make cost share payments on behalf of the sponsor.

§ 2556.165 What Fair Labor Standards apply to VISTA sponsors and subrecipients?

All sponsors and subrecipients that employ laborers and mechanics for construction, alteration, or repair of facilities shall pay wages at prevailing rates as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, 40 U.S.C. 276a.

§ 2556.170 What nondiscrimination requirements apply to sponsors and subrecipients?

(a) An individual with responsibility for the operation of a project that receives CNCS assistance must not discriminate against a participant in, or member of the staff of, such project on the basis of race, color, national origin, sex, age, or political affiliation of such participant or staff member, or on the basis of disability, if the participant or staff member is a qualified individual with a disability.

(b) Any CNCS assistance constitutes Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and constitutes Federal financial assistance to an education program or activity for purposes of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*).

(c) An individual with responsibility for the operation of a project that receives CNCS assistance may not discriminate on the basis of religion against a participant in such project or a member of the staff of such project who is paid with CNCS funds. This provision does not apply to the employment (with CNCS assistance) of any staff member of a CNCS-supported project who was employed with the organization operating the project on the date the CNCS assistance was awarded.

(d) Sponsors must notify all program participants, staff, applicants, and beneficiaries of:

(1) Their rights under applicable federal nondiscrimination laws, including relevant provisions of the

national service legislation and implementing regulations; and

(2) The procedure for filing a discrimination complaint. No sponsor or subrecipient, or sponsor or subrecipient employee, or individual with responsibility for the implementation or operation of a sponsor or a subrecipient, shall discriminate against a VISTA on the basis of race, color, national origin, gender, age, religion, or political affiliation. No sponsor or subrecipient, or sponsor or subrecipient employee, or individual with responsibility for the implementation or operation of a sponsor or a subrecipient, shall discriminate against a VISTA on the basis of disability, if the VISTA is a qualified individual with a disability.

§ 2556.175 What limitations are VISTA sponsors subject to regarding religious activities?

(a) A VISTA shall not give religious instruction, conduct worship services or engage in any form of proselytizing as part of his or her duties.

(b) A sponsor or subrecipient may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use any CNCS assistance, including the services of any VISTA or VISTA assistance, to support any inherently religious activities, such as worship, religious instruction, or proselytizing, as part of the programs or services assisted by the VISTA program. If a VISTA sponsor or subrecipient conducts such inherently religious activities, the activities must be offered separately, in time or location, from the programs or services assisted under this Part by the VISTA program.

Subpart C—VISTA Members

Authority: 42 U.S.C. 4953(b)(3), (f), 4954(a)–(c), 5044(e).

§ 2556.200 Who may apply to serve as a VISTA?

An individual may apply to serve as a VISTA if all the following requirements are met:

(a) The individual is at least eighteen years of age upon taking an oath or affirmation, as appropriate, to enter VISTA service. There is no upper age limit.

(b) The individual is a United States citizen or national, or is legally residing within a state. For eligibility purposes, a lawful permanent resident alien is considered to be an individual who is legally residing within a state.

§ 2556.205 What commitments and agreements must an individual make to serve in the VISTA program?

(a) To the maximum extent practicable, the individual must make a full-time commitment to remain available for service without regard to regular working hours, at all times during his or her period of service, except for authorized periods of leave.

(b) To the maximum extent practicable, the individual must make a full-time personal commitment to alleviate poverty and poverty-related problems, and to live among and at the economic level of the low-income people served by the project.

(c) The individual's service cannot be used to satisfy service requirements of parole, probation, or community service prescribed by the criminal justice system.

(d) A VISTA candidate or member agrees to undergo an investigation into his or her criminal history or background as a condition of enrollment, or continued enrollment, in the VISTA program.

§ 2556.210 Who reviews and approves an application for VISTA service?

CNCS has the final authority to approve or deny VISTA applications for VISTA service.

Subpart D—Terms, Protections, and Benefits of VISTA Members

Authority: 42 U.S.C. 4954(a), (b), (d), 4955, 5044(e), 5055, and 5059; 42 U.S.C. 12602(c).

§ 2556.300 Is a VISTA considered a Federal employee and is a VISTA considered an employee of the sponsor?

(a) Except for the purposes listed here, a VISTA is not considered an employee of the Federal Government. A VISTA is considered a Federal employee only for the following purposes:

- (1) Federal Tort Claims Act—28 U.S.C. 1346(b); 28 U.S.C. 2671–2680;
- (2) Federal Employees' Compensation Act—5 U.S.C. chapter 81, subchapter 1;
- (3) Hatch Act—5 U.S.C. chapter 73, subchapter III;
- (4) Internal Revenue Service Code—26 U.S.C. 1 *et seq.*; and
- (5) Title II of the Social Security Act—42 U.S.C. 401 *et seq.*

(b) A VISTA is not considered a federal employee for any purposes other than those set forth in paragraph (a) of this section.

(c) A VISTA is not covered by Federal or state unemployment compensation related to their enrollment or service in the VISTA program. A VISTA's service is not considered employment for purposes of eligibility for, or receipt of,

federal, state, or any other unemployment compensation.

(d) Monetary allowances, such as living allowances that VISTAs receive during VISTA service are not considered wages. Monetary allowances, such as living allowances, that VISTAs receive during VISTA service are considered income for such purposes as Federal income tax and Social Security.

(e) A VISTA is not, under any circumstances, considered an employee of the sponsor or subrecipient to which he or she is assigned to serve. No VISTA is in an employment relationship with the sponsor or subrecipient to which he or she is assigned. The sponsor is not authorized to make contributions to any state unemployment compensation fund on a VISTA's behalf.

§ 2556.305 What is the duration and scope of service for a VISTA?

(a) To serve as a VISTA, an individual makes a full-time commitment for a minimum of one year, without regard to regular working hours.

(b) A VISTA carries out activities in accordance with the purpose of the VISTA program, as described in § 2556.1.

(c) To the maximum extent practicable, the VISTA shall live among and at the economic level of the low-income community served by the project, and actively seek opportunities to engage with that low-income community without regard to regular work hours.

(d) A VISTA carries out service activities in conformance with the sponsor's approved project application, including any description of a VISTA assignment as contained in the project application; and, in conformance with the purpose of title I of the DVSA. In any case where there is a conflict between the project application and the DVSA, the DVSA takes precedence.

(e) Under no circumstances may an individual be enrolled to serve as a VISTA beyond five years.

§ 2556.310 What are the lines of supervision or oversight of a VISTA, a VISTA sponsor, and CNCS during a VISTA's term of service?

(a) The VISTA sponsor is responsible for the day-to-day supervision and oversight of the VISTA.

(b) CNCS is responsible for ongoing monitoring and oversight of the VISTA sponsor's project where the VISTA is assigned. CNCS is responsible for selecting the VISTA, assigning the VISTA to a project, removal of a VISTA from a project, and VISTA separation actions such as termination from the VISTA program.

§ 2556.315 What are terms and conditions for official travel for a VISTA?

(a) CNCS may provide official travel for a VISTA candidate or a VISTA, as appropriate, to attend CNCS-directed activities, such as pre-service training, placement at the project site, in-service training events, and return from the project site to home of record.

(b) CNCS must approve all official travel of a VISTA candidate or a VISTA, including the mode of travel.

(c) CNCS may provide for official emergency travel for a VISTA in case of a natural disaster or the critical illness or death of an immediate family member.

§ 2556.320 What benefits may a VISTA receive during VISTA service?

(a) A VISTA receives a living allowance computed on a daily rate. Living allowances vary according to the local cost-of-living in the project area where the VISTA is assigned.

(b) Subject to a maximum amount, and at the discretion and upon approval of CNCS, a VISTA may receive payment for settling-in expenses, as determined by CNCS.

(c) Subject to a maximum amount, and at the discretion of CNCS, in the event of an emergency (such as theft, fire loss, or special clothing necessitated by severe climate), a VISTA may receive an emergency expense payment in order to resume VISTA service activities, as determined and approved by CNCS.

(d) Subject to a maximum amount, and at the discretion of CNCS, a VISTA may receive a baggage allowance for the actual costs of transporting personal effects to the project site to which the VISTA is assigned to serve, as determined by CNCS.

(e) To the extent eligible, a VISTA may receive health care through a health benefits program provided by CNCS.

(f) To the extent eligible, a VISTA may receive child care support through a child care program provided by CNCS.

(g) To the extent eligible, a VISTA may elect to receive a Segal AmeriCorps Education Award, and upon successful completion of service, receive that award in an amount prescribed by CNCS, in accordance with the applicable provisions of 45 CFR parts 2526, 2527, and 2528.

(1) A VISTA is eligible to elect to receive a Segal AmeriCorps Education Award if he or she is a citizen, national, or lawful permanent resident alien of the United States.

(2) A VISTA who elects a Segal AmeriCorps Education Award is eligible to request forbearance of a student loan from his or her loan-holder. A VISTA who elects a Segal AmeriCorps

Education Award may, upon successful completion of service, be eligible to receive up to 100 percent of the interest accrued on a qualified student loan, consistent with the applicable provisions of 45 CFR part 2529.

(3) A VISTA is not eligible to receive more than an amount equal to the aggregate value of two full-time Segal AmeriCorps Education Awards in his or her lifetime.

(4) Other than for a summer associate, the amount of a Segal AmeriCorps Education Award for the successful completion of a VISTA term of service is equal to the maximum amount of a Federal Pell Grant under Section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a) that a student eligible for such grant may receive in the aggregate for the fiscal year in which the VISTA has enrolled in the VISTA program.

(h) A VISTA who does not elect to receive a Segal AmeriCorps Education Award, upon successful completion of service, receives an end-of-service stipend in an amount prescribed by CNCS.

(i) In the event that a VISTA does not successfully complete a full term of service, a VISTA shall not receive a pro-rated Segal AmeriCorps Education Award or a pro-rated end-of-service stipend, except in cases where the appropriate State Program Director determines the VISTA did not successfully complete a full term of service because of a compelling, personal circumstance. Examples of a compelling, personal circumstance are: Serious medical condition or disability of a VISTA during VISTA service; critical illness or disability of a VISTA's immediate family member (spouse, domestic partner, parent, sibling, child, or guardian) if this event makes completing a term of service unreasonably difficult; or unusual conditions not attributable to the VISTA, such as natural disaster, strike, or premature closing of a project, that make completing a term unreasonably difficult or infeasible.

(j) In the event of a VISTA's death during service, his or her family or others that he or she named as beneficiary in accordance with section 5582 of title 5, United States Code, shall be paid a pro-rated end-of-service stipend for the period during which the VISTA served. If the VISTA had elected to receive the Segal AmeriCorps Education Award for successful completion of a full term of VISTA service, prior to payment to the named beneficiary, CNCS shall convert that election to an end-of-service stipend and pay the VISTA's family, or others that he or she named as beneficiary, a

pro-rated end-of-service stipend accordingly.

§ 2556.325 May a VISTA be provided coverage for legal defense expenses related to VISTA service?

Under certain circumstances, as set forth in §§ 2556.330 through 2556.335, CNCS may pay reasonable legal defense expenses incurred in judicial or administrative proceedings for the defense of a VISTA serving in the VISTA program. Such covered legal expenses consist of counsel fees, court costs, bail, and other expenses incidental to a VISTA's legal defense.

§ 2556.330 When may a VISTA be provided coverage for legal defense expenses related to criminal proceedings?

(a) For the legal defense of a VISTA member who is charged with a criminal offense related to the VISTA member's service, up to and including arraignment in Federal, state, and local criminal proceedings, CNCS may pay actual and reasonable legal expenses. CNCS is not required to pay any expenses for the legal defense of a VISTA member where he or she is charged with a criminal offense arising from alleged activity or action that is unrelated to that VISTA's service.

(b) A VISTA member's service is clearly unrelated to a charged offense:

(1) When the activity or action is alleged to have occurred prior to the VISTA member's VISTA service.

(2) When the VISTA member is not at his or her assigned project location, such as during periods of approved leave, medical leave, emergency leave, or in administrative hold status in the VISTA program.

(3) When the activity or action is alleged to have occurred at or near his or her assigned project, but is clearly not part of, or required by, the VISTA member's service assignment.

(c) For the legal defense, beyond arraignment in Federal, state, and local criminal proceedings, of a VISTA member who is charged with a criminal offense, CNCS may also pay actual and reasonable legal expenses:

(1) When the charged offense against the VISTA member relates exclusively to his or her VISTA assignment or status as a VISTA member;

(2) When the charge offense against the VISTA member arises from an alleged activity or action that is a part of, or required by, the VISTA member's VISTA assignment;

(3) When the VISTA member has not admitted a willful or knowing violation of law; or

(4) When the charged offense against the VISTA member is not a minor

offense or misdemeanor, such as a minor vehicle violation.

(d) Notwithstanding paragraphs (a) through (c) of this section, there may be situations in which the criminal proceedings at issue arise from a matter that also gives rise to a civil claim under the Federal Tort Claims Act. In such a situation, the U.S. Department of Justice may, on behalf of the United States, agree to defend the VISTA. If the U.S. Department of Justice agrees to defend the VISTA member, unless there is a conflict between the VISTA member's interest and that of the United States, CNCS will not pay for expenses associated with any additional legal representation (such as counsel fees for private counsel) for the VISTA member.

§ 2556.335 When may a VISTA be provided coverage for legal defense expenses related to civil or administrative proceedings?

For the legal defense in Federal, state, and local civil judicial and administrative proceedings of a VISTA member, CNCS may also pay actual and reasonable legal expenses, where:

(a) The complaint or charge is against the VISTA, and is directly related to his or her VISTA service and not to his or her personal activities or obligations;

(b) The VISTA has not admitted to willfully or knowingly pursuing a course of conduct that would result in the plaintiff or complainant initiating such a proceeding; and

(c) The judgment sought involves a monetary award that exceeds \$1,000.

§ 2556.340 What is non-competitive eligibility and who is eligible for it?

(a) Non-competitive eligibility is a status attained by an individual such that the individual is eligible for appointment by a Federal agency in the Executive branch, into a civil service position in the federal competitive service, in accordance with 5 CFR 315.605.

(b) An individual who successfully completes at least a year-long term of service as a VISTA, and who has not been terminated for cause from the VISTA program at any time, retains non-competitive eligibility status for one year following the end of the term of service as a VISTA.

(c) In addition to the retention of the one year of non-competitive eligibility status as provided in paragraph (b) of this section, an individual's non-competitive eligibility status may extend for two more years to a total of three years if the individual is:

(1) In the military service;

(2) Studying at a recognized institution of higher learning; or

(3) In another activity which, in the view of the federal agency referenced in

paragraph (a) of this section, warrants extension.

§ 2556.345 Who may present a grievance?

(a) Under the VISTA program grievance procedure, a grievance may be presented by any individual who is currently enrolled as a VISTA in the VISTA program or who was enrolled as a VISTA in the VISTA program within the past 30 calendar days.

(b) A VISTA's grievance shall not be construed as reflecting on the VISTA's standing, performance, or desirability as a VISTA.

(c) A VISTA who presents a grievance shall not be subjected to restraint, interference, coercion, discrimination, or reprisal because of presentation of views.

§ 2556.350 What matters are considered grievances?

(a) Under the VISTA program grievance procedure, grievances are matters of concern, brought by a VISTA, that arise out of, and directly affect, the VISTA's service situation or that arise out of a violation of a policy, practice, or regulation governing the terms or conditions of the VISTA's service, such that the violation results in the denial or infringement of a right or benefit to the VISTA member.

(b) Matters not within the definition of a grievance as defined in paragraph (a) of this section are not grievable, and therefore, are excluded from the VISTA program grievance procedure. Though not exhaustive, examples of matters excluded from the VISTA program grievance procedure are:

(1) Those matters related to a sponsor's or project's continuance or discontinuance; the number of VISTAs assigned to a VISTA project; the increases or decreases in the level of support provided to a VISTA project; the suspension or termination of a VISTA project; or the selection or retention of VISTA project staff.

(2) Those matters for which a separate administrative procedure or complaint process is provided, such as early termination for cause, claims of discrimination during service, and federal worker's compensation claims filed for illness or injury sustained in the course of carrying out VISTA activities.

(3) Those matters related to any law, published rule, regulation, policy, or procedure.

(4) Those matters related to housing during a VISTA member's service.

(5) Those matters which are, by law, subject to final administrative review outside CNCS.

(6) Those matters related to actions taken, or not taken, by a VISTA sponsor

or subrecipient, or CNCS, in compliance with or in order to fulfill the terms of a contract, grant, or other agreement related to the VISTA program.

(7) Those matters related to the internal management of CNCS, unless such matters are shown to specifically and directly affect the VISTA's service situation or terms or conditions of his or her VISTA service.

§ 2556.355 May a VISTA have access to records as part of the VISTA grievance procedure?

(a) A VISTA is entitled to review any material in his or her official VISTA file and any relevant CNCS records to the extent permitted by the Freedom of Information Act and the Privacy Act, 5 U.S.C. 552, 552a. Examples of materials that may be withheld include references obtained under pledge of confidentiality, official VISTA files of other VISTAs, and privileged intra-agency documents.

(b) A VISTA may review relevant materials in the possession of a sponsor to the extent such materials are disclosable by the sponsor under applicable freedom of information act and privacy laws.

§ 2556.360 How may a VISTA bring a grievance?

(a) *Bringing a grievance—Step 1.* (1) While currently enrolled in the VISTA program, or enrolled in the VISTA program within the past 30 calendar days, a VISTA may bring a grievance to the sponsor or subrecipient where he or she is assigned to serve within 15 calendar days that the event giving rise to the grievance occurs, or within 15 calendar days after becoming aware of the event. If the grievance arises out of a continuing condition or practice that individually affects a VISTA, while enrolled the VISTA may bring it at any time while he or she is affected by a continuing condition or practice.

(2) A VISTA brings a grievance by presenting it in writing to the executive director, or comparable individual, of the sponsoring organization where the VISTA is assigned, or to the sponsor's representative who is designated to receive grievances from a VISTA.

(3) The sponsor shall review and respond in writing to the VISTA's grievance, within 10 calendar days of receipt of the written grievance. The sponsor may not fail to respond to a complaint raised by a VISTA on the basis that it is not an actual grievance, or that it is excluded from coverage as a grievance, but may, in the written response, dismiss the complaint and refuse to grant the relief requested on either of those grounds.

(4) If the grievance brought by a VISTA involves a matter over which the sponsor has no substantial control or if the sponsor's representative is the supervisor of the VISTA, the VISTA may pass over the procedure set forth in paragraphs (a)(1) through (3) of this section, and present the grievance in writing directly to the State Program Director, as described in paragraph (b) of this section.

(b) *Bringing a grievance—Step 2.* (1) If, after a VISTA brings a grievance as set forth in paragraphs (a)(1) and (2) of this section, the matter is not resolved, he or she may submit the grievance in writing to the appropriate State Program Director. The VISTA must submit the grievance to the State Program Director either:

(i) Within seven calendar days of receipt of the response of the sponsor; or,

(ii) In the event the sponsor has not issued a response to the VISTA within 10 calendar days of receipt of the written grievance, within 17 calendar days.

(2) If the grievance involves a matter over which either the sponsor or subrecipient has no substantial control or if the sponsor's representative is the supervisor of the VISTA, as described in paragraph (a)(4) of this section, the VISTA may pass over the procedure set forth in paragraphs (a)(1) through (3) of this section, and submit the grievance in writing directly to the State Program Director. In such a case, the VISTA must submit the grievance to the State Program Director within 15 calendar days of the event giving rise to the grievance occurs, or within 15 calendar days after becoming aware of the event.

(3) Within ten working days of receipt of the grievance, the State Program Director shall respond in writing, regardless of whether or not the matter constitutes a grievance as defined under this grievance procedure, and/or is timely submitted. In the response, the State Program Director may determine that the matter submitted as a grievance is not grievable, is not considered a grievance, or fails to meet the time limit for response. If the State Program Director makes any such determination, he or she may dismiss the complaint, setting forth the reason(s) for the dismissal. In such a case, the State Program Director need not address the complaint on the merits, nor make a determination of the complaint on the merits.

§ 2556.365 May a VISTA appeal a grievance?

(a) The VISTA may appeal in writing to the appropriate Area Manager the

response of the State Program Director to the grievance, as set forth in § 2556.360(b)(3). To be eligible to appeal a grievance response to the Area Manager, the VISTA must have exhausted all appropriate actions as set forth in § 2556.360.

(b) A VISTA's grievance appeal must be in writing and contain sufficient detail to identify the subject matter of the grievance, specify the relief requested, and be signed by the VISTA.

(c) The VISTA must submit a grievance appeal to the appropriate Area Manager no later than 10 calendar days after the State Program Director issues his or her response to the grievance.

(d) Certain matters contained in a grievance appeal may be rejected, rather than denied on the merits, by the Area Manager. A grievance appeal may be rejected, in whole or in part, for any of the following reasons:

(1) The grievance appeal was not submitted to the appropriate Area Manager within the time limit specified in paragraph (c) of this section;

(2) The grievance appeal consists of matters not contained within the definition of a grievance, as specified in section § 2556.350(a);

(3) The grievance appeal consists of matters excluded from the VISTA program grievance procedure, as specified in § 2556.350(b); or

(4) The grievance appeal contains matters that are moot, or for which relief has otherwise been granted.

(e) Within 14 calendar days of receipt of the grievance, the appropriate Area Manager shall decide the grievance appeal on the merits, or reject the grievance appeal in whole or in part, or both, as appropriate. The Area Manager shall notify the VISTA in writing of the decision and specify the grounds for the appeal decision. The appeal decision shall include a statement of the basis for the decision and is a final decision of CNCS.

Subpart E—Termination for Cause Procedures

Authority: 42 U.S.C. 4953(b), (c), (f), and 5044(e).

§ 2556.400 What is termination for cause and what are the criteria for termination for cause?

(a) Termination for cause is discharge of a VISTA from the VISTA program due to a deficiency, or deficiencies, in conduct or performance.

(b) CNCS may terminate for cause a VISTA for any of the following reasons:

(1) Conviction of any criminal offense under Federal, State, or local statute or ordinance;

(2) Violation of any provision of the Domestic Service Volunteer Act of 1973, as amended, or any CNCS or VISTA program policy, regulation, or instruction;

(3) Failure, refusal, or inability to perform prescribed project duties as outlined in the project plan, assignment description, or as directed by the sponsor to which the VISTA is assigned;

(4) Involvement in activities which substantially interfere with the VISTA's performance of project duties;

(5) Intentional false statement, misrepresentation, omission, fraud, or deception in seeking to obtain selection as a VISTA in the VISTA program;

(6) Any conduct on the part of the VISTA which substantially diminishes his or her effectiveness as a VISTA; or

(7) Unsatisfactory performance of an assignment.

§ 2556.405 Who has sole authority to remove a VISTA from a VISTA project and who has sole authority to terminate a VISTA from the VISTA program?

(a) CNCS has the sole authority to remove a VISTA from a project where he or she has been assigned.

(b) CNCS has the sole authority to terminate for cause, or otherwise terminate, a VISTA from the VISTA program.

(c) Neither the sponsoring organization nor any of its subrecipients has the authority to remove a VISTA from a project or to terminate a VISTA for cause, or for any other basis, from the VISTA program.

§ 2556.410 May a sponsor request that a VISTA be removed from its project?

(a) The head of a sponsoring organization, or his or her designee, may request that CNCS remove a VISTA assigned to its project. Any such request must be submitted in writing to the appropriate State Program Director and should state the reasons for the request.

(b) The State Program Director may, at his or her discretion, attempt to resolve the situation with the sponsor so that an alternative solution other than removal of the VISTA from the project assignment is reached.

(c) When an alternative solution, as referenced in paragraph (b) of this section, is not sought, or is not reached within a reasonable time period, the State Program Director shall remove the VISTA from the project.

§ 2556.415 May CNCS remove a VISTA from a project without the sponsor's request for removal?

Of its own accord, CNCS may remove a VISTA from a project assignment without the sponsor's request for removal.

§ 2556.420 What are termination for cause proceedings?

(a) Termination for cause proceedings are initiated by the State Program Director when CNCS removes a VISTA from a project assignment due to an alleged deficiency, or alleged deficiencies, in conduct or performance.

(b) The State Program Director or other CNCS State Office staff, to the extent practicable, communicates the matter with the VISTA who is removed from a VISTA project and the administrative procedures as set forth in paragraphs (c) through (e) of this section.

(c) The State Program Director shall notify VISTA in writing of CNCS's proposal to terminate for cause. The written proposal to terminate him or her for cause must give the VISTA the reason(s) for the proposed termination, and notify him or her that he or she has 10 calendar days within which to answer in writing the proposal to terminate him or her for cause, and to furnish any accompanying statements or written material. The VISTA must submit any answer to the appropriate State Program Director identified in the written proposal to terminate for cause within the deadline specified in the proposal to terminate for cause.

(d) Within 10 calendar days of the expiration of the VISTA's deadline to answer the proposal to terminate for cause, the appropriate State Program Director shall issue a written decision regarding the proposal to terminate for cause.

(1) If the decision is to terminate the VISTA for cause, the decision shall set forth the reasons for the determination and the effective date of termination (which may be on or after the date of the decision).

(2) If the decision is not to terminate the VISTA for cause, the decision shall indicate that the proposal to terminate for cause is rescinded.

(e) A VISTA who does not submit a timely answer to the appropriate State Program Director, as set forth in paragraph (c) of this section, is not entitled to appeal the decision regarding the proposal to terminate for cause. In such cases, CNCS may terminate the VISTA for cause, on the date identified in the decision, and the termination action is final.

§ 2556.425 May a VISTA appeal his or her termination for cause?

(a) Within 10 calendar days of the appropriate State Program Director's issuance of the decision to terminate the VISTA for cause, as set forth in § 2556.420(d), the VISTA may appeal the decision to the appropriate Area

Manager. The appeal must be in writing and specify the reasons for the VISTA's disagreement with the decision.

(b) CNCS shall not incur any expenses or travel allowances for the VISTA in connection with the preparation or presentation of the appeal.

(c) The VISTA may have access to records as follows:

(1) The VISTA may review any material in the VISTA's official CNCS file and any relevant CNCS records to the extent permitted by the Freedom of Information Act and the Privacy Act, 5 U.S.C. 552, 552a. Examples of documents that may be withheld include references obtained under pledge of confidentiality, official files of other program participants, and privileged intra-agency documents.

(2) The VISTA may review relevant records in the possession of a sponsor to the extent such documents are disclosable by the sponsor under applicable freedom of information act and privacy laws.

(d) Within 14 calendar days of receipt of any appeal by the VISTA, the Area Manager or equivalent CNCS official shall issue a written appeal determination. The appeal determination shall indicate the reasons for such an appeal determination. The appeal determination shall be final.

§ 2556.430 Is a VISTA who is terminated early from the VISTA program for other than cause entitled to appeal under these procedures?

(a) Only a VISTA whose early termination from the VISTA program is for cause, and who has answered the proposal to terminate him or her for cause in a timely manner, as set forth in § 2556.420(c), is entitled to appeal the early termination action, as referenced in § 2556.425. A termination for cause is based on a deficiency, or deficiencies, in the performance or conduct of a VISTA.

(b) The following types of early terminations from the VISTA program are not terminations for cause, and are not entitled to appeal under the early termination appeal procedure set forth in §§ 2556.420 and 2556.425:

(1) Resignation from the VISTA program prior to the issuance of a decision to terminate for cause, as set forth in § 2556.420(d);

(2) Early termination from the VISTA program because a VISTA did not secure a suitable reassignment to another project; and

(3) Medical termination from the VISTA program.

Subpart F—Summer Associates

Authority: 42 U.S.C. 4954(d), (e).

§ 2556.500 How is a position for a summer associate established in a project?

(a) From time-to-time, the State Program Director invites sponsors within the state to apply for one or more positions for individuals to serve as summer associates at the sponsor's VISTA project.

(b) Subject to VISTA assistance availability, CNCS approves the establishment of summer associate positions based on the following factors:

- (1) The need in the community, as demonstrated by the sponsor, for the performance of project activities by a summer associate(s);
- (2) The content and quality of summer associate project plans;
- (3) The capacity of the sponsor to implement the summer associate project activities; and
- (4) The sponsor's compliance with all applicable parts of the DVSA, VISTA program policy, and the sponsor's Memorandum of Agreement, which incorporates their project application.

§ 2556.505 How do summer associates differ from other VISTAs?

Summer associates differ from other VISTAs in the following ways:

(a) Summer associates are not eligible to receive:

- (1) Health care through a health benefits program provided by CNCS;
- (2) Child care support through a child care program provided by CNCS;
- (3) Payment for settling-in expenses; or

(4) Non-competitive eligibility in accordance with 5 CFR 315.605.

(b) Absent extraordinary circumstances, summer associates are not eligible to receive:

(1) Payment for travel expenses incurred for travel to or from the project site to which the summer associate is assigned; or

(2) A baggage allowance for the costs of transporting personal effects to or from the project site to which the summer associate is assigned to serve.

(c) CNCS may discharge a summer associate due to a deficiency, or deficiencies, in conduct or performance. Summer associates are not subject to subpart E of this part, or to the grievance procedures provided to VISTAs set forth in §§ 2556.345 through 2556.365.

Subpart G—VISTA Leaders

Authority: 42 U.S.C. 4954(b).

§ 2556.600 How is a position for a leader established in a project, or in multiple projects within a contiguous geographic region?

(a) At its discretion, CNCS may approve the establishment of a leader position based on the following factors:

(1) The need for a leader in a project of a substantial size and with multiple VISTAs assigned to serve at that project, or the need for leader for multiple projects located within a contiguous geographic region.

(2) The need for a leader to assist with the communication of VISTA policies and administrative procedures to VISTAs within a project, or throughout the multiple projects within a contiguous geographic region, as applicable.

(3) The need for a leader to assist with the professional development of VISTAs within a project, or throughout the multiple projects within a contiguous geographic region, as applicable.

(4) The need for a leader to assist with the recruitment and preparation for the arrival of VISTAs within a project, or throughout the multiple projects within a contiguous geographic region, as applicable.

(5) The capacity of the VISTA supervisor to support and guide the leader.

(b) A sponsor may request, in its project application, that CNCS establish a leader position in its project.

§ 2556.605 Who is eligible to apply to serve as a leader?

An individual is eligible to apply to serve as a leader if he or she has successfully completed any of the following:

(a) At least one year of service as a VISTA;

(b) At least one full term of service as a full-time AmeriCorps State and National member;

(c) At least one full term of service as a member of the AmeriCorps National Civilian Community Corps (NCCC); or

(d) At least one traditional term of service as a Peace Corps Volunteer.

§ 2556.610 What is the application process to apply to become a leader?

(a) *Application package.* An eligible individual must apply in writing to CNCS to become a leader. The sponsor's recommendation and related materials, described in paragraph (b) of this section, must be included with the individual's application to become a leader.

(b) *Sponsor recommendation.* A sponsor where an individual is seeking to serve as a leader must recommend in writing to CNCS the individual to become a leader. Included with the recommendation must be an evaluation of the individual's performance while in previous service, a description of specific tasks, responsibilities, qualifications, and other relevant information that justifies the placement

of the individual in a leader position, and if appropriate, the establishment of a leader position.

(c) *Selection.* CNCS shall have sole authority to select a leader. The criteria for selection shall include consideration of the individual's application and the sponsor's recommendation described in paragraph (b) of this section.

§ 2556.615 Who reviews a leader application and who approves or disapproves a leader application?

CNCS reviews the application package for the leader position, considers the recommendation of the sponsor, and approves or disapproves the individual to serve as a leader.

§ 2556.620 How does a leader differ from other VISTAs?

The application process to apply to become a leader, as described in § 2556.610, is separate and distinct from the application process to apply to enroll as a VISTA in the VISTA program:

(a) A leader may receive a living allowance computed at a higher daily rate than other VISTAs, as authorized under section 105(a)(1)(B) of the DVSA.

(b) A leader is subject to all the terms and conditions of service described in § 2556.625.

§ 2556.625 What are terms and conditions of service for a leader?

Though not exhaustive, terms and conditions of service as a leader include:

(a) A leader makes a full-time commitment to serve as a leader, without regard to regular working hours, for a minimum of one year.

(b) To the maximum extent practicable, a leader shall live among and at the economic level of the low-income community served by the project and actively seek opportunities to engage with that low-income community.

(c) A leader aids the communication of VISTA policies and administrative procedures to VISTAs.

(d) A leader assists with the leadership development of VISTAs.

(e) A leader is a resource in the development and delivery of training for VISTAs.

(f) A leader may assist the sponsor with recruitment and preparation for the arrival of VISTAs.

(g) A leader may advise a supervisor on potential problem areas and needs of VISTAs.

(h) A leader aids VISTAs in the development of effective working relationships and understanding of VISTA program concepts.

(j) A leader may aid the supervisor and sponsor in directing or focusing the VISTA project to best address the community's needs.

(j) A leader may serve as a collector of data for performance measures of the project and the VISTAs.

(k) A leader is prohibited from supervising VISTAs. A leader is also prohibited from handling or managing, on behalf of the project, personnel-related matters affecting VISTAs. Personnel-related matters affecting VISTAs must be managed and handled by the project and in coordination with the appropriate CNCS State Office.

Subpart H—Restrictions and Prohibitions on Political Activities and Lobbying

Authority: 42 U.S.C. 4954(a), 5043, and 5055(b).

§ 2556.700 Who is covered by this subpart?

(a) All VISTAs, including leaders and summer associates, are subject to this subpart.

(b) All employees of VISTA sponsors and subrecipients, whose salaries or other compensation are paid, in whole or in part, with VISTA grant assistance are subject to this subpart.

(c) All VISTA sponsors and subrecipients are subject to this subpart.

§ 2556.705 What is prohibited political activity?

For purposes of the regulations in this subpart, "prohibited political activity" means an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.

§ 2556.710 What political activities are VISTAs prohibited from engaging in?

(a) A VISTA may not use his or her official authority or influence to interfere with or affect the result of an election.

(b) A VISTA may not use his or her official authority or influence to coerce any individual to participate in political activity.

(c) A VISTA may not use his or her official VISTA program title while participating in prohibited political activity.

(d) A VISTA may not participate in prohibited political activities in the following circumstances:

(1) While he or she is on duty;

(2) While he or she is wearing an article of clothing, logo, insignia, or other similar item that identifies CNCS, the VISTA program, or one of CNCS's other national service programs;

(3) While he or she is in any room or building occupied in the discharge of

VISTA duties by an individual employed by the sponsor; and

(4) While using a vehicle owned or leased by a sponsor or subrecipient, or while using a privately-owned vehicle in the discharge of VISTA duties.

§ 2556.715 What political activities may a VISTA participate in?

(a) Provided that paragraph (b) of this section is fully adhered to, a VISTA may:

(1) Express his or her opinion privately and publicly on political subjects;

(2) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any other question or issue of similar character;

(3) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization; and

(4) Participate fully in public affairs, except as prohibited by other Federal law, in a manner which does not compromise his or her efficiency or integrity as a VISTA, or compromise the neutrality, efficiency, or integrity of CNCS or the VISTA program.

(b) A VISTA may participate in political activities set forth in paragraph (a) of this section as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

(2) Does not interfere with his or her provision of service in the VISTA program;

(3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

§ 2556.720 May VISTAs participate in political organizations?

(a) Provided that paragraph (b) of this section is fully adhered to, and in accordance with the prohibitions set forth in § 2556.710, a VISTA may:

(1) Be a member of a political party or other political group and participate in its activities;

(2) Serve as an officer of a political party or other political group, a member of a national, State, or local committee of a political party, an officer or member of a committee of a political group, or be a candidate for any of these positions;

(3) Attend and participate fully in the business of nominating caucuses of political parties;

(4) Organize or reorganize a political party organization or political group;

(5) Participate in a political convention, rally, or other political gathering; and

(6) Serve as a delegate, alternate, or proxy to a political party convention.

(b) A VISTA may participate in a political organization as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

(2) Does not interfere with the provision of service in the VISTA program;

(3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

§ 2556.725 May VISTAs participate in political campaigns?

(a) Provided that paragraph (b) of this section is fully adhered to, and in accordance with the prohibitions set forth in § 2556.710, a VISTA may:

(1) Display pictures, signs, stickers, badges, or buttons associated with political parties, candidates for partisan political office, or partisan political groups, as long as these items are displayed in accordance with the prohibitions set forth in § 2556.710;

(2) Initiate or circulate a nominating petition for a candidate for partisan political office;

(3) Canvass for votes in support of or in opposition to a partisan political candidate or a candidate for political party office;

(4) Endorse or oppose a partisan political candidate or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material; and

(5) Address a convention caucus, rally, or similar gathering of a political

party or political group in support of or in opposition to a partisan political candidate or a candidate for political party office.

(b) A VISTA may participate in a political campaign as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

(2) Does not interfere with the provision of service in the VISTA program;

(3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

§ 2556.730 May VISTAs participate in elections?

(a) Provided that paragraph (b) of this section is fully adhered to, and in accordance with the prohibitions set forth in § 2556.710, a VISTA may:

(1) Register and vote in any election;

(2) Act as recorder, watcher, challenger, or similar officer at polling places;

(3) Serve as an election judge or clerk, or in a similar position; and

(4) Drive voters to polling places for a partisan political candidate, partisan political group, or political party.

(5) Participate in voter registration activities.

(b) A VISTA may participate in elections as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

(2) Does not interfere with the provision of service in the VISTA program;

(3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times

during periods of service, except for authorized periods of leave.

§ 2556.735 May a VISTA be a candidate for public office?

(a) Except as provided in paragraph (c) of this section, no VISTA may run for the nomination to, or as a candidate for election to, partisan political office.

(b) In accordance with the prohibitions set forth in § 2556.710, a VISTA may participate in elections as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

(2) Does not interfere with the provision of service in the VISTA program;

(3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

(c) Provided that paragraphs (a) and (b) of this section are adhered to, and in accordance with the prohibitions set forth in § 2556.710, a VISTA may:

(1) Run as an independent candidate in a partisan election in designated U.S. municipalities and political subdivisions as set forth at 5 CFR part 733; and

(2) Run as a candidate in a non-partisan election.

§ 2556.740 May VISTAs participate in political fundraising activities?

(a) Provided that paragraphs (b) through (d) of this section are fully adhered to, and in accordance with the prohibitions set forth in § 2556.710, a VISTA may:

(1) Make a political contribution to a political party, political group, campaign committee of a candidate for public office in a partisan election;

(2) Attend a political fundraiser; and

(3) Solicit, accept, or receive uncompensated volunteer services for a political campaign from any individual.

(b) A VISTA may participate in fundraising activities as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

(2) Does not interfere with the provision of service in the VISTA program;

(3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

(c) A VISTA may not knowingly:

(1) Personally solicit, accept, or receive a political contribution from another individual;

(2) Personally solicit political contributions in a speech or keynote address given at a fundraiser;

(3) Allow his or her perceived or actual affiliation with the VISTA program, or his or her official title as a VISTA, to be used in connection with fundraising activities; or

(4) Solicit, accept, or receive uncompensated individual volunteer services from a subordinate, (e.g., a leader may not solicit, accept or receive a political contribution from a VISTA).

(d) Except for VISTAs who reside in municipalities or political subdivisions designated under 5 CFR part 733, no VISTA may accept or receive a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party.

§ 2556.745 Are VISTAs prohibited from soliciting or discouraging the political participation of certain individuals?

(a) A VISTA may not knowingly solicit or discourage the participation in any political activity of any individual who has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before CNCS or the VISTA program.

(b) A VISTA may not knowingly solicit or discourage the participation of any political activity of any individual who is the subject of, or a participant in, an ongoing audit, investigation, or enforcement action being carried out by or through CNCS or the VISTA program.

§ 2556.750 What restrictions and prohibitions are VISTAs subject to who campaign for a spouse or family member?

A VISTA who is the spouse or family member of either a candidate for partisan political office, candidate for political party office, or candidate for

public office in a nonpartisan election, is subject to the same restrictions and prohibitions as other VISTAs, as set forth in § 2556.725.

§ 2556.755 May VISTAs participate in lawful demonstrations?

In accordance with the prohibitions set forth in § 2556.710, VISTAs may participate in lawful demonstrations, political rallies, and other political meetings, so long as such participation is in conformance with all of the following:

(a) Occurs only while on authorized leave or while otherwise off duty;

(b) Does not include attempting to represent, or representing the views of VISTAs or the VISTA program on any public issue;

(c) Could not be reasonably understood by the community as being identified with the VISTA program, the project, or other elements of VISTA service; and

(d) Does not interfere with the discharge of VISTA duties.

§ 2556.760 May a sponsor and subrecipient approve the participation of a VISTA in a demonstration or other political meeting?

(a) No VISTA sponsor or subrecipient shall approve a VISTA to be involved in planning, initiating, participating in, or otherwise aiding or assisting in any demonstration or other political meeting.

(b) If a VISTA sponsor or subrecipient which, subsequent to the receipt of any CNCS financial assistance, including the assignment of VISTAs, approves the participation of a VISTA in a demonstration or other political meeting, shall be subject to procedures related to the suspension or termination of such assistance, as provided in

subpart B of this part, §§ 2556.135 through 2556.140.

§ 2556.765 What disciplinary actions are VISTAs subject to for violating restrictions or prohibitions on political activities?

Violations by a VISTA of any of the prohibitions or restrictions set forth in this subpart may warrant termination for cause, in accordance with proceedings set forth at §§ 2556.420, 2556.425, and 2556.430.

§ 2556.770 What are the requirements of VISTA sponsors and subrecipients regarding political activities?

(a) All sponsors and subrecipients are required to:

(1) Understand the restrictions and prohibitions on the political activities of VISTAs, as set forth in this subpart;

(2) Provide training to VISTAs on all applicable restrictions and prohibitions on political activities, as set forth in this subpart, and use training materials that are consistent with these restrictions and prohibitions;

(3) Monitor on a continuing basis the activity of VISTAs for compliance with this subpart; and

(4) Report all violations, or questionable situations, immediately to the appropriate CNCS State Office.

(b) Failure of a sponsor to comply with the requirements of this subpart, or a violation of the requirements contained in this subpart by the sponsor or subrecipient, sponsor or subrecipient's covered employees, agents, or VISTAs, may be deemed to be a material failure to comply with terms or conditions of the VISTA program. In such a case, the sponsor shall be subject to procedures related to the denial or reduction, or suspension or termination, of such assistance, as provided in §§ 2556.125, 2556.130, and 2556.140.

§ 2556.775 What prohibitions and restrictions on political activity apply to employees of VISTA sponsors and subrecipients?

All employees of VISTA sponsors and subrecipients, whose salaries or other compensation are paid, in whole or in part, with VISTA funds are subject to all applicable prohibitions and restrictions described in this subpart in the following circumstances:

(a) Whenever they are engaged in an activity that is supported by CNCS or VISTA funds or assistance; and

(b) Whenever they identify themselves as acting in their capacity as an official of a VISTA project that receives CNCS or VISTA funds or assistance, or could reasonably be perceived by others as acting in such a capacity.

§ 2556.780 What prohibitions on lobbying activities apply to VISTA sponsors and subrecipients?

(a) No VISTA sponsor or subrecipient shall assign a VISTA to perform service or engage in activities related to influencing the passage or defeat of legislation or proposals by initiative petition.

(b) No VISTA sponsor or subrecipient shall use any CNCS financial assistance, such as VISTA funds or the services of a VISTA, for any activity related to influencing the passage or defeat of legislation or proposals by initiative petition.

Dated: October 6, 2015.

Jeremy Joseph,

General Counsel.

[FR Doc. 2015-25790 Filed 10-19-15; 8:45 am]

BILLING CODE 6050-28-P

Proposed Rules

Federal Register

Vol. 80, No. 202

Tuesday, October 20, 2015

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2015-3835; Airspace Docket No. 14-ASW-13]

RIN 2120-AA66

Proposed Amendment of Air Traffic Service (ATS) Routes; Southwest Oklahoma

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify 3 VHF Omnidirectional Range (VOR) Federal airways (V-140, V-272, and V-440) in the vicinity of Sayre, OK. The FAA is proposing this action due to the scheduled decommissioning of the Sayre, OK (SYO), VOR/Tactical Air Navigation (VORTAC) facility that provides navigation guidance for a portion of the airways listed. This action would enhance the route structure within the National Airspace System.

DATES: Comments must be received on or before December 4, 2015.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M-30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001; telephone: (202) 366-9826. You must identify FAA Docket No. FAA-2015-3835 and Airspace Docket No. 14-ASW-13 at the beginning of your comments. You may also submit comments through the internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, 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 this material at NARA, call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the route structure as required to preserve the safe and efficient flow of air traffic in the vicinity of Sayre, OK.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in

developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA-2015-3835 and Airspace Docket No. 14-ASW-13) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2015-3835 and Airspace Docket No. 14-ASW-13." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the internet at <http://www.regulations.gov>.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, Operations Support Group, Federal Aviation Administration, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267-9677, for a copy of Advisory Circular No. 11-2A, Notice of Proposed

Rulemaking Distribution System, which describes the application procedure.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Z, airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the ADDRESSES section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The SYO VORTAC facility is scheduled to be decommissioned. With the decommissioning of the SYO VORTAC, the remaining ground-based navigation aid (NAVAID) coverage is insufficient to enable the continuity of the affected airways. The proposed modifications to VOR Federal airways V-140, V-272, and V-440 would result in slightly realigned routes through the Sayre, OK, area by using the Burns Flat, OK (BFV), VORTAC located approximately 22 nautical miles southeast of the SYO VORTAC to replace it. Route segments supported by other NAVAIDs would remain unchanged.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to modify VOR Federal airways V-140, V-272, and V-440 in the vicinity of Sayre, OK. These proposed modifications are necessary due to the scheduled decommissioning of the SYO VORTAC. The proposed route modifications are outlined below.

V-140: V-140 extends from the Panhandle, TX (PNH), VORTAC to the Casanova, VA (CSN), VORTAC. The route segment between the PNH VORTAC and Kingfisher, OK (IFI), VORTAC would be realigned to proceed over the BFV VORTAC instead of the SYO VORTAC.

V-272: V-272 extends from the Dalhart, TX (DHT), VORTAC to the Fort Smith, AR (FSM), VORTAC. The route segment between the Borger, TX (BGD), VORTAC and Will Rogers, OK (IRW), VORTAC would be realigned to proceed over the BFV VORTAC instead of the SYO VORTAC.

V-440: V-440 extends from the PNH VORTAC to the IRW VORTAC. The intersecting NAVAID radial information used to describe the BRISC and CARFF fixes would be updated using BFV VORTAC radials instead of SYO VORTAC radials, and the route segment

between the BRISC and CARFF fixes would be realigned to proceed over the BFV VORTAC instead of the SYO VORTAC.

All radials in the route descriptions below that do not reflect True (T)/Magnetic (M) degree radial information are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010 of FAA Order 7400.9Z dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document would be subsequently published in the Order.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V-140 [Amended]

From Panhandle, TX; Burns Flat, OK; Kingfisher, OK; INT Kingfisher 072° and Tulsa, OK, 261° radials; Tulsa; Razorback, AR; Harrison, AR; Walnut Ridge, AR; Dyersburg, TN; Nashville, TN; Livingston, TN; London, KY; Hazard, KY; Bluefield, WV; INT Bluefield 071° and Montebello, VA, 250° radials; Montebello; to Casanova, VA.

* * * * *

V-272 [Amended]

From Dalhart, TX; Borger, TX; Burns Flat, OK; Will Rogers, OK; INT Will Rogers 113° and McAlester, OK, 286° radials; McAlester; to Fort Smith, AR.

* * * * *

V-440 [Amended]

From Panhandle, TX; INT Panhandle 070°(T)/062°(M) and Burns Flat, OK, 288°(T)/280°(M) radials; Burns Flat; INT Burns Flat 103°(T)/095°(M) and Will Rogers, OK, 248°(T)/241°(M) radials; to Will Rogers.

* * * * *

Issued in Washington, DC, on October 8, 2015.

Gary A. Norek,

Manager, Airspace Policy Group.

[FR Doc. 2015–26498 Filed 10–19–15; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

[Docket No: NASA–2015–0010]

RIN 2700–AD98

Space Flight

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Aeronautics and Space Administration (NASA) is proposing to amend its regulations that govern International Space Station crewmembers, mementos aboard Orion and Space Launch System (SLS) missions, the authority of the NASA Commander, and removes the Agency's policy on space flight participation and

other policies that were relevant to the Space Shuttle. The revisions to this rule are part of NASA's retrospective plan under Executive Order (E.O.) 13563 completed in August 2011. NASA's full plan can be accessed on the Agency's open Government Web site at <http://www.nasa.gov/open/>.

DATES: Submit comments on or before November 19, 2015.

ADDRESSES: Comments must be identified with RIN 2700-AD98 and may be sent to NASA via the *Federal E-Rulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Please note that NASA will post all comments on the Internet without change, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Craig Salvas at (202)-358-2330, craig.b.salvas@nasa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Space Shuttle Program formally commenced in 1972. After a total of 135 flights, the last of which occurred in July 2011, the Space Shuttle was officially retired after 30 years of operation. During this period, the fleet and its crews carried out a large and varied number of tasks to meet the goals and objectives of the Nation's space program. These included the launch of large interplanetary probes, the performance of scientific experiments under microgravity conditions, the on-orbit servicing of the Hubble Space Telescope, and the assembly and resupply of the International Space Station. Functions previously performed by the Space Shuttle will now be done by many different spacecraft currently flying or in development, including vehicles owned by both the Government and the private sector.

NASA is currently developing a new human-rated spacecraft, the Orion, and launch system, the Space Launch System (SLS). With the end of the Space Shuttle Program, many sections of this rule are no longer relevant and will be deleted. However, sections which have current or future application will be maintained and updated or amended as required.

Significant elements of Part 1214, in its current form, govern the use and operation of the Space Shuttle and cover a diverse number of areas including requirements for reimbursement for Space Shuttle services to civil U.S. Government and foreign users, the flight of Payload Specialists and Space Flight Participants on Space Shuttle missions, reimbursement terms, and conditions

for use of the Spacelab Module. Also covered in Part 1214 are the rules for the NASA Astronaut Candidate Recruitment and Selection Program, the Code of Conduct for the International Space Station Crew, and the Authority of the Space Shuttle Commander.

The intent of these proposed amendments is to repeal those portions of the regulation that, with the ending of the Space Shuttle Program, are no longer relevant. Sections that remain in effect will be amended because they are outdated. Other sections that are applicable to the Orion and SLS will also be amended.

Statutory Authority

Section 1214 is established under the National Aeronautics and Space Act (Space Act) (51 U.S.C. 20101, *et seq.*).

Regulatory Analysis

Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improving Regulation and Regulation Review

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been designated as "not significant" under section 3(f) of Executive Order 12866.

Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This requirement does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities" (5 U.S.C. 603). This rule updates these sections of the CFR to align with Federal guidelines and does not have a significant economic impact on a substantial number of small entities.

Review Under the Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Review Under Executive Order of 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) requires regulations be reviewed for Federalism effects on the institutional interest of states and local governments, and if the effects are sufficiently substantial, preparation of the Federal assessment is required to assist senior policy makers. The amendments will not have any substantial direct effects on state and local governments within the meaning of the Executive Order. Therefore, no Federalism assessment is required.

List of Subjects in 14 CFR Part 1214

Government employees, Government procurement, Security measures, Space transportation and exploration.

For the reason stated in the preamble, NASA is proposing to amend 14 CFR part 1214 as follows:

PART 1214—SPACE FLIGHT

■ 1. The authority citation for part 1214 is revised to read as follows:

Authority: Pub. L. 111-314, sec. 3, 124 Stat. 3328 (51 U.S.C. 20101, *et seq.*).

Subpart 1214.1—[Removed and Reserved]

■ 2. Remove and reserve subpart 1214.1, consisting of §§ 1214.100 through 1214.119.

Subpart 1214.2—[Removed and Reserved]

■ 3. Remove and reserve subpart 1214.2, consisting of §§ 1214.200 through 1214.207 and Appendices A and B.

Subpart 1214.3—[Removed and Reserved]

■ 4. Remove and reserve subpart 1214.3, consisting of §§ 1214.300 through 1214.306.

Subpart 1214.4—International Space Station Crew

■ 5. The authority citation for subpart 1214.4 is revised to read as follows:

Authority: Pub. L. 111-314, sec. 3, 124 Stat. 3328 (51 U.S.C. 20101, *et seq.*).

■ 6. Revise Subpart 1214.6 to read as follows:

Subpart 1214.6 Mementos aboard NASA missions

Sec.	
1214.600	Scope.
1214.601	Definitions.
1214.602	Policy.
1214.603	Official Flight Kit.
1214.604	Personal Preference Kit.
1214.605	Reserved.
1214.606	Reserved.

- 1214.607 Media and public inquiries.
 1214.608 Reserved.
 1214.609 Loss or theft.
 1214.610 Violations.

Authority: Pub. L. 111–314, sec. 3, 124 Stat. 3328 (51 U.S.C. 20101, *et seq.*).

§ 1214.600 Scope.

This subpart establishes policy and procedures for carrying mementos on the NASA missions, with the exception of mementos and personal effects carried onboard the International Space Station (ISS).

§ 1214.601 Definitions.

Mementos. Flags, patches, insignia, minor graphics, and similar items of little commercial value, especially suited for display by the individuals or groups to whom they have been presented.

§ 1214.602 Policy.

Premise. Mementos are welcome aboard NASA missions. However, they are flown as a courtesy—not as an entitlement. The NASA Administrator, or his/her designee, will approve all requests for flying mementos.

§ 1214.603 Official Flight Kit.

(a) *Purpose.* The Official Flight Kit (OFK) on a particular mission allows NASA, and other domestic and friendly foreign countries organizations with NASA approval, to utilize mementos as awards and commendations or preserve them in museums or archives. No personal items will be carried in the OFK.

(b) *Approval of Contents.* At least 120 days prior to the scheduled launch of a particular mission, an authorized representative of each organization desiring mementos to be carried on a flight in the OFK must submit a letter or request describing the item(s) to be flown and the intended purpose or distribution. Letters should be directed to the Associate Administrator for Human Exploration and Operations, NASA Headquarters, Washington, DC 20546.

§ 1214.604 Personal Preference Kit.

(a) *Purpose.* The Personal Preference Kit (PPK) enables persons on a particular mission to carry personal items for use as mementos. Only those individuals actually accompanying such flights may request authorization to carry personal items as mementos.

(b) *Approval of Content.* At least 60 days prior to the scheduled launch of a particular mission, each person assigned to the flight who desires to carry items in a PPK must submit a proposed list of items and their recipients to the Associate Director, NASA Johnson

Space Center. The Associate Director will review the proposed list of items and, if approved, submit the crew members' PPK lists through supervisory channels to the Associate Administrator for Human Exploration and Operations for approval. A signed copy of approval from the Associate Administrator for Human Exploration and Operations will be returned to the Director, NASA Johnson Space Center, for distribution.

§§ 1214.605, 1214.606 [Reserved]

§ 1214.607 Media and public inquiries.

Information on mementos flown on a particular mission will be routinely released by the Associate Administrator of the Office of Communications to the media and to the public upon their request, but only after they have been approved for flight.

§ 1214.608 [Reserved]

§ 1214.609 Loss or Theft.

(a) *Liability.* Neither NASA nor the U.S. Government will be liable for the loss or theft of, or damage to, items carried in OFKs or PPKs.

(b) *Report of Loss or Theft.* Any person who learns that an item contained in an OFK or a PPK is missing shall immediately report the loss to the Johnson Space Center Security Office and the NASA Inspector General.

§ 1214.610 Violations.

Any items carried in violation of the requirements of this subpart shall become property of the U.S. Government, subject to applicable Federal laws and regulations, and the violator may be subject to disciplinary action, including being permanently prohibited from use of, or if an individual, from flying aboard a NASA mission.

Subpart 1214.7—The Authority of the NASA Commander

■ 7. The authority citation for subpart 7 is revised to read as follows:

Authority: Pub. L. 111–314, sec. 3, 124 Stat. 3328 (51 U.S.C. 20101, *et seq.*)

■ 8. Revise the heading of subpart 1214.7 to read as set forth above.

■ 9. Revise sections §§ 1214.700, 1214.701, and 1214.702 to read as follows:

§ 1214.700 Scope.

This subpart establishes the authority of the NASA Commander of a NASA mission, excluding missions related to the ISS and activities licensed under Title 51 U.S.C. Chapter 509, to enforce order and discipline during a mission and to take whatever action in his/her

judgment is reasonable and necessary for the protection, safety, and well-being of all personnel and on-board equipment, including the spacecraft and payloads. During the final launch countdown, following crew ingress, the NASA Commander has the authority to enforce order and discipline among all on-board personnel. During emergency situations prior to liftoff, the NASA Commander has the authority to take whatever action in his/her judgment is necessary for the protection or security, safety, and well-being of all personnel on board.

§ 1214.701 Definitions.

(a) The *flight crew* consists of the NASA Commander, astronaut crew members, and [any] other persons aboard the spacecraft.

(b) A *mission* is the period including the flight-phases from launch to landing on the surface of the Earth—a single round trip. (In the case of a forced landing, the NASA Commander's authority continues until a competent authority takes over the responsibility for the persons and property aboard).

(c) The *flight-phases* consist of launch, in orbit/transit, extraterrestrial mission, deorbit, entry, and landing, and post-landing back on Earth.

(d) A *payload* is a specific complement of instruments, space equipment, and support hardware/software carried into space to accomplish a scientific mission or discrete activity.

§ 1214.702 Authority and responsibility of the NASA Commander.

(a) During all flight phases, the NASA Commander shall have the absolute authority to take whatever action is in his/her discretion necessary to:

- (1) Enhance order and discipline.
- (2) Provide for the safety and well-being of all personnel on board.
- (3) Provide for the protection of the spacecraft and payloads.

The NASA Commander shall have authority, throughout the mission, to use any reasonable and necessary means, including the use of physical force, to achieve this end.

(b) The authority of the NASA Commander extends to any and all personnel on board the spacecraft including Federal officers and employees and all other persons whether or not they are U.S. nationals.

(c) The authority of the NASA Commander extends to all spaceflight elements, payloads, and activities originating with or defined to be a part of the NASA mission.

(d) The NASA Commander may, when he/she deems such action to be

necessary for the safety of the spacecraft and personnel on board, subject any of the personnel on board to such restraint as the circumstances require until such time as delivery of such individual or individuals to the proper authorities is possible.

■ 10. Amend paragraphs (a), (c) and (d) in § 1214.703 to read as follows:

§ 1214.703 Chain of command.

(a) The NASA *Commander* is a trained NASA astronaut who has been designated to serve as commander on a NASA mission and who shall have the authority described in § 1214.702 of this part. Under normal flight conditions (other than emergencies or when otherwise designated) the NASA Commander is responsible to the Mission Flight Director.

* * * * *

(c) Before each flight, the other flight crewmembers will be designated in the order in which they will assume the authority of the NASA Commander under this subpart in the event that the NASA Commander is not able to carry out his/her duties.

(d) The determinations, if any, that a crewmember in the chain of command is not able to carry out his or her command duties and is, therefore, to be relieved of command, and that another crewmember in the chain of command is to succeed to the authority of the NASA Commander, will be made by the NASA Administrator or his/her designee.

■ 11. Revise § 1214.704 to read as follows:

§ 1214.704 Violations.

(a) All personnel on board the NASA mission are subject to the authority of the NASA Commander and shall conform to his/her orders and direction as authorized by this subpart.

(b) This regulation is a regulation within the meaning of 18 U.S.C. 799, and whoever willfully violates, attempts to violate, or conspires to violate any provision of this subpart or any order or direction issued under this subpart shall be subject to fines and imprisonment, as specified by law.

Subpart 1214.8—[Removed and Reserved]

■ 12. Remove and reserve subpart 1214.8, consisting §§ 1214.800 through 1214.813.

Subpart 1214.17—[Removed and Reserved]

■ 13. Remove and reserve subpart 1214.17, consisting of §§ 1214.1700 through 1214.1707.

Nanette Jennings,

Federal Register Liaison Officer.

[FR Doc. 2015–26475 Filed 10–19–15; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA–2012–N–1210]

RIN 0910–AF22

Food Labeling: Revision of the Nutrition and Supplement Facts Labels; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the reopening of the comment period for certain documents associated with the proposed rule to amend FDA's labeling regulations for conventional foods and dietary supplements to provide updated nutrition information on the Nutrition Facts and Supplement Facts labels to assist consumers in maintaining healthy dietary practices. We also are reopening the comment period for a supplemental proposed rule to revise the Nutrition Facts and Supplement Facts labels. We are taking this action due to technical difficulties at the Federal eRulemaking Portal.

DATES: Submit either electronic or written comments on the supplemental proposed rule and related documents by October 23, 2015.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://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 <http://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):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, 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–2012–N–1210 for this rulemaking. Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management 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 <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. 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: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://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 Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Center for Food Safety and Applied Nutrition (HFS-24), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240-402-2112, email: Philip.Chao@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 3, 2014 (79 FR 11879), we published a proposed rule that would amend our labeling regulations for conventional foods and dietary supplements to provide updated nutrition information. In the **Federal Register** of July 27, 2015 (80 FR 44302), we reopened the comment period through September 25, 2015, for the proposed rule for the sole purpose of inviting public comments on two consumer studies being added to the administrative record. The consumer studies pertained to proposed changes to the Nutrition Facts label formats. We also issued a supplemental proposed rule (80 FR 44303) with a comment period through October 13, 2015. The supplemental proposal included two additional consumer studies pertaining to the declaration of added sugars and alternative footnote statements. We proposed text for the footnotes to be used on the Nutrition Facts label, after completing our consumer research in which we tested various footnote text options for the label. We also proposed to establish a Daily Reference Value of 10 percent of total energy intake from added sugars and to require the declaration of the

percent Daily Value for added sugars on the label. The supplemental proposed rule also provided additional rationale for the declaration of the amount of added sugars on the label. We explained that we were taking these actions based, in part, on the science underlying a new report released by the 2015 Dietary Guidelines Advisory Committee.

More recently, in the **Federal Register** of September 10, 2015 (80 FR 54446), we issued a notice clarifying: (1) The consumer studies on the added sugars declaration and the alternative footnote statements in the supplemental proposal relate to topics on which we sought comment and (2) the consumer studies on the format published in a separate notice in July 2015 were included for comment, and were placed in the docket at that time. We also stated that, in response to requests for the raw data for each of these consumer studies that are relevant to the summary memoranda for the studies, we were making the raw data available for comment. We extended the comment period for the two consumer studies pertaining to the proposed changes to the Nutrition Facts label formats (originally scheduled to close on September 25, 2015) to October 13, 2015, to coincide with the end of the comment period for the supplemental proposed rule.

However, on October 13 and 14, 2015, the Federal eRulemaking Portal, <http://www.regulations.gov>, experienced technical difficulties which sometimes prevented the electronic submission of comments. Therefore, we are reopening the comment period for the consumer studies and the supplemental proposal; the reopened comment period will close on October 23, 2015.

Dated: October 15, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015-26636 Filed 10-19-15; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED-2015-OPE-0103]

Negotiated Rulemaking Committee; Negotiator Nominations and Schedule of Committee Meetings—Borrower Defenses

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Intent to establish negotiated rulemaking committee.

SUMMARY: We announce our intention to establish a negotiated rulemaking

committee to prepare proposed regulations for the Federal Student Aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). The committee will include representatives of organizations or groups with interests that are significantly affected by the topics proposed for negotiations. We request nominations for individual negotiators who represent key stakeholder constituencies for the issues to be negotiated to serve on the committee, and we set a schedule for committee meetings.

DATES: We must receive your nominations for negotiators to serve on the committee on or before November 19, 2015. The dates, times, and locations of the committee meetings are set out in the *Schedule for Negotiations* section in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Please send your nominations for negotiators to Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8013, Washington, DC 20006. Telephone: (202) 502-7526 or by email: Wendy.Macias@ed.gov.

FOR FURTHER INFORMATION CONTACT: For information about the content of this notice, including information about the negotiated rulemaking process or the nomination submission process, contact: Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8013, Washington, DC 20006. Telephone: (202) 502-7526 or by email: Wendy.Macias@ed.gov.

For information about negotiated rulemaking in general, see *The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions* at www2.ed.gov/policy/highered/reg/heardrulemaking/hea08/neg-reg-faq.html.

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

SUPPLEMENTARY INFORMATION: On August 20, 2015, we published a notice in the **Federal Register** (80 FR 50588) announcing our intent to establish a negotiated rulemaking committee under section 492 of the HEA to develop proposed regulations for determining which acts or omissions of an institution of higher education (“institution”) a borrower may assert as a defense to repayment of a loan made under the William D. Ford Federal Direct Loan (Federal Direct Loan) Program (“borrower defenses”) and the consequences of such borrower defenses for borrowers, institutions, and the

Secretary. We also announced two public hearings at which interested parties could comment on the topic suggested by the U.S. Department of Education (Department) and suggest additional topics for consideration for action by the negotiated rulemaking committee. Those hearings were held on September 10, 2015, in Washington, DC, and on September 16, 2015, in San Francisco, California. We invited parties to comment and submit topics for consideration in writing as well. Transcripts from the public hearings are available at www2.ed.gov/policy/highered/reg/hearulemaking/2016/index.html. Written comments submitted in response to the August 20, 2015 notice may be viewed through the Federal eRulemaking Portal at www.regulations.gov. Instructions for finding comments are available on the site under “How to Use Regulations.gov” in the Help section. Individuals can enter docket ID ED–2015–OPE–0103 in the search box to locate the appropriate docket.

Regulatory Issues

After considering the information received at the regional hearings and the written comments, we have decided to establish a negotiating committee to address for loans made under the William D. Ford Federal Direct Loan (Federal Direct Loan) Program: (1) The procedures to be used for a borrower to establish a defense to repayment; (2) the criteria that the Department will use to identify acts or omissions of an institution that constitute defenses to repayment of Federal Direct Loans, including the creation of a Federal standard; (3) the standards and procedures that the Department will use to determine the liability of the institution for amounts based on borrower defenses; (4) the effect of borrower defenses on institutional capability assessments, and (5) other loan discharges. In addition, the committee may also consider if and how these issues will affect the Federal Family Education Loan (FFEL) Program.

These topics are tentative. Topics may be added or removed as the process continues.

We intend to select negotiators for the committee who represent the interests significantly affected by the topics proposed for negotiations. In so doing, we will follow the requirement in section 492(b)(1) of the HEA that the individuals selected must have demonstrated expertise or experience in the relevant topics proposed for negotiations. We will also select individual negotiators who reflect the diversity among program participants,

in accordance with section 492(b)(1) of the HEA. Our goal is to establish a committee that will allow significantly affected parties to be represented while keeping the committee size manageable.

We generally select a primary and alternate negotiator for each constituency represented on the committee. The primary negotiator participates for the purpose of determining consensus. The alternate participates for the purpose of determining consensus in the absence of the primary. Either the primary or the alternate may speak during the negotiations.

The committee may create subgroups on particular topics that may involve individuals who are not members of the committee. Individuals who are not selected as members of the committee will be able to observe the committee meetings, will have access to the individuals representing their constituencies, and may be able to participate in informal working groups on various issues between the meetings.

Constituencies: We have identified the following constituencies as having interests that are significantly affected by the topics proposed for negotiations. The Department plans to seat as negotiators individuals from organizations or groups representing these constituencies:

- Students/borrowers.
- Legal assistance organizations that represent students/borrowers.
- Consumer advocacy organizations.
- Groups representing U.S. military servicemember or veteran Federal loan borrowers.
 - Financial aid administrators at postsecondary institutions.
 - State attorneys general and other appropriate State officials.
 - State higher education executive officers.
 - Institutions of higher education eligible to receive Federal assistance under title III, parts A, B, and F, and title V of the HEA, which include Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA.
 - Two-year public institutions of higher education.
 - Four-year public institutions of higher education.
 - Private, nonprofit institutions of higher education.

- Private, for-profit institutions of higher education.
- FFEL Program lenders and loan servicers.

- FFEL Program guaranty agencies and guaranty agency servicers (including collection agencies).

The goal of the committee is to develop proposed regulations that reflect a final consensus of the committee. Consensus means that there is no dissent by any member of the negotiating committee, including the committee member representing the Department. An individual selected as a negotiator will be expected to represent the interests of his or her organization or group and participate in the negotiations in a manner consistent with the goal of developing proposed regulations on which the committee will reach consensus. If consensus is reached, all members of the organization or group represented by a negotiator are bound by the consensus and are prohibited from commenting negatively on the resulting proposed regulations. The Department will not consider any such negative comments on the proposed regulations that are submitted by members of such an organization or group.

Nominations: Nominations should include:

- The name of the nominee, the organization or group the nominee represents, and a description of the interests that the nominee represents.
- Evidence of the nominee’s expertise or experience in the topics proposed for negotiations.
- Evidence of support from individuals or groups within the constituency that the nominee will represent.
- The nominee’s commitment that he or she will actively participate in good faith in the development of the proposed regulations.
- The nominee’s contact information, including address, phone number, and email address.

For a better understanding of the negotiated rulemaking process, nominees should review *The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions* at www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html prior to committing to serve as a negotiator.

Nominees will be notified whether or not they have been selected as negotiators as soon as the Department’s review process is completed.

Schedule for Negotiations

The committee will meet for three sessions on the following dates:

Session 1: January 12–14, 2016

Session 2: February 17–19, 2016

Session 3: March 16–18, 2016

Sessions will run from 9 a.m. to 5 p.m.

The January and February committee meetings will be held at the U.S. Department of Education at: 1990 K Street NW., Eighth Floor Conference Center, Washington, DC 20006.

The March committee meetings will be held at: Union Center Plaza (UCP) Learning Center, 830 First Street NE., Lobby Level, Washington, DC 20002.

The meetings are open to the public.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8013, Washington, DC 20006. Telephone: (202) 502–7526 or by email: Wendy.Macias@ed.gov.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. 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 Adobe 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.

Delegation of Authority: The Secretary of Education has delegated authority to Jamiene S. Studley, Deputy Under Secretary, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Program Authority: 20 U.S.C. 1098a.

Dated: October 15, 2015.

Jamiene S. Studley,

Deputy Under Secretary.

[FR Doc. 2015–26626 Filed 10–19–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AP37

Removing Net Worth Requirement From Health Care Enrollment

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes to remove the regulatory provision regarding consideration by the Department of Veterans Affairs (VA) of the net worth of a veteran's assets as a factor in determining the veteran's eligibility for lower-cost VA health care. Prior to January 1, 2015, VA considered both the net worth of a veteran's assets and the veteran's annual income when determining a veteran's eligibility. Because of that, certain veterans who would have been eligible for VA health care based on their annual income alone were ineligible for care because the net value of their assets was too high, or they were placed in a less favorable eligibility category. Reporting asset information imposed a significant paperwork burden on veterans, and VA dedicated significant administrative resources to verifying reported information. VA changed its policy to improve access to health care to lower-income veterans and remove the reporting burden from veterans by discontinuing collection of asset information. This rulemaking would amend the regulation to remove the reference to VA's discretionary statutory authority to consider net worth.

DATES: *Comment Date:* Comments must be received on or before December 21, 2015.

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to “RIN 2900–AP37—Removing Net Worth Requirement from Health Care Enrollment.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be

viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Kristin J. Cunningham, Director, Business Policy, Chief Business Office, (10NB6), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; (202) 382–2508. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This rulemaking proposes to amend VA's regulations governing enrollment in the VA health care system by removing the regulatory provision restating VA's discretionary authority to consider the net worth of a veteran's assets when determining eligibility for lower-cost health care.

Pursuant to 38 U.S.C. 1705, VA has established a health care enrollment system with implementing regulations at 38 CFR 17.36. When veterans apply for health care benefits, VA assigns a priority category that reflects the basis for that veteran's eligibility, such as whether the veteran has been rated as having a service-connected disability or would be unable to defray the costs of necessary expenses because of low income. The veteran is placed in the highest priority category possible. These categories are described in § 17.36(b). Priority categories are used by VA to determine which veterans are eligible to enroll in the VA health care system, which VA does on an annual basis, in accordance with § 17.36(c). The priority category is also used to determine the amount of copayments veterans must pay to receive VA medical benefits. Veterans who are not eligible for enrollment in priority categories 1 through 4 but who are unable to defray the expenses of necessary care under 38 U.S.C. 1722(a) are placed in priority category 5. 38 CFR 17.36(b)(5). This rulemaking would affect a regulatory provision related to that category. Veterans are considered to be unable to defray the costs of necessary care if they have a low annual income, qualify for VA pension benefits, or meet other criteria under 38 U.S.C. 1722(a) and 38 CFR 17.47(d). VA has the authority to use net worth asset values to determine whether a veteran is unable to defray the cost of care at 38 U.S.C. 1722(d)(1), but this authority is not mandatory; *i.e.*, VA is not required to consider the value of the estate of a veteran for this purpose. 38 U.S.C. 1722(d)(1) (“Notwithstanding the attributable income of a veteran,” VA may determine that such veteran is not eligible “if the corpus of the estate of the veteran is such that under all the circumstances it is reasonable that some

part of the corpus of the estate of the veteran be consumed for the veteran's maintenance").

In 2013, VA informed the public of its intent to discontinue annual financial assessment reporting by veterans. 78 FR 64065 (Oct. 25, 2013), 78 FR 79564 (Dec. 30, 2013). VA notified the public that it would no longer request annual financial assessments from veterans enrolled in income-based priority categories, and would only request financial assessments for the initial health care enrollment process. Because we received no adverse responses to those notices and for the reasons that follow, as VA announced in March 2015, VA used its discretion under 38 U.S.C. 1722(d)(1) to cease consideration of the net worth of veterans' assets to determine whether they are able to defray the expenses of necessary care and qualify for inclusion in priority category 5, effective January 1, 2015. To avoid potential confusion, this rulemaking would remove the regulatory provision referencing VA's discretionary authority to consider net worth for purposes of priority category 5.

By eliminating consideration of the net worth of a veteran's assets for purposes of health care enrollment, more veterans would qualify for VA health care in a higher priority category, improving access and affordability of health care for many lower-income veterans. VA estimates that in the first year of implementation of this policy, 53,000 veterans would be moved to category 5 from a lower priority category and would be able to make lower copayments for VA care. Over five years, VA expects that 135,000 veterans who previously were ineligible would be able to enroll in the VA health care system because of this change. This change also reduces administrative burdens for veterans and VA. The burden on veterans to supply asset information to VA on an annual basis was considerable. In contrast, the burden is much lower for veterans to provide only an initial report of annual income during the enrollment process and future verification only in those cases where VA identifies a change to the veteran's income that would result in a change to the veteran's priority group status. In past years, VA had expended significant resources on verifying the reported figures because asset values are subjective and difficult to verify. Through established practices with the Internal Revenue Service and Social Security Administration, VA can verify veterans' reported annual income far more efficiently than reported assets. Therefore, this policy has eliminated the

significant burden on veterans to report the worth of their assets, and also eliminated the need for VA to use resources to verify that information.

In light of the preceding discussion, we propose to remove § 17.47(d)(5) in its entirety and renumber current § 17.47(d)(6) as § 17.47(d)(5). Current paragraph (d)(5) restates VA's discretionary statutory authority to use the value of a veteran's estate to determine whether he is able to defray the costs of care. By removing the regulatory restatement of VA's discretionary statutory authority to consider a veteran's net worth, VA removes language in the regulation that could be perceived as inconsistent with the policy change, which is favorable to veterans.

Effect of Rulemaking

The Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, represents the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All existing or subsequent VA guidance would be read to conform with this rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

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

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of

quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action," requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

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

Unfunded Mandates

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care;

64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Nabors II, Chief of Staff, Department of Veterans Affairs, approved this document on October 9, 2015, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Dated: October 15, 2015,

William F. Russo,

Director, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 17 as follows:

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501, and as noted in specific sections.

§ 17.47 [Amended]

■ 2. Amend § 17.47 by removing paragraph (d)(5) and redesignating paragraph (d)(6) as new paragraph (d)(5).

[FR Doc. 2015–26606 Filed 10–19–15; 8:45 am]

BILLING CODE 8320–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2016–1; Order No. 2752]

Periodic Reporting

AGENCY: Postal Regulatory Commission.
ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is noticing a recent Postal Service filing requesting that the Commission initiate an informal rulemaking proceeding to consider a proposed change to analytical principles relating to periodic reports (Proposal Eleven). This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 24, 2015. *Reply Comments are due:* December 7, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Summary of Proposal
- III. Initial Commission Action
- IV. Ordering Paragraphs

I. Introduction

On October 7, 2015, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate an informal rulemaking proceeding to consider a proposed change in analytical principles relating to periodic reports.¹ A description of Proposal Eleven is attached to the Petition. *Id.* at 1. The Petition seeks a change in the statistical point and variance estimation methodology for the Origin-Destination Information System—revenue, pieces, and weight (ODIS–RPW) system² estimates used in the “Revenue, Pieces and Weight By

¹Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider a Proposed Change in Analytical Principles (Proposal Eleven), October 7, 2015 (Petition).

²“The ODIS–RPW system is a probability-based destinating mail sampling system used to support the Postal Service's many and varied business needs for mail revenue and volume information. ODIS–RPW primarily supplies official RPW estimates of revenue, volume and weight for single-piece stamped and metered indicia mail.” Petition at 4.

Class and Special Services (RPW) report relating to letter and card mailpieces that will be sampled digitally.” Petition at 3.

II. Summary of Proposal

Under Proposal Eleven, beginning Q2 FY2016 (January 1, 2016), the Postal Service seeks to replace the direct expansion estimator for the population of digitally sampled First-Class letter and card mail,³ within ODIS–RPW, with a ratio estimator that utilizes national End-of-Run machine counts. Petition at 1–2. “The digital letter mail estimates utilizing the ratio estimator applied to the digital letter mail sampling frame would be combined with direct expansion estimates from the non-digital sampling frame.” *Id.* at 2. The Postal Service contends the proposed ratio estimator for the letter mail digital sampling frame mathematically outperforms the direct expansion estimator for First-Class Mail single-piece volume and revenue. *Id.*

The Postal Service plans to implement the change described in Proposal Eleven on January 1, 2016. *Id.* at 3. The Postal Service asserts that the proposed estimation methodology of the ratio estimator is an improvement over the direct expansion estimator and will improve the product estimates used for RPW by reducing bias and significantly lowering the calculated coefficient of variation for the same sample size. *Id.* The Postal Service states that “[t]he only significant category affected is First-Class Mail single piece letters and cards.” *Id.* at 4.

III. Initial Commission Action

The Commission establishes Docket No. RM2016–1 for consideration of matters raised by the Petition. Additional information concerning the Petition may be accessed via the Commission's Web site at <http://www.prc.gov>. Interested persons may submit comments on the Petition and Proposal Eleven no later than November 24, 2015. Reply comments are due no later than December 7, 2015. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is designated as an officer of the Commission to represent the interests of the general public (Public Representative) in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2016–1 for consideration of the

³Docket No. RM2015–11, Order on Analytical Principles Used in Periodic Reporting (Proposal Three) September 30, 2015 (Order No. 2739).

matters raised by the Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider a Proposed Change in Analytical Principles (Proposal Eleven), filed October 7, 2015.

2. Comments are due no later than November 24, 2015. Reply comments are due no later than December 7, 2015.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,
Acting Secretary.

[FR Doc. 2015-26549 Filed 10-19-15; 8:45 am]

BILLING CODE 7710-FW-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2014-0657; FRL-9935-62-Region 5]

Air Plan Approval; Michigan; 2006 PM_{2.5} and 2008 Lead NAAQS State Board Infrastructure SIP Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of state implementation plan submissions from Michigan regarding state board requirements of section 110 of the Clean Air Act (CAA) for the 2006 fine particulate matter (PM_{2.5}) and 2008 lead National Ambient Air Quality Standards. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before November 19, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2014-0657, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *Email*: aburano.douglas@epa.gov.

3. *Fax*: (312) 408-2279.

4. *Mail*: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery*: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT:

Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-9401, arra.sarah@epa.gov.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, we will withdraw the direct final rule and will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: October 5, 2015.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2015-26310 Filed 10-19-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2013-0614; FRL-9935-52-Region 6]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County; Revisions to State Boards and Conflict of Interest Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Albuquerque/Bernalillo County, New Mexico State Implementation Plan for state board composition and conflict of interest provisions. These revisions add administrative updates and clarifying changes to the state board and conflict of interest provisions in the city and county ordinances for the Albuquerque/Bernalillo County Air Quality Control Board. The EPA is proposing to approve these revisions pursuant to sections 110 and 128 of the Clean Air Act (CAA).

DATES: Written comments should be received on or before November 18, 2015.

ADDRESSES: Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. John Walser, (214) 665-7128, walser.john@epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct rule without prior proposal because the Agency views this as noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action no further activity is contemplated. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any

parties interested in commenting on this action should do so at this time.

We are also proposing to approve a ministerial change to the Code of Federal Regulations (CFR) at 40 CFR 52.1620(e). The entry titled “City of Albuquerque request for redesignation” was mistakenly placed in the first table of 40 CFR 52.1620(e) under the heading “EPA Approved city of Albuquerque and Bernalillo County Ordinances for State Board Composition and Conflict of Interest Provisions” and belongs in the second table of 40 CFR 52.1620(e) under the heading “EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP.”

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: September 30, 2015.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2015-26303 Filed 10-19-15; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS-3321-NC2]

Medicare Program; Request for Information Regarding Implementation of the Merit Based Incentive Payment System, Promotion of Alternative Payment Models, and Incentive Payments for Participation in Eligible Alternative Payment Models

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Request for information; extension of comment period.

SUMMARY: This document extends the comment period for the October 1, 2015 document entitled “Request for Information Regarding Implementation of the Merit-based Incentive Payment System, Promotion of Alternative Payment Models, and Incentive Payments for Participation in Eligible Alternative Payment Models” (80 FR 59102, referred to in this document as “the October 1 RFI”). The comment period for the October 1 RFI, which would have ended on November 2, 2015, is extended for an additional 15 days. This document also advises the public and stakeholders of CMS priorities for the information sought in the October 1 RFI, and suggests that

commenters may choose to focus their attention and comments accordingly.

DATES: The comment period for the October 1, 2015 RFI (80 FR 59102) is extended to November 17, 2015. To be assured consideration, written or electronic comments on the October 1, 2015 RFI must be received at one of the addresses provided below no later than November 17, 2015.

ADDRESSES: In commenting on the October 1, 2015 RFI, please refer either to file code CMS-3321-NC and comment as indicated in that document (80 FR 59102) or refer to file code CMS-3321-NC2 and comment as provided here. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four 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-3321-NC2, P.O. Box 8016, Baltimore, MD 21244-8016.

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-3321-NC2, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid

Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786-9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments. Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

FOR FURTHER INFORMATION CONTACT:

Molly MacHarris, (410) 786-4461.

Alison Falb, (410) 786-1169.

SUPPLEMENTARY INFORMATION: On October 1, 2015, we published a request for information in the **Federal Register** (80 FR 59102) entitled, “Request for Information Regarding Implementation of the Merit-based Incentive Payment System, Promotion of Alternative Payment Models, and Incentive Payments for Participation in Eligible Alternative Payment Models” (referred to in this document as “the October 1 RFI”). Section 101 of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) repeals the Medicare sustainable growth rate (SGR) methodology for updates to the physician fee schedule (PFS) and replaces it with a new Merit-based Incentive Payment System (MIPS) for MIPS eligible professionals (MIPS EPs) under the PFS. Section 101 of the MACRA (Pub. L. 114-10, enacted April 16, 2015) sunsets payment adjustments under the current Physician Quality Reporting System (PQRS), the Value-Based Payment Modifier (VM), and the Electronic Health Records (EHR)

Incentive Program. It also consolidates aspects of the PQRS, VM, and EHR Incentive Program into the new MIPS. Additionally, section 101 of the MACRA promotes the development of Alternative Payment Models (APMs) by providing incentive payments for certain eligible professionals (EPs) who participate in APMs, by exempting EPs from the MIPS if they are qualifying APM participants, and by encouraging the creation of physician-focused payment models (PFPMs). In the request for information, we seek public and stakeholder input to inform the implementation of these provisions.

We have received inquiries from national organizations regarding the 30-day comment period we provided for the October 1 RFI. The organizations stated that they need additional time to respond as a result of the number and depth of questions posed in the October 1 RFI. Since we requested the public to comment on various aspects of MIPS and APMs, we believe that it is important to allow ample time for the public to prepare comments regarding the October 1 RFI. Therefore, we have decided to extend the comment period for an additional 15 days. This document announces the extension of the public comment period to November 17, 2015.

While we continue to welcome comments on all questions asked in the October 1 RFI, we suggest that the public and stakeholders may choose to focus their attention on issues that are a higher priority for CMS. To assist commenters in considering and formulating their comments on the October 1 RFI, we identify the following sections and questions, which we have categorized in descending order of priority for CMS.

- For Section II, Subsection A (The Merit-Based Incentive Program System (MIPS)) of the request for information, each component (sub-subsection) under Subsection A has been prioritized by the following categories, in which all questions listed in the October 1 RFI that are within each component correspond to the specified priority category.

- Priority Category One:
 - Sub-Subsection 1 (MIPS EP Identifier and Exclusions)
 - Sub-Subsection 3 (Quality Performance Category)
 - Sub-Subsection 4 (Resource Use Performance Category)
 - Sub-Subsection 5 (Clinical Practice Improvement Activities Performance Category)
 - Sub-Subsection 6 (Meaningful Use of Certified EHR Technology Performance Category)

- Priority Category Two:
 - Sub-Subsection 2 (Virtual Groups)
 - Sub-Subsection 8 (Development of Performance Standards)
 - Sub-Subsection 12 (Feedback Reports)
- Priority Category Three:
 - Sub-Subsection 7 (Other Measures)
 - Sub-Subsection 9 (Flexibility in Weighting Performance Categories)
 - Sub-Subsection 10 (MIPS Composite Performance Score and Performance Threshold)
 - Sub-Subsection 11 (Public Reporting)
 - For Section II, Subsection B (Alternative Payment Models) of the October 1 RFI, the following questions have been prioritized.
 - Priority Category:
 - How should CMS define “services furnished under this part through an EAPM entity”?
 - What types of data and information can EPs submit to CMS for purposes of determining whether they meet the non-Medicare share of the Combination All-Payer and Medicare Payment Threshold, and how can they be securely shared with the federal government?
 - What criteria could the Secretary consider for determining comparability of state Medicaid medical home models to medical home models expanded under section 1115A(c) of the Act?
 - Which states’ Medicaid medical home models might meet criteria comparable to medical homes expanded under section 1115A(c) of the Act?
 - How should CMS define “use” of certified EHR technology as defined in section 1848(o)(4) of the Act by participants in an APM? For example, should the APM require participants to report quality measures to all payers using certified EHR technology or only payers who require EHR reported measures? Should all professionals in the APM in which an EAPM entity participates be required to use certified EHR technology or a particular subset?
 - What criteria should be used by the Physician-focused Payment Model Technical Advisory Committee for assessing PFPM proposals submitted by stakeholders? We are interested in hearing suggestions related to the criteria discussed in this RFI as well as other criteria.
 - What are examples of methodologies for attributing and counting patients in lieu of using payments to determine whether an EP is a qualifying APM participant (QP) or partial QP?
 - What is the appropriate type or types of “financial risk” under section

1833(z)(3)(D)(ii)(I) of the Act to be considered an eligible APM (EAPM) entity?

- What is the appropriate level of financial risk “in excess of a nominal amount” under section 1833(z)(3)(D)(ii)(I) of the Act to be considered an EAPM entity?
- What criteria could be considered when determining “comparability” to MIPS of quality measures used to identify an EAPM entity? Please provide specific examples for measures, measure types (for example, structure, process, outcome, and other types), data source for measures (for example, patients/caregivers, medical records, billing claims, etc.), measure domains, standards, and comparable methodology.

Dated: October 14, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2015–26568 Filed 10–15–15; 4:15 pm]

BILLING CODE 4120-01-P

GENERAL SERVICES ADMINISTRATION

DEPARTMENT OF DEFENSE

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 53

[FAR Case 2015–025; Docket No. 2015–0025; Sequence No. 1]

RIN 9000–AN11

Federal Acquisition Regulation: Revision to Standard Forms for Bonds

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to revise Standard Forms prescribed by the Federal Acquisition Regulation (FAR) for contracts involving bonds and other financial protections. The revisions are aimed at clarifying liability limitations and expanding the options for organization types.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before December 21, 2015 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2015–025 by any of the following methods:

• *Regulations.gov*: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FAR Case 2015–025”. Select the link “Comment Now” that corresponds with “FAR Case 2015–025”. Follow the instructions provided on the screen. Please include your name, company name (if any), and “FAR Case 2015–025” on your attached document.

• *Mail*: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001.

Instructions: Please submit comments only and cite FAR Case 2015–025, Revision to Standard Forms for Bonds in all correspondence related to this case. 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. Kathlyn J. Hopkins, Procurement Analyst, at 202–969–7226 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAR Case 2015–025.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to revise the FAR to clarify liability limitations and to expand the options for organization types on Standard Forms (SFs) 24, 25, 25A, 34, and 35. This case addresses concerns of surety bond producers that may be adversely affected by differing Federal Agency views on the proper type of organization to indicate on these Standard Forms when a business is a limited liability company (LLC), which is an increasingly prevalent form of business in the construction industry. In some cases, companies are being told to leave the “Type of Organization” block blank because there is no good fit; in other cases, they select the closest fit and are challenged on that selection. To address these concerns, this rule proposes to add a box labelled “Other: (Specify)” to the “Type of Organization” block on each of the five forms (SFs 24, 25, 25A, 34, and 35) in order to expand the range of business types to include LLCs and others, as they evolve.

In addition, there have been questions about the appropriate value to report in the “Liability Limit” block on these standard forms (*i.e.*, whether to cite the Surety Company’s T-limit, as established by the Treasury Department, or the penalty limit for a given bond (its face value)); this has caused processing delays and even some rejections of bids. To address this concern, this rule proposes to add clarifying instructions to each of the forms (SFs 24, 25, 25A, 34, and 35) that amplify the fact that the typical value put into the “Liability Limit” block is the face value of the bond, unless a co-surety arrangement is proposed. These instructions are inserted into item (4) of the SF 24 and into item (3) of SFs 25, 25A, 34, and 35, along with some editorial corrections to the existing instructions.

II. 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.

III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.*, because the rule simply provides additional choices for offerors in characterizing their organization types on SFs 24, 25, 25A, 34, and 35, as well as clarifying what offerors should specify in terms of liability limits. However, an initial regulatory flexibility analysis (IRFA) has been prepared consistent with 5 U.S.C. 603. The analysis is summarized as follows:

The reason for this action is to provide more choices for organization types on five Standard Forms and to clarify instructions; the action’s objective is to make the forms more reflective of current forms of business in the construction industry. The proposed rule would apply to all entities, both small and other than small, performing as

contractors or subcontractors on U.S. Government contracts that require bonds and other financial protections. The Federal Procurement Data System-Next Generation (FPDS–NG) indicates that the U.S. Government awarded 3,495 new construction contracts that required bonds and other financial protections from October 1, 2014 through August 4, 2015. Approximately 78 percent (2,711) of the total awards (3,495) were awarded to small entities (comprised of 1,687 unique small entities). However, the small entities will not be materially affected by this rule, as it simply allows all businesses to choose from a broader array of organization types.

There are no reporting or recordkeeping requirements associated with this rule.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There were no significant alternatives identified that would meet the objective of the rule.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat, DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2015–025), in correspondence.

IV. Paperwork Reduction Act

This rule affects the information collection requirements in the provisions at FAR 28.1 and 28.2; 52.228–1; 52.228–2; 52.228–13, 52.228–15; and 52.228–16, currently approved under OMB Control Number 9000–0045, titled: Bid Guarantees, Performance, and Payments Bonds, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible, because this rule simply provides additional choices for offerors in characterizing their organization types on SFs 24, 25, 25A, 34, and 35, as well as clarifying what offerors should specify in terms of liability limits.

List of Subjects in 48 CFR Part 53

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 proposes to amend 48 CFR part 53 as set forth below:

PART 53—FORMS

■ 1. The authority citation for 48 CFR part 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 53.228 by revising the introductory text and paragraphs (a) through (g) to read as follows:

53.228 Bonds and insurance.

The following standard forms are prescribed for use for bond and insurance requirements, as specified in part 28 of this chapter:

(a) SF 24 (Rev. (Date)) Bid Bond. (See 28.106–1.) SF 24 is authorized for local reproduction and can be found in the GSA Forms Library at *gsa.gov/forms*.

(b) SF 25 (Rev. (Date)) Performance Bond. (See 28.106–1(b).) SF 25 is authorized for local reproduction and can be found in the GSA Forms Library at *gsa.gov/forms*.

(c) SF 25–A (Rev. (Date)) Payment Bond. (See 28.106–1(c).) SF 25–A is authorized for local reproduction and can be found in the GSA Forms Library at *gsa.gov/forms*.

(d) SF 25–B (Rev. 10/83), Continuation Sheet (For Standard Forms 24, 25, and 25–A). (See 28.106–1(d).) This form can be found in the GSA Forms Library at *gsa.gov/forms*.

(e) SF 28 (Rev. 6/03) Affidavit of Individual Surety. (See 28.106–1(e) and 28.203(b).) SF 28 is authorized for local

reproduction and can be found in the GSA Forms Library at *gsa.gov/forms*.

(f) SF 34 (Rev. (Date)), Annual Bid Bond. (See 28.106–1(f).) SF 34 is authorized for local reproduction and can be found in the GSA Forms Library at *gsa.gov/forms*.

(g) SF 35 (Rev. (Date)), Annual Performance Bond. (See 28.106–1.) SF 35 is authorized for local reproduction and can be found in the GSA Forms Library at *gsa.gov/forms*.

* * * * *

■ 3. Revise section 53.301–24 to read as follows:

53.301–24 Bid Bond.

BILLING CODE 6820–EP–P

BID BOND <i>(See instructions on reverse)</i>	DATE BOND EXECUTED <i>(Must not be later than bid opening date)</i>	OMB Control Number: 9000-0045 Expiration Date: DATE
<small>Paperwork Reduction Act Statement - This information collection meets the requirements of 44 USC § 3607, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 9000-0045. We estimate that it will take 25 minutes to read the instructions, gather the facts, and answer the questions. Send only comments relating to our time estimate, including suggestions for reducing this burden, or any other aspects of this collection of information to: General Services Administration, Regulatory Secretariat Division (M1V1CB), 1800 F Street, NW, Washington, DC 20405.</small>		
PRINCIPAL <i>(Legal name and business address)</i>		TYPE OF ORGANIZATION <i>("X" one)</i> <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION <input type="checkbox"/> OTHER <i>(Specify)</i> STATE OF INCORPORATION
SURETY(IES) <i>(Name and business address)</i>		

PENAL SUM OF BOND				BID IDENTIFICATION	
PERCENT OF BID PRICE	AMOUNT NOT TO EXCEED			BID DATE	INVITATION NUMBER
	MILLION(S)	THOUSAND(S)	HUNDRED(S)		
FOR <i>(Construction, Supplies or Services)</i>					

OBLIGATION:

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has submitted the bid identified above.

THEREFORE:

The above obligation is void if the Principal - (a) upon acceptance by the Government of the bid identified above, within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of the forms by the principal; or (b) in the event of failure to execute such further contractual documents and give such bonds, pays the Government for any cost of procuring the work which exceeds the amount of the bid.

Each Surety executing this instrument agrees that its obligation is not impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the Government. Notice to the surety(ies) of extension(s) is waived. However, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.

WITNESS:

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

PRINCIPAL					
SIGNATURE(S)	1.	2.	3.	Corporate Seal	
		(Seal)	(Seal)			(Seal)
NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.	3.		
INDIVIDUAL SURETY(IES)					
SIGNATURE(S)	1.	2.	(Seal)		
NAME(S) <i>(Typed)</i>	1.	2.			
CORPORATE SURETY(IES)					
SURETY A	NAME & ADDRESS			STATE OF INCORPORATION	LIABILITY LIMIT (\$)
	SIGNATURE(S)	1.	2.	Corporate Seal	
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		

SURETY B	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		

INSTRUCTIONS

1. This form is authorized for use when a bid guaranty is required. Any deviation from this form will require the written approval of the Administrator of General Services.
2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
3. The bond may express penal sum as a percentage of the bid price. In these cases, the bond may state a maximum dollar limitation (e.g., 20% of the bid price but the amount not to exceed _____ dollars).
4. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitations listed therein. The value put into the LIABILITY LIMIT block is the penal sum (i.e., the face value) of the bond, unless a co-surety arrangement is proposed.
 (b) When multiple corporate sureties are involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identifier corresponding to each of the sureties. Moreover, when co-surety arrangements exist, the parties may allocate their respective limitations of liability under the bond, provided that the sum total of their liability equals 100% of the bond penal sum.
 (c) When individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.
5. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
6. Type the name and title of each person signing this bond in the space provided.
7. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

■ 4. Revise section 53.301–25 to read as **53.301–25 Performance Bond.**
 follows:

PERFORMANCE BOND <i>(See instructions on reverse)</i>	DATE BOND EXECUTED <i>(Must be same or later than date of contract)</i>	OMB Control Number: 9000-0045 Expiration Date: DATE	
<small>Paperwork Reduction Act Statement - This information collection meets the requirements of 44 USC § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 9000-0045. We estimate that it will take 60 minutes to read the instructions, gather the facts, and answer the questions. Send only comments relating to our time estimate, including suggestions for reducing this burden, or any other aspects of this collection of information to: General Services Administration, Regulatory Secretariat Division (M/TVCB), 1600 F Street, NW, Washington, DC 20405.</small>			
PRINCIPAL <i>(Legal name and business address)</i>	TYPE OF ORGANIZATION <i>(“X” one)</i> <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION <input type="checkbox"/> OTHER <i>(Specify)</i>		
	STATE OF INCORPORATION		
SURETY(IES) <i>(Name(s) and business address(es))</i>	PENAL SUM OF BOND		
	MILLION(S)	THOUSAND(S)	
	HUNDRED(S)	CENTS	
	CONTRACT DATE	CONTRACT NUMBER	
OBLIGATION: We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.			
CONDITIONS: The Principal has entered into the contract identified above.			
THEREFORE: The above obligation is void if the Principal-			
(a)(1) Performs and fulfills all the understanding, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice of the Surety(ies) and during the life of any guaranty required under the contract, and			
(2) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notices of those modifications to the Surety(ies) are waived.			
(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to 41 USC Chapter 31, Subchapter III, Bonds, which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contract with respect to which this bond is furnished.			
WITNESS: The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.			
PRINCIPAL			
SIGNATURE(S)	1. _____ <i>(Seal)</i>	2. _____ <i>(Seal)</i>	
	3. _____ <i>(Seal)</i>	Corporate Seal	
NAME(S) & TITLE(S) <i>(Typed)</i>	1. _____	2. _____	
	3. _____		
INDIVIDUAL SURETY(IES)			
SIGNATURE(S)	1. _____ <i>(Seal)</i>	2. _____ <i>(Seal)</i>	
NAME(S) <i>(Typed)</i>	1. _____	2. _____	
CORPORATE SURETY(IES)			
SURETY A	NAME & ADDRESS	STATE OF INCORPORATION	LIABILITY LIMIT (\$)
	SIGNATURE(S)	1. _____ <i>(Seal)</i>	2. _____ <i>(Seal)</i>
	NAME(S) & TITLE(S) <i>(Typed)</i>	1. _____	2. _____
			Corporate Seal

CORPORATE SURETY(IES) (Continued)					
SURETY B	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

BOND PREMIUM	▶	RATE PER THOUSAND (\$)	TOTAL (\$)
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INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.
2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitations listed therein. The value put into the LIABILITY LIMIT block is the penal sum (i.e., the face value) of bonds, unless a co-surety arrangement is proposed.
 (b) When multiple corporate sureties are involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identifier corresponding to each of the sureties. Moreover, when co-surety arrangements exist, the parties may allocate their respective limitations of liability under the bonds, provided that the sum total of their liability equals 100% of the bond penal sum.
 (c) When individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety shall accompany the bond. The government may require the surety to furnish additional substantiating information concerning its financial capability.
4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the words "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
5. Type the name and title of each person signing this bond in the space provided.

■ 5. Revise section 53.301–25A to read **53.301–25A Payment Bond.**
as follows:

PAYMENT BOND <i>(See instructions on reverse)</i>	<small>DATE BOND EXECUTED (Must be same or later than date of contract)</small>	OMB Control Number: 9000-0045 Expiration Date: DATE
<small>Paperwork Reduction Act Statement: This information collection meets the requirements of 44 USC § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 9000-0045. We estimate that it will take 60 minutes to read the instructions, gather the facts, and answer the questions. Send only comments relating to our time estimate, including suggestions for reducing this burden, or any other aspects of this collection of information to: General Services Administration, Regulatory Secretariat Division (M1V1CB), 1800 F Street, NW, Washington, DC 20405.</small>		
<small>PRINCIPAL (Legal name and business address)</small>	<small>TYPE OF ORGANIZATION ("X" one)</small> <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION <input type="checkbox"/> OTHER (Specify)	
	<small>STATE OF INCORPORATION</small>	
<small>SURETY(IES) (Name(s) and business address(es))</small>	<small>PENAL SUM OF BOND</small>	
	<small>MILLION(S)</small>	<small>THOUSAND(S)</small>
	<small>HUNDRED(S)</small>	<small>CENTS</small>
	<small>CONTRACT DATE</small>	<small>CONTRACT NUMBER</small>

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

WITNESS:

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

PRINCIPAL				
<small>SIGNATURE(S)</small>	1.	2.	3.	Corporate Seal
	<small>(Seal)</small>	<small>(Seal)</small>	<small>(Seal)</small>	
<small>NAME(S) & TITLE(S) (Typed)</small>	1.	2.	3.	
INDIVIDUAL SURETY(IES)				
<small>SIGNATURE(S)</small>	1.	2.		<small>(Seal)</small>
		<small>(Seal)</small>		
<small>NAME(S) (Typed)</small>	1.	2.		
CORPORATE SURETY(IES)				
<small>SURETY A</small>	<small>NAME & ADDRESS</small>		<small>STATE OF INCORPORATION</small>	<small>LIABILITY LIMIT \$</small>
	<small>SIGNATURE(S)</small>	1.	2.	Corporate Seal
	<small>NAME(S) & TITLE(S) (Typed)</small>	1.	2.	

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STANDARD FORM 25A (REV. DATE)
Prescribed by GSA-FAR (48 CFR) 53.2228(c)

CORPORATE SURETY(IES) (Continued)					
SURETY B	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

INSTRUCTIONS

- This form, for the protection of persons supplying labor and material, is used when a payment bond is required under 40 USC Chapter 31, Subchapter III, Bonds. Any deviation from this form will require the written approval of the Administrator of General Services.
- Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
- (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitations listed therein. The value put into the LIABILITY LIMIT block is the penal sum (i.e., the face value) of the bond, unless a co-surety arrangement is proposed.

(b) When multiple corporate sureties are involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identifier corresponding to each of the sureties. Moreover, when co-surety arrangements exist, the parties may allocate their respective limitations of liability under the bonds, provided that the sum total of their liability equals 100% of the bond penal sum.

(c) When individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.
- Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the words "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
- Type the name and title of each person signing this bond in the space provided.

- 6. Revise section 53.301–34 to read as **53.301–34 Annual Bid Bond.** follows:

ANNUAL BID BOND <i>(See instructions on reverse)</i>	DATE BOND EXECUTED	OMB Control Number: 9000-0045 Expiration Date: DATE								
<small>Paperwork Reduction Act Statement - This information collection meets the requirements of 44 USC § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 9000-0045. We estimate that it will take 80 minutes to read the instructions, gather the facts, and answer the questions. Send only comments relating to our time estimate, including suggestions for reducing this burden, or any other aspects of this collection of information to: General Services Administration, Regulatory Secretariat Division (M1V1CB), 1800 F Street, NW, Washington, DC 20405.</small>										
PRINCIPAL <i>(Legal name and business address)</i>	TYPE OF ORGANIZATION ("X" one) <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION <input type="checkbox"/> OTHER <i>(Specify)</i>									
SURETY(IES) <i>(Name, business address, and state of incorporation)</i>	STATE OF INCORPORATION									
AGENCY TO WHICH BIDS ARE TO BE SUBMITTED	PENAL SUM OF BOND <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:25%;">MILLION(S)</td> <td style="width:25%;">THOUSAND(S)</td> <td style="width:25%;">HUNDRED(S)</td> <td style="width:25%;">CENTS</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table> BIDS TO BE SUBMITTED DURING FISCAL YEAR ENDING September 30, 20: _____		MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS				
MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS							

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the penal sum or sums that is sufficient to indemnify the Government in case of the default of the Principal as provided herein. For payment of the penal sum or sums, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally.

CONDITIONS:

The Principal contemplates submitting bids from time to time during the fiscal year shown above to the department or agency named above for furnishing supplies or services to the Government. The Principal desires that all of those bids submitted for opening during the fiscal year be covered by a single bond instead of by a separate bid bond for each bid.

THEREFORE:

The above obligation is void and of no effect if the Principal - (a) upon acceptance by the Government of any such bid within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of forms by the Principal; or (b) in the event of failure to execute the further contractual documents and give the bond(s), pays the Government for any cost of acquiring the work which exceeds the amount of the bid.

WITNESS:

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

SIGNATURES	NAMES AND TITLES <i>(Typed)</i>
PRINCIPAL	
1. _____ (Seal)	1. _____ Corporate Seal
2. _____ (Seal)	2. _____
3. _____ (Seal)	3. _____
INDIVIDUAL SURETIES	
1. _____ (Seal)	1. _____
2. _____ (Seal)	2. _____
CORPORATE SURETY	
1. _____	1. _____ Corporate Seal
2. _____	2. _____ Seal

INSTRUCTIONS

1. This form is authorized for use in the acquisition of supplies and services, excluding construction, in lieu of Standard Form 24 (Bid Bond). Any deviation from this form will require the written approval of the Administrator of General Services.
2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitations listed therein. The value put into the LIABILITY LIMIT block is the penal sum (i.e., the face value) of the bond, unless a co-surety arrangement is proposed.

(b) Where multiple corporate sureties are involved, their names and addresses shall appear in the spaces (Surety 1, Surety 2, etc.) headed "CORPORATE SURETY." In the space designated "SURETY(IES)" on the face of the form, insert only the numeric identifier corresponding to each of the sureties. Moreover, when co-surety arrangements exist, the parties may allocate their respective limitations of liability under the bonds, provided that the sum of their total liability equals 100% of the bond penal sum.

(c) When individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.
4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
5. Type the name and title of each person signing this bond in the space provided.
6. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

■ 7. Revise section 53.301–35 to read as **53.301–35 Annual Performance Bond.** follows:

ANNUAL PERFORMANCE BOND <i>(See instructions on reverse)</i>	DATE BOND EXECUTED:	OMB Control Number: 9000-0045 Expiration Date: DATE								
Paperwork Reduction Act Statement - This information collection meets the requirements of 44 USC § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 9000-0045. We estimate that it will take 25 minutes to read the instructions, gather the facts, and answer the questions. Send only comments relating to our time estimate, including suggestions for reducing this burden, or any other aspects of this collection of information to: General Services Administration, Regulatory Secretariat Division (M1V1CB), 1800 F Street, NW, Washington, DC 20405.										
PRINCIPAL <i>(Legal name and business address)</i>	TYPE OF ORGANIZATION <i>(Check one)</i> <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION <input type="checkbox"/> OTHER <i>(Specify)</i>									
	STATE OF INCORPORATION									
SURETY(IES) <i>(Name(s) and business address(es))</i>	PENAL SUM OF BOND <table border="1" style="width:100%; border-collapse: collapse; font-size: x-small;"> <tr> <th style="width:25%;">MILLION(S)</th> <th style="width:25%;">THOUSAND(S)</th> <th style="width:25%;">HUNDRED(S)</th> <th style="width:25%;">CENTS</th> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>		MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS				
MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS							
	FISCAL YEAR ENDING September 30, 20____									
AGENCY REPRESENTING THE GOVERNMENT										
OBLIGATION: We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally.										
CONDITIONS: The Principal contemplates entering into contracts, from time to time during the fiscal year shown above, with the Government department or agency shown above, for furnishing supplies or services to the Government. The Principal desires that all of those contracts be covered by one bond instead of by a separate performance bond for each contract.										
THEREFORE: The above obligation is void if the Principal - (a) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all of those contracts entered into during the original term and any extensions granted by the Government with or without notice to the surety(ies) and during the life of any guaranty required under the contracts; and (b) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of those contracts, that subsequently are made. Notice of those modifications to the surety(ies) is waived.										
WITNESS: The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.										
SIGNATURES	NAMES AND TITLES <i>(Typed)</i>									
PRINCIPAL										
1.	1.	Corporate Seal								
(Seal)	2.									
2.	(Seal)									
3.	3.									
(Seal)										
INDIVIDUAL SURETIES										
1.	1.									
(Seal)	2.									
2.	(Seal)									
CORPORATE SURETY										
1.	1.	Corporate Seal								
2.	2.									

INSTRUCTIONS

1. This form is authorized for use in the acquisition of supplies and services, excluding construction, in lieu of Standard Form 25 (Performance Bond). Any deviation from this form will require the written approval of the Administrator of General Services.
2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitations listed therein. The value put into the LIABILITY LIMIT block is the penal sum (i.e., the face value) of the bond, unless a co-surety arrangement is proposed.

(b) When multiple corporate sureties are involved, their names and addresses shall appear in the spaces (Surety 1, Surety 2, etc.) headed "CORPORATE SURETY." In the space designated "SURETY(IES)" on the face of the form, insert only the numeric identifier corresponding to each of the sureties. Moreover, when co-surety arrangements exist, the parties may allocate their respective limitations of liability under the bonds, provided that the sum total of their liability equals 100% of the bond penal sum.

(c) When individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.
4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
5. Type the name and title of each person signing this bond in the space provided.
6. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror".

STANDARD FORM 35 (REV. DATE) BACK

Notices

Federal Register

Vol. 80, No. 202

Tuesday, October 20, 2015

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

Economic Research Service

Submission for OMB Review; Comment Request

October 14, 2015.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden 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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs

potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Economic Research Service

Title: Food Security Supplement to the Current Population Survey.

OMB Control Number: 0536–0043.

Summary of Collection: The Food Security Supplement is sponsored by USDA as research and evaluation activity authorized under 7 U.S.C. 2004(a). This outlines duties of the Secretary of Agriculture related to research and development including authorizing the collection of statistics. The data to be collected will be used to address multiple programmatic and policy development needs of the Food and Nutrition Service (FNS) and other Federal agencies. The U.S. Census Bureau has the right to conduct the data collection on USDA's behalf under Title 13, Section 8(b).

Need and Use of the Information: The data collected by the food security supplement will be used to obtain reliable data from a large, representative national sample as a basis for monitoring the prevalence of food security, food insecurity, and very low food security within the U.S. population as a whole and in selected population subgroups; conducting research on causes of food insecurity and the role of Federal food and nutrition programs in ameliorating food insecurity; and continuing development and improvement of methods for measuring these conditions. Information will be collected on food spending, use of Federal and community food and nutrition assistance programs, difficulties in obtaining adequate food during the previous 12 months and 30 days due to constrained resources, and conditions that result from inadequate access to food.

Description of Respondents: Individuals or Households.

Number of Respondents: 53,657.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 6,450.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015–26510 Filed 10–19–15; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Forest Service

Request for Proposals: 2016 Wood Innovations Funding Opportunity

AGENCY: Forest Service.

ACTION: Request for proposals.

SUMMARY: The U.S. Forest Service (Forest Service) requests proposals to substantially expand and accelerate wood energy and wood products markets throughout the United States to support forest management needs on National Forest System and other forest lands. The grants and cooperative agreements awarded under this announcement will support the Agricultural Act of 2014 (Pub. L. 113–79), Rural Revitalization Technologies (7 U.S.C. 6601), and the nationwide challenge of disposing of hazardous fuels and other wood residues from the National Forest System and other forest lands in a manner that supports wood energy and wood products markets.

DATES: The application deadline is Wednesday, January 13, 2016 at 5:00 p.m. Eastern Time. The Forest Service will hold an informational Pre-Application Webinar on November 10, 2015 at 1:00 p.m. Eastern Standard Time to present this funding opportunity and answer questions. The link is: <https://www.livemeeting.com/cc/usda/join?id=TC9SFQ&role=attend&pw=tK-%287%26Dwt>.

FOR FURTHER INFORMATION CONTACT:

Information on application requirements, eligibility, and prerequisites are available at www.na.fs.fed.us/werc (see “Wood Innovations”) and www.grants.gov. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 800–877–8339 24 hours a day, every day of the year, including holidays.

Please direct questions regarding this announcement to the appropriate Forest Service Regional Biomass Coordinator listed in the table below. If you have questions that a Coordinator is unable to assist you with, please contact Ed Cesa (ecesa@fs.fed.us or (304) 285–1530) at the Wood Education and Resource Center in Princeton, WV.

TABLE 1—FOREST SERVICE REGIONAL BIOMASS COORDINATORS

Forest Service Region 1 (MT, ND, Northern ID, & Northwestern SD), ATTN: Mike Dudley, Forest Service, Northern Region (R1), 324 25th St., Ogden, UT 84401, mdudley@fs.fed.us , (801) 625-5253.	Forest Service Region 2 (CO, KS, NE, SD, & WY), ATTN: Mike Eckhoff, Forest Service, Rocky Mountain Region (R2), 740 Simms St, Golden, CO 80401-4702, mike.eckhoff@colostate.edu , (970) 219-2140.
Forest Service Region 3 (AZ & NM), ATTN: Buck Sanchez, Forest Service, Southwestern Region (R3), 333 Broadway Blvd, SE, Albuquerque, NM 87102, bsanchez@fs.fed.us , (505) 842-3498.	Forest Service Region 4 (Southern ID, NV, UT, & Western WY), ATTN: Mike Dudley, Forest Service, Intermountain Region (R4), 324 25th St., Ogden, UT 84401, mdudley@fs.fed.us , (801) 625-5253.
Forest Service Region 5 (CA, HI, Guam, and Trust Territories of the Pacific Islands), ATTN: Larry Swan, Forest Service, Pacific Southwest Region (R5), 1323 Club Drive, Vallejo, CA 94592, lswan01@fs.fed.us , (707) 562-8917.	Forest Service Region 6 (OR & WA), ATTN: Ron Saranich, Forest Service, Pacific Northwest Region (R6), 1220 SW 3rd Ave., Portland, OR 97204, rsaranich@fs.fed.us , (503) 808-2346.
Forest Service Region 8 (AL, AR, FL, GA, KY, LA, MS, NC, OK, SC, TN, TX, VA, Virgin Islands, & Puerto Rico), ATTN: Dan Len, Forest Service, Southern Region (R8), 1720 Peachtree Rd NW, Atlanta, GA 30309, dlen@fs.fed.us , (404) 347-4034.	Forest Service Region 9/Northeastern Area (CT, DL, IL, IN, IA, ME, MD, MA, MI, MN, MO, NH, NJ, NY, OH, PA, RI, VT, WV, WI), ATTN: Lew McCreery, Forest Service, Northeastern Area—S&PF, 180 Canfield St, Morgantown, WV 26505, lmccreery@fs.fed.us , (304) 285-1538.
Forest Service Region 10 (Alaska), ATTN: Daniel Parrent, Forest Service, Alaska Region (R10), 161 East 1st Avenue, Door 8, Anchorage, AK 99501, djparrent@fs.fed.us , (907) 743-9467.	

Grant Program Overview

Available Funding: The Forest Service plans to award approximately \$5 million under this announcement. The maximum for each award is generally \$250,000; however, the Forest Service may consider awarding more than \$250,000 to a proposal that shows far reaching or significant impact. All awards are based on availability of funding.

Eligible Applicants: Eligible applicants are for-profit entities; State, local, and Tribal governments; school districts; communities; not-for-profit organizations; or special purpose districts (e.g., public utilities districts, fire districts, conservation districts, or ports).

Matching Requirements: A minimum 35:65 match is required. That is, an applicant must contribute at least 35 percent of the total project cost. The Forest Service's share of the project will be no more than 65 percent of the total. The applicant's match or contribution must come from non-Federal source funds. The match may include cash or in-kind contributions. All matching funds must be *directly* related to the proposed project. All organizations that provide matching funds (other than the applicant) must submit letters of support specifying the amount of cash or in-kind services to be provided.

Deadline: Wednesday, January 13, 2016 at 5:00 p.m. Eastern Standard Time.

Award Information: Grants and Cooperative Agreements awarded under this announcement are typically awarded for two to three years. Projects of greater complexity may be awarded for up to five years. The Forest Service will notify a recipient if their proposal is selected for an award and indicate whether any additional forms or

information is required and an estimate of when they may proceed. The Federal government will incur no legal obligation until appropriated funds are available and a Forest Service Grant Officer returns a fully executed award letter to a successful applicant.

Note: An award to a for-profit entity will generate an Internal Revenue Service (IRS) Form 1099 Miscellaneous Income that will be filed with the IRS and provided to the awardee. The Forest Service expresses no opinion on the taxability, if any, of the awarded grant funds.

Reporting Requirements: A Federal Financial Report (SF-425) and progress report are required on an annual calendar year basis and must be submitted to the appropriate Grant Officer. A detailed final report is required and should include: (1) Final Summary Report (brief overview of accomplishments of the goals and objectives described in the approved award); and (2) Final Accomplishment Report (includes assessments, reports, case studies, and related documents that resulted from project activities). Ten percent of awarded funds will be withheld until an acceptable final report is approved by the Forest Service. Forest Service will post final reports on the Wood Education and Resource Center Web site.

Wood Innovations Grant Categories

The Forest Service seeks proposals that significantly stimulate or expand wood energy and wood products markets that support the long-term management of National Forest System and other forest lands.

This Request for Proposals focuses on the following priorities to:

- Reduce hazardous fuels and improve forest health on National Forest System and other forest lands;

- Reduce costs of forest management on all land types; and
- Promote economic and environmental health of communities.

Equipment purchases, basic research, and construction will not be funded under this funding opportunity. Funding will be awarded in two separate categories.

Grant Category 1: Expansion of Wood Energy Markets

The intent of this category is to stimulate, expand, or support wood energy markets that depend on forest residues or forest byproducts generated from all land types. Preference will be given to projects that make use of wood generated from National Forest System and other forest lands with high wildfire risk.

The most competitive proposals will generate immediate and measurable on-the-ground results or substantially stimulate immediate adoption of wood energy. Proposals incorporating technologies that are not commercially proven will *not* be competitive under this category.

Grant Category 1 is separated into two main project types:

1. Wood Energy Markets

Expand or support wood energy markets that use wood residues for heating, cooling, or electricity production. Projects can include, but are not limited to the following:

- a. Develop a cluster of wood energy projects in a geographic area or specific sector (e.g., prisons, hospitals, universities, manufacturing sector, or industrial sector).

- b. Evaluate and recommend a commercial, institutional, or industrial sector most suitable for wood energy

that has not traditionally used wood for heating, cooling, or electricity.

c. Conduct a feasibility assessment of several municipalities that would be ideal candidates to construct a district wood energy system for heating, cooling, and electricity.

d. Develop innovative financing or new funding opportunities for wood energy development.

e. Overcome market barriers and stimulate expansion of wood energy in the commercial sector.

f. Establish a Statewide Wood Energy Team that provides technical, financial, and outreach assistance for wood energy projects. Note: Proposals to establish a Statewide Wood Energy Team in the following States will not be considered because a team is already in place: AK, AZ, CA, CO, ID, KY, MA, MI, MN, MT, NH, NM, NY, OR, PA, VA, VT, WA, WI, and WV.

The above list of examples is not exhaustive and merely illustrates the types of projects that can be considered.

2. Wood Energy Projects

Complete engineering designs, cost analyses, permitting, or other requirements that are necessary in the later stages of wood energy project development to secure financing.

Note: Preference will be given to proposals that bundle or address multiple wood energy projects. Projects in early project scoping or planning that need preliminary analyses, pre-feasibility assessments, or other assistance that is typical in the early phases of project development will not be competitive.

Grant Category 2: Expansion of Wood Products Markets

The intent of this category is to promote markets that create or expand the demand for non-energy based wood products. Preference will be given to projects that support commercial building markets or other markets that use innovative wood products. Wood energy projects will not be considered under this category because those projects can apply for funding under Grant Category 1. Demonstration projects and applied research will be considered but applicants are strongly encouraged to first consult with their designated Forest Service Regional Biomass Coordinator to determine whether such projects will be competitive.

Projects can include, but are not limited to the following:

a. Develop training or perform outreach about innovative wood construction materials or building designs that incorporate wood into commercial construction (e.g., structural

round wood or cross-laminated timbers).

b. Develop a regional or national strategy to stimulate market demand for wood technology in targeted sectors, especially commercial construction.

c. Establish statewide wood action teams that focus on using wood in support of Forest Service Regional/Area priorities and State Forest Action Plans.

d. Facilitate establishment of new building codes to support expanded use of wood materials.

e. Showcase the quantified environmental and economic benefits of using wood as a green building material in an actual commercial building and the projected benefits achieved if replicated across the United States based on commercial construction market trends.

f. Develop a carbon trading market protocol for wood building materials that accounts for the fossil carbon offset from using wood.

g. Develop manufacturing capacity and markets for wood products that support forest ecosystem restoration.

h. Complete engineering designs, cost analyses, permitting, or other requirements for the final stages of commercial construction projects that use wood as a primary building material.

The above list of examples is not exhaustive and merely illustrates the types of projects that can be considered.

Application Process

Application information is available at the following two Web sites:

- <http://www.na.fs.fed.us/werc/> (on right side of Web page under "Wood Innovations")
- www.grants.gov (Search: Opportunity: USDA-FS-WERC-2016 or CFDA 10.674 Wood Utilization Assistance, Agency Forest Service);

Applicants should consult with the appropriate Forest Service Regional Biomass Coordinator to develop proposals (see Table 1 of Contacts section). Proposals should align with Forest Service Regional/Area priorities and State Forest Action Plans.

Application Submission: Applications must be submitted by email to the respective Forest Service Regional Biomass Coordinator listed in the Contacts section of this announcement by 5:00 p.m. Eastern Time on January 13, 2016. No Exceptions. Paper submittals will not be accepted.

Note: Your Forest Service Region is generally determined by the State where the majority of the proposed work will be conducted. Two Forest Service regions may exist in one State. You can locate your Forest Service region at: <http://www.fs.fed.us/maps/>

[products/guide-national-forests09.pdf](#). Consult with a Forest Service Regional Biomass Coordinator if you are not certain which Region applies.

Application Format and Content:

Each submittal must consist of two separate PDF files, preferably in a searchable format, as follows:

- **PDF file #1:** Application Part 1 (Cooperator Contact Information) and Application Part 2 (Proposal and Appendices).
- **PDF file #2:** Application Part 3 (Required Financial Forms, which must include SF-424, SF-424A, SF-424B, AD-1047, AD-1049 (or AD-1052 for States and State agencies), AD-3030, FS-1500-35 (certificate regarding lobbying activities), and Financial Capability Questionnaire FS-1500-22).

Note: The applicant must include a DUNS number and register at www.sam.gov to receive a federal award.

Application Parts 1, 2, and 3 can be found at <http://www.na.fs.fed.us/werc> on right side of Web page under "Wood Innovations." Submit all application information at the same time.

The Proposal in Application Part 2 must be presented on 8.5 × 11 single-spaced and numbered pages with 1-inch margins using 12-point Times New Roman font. The Proposal cannot exceed 11 pages and must include items #1 through #5 as listed below:

1. Project Narrative (4 Pages)

- The project narrative should provide a clear description and anticipated impact of the project, including the following where appropriate: (1) Magnitude of the impact on markets generating renewable energy or creating non-energy wood products; (2) Benefits to National Forest System lands (e.g., tons of biomass removed in fire-prone areas, air quality improvements, acres treated, cost savings for forest management, or carbon offsets); (3) Source of biomass removed from forested areas broken out by land ownership; and (4) Job creation and retention.

- Describe methods and reasoning for selecting areas of focus (e.g., geographic clusters, sector-based clusters, or larger projects to be targeted).

- Specify the number of years requested for the award.

2. Program of Work (3 Pages)

- Describe statement of need, goals, and objectives.

- Describe methods to accomplish goals and objectives.

- Specify projected accomplishments, timeline, and deliverables.

- Discuss communication and outreach activities that create social

acceptance in communities or markets where projects are targeted.

- Describe monitoring plan, which must include annual and final reports.
- Discuss all relevant aspects of the project, such as preliminary assessments, resource inventories, and success stories.
- Describe projected impact on wood energy or wood products markets.

3. Budget Summary and Justification in Support of SF-424A (2 Pages)

- Address proposed expenditures for each key activity or category within the proposed program of work.
- Specify cash and in-kind match, other Federal funds, and staff time that will help accomplish the program of work.
- Describe the fee structure if fee-for-services is planned.

4. Qualifications of Staff, Organization, and Partners (1.5 Pages)

- Include key personnel qualifications, certifications, and relevant experience.
- Describe experience and success of any prior funded Forest Service projects.

5. Project Outcomes, Annual Progress Reports, and Final Reports (0.5 Pages)

- List anticipated project outcomes and accomplishments.
- Describe types of reports, documents, and success stories that will be provided at the end of the project for posting on the Wood Education and Resource Center Web site in addition to mandatory reporting.

Documentation exceeding the designated page limit requirements for any given section will not be considered.

Appendices should be well organized with an index so that a reviewer can readily find information of interest. Include only relevant information in the Appendices that will help a review panel better understand and evaluate your project. Below are examples of information to include in the Appendices:

- Feasibility Assessments.
- Woody Biomass Resource Supply Assessment.
- If appropriate, quotes for Professional Engineering Services and rationale for selection of contractor, if already selected.
- Letters of Support from Partners, Individuals, or Organizations, especially those playing a key role or providing matching funds. These letters should display the degree of collaboration occurring between the different entities engaged on the project.

- Miscellaneous, such as schematics, engineering designs, or executive summaries of reports.

- List of all other Federal funds received for this project within the last 3 years (include agency, program name, and dollar amount).

Letters of Support to include in Appendix: Applicants are strongly encouraged to include letters of support from partners closely engaged on the project, especially Forest Service units if National Forest System Lands will directly benefit from the project. All organizations that provide matching funds (other than the applicant) must submit letters of support specifying the amount of cash or in-kind services to be provided. These letters of support must be included in the application package.

Proposal Evaluation

All applications will be screened to ensure basic compliance with the directions in this announcement. Applications not following the directions will be disqualified without appeal. A panel of Federal experts and their designees will perform a thorough technical review of eligible proposals and evaluate the proposals according to the criteria outlined in this announcement. Regional Foresters and the Northeastern Area Director will rank proposals according to regional and area priorities. The panel, Regional Foresters, and Northeastern Area Director will submit their recommendations to the Forest Service national leadership for a final decision.

Evaluation Criteria and Point System: Reviewers will assign points to each proposal based on its ability to meet the following criteria. A maximum of 100 points can be earned per proposal.

- Alignment with goals and objectives of this Request for Proposals. (20 points)
- Technical approach, deliverables, and timetable. (30 points)
- Impact on forest management, wood energy markets, or wood products markets. (20 points)
- Qualifications, relevant experience, and roles of team members. (20 points)
- Leveraging of federal funds. (10 points)

Dated: October 2, 2015.

Patricia F. Hiramí,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 2015-26533 Filed 10-19-15; 8:45 a.m.]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Submission for OMB Review; Comment Request

October 14, 2015.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden 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 the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 19, 2015 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: OIRA_Submission@omb.eop.gov or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Cost of Pollination Survey.

OMB Control Number: 0535-NEW.

Summary of Collection: The primary objectives of the National Agricultural Statistics Service (NASS) are to prepare and issue official State and national

estimates of crop and livestock production, disposition and prices, economic statistics, and environmental statistics related to agriculture and to conduct the Census of Agriculture and its follow-on surveys. As pollinators (honeybees) are vital to the agricultural industry for producing food for the world's population, NASS' primary focus will center on costs associated with honey bee pollination, but will also collect some basic information relating to other forms of pollination. General authority for these data collection activities is granted under U.S.C. Title 7, Section 2204.

Need and Use of the Information: NASS plans to collect economic data under this new collection using the "Cost of Pollination Inquiry" survey. Data relating to the targeted crops (fruits, nuts, vegetable and specialty crops) will be collected for the total number of acres that rely on honey bee pollination, the number of honey bee colonies that were used on those acres, and any cash fees associated with honey bee pollination. By publishing both regional and crop specific pollination costs, both, crop farmers and beekeepers will be able to benefit from this additional data.

Description of Respondents: Farmers.

Number of Respondents: 50,000.

Frequency of Responses: Reporting: Once a year.

Total Burden Hours: 14,987.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015-26529 Filed 10-19-15; 8:45 am]

BILLING CODE 3410-20-P

DEPARTMENT OF AGRICULTURE

Rural Business Cooperative Service

Submission for OMB Review; Comment Request

October 14, 2015.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden 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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: OIRA_Submission@omb.eop.gov or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received by November 19, 2015. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business-Cooperative Service

Title: Strategic Economic and Community Development.

OMB Control Number: 0570-0068.

Summary of Collection: As authorized under the Agricultural Act of 2014 (2014 Farm Bill), Section 6025, Strategic Economic and Community Development enables the Secretary of Agriculture to provide priority to projects that support Strategic Economic and Community Development plans. The Agency will reserve up to 10 percent of the funds appropriated to the following seven Rural Development programs (which are referred to as the "underlying programs"): Community Facility Grants; Community Facility Guaranteed Loans; Community Facility Direct Loans; Water and Waste Disposal Loans and Grants; Water and Waste Disposal Guaranteed Loans; Business and Industry Guaranteed Loans and Rural Business Development Grants each fiscal year.

Need and use of the Information: To be eligible for the reserved funds a project must meet three criteria: Projects must first be eligible for funding under the underlying program from which funds are reserved; carried out solely in rural areas and that the project support the implementation of a strategic

economic development or community development plan on a multi-jurisdictional basis as defined in 7 CFR 1980.1005. Applicants will submit information on the Application Form 1980-88, the Plan that the project supports, and the project's measures, metrics and outcome. The collection of information is necessary for the Agency to identify projects eligible for the reserved funding under the Section 6025 program and to prioritize eligible applications.

Description of Respondents: Business or other for-profit.

Number of Respondents: 374.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,348.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015-26528 Filed 10-19-15; 8:45 am]

BILLING CODE 3410-XY-P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Scientific Advisory Committee

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of Public Virtual Meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a virtual meeting of the Census Scientific Advisory Committee (C-SAC). The Committee will address policy, research, and technical issues relating to the 2020 Census Operational Plan. The C-SAC will meet via teleconference on November 2, 2015. Last-minute changes to the schedule are possible, which could prevent us from giving advance public notice of schedule adjustments. Please visit the Census Advisory Committees Web site for the most current meeting agenda at: <http://www.census.gov/cac/>.

DATES: November 2, 2015. The virtual meeting will begin at approximately 1:00 p.m. and end at approximately 3:00 p.m.

ADDRESSES: The meeting will be held via teleconference. To attend, participants should call the following phone number: 1-877-973-5204. When prompted, please use the following password: 1733620.

FOR FURTHER INFORMATION CONTACT: Kim Collier, Assistant Division Chief for Stakeholders, Customer Liaison and Marketing Services Office, kimberly.l.collier@census.gov,

Department of Commerce, U.S. Census Bureau, Room 8H185, 4600 Silver Hill Road, Washington, DC 20233, telephone 301-763-6590. For TTY callers, please use the Federal Relay Service 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The members of the C-SAC are appointed by the Census Bureau's Director. The Committee provides scientific and technical expertise, as appropriate, to address Census Bureau program needs and objectives. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10).

All meetings are open to the public. A brief period will be set aside at the meeting for public comment on November 2. However, individuals with extensive questions or statements must submit them in writing to:

census.scientific.advisory.committee@census.gov (subject line "November 2015 C-SAC Virtual Meeting Public Comment"), or by letter submission to the Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H185, 4600 Silver Hill Road, Washington, DC 20233.

Dated: October 15, 2015.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2015-26605 Filed 10-19-15; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis (BEA), Department of Commerce.

Title: Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons.

OMB Control Number: 0608-0065.

Form Number: BE-185.

Type of Request: Regular submission.

Number of Responses: 2,700 annually (675 filed each quarter; 550 reporting mandatory data, and 125 that would file other responses).

Average Hours per Response: 10 hours is the average for those reporting data and 1 hour is the average for those not reporting data or providing voluntary responses, but hours may vary considerably among respondents

because of differences in company size and complexity.

Estimated Total Annual Burden Hours: 22,500.

Needs and Uses: The Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons (BE-185) is a survey that collects data from U.S. financial services providers that engage in covered transactions with foreign persons in financial services. A U.S. person must report if it had sales of covered services to foreign persons that exceeded \$20 million for the previous fiscal year, or are expected to exceed that amount during the current fiscal year, or if it had purchases of covered services from foreign persons that exceeded \$15 million for the previous fiscal year, or are expected to exceed that amount during the current fiscal year.

The data collected on the survey are needed to monitor U.S. trade in services, to analyze the impact of U.S. trade on the U.S. and foreign economies, to compile and improve the U.S. economic accounts, to support U.S. commercial policy on trade in services, to conduct trade promotion, and to improve the ability of U.S. businesses to identify and evaluate market opportunities. The data are used in estimating the financial services component of the U.S. international transactions accounts and national income and product accounts.

The Bureau of Economic Analysis (BEA) is proposing no additions and modifications to the current BE-185 survey. The effort to keep current reporting requirements unchanged is intended to minimize respondent burden while considering the needs of data users. Existing language in the instructions and definitions will be reviewed and adjusted as necessary to clarify survey requirements.

Affected Public: Businesses or other for-profit organizations.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA *Suybmission@omb.eop.gov* or faxed to (202) 395-5806.

Dated: October 14, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015-26495 Filed 10-19-15; 8:45 am]

BILLING CODE 3510-06-P

DEPARTMENT OF COMMERCE

Economic Development Administration

Membership of the Economic Development Administration Performance Review Board

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice of Membership on the Economic Development Administration's Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. § 4314(c)(4), the Economic Development Administration (EDA), Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of EDA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for EDA's Performance Review Board begins on October 20, 2015.

FOR FURTHER INFORMATION CONTACT: Jennifer Munz, U.S. Department of Commerce, Office of Human Resources Management, Office of Executive Resources, 14th and Constitution Avenue NW., Room 51010, Washington, DC 20230, at (202) 482-4051.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the Economic Development Administration (EDA), Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of EDA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such

as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for EDA's Performance Review Board begins on October 20, 2015. The name, position title, and type of appointment of each member of EDA's Performance Review Board are set forth below by organization:

1. *Department of Commerce, Office of the Secretary, Office of the General Counsel (OS/OGC)*
Stephen D. Kong, Chief Counsel for Economic Development, Career SES, Chairperson
2. *Department of Commerce, Minority Business Development Agency (MBDA)*
Edith J. McCloud, Associate Director for Management, Career SES
3. *Department of Commerce, Office of the Secretary (OS), Office of the Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA)*
Renee A. Macklin, Director for Program Evaluation and Risk Management, Career SES (New Member)
4. *Department of Commerce, National Oceanic and Atmospheric Administration (NOAA)*
Russell F. Smith, III, Deputy Assistant Secretary for International Fisheries, Non-Career SES

Denise A. Yaag,

Director, Office of Executive Resources, Office of Human Resources Management, Office of the Secretary/Office of the CFO/ASA, Department of Commerce.

[FR Doc. 2015-26582 Filed 10-19-15; 8:45 am]

BILLING CODE 3510-25-P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Performance Review Board Membership

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: Below is a listing of individuals who are eligible to serve on the Performance Review Board (PRB) in accordance with the Economics and Statistics Administration's (ESA) Senior Executive Service and Senior Professional performance management systems:

Kenneth A. Arnold, Deputy Under Secretary for Economic Affairs, ESA

Lisa M. Blumerman, Associate Director for Decennial Census Programs, Census Bureau
William G. Bostic, Jr., Associate Director for Economic Programs, Census Bureau
Stephen B. Burke, Chief Financial Officer and Director for Administration, ESA
Joanne Buenzli Crane, Associate Director for Administration and Chief Financial Officer, Census Bureau
Austin J. Durrer, Chief of Staff, ESA
Susan Helper, Special Advisor, ESA
Ron S. Jarmin, Assistant Director for Research and Methodology, Census Bureau
Enrique Lamas, Associate Director for Demographic Programs, Census Bureau
Harry Lee, Assistant Director for Information Technology and Deputy Chief Information Officer, Census Bureau
Thomas A. Louis, Associate Director for Research and Methodology, Census Bureau
Jennifer Madans, Associate Director for Science, Center for Disease Control and Prevention
Brent R. Moulton, Associate Director for National Economics, Bureau of Economic Analysis
Brian C. Moyer, Director, Bureau of Economic Analysis
Joel D. Platt, Associate Director for Regional Economics, Bureau of Economic Analysis
Nancy A. Potok, Deputy Director, Census Bureau
Pravina A. Raghavan, Senior Advisor for Policy and Program Integration, Office of the Deputy Secretary
Angela Simpson, Deputy Assistant Secretary for Communications and Information, National Telecommunications and Information Administration
Jeannie L. Shiffer, Associate Director for Communications, Census Bureau
Sarahelen Thompson, Associate Director for International Economics, Bureau of Economic Analysis
Katherine K. Wallman, Chief Statistician, Office of Management and Budget

The purpose of a PRB is to provide fair and impartial review of recommended SES/ST performance ratings, bonuses, and pay adjustments and Presidential Rank Award nominations. The term of each PRB member will expire on December 31, 2017.

FOR FURTHER INFORMATION CONTACT: Latasha Ellis, Executive Resources Office, 301-763-3727.

Dated: October 12, 2015.

Stephen B. Burke,

Chief Financial Officer and Director for Administration, Chair, ESA Performance Review Board.

[FR Doc. 2015-26586 Filed 10-19-15; 8:45 am]

BILLING CODE 3510-BS-P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority

[Docket Number: 140821696-5909-05]

RIN 0660-XC012

Final Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012

AGENCY: First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice; final interpretations.

SUMMARY: The First Responder Network Authority ("FirstNet") publishes this Notice to issue final interpretations of its enabling legislation that will inform, among other things, forthcoming requests for proposals, interpretive rules, and network policies. The purpose of this Notice is to provide stakeholders FirstNet's interpretations on many of the key preliminary interpretations presented in the proposed interpretations published on March 13, 2015.

DATES: Effective October 20, 2015.

FOR FURTHER INFORMATION CONTACT: Eli Veenendaal, First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce, 12201 Sunrise Valley Drive, M/S 243, Reston, VA 20192; 703-648-4167; or elijah.veenendaal@firstnet.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96, Title VI, 126 Stat. 256 (codified at 47 U.S.C. 1401 *et seq.*)) (the "Act") established the First Responder Network Authority ("FirstNet") as an independent authority within the National Telecommunications and Information Administration ("NTIA"). The Act establishes FirstNet's duty and responsibility to take all actions necessary to ensure the building, deployment, and operation of a nationwide public safety broadband network ("NPSBN").¹

One of FirstNet's initial steps in carrying out this responsibility pursuant to the Act is the issuance of open, transparent, and competitive requests for proposals ("RFPs") for the purposes of building, operating, and maintaining

¹ 47 U.S.C. 1426(b).

the network. We have sought, and may continue to seek, public comments on many technical and economic aspects of these RFPs through traditional procurement processes, including requests for information (“RFIs”) and potential draft RFPs and Special Notices, prior to issuance of RFPs.²

As a newly created entity, however, we are also confronted with many complex legal issues of first impression pursuant to the Act that will have a material impact on the RFPs, responsive proposals, and our operations going forward. Generally, the Administrative Procedure Act (“APA”) ³ provides the basic framework of administrative law governing agency action, including the procedural steps that must precede the effective promulgation, amendment, or repeal of a rule by a federal agency.⁴ However, section 1426(d)(2) of the Act provides that any action taken or decision made by FirstNet is exempt from the requirements of the APA.⁵

Nevertheless, although excluded from these procedural requirements, on March 13, 2015, FirstNet published a public notice entitled “Further Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012” (hereinafter “the Second Notice”),⁶ seeking public comments on preliminary interpretations on certain foundational legal issues, as well as technical and economic issues, to help guide FirstNet’s efforts in achieving its mission.

The purpose of this *Notice* is to provide stakeholders notice of the final legal interpretations on many of the key preliminary interpretations presented in the *Second Notice*. Additional background, rationale for this action, and explanations of FirstNet’s interpretations were included in the *Second Notice* and are not repeated herein. The section immediately below labeled “Final Interpretations” summarizes FirstNet’s final

interpretations with respect to the *Second Notice*. Thereafter, the section labeled “Response to Comments” summarizes the comments received on the preliminary interpretations contained in the *Second Notice* and provides FirstNet’s responses to such comments, including further explanations to FirstNet’s interpretations.

II. Final Interpretations

In sum, FirstNet makes the following final interpretations related to topics in the *Second Notice*:

A. Technical Requirements Relating to Equipment for Use on the NPSBN

Promoting Competition in the Equipment Market Place

1. FirstNet interprets 47 U.S.C. 1426(b)(2)(B) as applying to any equipment, including end user devices, used “on” (*i.e.*, to use or access) the network, but does not include any equipment that is used to constitute the network (*i.e.*, the core network or radio access network (“RAN”)).

2. FirstNet concludes that the Act’s goal of “promot[ing] competition in the equipment market” is satisfied by applying the requirements listed in 47 U.S.C. 1426(b)(2)(B)(i) to only those parameters necessary to maintain interoperability (*i.e.*, “connectivity”) with the NPSBN, which are included in the Interoperability Board Report or otherwise in FirstNet network policies.

3. FirstNet concludes that 47 U.S.C. 1426(b)(2)(B) applies regardless of whether the equipment will access or use the NPSBN via a FirstNet-deployed RAN or a State-deployed RAN.

B. FirstNet Network Policies Network Policies

4. FirstNet concludes that the items listed in 47 U.S.C. 1426(c)(1)(A) relating to RFPs are “policies” for purposes of 47 U.S.C. 1426(c)(2) and as the term is generally used in 47 U.S.C. 1426(c).

5. FirstNet concludes that the network policies developed pursuant to 47 U.S.C. 1426(c)(1) apply to all elements of the network, including RANs deployed by individual States pursuant to 47 U.S.C. 1442(e)(3).

6. FirstNet concludes that a required aspect of a State’s demonstrations of interoperability to both the Federal Communications Commission (“FCC”) and NTIA under 47 U.S.C. 1442(e)(3), is a commitment to adhering to FirstNet’s network policies implemented under 47 U.S.C. 1426(c).

7. FirstNet concludes that it could require compliance with network policies essential to the deployment and

interoperable operation of the network for public safety in all States as a condition of entering into a spectrum capacity lease pursuant to 47 U.S.C. 1442(e)(3)(C)(iii)(II).

C. A State’s Opportunity To Assume Responsibility for RAN Deployment and Operation

Final Interpretations Regarding the Presentation of a State Plan and the Completion of Request for Proposal Process

8. FirstNet interprets 47 U.S.C. 1442(e) to merely require completion of the request for proposal process for the State in question, rather than the nation as a whole, prior to presentation of the plan to the State, assuming that FirstNet can at that stage otherwise meet the requirements for presenting a plan (and its contents) to such State.

9. FirstNet concludes that “completion” of the request for proposal process occurs when FirstNet has obtained sufficient information to present the State plan with the details required pursuant to the Act for such plan, but not necessarily at any final award stage of such a process.

Final Interpretations Regarding the Content of a State Plan

10. FirstNet concludes that the details of the proposed State plan pursuant to 47 U.S.C. 1442(e)(1)(B) should include at least certain outcomes of the RFP process.

11. FirstNet concludes that the FirstNet plan must contain sufficient information to enable NTIA to make comparisons of cost-effectiveness, security, coverage, and quality of service.

Governor’s Role in the State Plan Process

12. FirstNet concludes that the decision of the Governor pursuant to 47 U.S.C. 1442(e)(2), for purposes of the Act, is binding on all jurisdictions within such State, and that such a decision must be made for the entire State, and not simply a subset of individual jurisdictions within such State.

13. FirstNet concludes that FirstNet and a State could agree that FirstNet and the State (or sub-State jurisdictions) work together to permit implementation of added RAN coverage, capacity, or other network components beyond the State plan to the extent the interoperability, quality of service, and other goals of the Act are met.

² The pronouns “we” or “our” throughout this *Notice* refer to “FirstNet” alone and not FirstNet, NTIA, and the U.S. Department of Commerce as a collective group.

³ See 5 U.S.C. 551–59, 701–06, 1305, 3105, 3344, 5372, 7521.

⁴ See 5 U.S.C. 551–559. The APA defines a “rule” as “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing.” 5 U.S.C. 551(4).

⁵ 47 U.S.C. 1426(d)(2).

⁶ 80 FR 13336 (Mar. 13, 2015).

Final Interpretations Regarding the Timing and Nature of a State's Decision

14. FirstNet concludes that the Governor must await notice and presentation of the FirstNet plan prior to making the decision pursuant to 47 U.S.C. 1442(e)(2).

15. FirstNet concludes that a State decision to participate in the FirstNet proposed deployment of the network in such State may be manifested by a State providing either (1) actual notice in writing to FirstNet within the 90-day decision period or (2) no notice within the 90-day period established pursuant to 47 U.S.C. 1442(e)(2).

16. FirstNet interprets the requirement within 47 U.S.C. 1442(e)(3) stating that the notice is to be provided to FirstNet, NTIA, and the FCC as being a contemporaneous (*i.e.*, same day) requirement.

The Nature of FirstNet's Proposed State Plan

17. FirstNet concludes that the presentation of a plan to a Governor and his/her decision to either participate in FirstNet's deployment or follow the necessary steps to build a State RAN does not create a contractual relationship between FirstNet and the State.

Final Interpretations Regarding the State's Development of an Alternative Plan

18. FirstNet concludes that the phrase "complete requests for proposals" means that a State has progressed in such a process to the extent necessary to submit an alternative plan for the construction, maintenance, operation, and improvements of the RAN, that demonstrates the technical and interoperability requirements in accordance with 47 U.S.C. 1442(e)(3)(C)(i).

19. FirstNet concludes that where a State fails to "complete" its request for proposal within the 180-day period pursuant to the Act, the State forfeits its ability to submit an alternative plan pursuant to 47 U.S.C. 1442(e)(3)(C), and the construction, maintenance, operations, and improvements of the RAN within the State shall proceed in accordance with the FirstNet proposed plan for such State.

Final Interpretations Regarding the Responsibilities of FirstNet and a State Upon a State Decision To Assume Responsibility for the Construction and Operation of Its Own RAN

20. FirstNet concludes that once a plan has been disapproved by the FCC, subject only to the additional review described in 47 U.S.C. 1442(h), the

opportunity for a State to conduct its own RAN deployment pursuant to 47 U.S.C. 1442(e)(3) will be forfeited, and FirstNet shall proceed in accordance with its proposed plan for that State.

21. FirstNet concludes, following an FCC-approved alternative State RAN plan, it would have no obligation to construct, operate, maintain, or improve the RAN within such State.

22. FirstNet concludes that if a State, following FCC approval of its alternative plan, is unable or unwilling to implement its alternative plan in accordance with all applicable requirements, then FirstNet may assume, without obligation, RAN responsibilities in the State.

D. Customer, Operational and Funding Considerations Regarding State Assumption of RAN Construction and Operation

Customer Relationships in States Assuming RAN Construction and Operation

23. FirstNet concludes that the Act provides sufficient flexibility to accommodate many types of customer relationships with public safety entities for States assuming RAN responsibility so long as the relationships meet the interoperability and self-sustainment goals of the Act.

24. FirstNet concludes that the Act does not require that States assuming RAN deployment responsibilities be the customer-facing entity entering into agreements with and charging fees to public safety entities in such States.

25. FirstNet concludes that the Act does not preclude States assuming RAN deployment responsibilities from charging subscription fees to public safety entities if FirstNet and such States agree to such an arrangement in the spectrum capacity lease.

26. FirstNet concludes that the Act provides sufficient flexibility to allow the determination of whether FirstNet or a State plays a customer-facing role to public safety entities in a State assuming RAN responsibilities to be the subject of operational discussions between FirstNet and the State in negotiating the terms of the spectrum capacity lease.

27. FirstNet concludes that it will maintain a flexible approach to such functions and interactions in order to provide the best solutions to each State so long as the agreed upon approach meets the interoperability and self-sustainment goals of the Act.

Final Interpretation of FirstNet Analyzing Funding Considerations as Part of Its Determination To Enter Into a Spectrum Capacity Lease

28. FirstNet concludes, in fulfilling its duties and responsibilities pursuant to the Act, it can and must take into account funding considerations, including the "cost-effectiveness" of an alternative state plan as it may impact the national deployment of the NPSBN, in determining whether and under what terms to enter into a spectrum capacity lease with a State.⁷

29. FirstNet concludes as part of its cost-effectiveness analysis in determining whether and under what terms to enter into a spectrum capacity lease, it (i) must consider the impact of cost-inefficient alternative RAN plans, including inefficient use of scarce spectrum resources, on the NPSBN, and (ii) may require that amounts generated within a State in excess of those required to reasonably sustain the State RAN, be utilized to support the Act's requirement to deploy the NPSBN on a nationwide basis.

30. FirstNet concludes as part of its cost-effectiveness analysis, it must consider State reinvestment and distribution of any user fees assessed to public safety entities or spectrum capacity revenues in determining whether and under what terms to enter into a spectrum capacity lease.

Reinvestment of User or Subscriber Fees

31. FirstNet concludes that the Act requires that States assuming RAN deployment responsibilities and charging user or subscription fees to public safety entities must reinvest such fees into the network.

32. FirstNet concludes it could impose a reinvestment restriction within the terms of a spectrum capacity lease with a State.

Reinvestment of Revenues From State Covered Leasing Agreements/Public-Private Partnerships

33. FirstNet concludes that, in practical effect, the literal statutory differences between a covered leasing agreement and public-private partnership as used in the Act result in no substantive difference between the Act's treatment of FirstNet and States that assume RAN responsibility.

34. FirstNet concludes that any revenues from public-private partnerships, to the extent such arrangements are permitted and different than covered leasing agreements, should be reinvested into the network and that the reinvestment

⁷ See 47 U.S.C. 1442(e)(3)(D).

provision of 47 U.S.C. 1442(g) should be interpreted to require such reinvestment.

III. Response to Comments

FirstNet received 70 written comments in response to the *Second Notice* from various stakeholders, including States, tribes, public safety organizations, commercial carriers, equipment vendors, utilities, and various associations. Comments included the submission of a large number of identical or similar comments as well as oral statements made during meetings with FirstNet. FirstNet has carefully considered each of the comments submitted. FirstNet has grouped and summarized the comments according to common themes and has responded accordingly. All written comments can be found at www.regulations.gov.

A. Final Interpretations of Technical Requirements Relating to Equipment for Use on the NPSBN

Promoting Competition in the Equipment Market Place

The Act requires FirstNet to “promote competition in the equipment market, including devices for public safety communications, by requiring that equipment for use on the network be: (i) Built to open, non-proprietary, commercially available standards; (ii) capable of being used by any public safety entity and by multiple vendors across all public safety broadband networks operating in the 700 MHz band; and (iii) backward-compatible with existing commercial networks to the extent that such capabilities are necessary and technically and economically reasonable.”⁸ Given the interoperability goals of the Act, and the fact that end user devices will need to operate seamlessly across the network regardless of State decisions to assume RAN responsibilities, FirstNet makes the following final interpretations related to this provision:

1. FirstNet interprets 47 U.S.C. 1426(b)(2)(B) as applying to any equipment, including end user devices, used “on” (*i.e.*, to use or access) the network, but does not include any equipment that is used to constitute the network (*i.e.*, the core network or RAN).

2. FirstNet concludes that the Act’s goal of “promot[ing] competition in the equipment market” is satisfied by applying the requirements listed in 47 U.S.C. 1426(b)(2)(B)(i) to only those parameters necessary to maintain interoperability (*i.e.*, “connectivity”)

with the NPSBN, which are included in the Interoperability Board Report or otherwise in FirstNet network policies.

3. FirstNet concludes that 47 U.S.C. 1426(b)(2)(B) applies whether or not the equipment is to access or use the NPSBN via a FirstNet-deployed RAN or a State-deployed RAN.

Analysis of and Responses to Comments on Technical Requirements Relating to Equipment for Use on the NPSBN

Summary: The majority of commenters supported FirstNet’s proposed interpretations regarding technical requirements relating to equipment for use on the NPSBN, emphasizing, for example, that a contrary interpretation could lead to incompatible equipment, thereby limiting interoperability and resulting in higher-priced end user equipment. In particular, all commenters agreed that 47 U.S.C. 1426(b)(2)(B) applies regardless of whether the equipment will access or use the NPSBN via a FirstNet-deployed RAN or a State-deployed RAN. Interoperability of end-user devices across the entire network was the primary basis for this perspective. As documented below, however, certain commenters disagreed or provided general comments on these interpretations.

Comment #1: Several commenters stated the FirstNet proposed interpretation limiting the applicability of 47 U.S.C. 1426(b)(2)(B) to subscriber equipment (*i.e.*, end-user devices) only and not system infrastructure (*i.e.*, the core network and RAN) is not supported by the plain language of the Act and should be interpreted to apply more broadly to all network equipment and infrastructure.

Response: FirstNet disagrees that its interpretation is not supported by the plain language of the Act or should be applied more broadly to include network components or equipment (*i.e.*, the core network and RAN). First, there is nothing in 47 U.S.C. 1426(b)(2)(B) that directly indicates or references equipment or components constituting the core network or RAN. Rather, the Act expressly states that 47 U.S.C. 1426(b)(2)(B) applies only to equipment “for use on” the NPSBN, rather than, for example, “equipment of” or “equipment constituting” the NPSBN. More specifically, the Act states that the range of equipment implicated in this provision must at least include “devices,” which, in the telecommunications market, is often a reference to end user devices, rather

than equipment used inside the network to provide service to such devices.⁹

Second, the Act provides a separate standard when discussing equipment constituting the NPSBN versus equipment for use on the network. In particular, the *network components* of the NPSBN itself initially consists of a core network and RAN, both of which are required to be based on “commercial standards.”¹⁰ Conversely, when describing *equipment*, the Act requires that such equipment must be built not only to commercial standards, but also to “open, non-proprietary” standards.¹¹ Consequently, a plain reading of the Act indicates that Congress intended for different standards to apply to the network components (*i.e.*, core network and RAN) and equipment for use on the network described in 47 U.S.C. 1426(b)(2)(B).

Finally, this interpretation is supported by the other two elements appearing in 47 U.S.C. 1426(b)(2)(B). For example, 47 U.S.C. 1426(b)(2)(B)(ii) requires that such equipment be “capable of being used by any public safety entity,” which would seem inconsistent with a requirement applicable to complex network routing and other equipment used inside the network. Similarly, 47 U.S.C. 1426(b)(2)(B)(iii) requires such equipment to be “backward-compatible with existing commercial networks” in certain circumstances, which would again make sense in the context of end user devices, but not equipment being used to construct the network. Thus, based on the analysis in the *Second Notice* and supporting comments, FirstNet interprets the plain language of the Act describing equipment in 47 U.S.C. 1426(b)(2)(B) as referring to equipment using the services of the network, rather than equipment forming elements of the NPSBN (*i.e.*, core network or the RAN).

Comment #2: One commenter stated that it is critical for FirstNet to understand that a paramount concern of the Act is to avoid a replication of the underlying conditions that led to limited participants in the public safety ecosystem, including the use of equipment that is not based on generally accepted commercial standards, but were in fact proprietary technologies that were, in most cases by design, not interoperable with other commercially available alternatives, resulting in limited competition and increased costs.

Response: FirstNet acknowledges the comment and understands the

⁹ See 47 U.S.C. 1426(b)(2)(B).

¹⁰ See 47 U.S.C. 1422(b).

¹¹ See 47 U.S.C. 1426(b).

⁸ 47 U.S.C. 1426(b)(2)(B)(i).

importance of promoting competition in the equipment marketplace as described in 47 U.S.C. 1426(b)(2)(B), while at the same time allowing for the development of innovative technologies that will interoperate with the NPSBN and provide the best solutions for public safety.

Comment #3: A few commenters disagreed with the interpretation and suggested further clarity was required around the specific elements that constitute the FirstNet core network and RAN in order to better understand the scope of the proposed interpretation.

Response: FirstNet refers the commenters to the final interpretations to the *First Notice*,¹² which discuss in detail the specific elements that constitute the FirstNet core network and RAN.

Comment #4: One commenter encouraged FirstNet to focus on optimizing options, rather than defining network openness proscriptively. The commenter reasoned that FirstNet should take into consideration the fact that maximizing customer choice and vendor competition on handsets will also require an eye towards RAN equipment open standards to maximize the use of commercially available handsets already in development for commercial cellular networks, and also to ensure maximum interoperability and roaming on commercial cellular networks.

Response: See the response to Comment #2 above.

Comment #5: A few commenters recommended that the application of this provision be performed in full conformance with the recommendation and guidelines on open, non-proprietary, commercially available standards found in the Section 4.1.8 of the Interoperability Board Report.

Response: FirstNet acknowledges the comment and believes its interpretations of 47 U.S.C. 1426(b)(2)(B) are consistent with the relevant Sections of the Interoperability Board Report.¹³

Comment #6: One commenter suggested that characterizing satellite connectivity as equipment “for use on” the network could result in requirements that constrict use of satellite connectivity as a network

element, as opposed to an end-user device.

Response: FirstNet acknowledges the comment and will take the suggestion into consideration as it further delineates which specific equipment falls within the network components constituting the core network and RAN.

Comment #7: One commenter recommended that FirstNet should more clearly articulate what it means by “connectivity” so that interested parties can meaningfully evaluate whether the proposed scope of the requirement is reasonable and consistent with the Act’s requirements.

Response: FirstNet, as stated in the *Second Notice*, interprets “connectivity” for the purposes of this provision as being satisfied by applying the requirements of 47 U.S.C. 1426(b)(2)(B) to only those parameters necessary to maintain interoperability and operational capability (*i.e.*, “connectivity”) with the NPSBN as detailed in the Interoperability Board Report or otherwise in FirstNet network policies.

Comment #8: One commenter suggested that FirstNet, the National Institute of Standards and Technology (“NIST”), and the FCC should work to ensure that conformity with open, non-proprietary, commercially available standards—such as those developed by the 3rd Generation Partnership Project—is a prerequisite to appearing on the list of certified equipment that the Act instructs to be developed by NIST. The commenter also stated that NIST, FirstNet, and the FCC should work together to ensure rigorous interoperability verification when developing the list.

Response: FirstNet acknowledges the comment and intends to coordinate with NIST and the FCC as required by the Act.

Comment #9: Several commenters stated that the definition of equipment, or its interoperability requirements, should not preclude commercially developed and potentially legally protected materials, such as existing operating systems, from being acceptable platforms for accessing applications and connecting to the NPSBN, but rather, innovation and existing capabilities should be encouraged among the vendor community to reduce device costs and speed to deployment, so long as interoperability among various devices remains.

Response: FirstNet believes its interpretations do not preclude or hinder existing operating systems from being acceptable platforms for accessing applications and connecting to the

NPSBN so long as these systems meet the relevant requirements of 47 U.S.C. 1426(b)(2)(B). Specifically, FirstNet concludes that the Act’s goal of “promot[ing] competition in the equipment market” is satisfied by applying these requirements to only those parameters necessary to maintain interoperability (*i.e.*, “connectivity”) with the NPSBN, which are included in the Interoperability Board Report or otherwise in FirstNet network policies. In reaching this conclusion, we recognized that in order for innovation to bring forth improved products for the NPSBN, and for FirstNet and public safety entities to benefit from competition, product differentiation must be allowed to thrive. However, such differentiation must be balanced with the interoperability goals of the Act. Thus, certain technical attributes of the network must be met by the equipment described pursuant to 47 U.S.C. 1426(b)(2)(B), but other equipment attributes may be left to individual vendors to develop.

Comment #10: One commenter stated that attributes and features of a particular product should, to the maximum extent possible, be traceable to a set of standard specifications.

Response: See the response to Comment #8 above.

B. FirstNet Network Policies Network Policies

Under the Act, FirstNet is tasked with developing “network policies” in carrying out various obligations related to its mission to ensure the establishment of the NPSBN.¹⁴ In particular, FirstNet must develop RFPs that appropriately address certain specified matters regarding building, operating, and maintaining the NPSBN, along with four other sets of policies covering technical and operational areas.¹⁵ In addition to items related to the RFPs, FirstNet must develop policies regarding the technical and operational requirements of the network; practices, procedures, and standards for the management and operation of the network; terms of service for the use of the network, including billing practices; and ongoing compliance reviews and monitoring.¹⁶ Taken as a whole, these policies, including the elements of the RFPs, form operating parameters for the NPSBN, addressing, for example, how the FirstNet core network will connect

¹² Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, 79 FR 57058 (September 24, 2014) (herein “*First Notice*”).

¹³ See Interoperability Board, *Recommended Minimum Technical Requirements to Ensure Nationwide Interoperability for the Nationwide Public Safety Broadband Network* (“Interoperability Board Report”) (May 22, 2012), available at <http://apps.fcc.gov/ecfs/document/view?id=7021919873>.

¹⁴ See 47 U.S.C. 1426(c)(1).

¹⁵ See *id.*

¹⁶ 47 U.S.C. 1426(c)(1).

and operate with the RANs to ensure interoperability.

The Act does not expressly state whether only FirstNet, or both FirstNet and a State assuming RAN responsibilities, must follow the network policies required pursuant to 47 U.S.C. 1426(c)(1). Rather, the Act only refers to the “nationwide public safety broadband network” or the “network,” without expressly indicating whether such State RANs are included in the term. Thus, given the provisions of the Act, the Interoperability Board Report, the overall interoperability goals of the Act, and the effect on interoperability of not having the network policies apply to States assuming RAN responsibilities, FirstNet makes the following conclusions relating to the nature and application of the network policies developed pursuant to 47 U.S.C. 1426(c)(1) to both FirstNet and States assuming RAN responsibilities:

1. FirstNet concludes that the items listed in 47 U.S.C. 1426(c)(1)(A) relating to RFPs are “policies” for purposes of 47 U.S.C. 1426(c)(2) and as the term is generally used in 47 U.S.C. 1426(c).

2. FirstNet concludes that the network policies developed pursuant to 47 U.S.C. 1426(c)(1) apply to all elements of the network, including RANs deployed by individual States pursuant to 47 U.S.C. 1442(e)(3).

3. FirstNet concludes that a required aspect of a State’s demonstrations of interoperability to both the FCC and NTIA under 47 U.S.C. 1442(e)(3), is a commitment to adhering to FirstNet’s network policies implemented under 47 U.S.C. 1426(c).

4. FirstNet concludes that it could require compliance with network policies essential to the deployment and interoperable operation of the network for public safety in all States as a condition of entering into a spectrum capacity lease pursuant to 47 U.S.C. 1442(e)(3)(C)(iii)(II).

Analysis of and Responses to Comments on Network Policies

RFPs Items as Network Policies

Summary: The majority of commenters agreed with FirstNet’s interpretation that the topics listed in 47 U.S.C. 1426(c)(1) pertaining to RFPs, while not typically thought of as policies, nonetheless are “network policies” for purposes of 47 U.S.C. 1426(c)(1).

Comment #11: One commenter disagreed that the RFP-related items *should* be considered policies, but acknowledged that they would qualify as such pursuant to the Act as written.

Response: FirstNet acknowledges the comment, but believes its interpretation of this provision as recognized by the commenter, is correct pursuant to the Act.

Applicability of Network Policies to States Assuming RAN Responsibilities

Summary: The vast majority of commenters also agreed with FirstNet’s interpretation that the network policies pursuant to 47 U.S.C. 1426(c) apply regardless of whether FirstNet deploys the RAN or the State takes on that responsibility. These commenters agreed with FirstNet’s assessment that universal application of network policies, irrespective of who deploys the RAN, is critical to maintaining interoperability throughout the NPSBN.

Comment #12: A few commenters disagreed with FirstNet’s interpretation that all States must comply with FirstNet’s network policies, generally arguing that States assuming responsibilities for deploying the RAN are not compelled pursuant to the Act to comply with FirstNet’s network policies and thus should have the authority to develop their own policies.

Response: FirstNet disagrees and believes the network policies required to be developed pursuant to 47 U.S.C. 1426(c)(1) to be applicable to the entire NPSBN, including a RAN whether such RAN is deployed by FirstNet or a State.

First, the plain language of the Act suggests that network policies developed pursuant to 47 U.S.C. 1426(c)(1) are intended to apply to all elements of the NPSBN. The Act defines the term “nationwide public safety broadband network” to mean the nationwide, interoperable public safety network described in 47 U.S.C. 1422.¹⁷ Accordingly, the Act, in 47 U.S.C. 1422(b), expressly defines the NPSBN as initially consisting of two primary components: The core network and the RAN. Although generally describing the elements and scope of these network components, the Act does not exclude or otherwise indicate that a State-deployed RAN is not part of the NPSBN. Thus, the plain language of the Act appears to indicate that a RAN, regardless of what entity actually deploys it, is a component of the overall NPSBN. Consequently, it is reasonable to interpret that a RAN, as a component of the network, would be subject to all network requirements, regardless of what entity is responsible for deploying the RAN, including policies that apply to the network as a whole.

Second, the Act mandates that FirstNet, in carrying out the

requirements of the Act, must establish *network* policies, but does not authorize any other entity to establish such policies.¹⁸ Specifically, FirstNet must develop the following policies: Those related to technical and operational requirements of the *network*; practices, procedures, and standards for the management and operation of such *network*; terms of service for the use of such *network*, including billing practices; and ongoing compliance reviews and monitoring of the management and operation of the *network* and practices and procedures of entities operating on the *network* and the personnel using the *network*.¹⁹ This list of network policies described in 47 U.S.C. 1426(c)(1) does not expressly contemplate that a separate set of network policies would be developed or apply to a RAN deployed by a State. In fact, the Act, by requiring FirstNet to consult with States on various matters, including network policies, suggests that the opposite conclusion is likely the case. For example, as stated in the *Second Notice*, the Act did not differentiate between States accepting the FirstNet RAN plan and States assuming RAN responsibility in the provisions of 47 U.S.C. 1426(c)(2) requiring consultation with States on the network policies of 47 U.S.C. 1426(c)(1). Consequently, such consultations presumably would not be required for States assuming RAN responsibility if the policies in question did not apply to the RAN in that State.

Third, among other network considerations, the Act describes the process a State seeking to conduct its own RAN deployment must follow in order to receive approval of an alternative RAN plan, a grant for RAN construction, and authority to seek a spectrum capacity lease with FirstNet. These considerations include, among other things, a demonstration of initial and ongoing interoperability with the NPSBN.²⁰ From a practical perspective, such interoperability will largely depend, as is the case with FirstNet’s deployed core network and RANs, on compliance with the network policies developed pursuant to 47 U.S.C. 1426(c)(1). Thus, a necessary aspect of a State’s demonstration of interoperability to both the FCC and NTIA is a commitment to adhering to FirstNet’s network policies. This could be particularly important because such policies will likely evolve over time as the technology, capabilities, and operations of the network evolve, and

¹⁸ See 47 U.S.C. 1426(c)(1).

¹⁹ See *id.*

²⁰ 47 U.S.C. 1422(e)(3).

¹⁷ 47 U.S.C. 1401(21).

an alternative interpretation could frustrate the interoperability goals of the Act.

In addition, States assuming RAN responsibilities must demonstrate “comparable security, coverage, and quality of service to that of the [NPSBN].”²¹ FirstNet’s policies will establish requirements for security, coverage, and quality of service standards for the NPSBN, and thus States seeking to assume State RAN responsibilities would need to demonstrate “comparable” capabilities to those specified in these policies. As stated above, however, the Act requires FirstNet to engage in consultation with States regarding the network policies pursuant to 47 U.S.C. 1426(c)(1), so while FirstNet will establish such policies, States will have meaningful opportunities to help inform the establishment of such policies.

Comment #13: A few commenters recognized the importance of interoperability, but suggested that States taking on RAN responsibilities should have the flexibility to tailor their policies to their unique circumstances unless it affected interoperability.

Response: FirstNet understands the unique needs of the States and believes the Act, through its extensive consultation requirements and processes regarding network policies developed pursuant to 47 U.S.C. 1426(c)(1), provides a vehicle for States to have substantial opportunities to inform such policies and, as is discussed in the *Second Notice*, FirstNet will continue to work cooperatively with States in their establishment.

Comment #14: One commenter advocated that, in order to avoid imposing unnecessary burdens, States assuming RAN responsibilities should be required to comply with only those policies necessary to maintain interoperability.

Response: FirstNet agrees that the primary goal of the Act is to ensure the interoperability of the NPSBN, and, accordingly, paramount among network policies are those that assist in meeting this requirement. However, the Act requires FirstNet to establish policies for other elements critical to establishing the NPSBN, such as those that govern the technical and operational requirements of the network.²² For example, such policies, as contemplated in the Act, will likely provide the criteria and processes for the implementation and monitoring of vital network features, including those related to priority and preemption or

network security, both of which are essential to public safety. To that end, it is critical that public safety be afforded the same features, functionality, and level of service from State to State, particularly when there is a need to cross State boundaries in the case of an incident, to ensure no impact to vital communications. The Act’s requirement pursuant to 47 U.S.C. 1426(c)(1) for the implementation of network policies, we believe, was reasonably intended to apply to States assuming RAN responsibilities to ensure neither the public’s safety nor the network are put at risk. Accordingly, FirstNet disagrees that States assuming RAN responsibilities should be required to comply with only those network policies necessary to maintain interoperability.

Compliance With FirstNet Network Policies as an Element To Demonstrating Interoperability

Summary: A majority of commenters agreed with FirstNet’s related interpretation that adherence to FirstNet’s network policies would be an important factor in demonstrating interoperability pursuant to 47 U.S.C. 1442(e)(3) by a State that is seeking to assume RAN responsibilities. Several of these commenters focused on the need for uniformity and consistency in policies to ensure interoperability throughout the lifetime of the network. A few commenters disagreed with this approach, however, suggesting that the interpretation was not supported by the Act.

Comment #15: One commenter contended that the Act neither expressly nor implicitly makes such a pronouncement regarding a State’s interoperability demonstration, expressed concern that the interpretation could compromise a State’s ability to have control over deployment of its RAN, and proposed instead that a State seeking to assume responsibility for deploying the RAN be required to demonstrate both current and future interoperability capability, but not necessarily be subject to FirstNet’s network policies.

Response: See the responses to Comment #1 and Comment #2 above.

Compliance With FirstNet Network Policies as a Condition To Obtaining a Spectrum Capacity Lease

Summary: Commenters largely agreed with FirstNet’s conclusion that it could require compliance with certain network policies essential to the deployment and interoperable operation of the NPSBN as a condition to entering into a spectrum capacity lease pursuant

to 47 U.S.C. 1442(e)(3)(C)(iii)(II). One commenter, for instance, encouraged FirstNet to use all the tools at its disposal to require compliance with network policies to ensure the central goal of the Act of creating a sustainable, interoperable, nationwide network. Another commenter noted that, as the license holder of the spectrum, FirstNet has the right to take measures that ensure the nationwide interoperability of the network. A few commenters disagreed with FirstNet’s interpretation that compliance with FirstNet’s network policies could be a condition within a State’s eventual spectrum capacity lease with FirstNet, challenging FirstNet’s authority pursuant to the Act to impose such a condition.

Comment #16: One commenter argued that the only limitations allowed to be placed on access to a spectrum capacity lease are those expressly enumerated in 47 U.S.C. 1442(e)(3)(D), indicating that compliance with FirstNet’s network policies are not explicitly included in those requirements.

Response: FirstNet disagrees and notes that as the licensee of the spectrum it must ultimately determine the terms and conditions of a spectrum capacity lease entered into with a State assuming responsibility for RAN deployment.

Comment #17: One commenter contended that requiring compliance with network policies as a condition to obtaining a spectrum capacity lease was a way for FirstNet to gain concessions not required pursuant to the Act from a State seeking to take on responsibilities for deploying the RAN.

Response: FirstNet recognizes the Act strikes a balance between establishing a nationwide network and providing States an opportunity, under certain conditions, to deploy a RAN within their respective State boundaries. One of those conditions explicitly stated within the Act is for the State to obtain a spectrum capacity lease from FirstNet.²³ Accordingly, FirstNet intends to act in good faith with each of the States to explore “win-win” solutions with States desiring to assume RAN responsibilities consistent with all requirements in the Act mandating the deployment of an interoperable nationwide broadband network for public safety.

Comment #18: A few commenters did not disagree with FirstNet’s interpretation, but noted the importance of providing clarity and transparency to the spectrum capacity leasing process.

Response: FirstNet acknowledges the comments and will consider them, as appropriate, in the development of any

²¹ 47 U.S.C. 1442(e)(3)(D)(iii).

²² See 47 U.S.C. 1426(c)(1).

²³ See 47 U.S.C. 1442(e)(3)(C)(iii)(II).

processes or requirements related to a spectrum capacity lease.

C. A State's Opportunity To Assume Responsibility for RAN Deployment and Operations

Final Interpretations Regarding the Presentation of a State Plan and the Completion of Request for Proposal Process

The Act requires FirstNet to present its plan for a State to the Governor “[u]pon the completion of the request for proposal process conducted by FirstNet for the construction, operation, maintenance, and improvement of the [NPSBN]”²⁴ The Act does not further define the specific stage in the RFP process that would constitute being “complete.”

FirstNet, in accordance with its analysis in the *Second Notice*, makes the following conclusions regarding the completion of the RFP process and the definition of completion:

1. FirstNet interprets 47 U.S.C. 1442(e) to merely require completion of the RFP process for a particular State, rather than the nation as a whole, prior to presentation of the plan to such State, assuming that FirstNet can at that stage otherwise meet the requirements for presenting a plan (and its contents) to such State.

2. FirstNet concludes that “completion” of the RFP process occurs at such time that FirstNet has obtained sufficient information to present the State plan with the details required pursuant to the Act for such plan, but not necessarily at any final award stage of such a process.

Analysis of and Responses to Comments on the Completion of the Request for Proposal Process

The majority of respondents agreed with FirstNet’s interpretation that, so long as FirstNet is able to provide the contents of, and meet the Act’s requirements for presenting, a plan to the State, FirstNet need only complete the RFP process for the specific State rather than the nation as a whole.²⁵ In addition, most commenters agreed that “completion” was not necessarily a final award stage of any RFP process, but simply the stage at which FirstNet has obtained sufficient information to present the State plan and its required details to the Governor. Commenters generally understood the complex economies of scale determinations that must be undertaken by potential offerors

and agreed that, depending on final determinations by the States regarding their decision to assume responsibility to deploy their own RAN, such final award stages may come after the State plan presentation.

Several respondents disagreed, however, arguing that the RFP process must be completed nationwide prior to any State plan being presented to the Governor or his designee, while other commenters provided recommendations for implementing these interpretations.

Comment #19: Two commenters were concerned that FirstNet intended to issue individual RFPs for each State, and that such an approach would deprive FirstNet and NTIA of critical information and prevent States from making informed decisions. One commenter stated that whether FirstNet chooses to conduct a single nationwide RFP for the entire network, discrete nationwide RFPs for categories of network procurements, or multiple State or regional RFPs, FirstNet should complete all of its planned RFP processes across the nation before presenting individualized State plans.

Response: FirstNet disagrees that all RFP processes across the nation must be completed prior to presenting a single State plan, and believes that requiring such a process would have the potential to restrict the number and kind of RFPs that FirstNet issues, and could unduly delay the deployment of the NPSBN to the injury of public safety stakeholders and potential partner(s).

The Act provides FirstNet with flexibility in deciding how many and what type of RFPs to develop and issue by not specifying any such required number or type.²⁶ As discussed in the *Second Notice*, if 47 U.S.C. 1426 is read to require all States to await the completion of all such RFP processes, FirstNet would likely constrain the range of RFPs it might otherwise conduct to avoid substantial delays nationwide, and in doing so constrain its ability to reflect the input from consultative parties as required by the Act.²⁷

Additionally, by requiring FirstNet to wait until all RFP processes are fully complete across the nation prior to issuing a State plan, a single protest regarding a single State or region could substantially delay implementation of the network in many or most States contrary to the Act’s emphasis on “speed[ing] deployment of the network.”²⁸

Comment #20: Another commenter focused on the potential for diminished spectrum value were FirstNet to issue individual State RFPs and was particularly concerned that there may be a lack of respondents to the RFPs in rural States with less overall spectrum value than those States that have larger, metropolitan areas within their respective borders. This commenter asserted that the only way to meet the Act’s requirements to “build out the NPSBN to cover rural America” was to either partner with a large number of rural providers or to have a nationwide partner.

Response: FirstNet acknowledges the comment and will consider it, as appropriate, in the development of any processes or requirements related to RFP(s) regarding the build out of the NPSBN.

Comment #21: An additional commenter was concerned that if complete nationwide data from the RFP process is not available to a State when FirstNet presents the State plan, any alternative plan developed by the State could not be fairly evaluated for its “‘cost-effectiveness’ based on a nationwide analysis.”

Response: FirstNet disagrees that full nationwide data is necessary for a State to develop an alternative plan. FirstNet interprets that, in order to present a State plan, FirstNet must have obtained sufficient information to present the State plan with the details required pursuant to the Act for such a plan. The details of the State plan, as discussed in the *Second Notice*, must include sufficient information to enable NTIA to undertake comparisons of cost-effectiveness, security, coverage, and quality of service—exactly the type of cost-effectiveness comparisons about which the commenter is concerned. Therefore, FirstNet believes its final interpretation regarding what constitutes completion of the RFP process necessarily encapsulates and allays the commenter’s concerns.

Comment #22: Several commenters, while agreeing with FirstNet’s legal interpretations that the RFP process is considered complete when FirstNet has enough information to present a State plan for the specific State in question, also suggested that FirstNet try to at least provide State plans at a similar time to members of the surrounding FEMA region due to the close coordination that must take place within FEMA region States.

Response: FirstNet acknowledges this comment and will consider it, as appropriate, as it develops the process for the presentation of State plans.

²⁴ 47 U.S.C. 1442(e).

²⁵ We note that that the FCC may provide further guidance with respect to the approval process for an alternative plan pursuant to 47 U.S.C. 1424(e)(3).

²⁶ See generally 47 U.S.C. 1426(b).

²⁷ See 47 U.S.C. 1426(c)(2)(A).

²⁸ See 47 U.S.C. 1426(b)(1)(C).

Final Interpretations Regarding the Content of a State Plan

47 U.S.C. 1442(e)(1) requires that FirstNet provide to the Governor of each State, or a Governor's designee, "details of the proposed plan for build out of the [NPSBN] in such State." Section 1442 does not include any express guidance as to the "details of the proposed plan" that must be provided.

Other provisions of the Act, however, provide some guidance in this regard and include provisions relating to the outcomes of the RFP process as well as the ability for NTIA to make comparisons of cost-effectiveness, security, coverage, and quality of service. In accordance with the structure and purposes of the Act, FirstNet makes the following interpretations regarding the content of a State plan:

1. FirstNet concludes that the details of the proposed State plan pursuant to 47 U.S.C. 1442(e)(1)(B) should include at least certain outcomes of the RFP process.

2. FirstNet concludes that the FirstNet plan must contain sufficient information to enable NTIA to make comparisons of cost-effectiveness, security, coverage, and quality of service.

Analysis of and Responses to Comments on the Content of a State Plan

The majority of commenters agreed with FirstNet's interpretations regarding the content of a State plan. Many agreed with FirstNet that its interpretations regarding the content of a State plan constituted only the minimum details that FirstNet should provide and that FirstNet may decide to provide more specifics as it deems necessary. A few commenters, while generally agreeing with FirstNet's conclusions, suggested additional details that FirstNet should take into consideration and provide upon the presentation of a State plan.

Comment #23: One commenter suggested that any State plan must also contain information and assumptions regarding the core network, including capacity, accessibility, and interoperability, for a Governor to truly have enough information at hand to make an informed decision.

Response: FirstNet agrees that certain information, as determined by FirstNet, regarding the core network should be included in the State plan in order to enable the FCC and NTIA to effectively evaluate and compare the State's alternative RAN plan should the State decide to deploy its own RAN and not participate in the FirstNet-proposed State plan pursuant to 47 U.S.C. 1442(e)(2).

Comment #24: Several commenters stated that any and all information, data,

and analysis that FirstNet uses to develop the State plan must be fully and completely available for a State to completely understand all decisions that went into the State plan and make an informed decision.

Response: FirstNet disagrees and notes that the Act does not require that such information be provided in a State plan.²⁹

Governor's Role in the State Plan Process

47 U.S.C. 1442(e)(2), entitled "State decision," establishes the Governor's role in choosing how the State will proceed regarding FirstNet deployment. FirstNet makes the following interpretations regarding the Governor's role in the State plan process and the ability of FirstNet and the States to implement additional State RAN deployment:

1. FirstNet concludes that the decision of the Governor pursuant to 47 U.S.C. 1442(e)(2), for purposes of the Act, is binding on all jurisdictions within such State, and that such a decision must be made for the entire State in question and not simply a subset of individual jurisdictions.

2. FirstNet concludes that FirstNet and a State could agree that FirstNet and the State (or sub-State jurisdictions) work together to permit implementation of added RAN coverage, capacity, or other network components beyond the State plan to the extent the interoperability, quality of service, and other goals of the Act are met.

Analysis of and Responses to Comments on the Governor's Role in the State Plan Process

Summary: The majority of commenters agreed that the Act specifies the Governor as the State official who makes a final determination regarding FirstNet deployment in the State and agreed that the Governor's decision should be binding on all jurisdictions within the State. Commenters also generally agreed with FirstNet's interpretation that FirstNet and States could work together to potentially expand RAN coverage, capacity, or other network components so long as the goals of the Act were met. A few commenters, as described below, expressed some general concerns about a Governor's authority to make a decision related to RAN deployment within the State.

Comment #25: Several commenters detailed, while agreeing with FirstNet's interpretation that the ultimate decision regarding FirstNet deployment in the

State was that of the Governor, that many States may require legislative approval or coordination between political subdivisions or counties and the State before the Governor is able to make such decisions for the State.

Response: FirstNet acknowledges the comment and believes regardless of whether a Governor may need to seek certain approvals prior to making a decision for the State, pursuant to the Act, the final State decision regarding a FirstNet-proposed State plan continues to ultimately rest with the Governor.³⁰

Comment #26: One commenter suggested that plans for each State should be developed after appropriate consultation with tribal jurisdictions in order for the plan to be binding on tribal jurisdictions. The commenter stated that in the event of a tribal/State dispute, approval for the State plan should not be delayed for the rest of the State and coverage or level of service for the tribal jurisdiction could be "amended to the FirstNet or Commission approved plan."

Response: Tribal jurisdictions are expressly included as part of the statutorily mandated consultation process.³¹ The Act specifies that such consultation regarding the development of State plans must occur between FirstNet and the State single point of contact ("SPOC").³² FirstNet has endeavored, and will continue, to seek input in accordance with the Act from tribal jurisdictions in an effort to ensure that their needs are reflected in the State plan ultimately delivered to a Governor. While it is not entirely clear what the commenter means by having tribal coverage levels be "amended to the FirstNet or Commission approved plan," FirstNet does agree that there may be opportunities for the State and FirstNet to agree to have FirstNet and the tribal jurisdictions work directly with one another to provide added RAN coverage, capacity, or other network components as necessary beyond the State plan so long as the interoperability, quality of service, and other goals of the Act are met.

Comment #27: One commenter stated that FirstNet wrongly concludes that a Governor's decision would prevent a city or county within the State from deploying its own RAN. The commenter asserts that if a jurisdiction chooses to fund and build its own RAN, it should be allowed to do so and mentions that, regardless, "the jurisdiction would be within its rights to seek licensure and

³⁰ See 47 U.S.C. 1442(e)(2).

³¹ See 47 U.S.C. 1426(c)(2).

³² See *id.*

²⁹ See 47 U.S.C. 1442(e)(1).

operate a network within its jurisdiction.”

Response: FirstNet disagrees with the commenter's assertions. 47 U.S.C. 1442(e)(2) clearly states that “the Governor shall choose whether to participate in the deployment of the [NPSBN] as proposed by [FirstNet] or conduct its own deployment of a [RAN] in such State.”³³ As discussed in the *Second Notice*, such sub-State level decisions, if permitted, could create potential islands of RANs which do not meet the interoperability and other goals of the Act regarding a NSPBN.³⁴ The Act does not authorize anyone other than the Governor to make a respective State's decision regarding the FirstNet-proposed State plan and, in fact, further supports the conclusion of a single decision point through the creation of a single point of contact for each State, directly appointed by the Governor.³⁵

In addition, the Act grants FirstNet the nationwide license for the 700 MHz D block spectrum and existing public safety broadband spectrum³⁶ and requires a “State” (not individual sub-State jurisdictions) that seeks to assume RAN responsibilities to “submit an alternative plan” to the FCC and apply to NTIA to lease spectrum capacity from FirstNet.³⁷ Nowhere does the Act contemplate sub-State jurisdictions operating their own RANs using FirstNet's licensed spectrum—it is only a State that may develop an alternative plan for submission through the section 1442(e)(3)(C) approval process for eventual negotiation of a spectrum capacity lease with FirstNet.

Comment #28: One commenter suggested that, while agreeing with FirstNet's conclusion that it could work with the State to permit State or sub-State implementation of added RAN coverage, capacity, or other network components beyond the FirstNet plan, FirstNet should not enter any agreement on a Statewide or sub-State basis without the concurrence of the State, or otherwise in a manner that would limit or restrict the Governor's discretion and rights with regard to the State decision process pursuant to the Act.

Response: FirstNet agrees with this comment and, as indicated in the *Second Notice*, would work with the State prior to any such agreements.

Final Interpretations Regarding the Timing and Nature of a State's Decision

The Act provides that the Governor must make a decision “[n]ot later than 90 days after the date on which the Governor of a State receives notice pursuant to [section 1442(e)(1)].”³⁸ As noted in the *Second Notice*, such phraseology raises the question as to whether a Governor could make such a decision prior to receiving the notice contemplated pursuant to section 1442(e)(1). Additionally, if the Governor decides to participate in the State plan, the Act does not specifically require the Governor to provide notice of the State's decision to participate in the FirstNet-proposed network to FirstNet, or any other parties.³⁹

Finally, if the Governor decides to assume RAN responsibilities on behalf of the State and create an alternative plan for deployment of the RAN within its borders, the Act provides that “[u]pon making a decision . . . the Governor shall notify [FirstNet], the NTIA, and the [FCC] of such decision.”⁴⁰

After taking into consideration the analysis contained in the *Second Notice* and its associated comments, FirstNet makes the following interpretations regarding the timing and nature of a State's decision:

1. FirstNet concludes that the Governor must await notice and presentation of the FirstNet plan prior to making the decision pursuant to 47 U.S.C. 1442(e)(2).

2. FirstNet concludes that a State decision to participate in the FirstNet-proposed deployment of the network in such State may be manifested by a State providing either (1) actual notice in writing to FirstNet within the 90-day decision period or (2) no notice within the 90-day period established pursuant to 47 U.S.C. 1442(e)(2).

3. FirstNet interprets the requirement within 47 U.S.C. 1442(e)(3) stating that the notice is to be provided to FirstNet, NTIA, and the FCC as being an immediate (*i.e.*, same day) requirement.

Analysis of and Responses to Comments Regarding the Timing and Nature of a State's Decision

The majority of commenters agreed with FirstNet's interpretations regarding the timing and nature of a State's decision. Several commenters affirmed that the Act requires certain findings and comparisons to be made during the process under which a State assumes RAN responsibility and that such a

comparison cannot be conducted until the FirstNet plan has been presented.

Some commenters, however, disagreed with FirstNet, stating that a Governor is free to make a decision at any time and should be allowed to make the decision to assume responsibility for the RAN early if the State so chooses, as well as be allowed the full 90 days to inform FirstNet, NTIA, and the FCC of the State's decision regardless of when a decision is actually made within a State. Additionally, some commenters asked that the Governor be allowed time beyond the 90-day limit to make such a decision. Others, while agreeing with FirstNet's legal conclusions, suggested that FirstNet try to provide the States with as much information as possible prior to the official 90-day clock to assist the Governors with their decision. Finally, some commenters disagreed with FirstNet's conclusion that only an affirmative opt-out notice would result in a State not accepting the State plan presented by FirstNet.

Comment #29: Several commenters stated that FirstNet has no authority to instruct a Governor on his or her decision-making process. These commenters stated that FirstNet should not become an obstacle requiring States to wait to make a decision to assume RAN responsibility.

Response: To clarify, FirstNet acknowledges that it has no authority to instruct a Governor on his or her specific decision-making process, but rather only to interpret the requirements with respect to the process for submitting that ultimate decision as provided in the Act.

The Act provides that “[n]ot later than 90 days after the date on which the Governor of a State receives notice pursuant to [section 1442(e)(1)], the Governor shall choose whether to (A) participate in the deployment of the [NPSBN] as proposed by [FirstNet] or (B) conduct its own deployment of a [RAN] in such State.”⁴¹ While many commenters seemed to focus on the “not later than 90 days” phrase at the beginning of the sentence and assert this to mean that a Governor may choose to assume RAN responsibility at any time between the present day up to the 90-day time limit, the decision is expressly dependent on FirstNet having first provided the Governor the requisite notice pursuant to section 1442(e)(2).

For instance, it is logical to conclude that a Governor could wait the full 90 days after he or she receives notice of the State plan before making the decision to assume RAN responsibility and notify the proper parties. Similarly,

³³ 47 U.S.C. 1442(e)(2)(1).

³⁴ See 47 U.S.C. 1422(a).

³⁵ See 47 U.S.C. 1442(d).

³⁶ See 47 U.S.C. 1421(a).

³⁷ See 47 U.S.C. 1442(e)(3).

³⁸ See 47 U.S.C. 1442(e)(1).

³⁹ See 47 U.S.C. 1442(e)(3)(A).

⁴⁰ *Id.*

⁴¹ 47 U.S.C. 1442(e)(2) (emphasis added).

a Governor could wait, for example, only 40 days after he or she receives notice, or even make the decision required pursuant to section 1442(e)(2) and notify the proper parties the same day as receiving notice of the State plan. By using the language “after the date on which the Governor of a State receives notice,” Congress indicated its intent that the State decision would occur *after* receipt of the notice from FirstNet. Thus, for purposes of the formal State decision pursuant to section 1442(e)(2), the Governor must wait until the FirstNet-proposed State plan is presented before he or she notifies FirstNet, NTIA, and the FCC of the State’s decision to assume RAN responsibility.

Furthermore, it would be counterproductive to notify FirstNet, NTIA, and the FCC of the State’s decision earlier than presentation by FirstNet of the State plan as that would necessarily start the 180-day clock regarding submission of an alternative plan without there being any FirstNet proposed plan against which the FCC and NTIA could evaluate and compare the State’s alternative plan.⁴² As such, these entities would be unable to fulfill their statutory responsibilities related to approving or rejecting the alternative plan as they would have insufficient information to make the necessary determinations as required under the Act.

Comment #30: Some commenters suggested that FirstNet should work with States where there are opportunities for early deployment and allow the State to amend their alternative plans at a later stage in the process as needed once the State plan is presented by FirstNet, the goal of which would be to allow the States to move forward with deployment as soon as the State was ready.

Response: The Act explicitly requires a sequential process to be followed prior to any FirstNet network deployment taking place.⁴³ It is not until the State has decided to participate in FirstNet’s proposed State plan or has progressed through the entire alternative plan process provided in section 1442(e)(3) that any network deployment may begin. To proceed through the process required under section 1442(e)(3)(C)-(D), the FCC and NTIA must have access to the FirstNet-proposed State plan in order to compare it to the State’s alternative plan.⁴⁴

The Act does not contemplate any type of retroactive amendment process

within section 1442(e)(3) and requires comparisons and evaluations to take place between the FirstNet-proposed State plan and the State’s alternative plan that simply cannot occur without the FirstNet proposed State plan first being presented to the Governor as required by the Act. Without a FirstNet plan having been presented, the State’s premature decision would not enable the FCC to make the assessments required to approve the State’s alternate plan, or if such plan is approved, enable NTIA to review and determine whether to approve an application for grant funds and to seek a spectrum capacity lease from FirstNet.

Comment #31: One commenter stated that FirstNet should make clear that Governors are not prohibited from beginning to develop alternative plans now and that the development of alternative plans in advance could also assist Governors in making informed choices regarding whether to assume RAN responsibility or participate in the FirstNet State plan.

Response: There is no statutory provision preventing States from using their own funds to begin developing alternative plans.

Comment #32: A few commenters asserted that the State must respond in writing with its decision, regardless of the 90-day time limit prior to FirstNet taking any action.

Response: As stated in the *Second Notice*, the Act does not require the Governor of a State to provide notice of the State’s decision to participate in FirstNet’s proposed State plan pursuant to section 1442(e)(2)(A) to FirstNet, or any other parties. Rather, notice is only required should the Governor of a State decide that the State will assume responsibility for the buildout and operation of the RAN in the State.⁴⁵

Taking into consideration the Act’s emphasis on the need “to speed deployment” of the network for public safety,⁴⁶ the requirement for specific required affirmative notice for a decision to assume RAN deployment and operation, and no such explicit affirmative notice required for a decision to accept the proposed FirstNet plan, FirstNet concludes that notice is not required within the 90-day period established pursuant to section 1442(e)(2) in order for a Governor to choose to participate in the FirstNet-proposed State plan.

Comment #33: Several commenters asked that States be given longer than the 90-day time limit established by the

Act due to the complexity of the decision itself and the decision process that many Governors may have to go through prior to making a final determination regarding whether to choose to participate in the FirstNet-proposed State plan or conduct the deployment of the State’s own RAN. In addition, some commenters expressed frustration that FirstNet will have several years to decide its approach with the States, whereas the States must provide written notice of its intentions within 90 days.

Response: FirstNet was created by Congress and is bound by the statutory language contained within the Act. The Act explicitly provides for a 90-day period following the presentation of the State plan for a Governor to choose to participate in the State plan as presented by FirstNet or choose to conduct its own deployment of a RAN within the State.⁴⁷ FirstNet has no ability to change the plain language of the Act and therefore has no authority to extend the 90-day time period.

Comment #34: Some commenters suggested that, while FirstNet is unable to provide the Governor with more time following the presentation of the FirstNet-proposed State plan, FirstNet should do everything in its power to provide the States with information that may be contained in the State plan as much in advance of the formal 90-day time clock as possible.

Response: FirstNet acknowledges the comment and plans to continue to coordinate with the States through its ongoing consultation efforts to share details of the proposed State plans as such information comes available as part of the RFP process.

The Nature of FirstNet’s Proposed State Plan

The Act pursuant to 47 U.S.C. 1442(e)(1) requires FirstNet to present a “plan” to the Governor, or to the Governor’s designee, of each State. The Governor then must decide whether to participate in the deployment as proposed by FirstNet or to deploy the State’s own RAN that interoperates with the NPSBN.⁴⁸ While the presentation of such a plan is an important step in the deployment of the NPSBN, it is only one additional milestone within the ongoing relationship between FirstNet and the States, with significant collaboration between the parties still to take place prior to deployment.

Using the plain language of the Act, a “plan,” as defined by Oxford

⁴² See 47 U.S.C. 1442(e)(3)(C)-(D).

⁴³ See 47 U.S.C. 1442(e).

⁴⁴ See 47 U.S.C. 1442(e)(3)(C)-(D).

⁴⁵ See 47 U.S.C. 1442(e)(3)(A).

⁴⁶ See, e.g., 47 U.S.C. 1426(b)(1)(C); see also, e.g., 47 U.S.C. 1426(b)(3).

⁴⁷ See 47 U.S.C. 1442(e)(2).

⁴⁸ See 47 U.S.C. 1442(e)(1)(B).

Dictionaries, is a “detailed proposal for doing or achieving something.”⁴⁹

Nowhere does the Act use contract terminology, such as “offer,” “execute,” or “acceptance,” in relationship to the FirstNet plan. In fact, the Act speaks only to a Governor’s decision to “participate” in the deployment as proposed by FirstNet.⁵⁰ Accordingly, FirstNet makes the following conclusion regarding the nature of FirstNet’s proposed State plan:

FirstNet concludes that the presentation of a plan to a Governor and his/her decision to either participate in FirstNet’s deployment or follow the necessary steps to build a State RAN do not create a contractual relationship between FirstNet and the State.

Analysis of and Responses to Comments Regarding the Nature of FirstNet’s Proposed State Plan

The majority of commenters agreed with FirstNet’s conclusion that the presentation of the State plan and the Governor’s decision to (or not to) participate in the plan do not constitute a contractual relationship between the parties. Several commenters expressed their sentiments that any network user fees associated with the network could not be binding on individual public safety entities at the time of the State plan because not all such fees will likely be known at the time a State plan is presented by FirstNet, and therefore a contract could not exist between the parties. Moreover, the vast majority of respondents agreed that it would not be until public safety entities actually subscribe to the NPSBN that contractual relationships would be established between the public safety entities themselves and FirstNet or the State, as applicable.

Comment #35: Several commenters, while agreeing with FirstNet’s interpretation that the plan does not constitute a contract, stated that any material alteration of the State plan by FirstNet, such as priority or timing of build-out, should also allow a State to similarly alter its decision that was based on the previous plan.

Response: The Act does not provide for any mechanism whereby a Governor that decides to participate in the FirstNet-proposed State plan pursuant to 47 U.S.C. 1442(e)(2) can then reverse his or her decision for the State and choose to assume RAN responsibility at some unspecified point in the future. Once a Governor is presented with the

FirstNet-proposed State plan, he or she then has 90 days with which to make the decision to participate in FirstNet’s proposed plan or to choose to conduct its own State RAN deployment.⁵¹ Congress struck a balance in the Act between a State’s right to conduct its own RAN deployment and FirstNet and its potential partner(s)’ needs for certainty as network deployment begins nationwide. Both FirstNet and its ultimate network partner(s) must be able to rely on State decisions in order to effectively and efficiently plan the nationwide deployment of the NPSBN.

FirstNet recognizes that after a Governor’s decision, changes to the FirstNet State plan could arguably occur due to unforeseen circumstances or even based on further agreements between FirstNet and the impacted State. FirstNet intends to continue to coordinate closely with each State as it plans the deployment in accordance with the State plan to help ensure such plans meet the needs of public safety. It is important to note that as there is no mandate in the Act that public safety purchase services from FirstNet, FirstNet must offer an attractive value proposition to incentivize adoption of the NPSBN by its public safety stakeholders.

Comment #36: One commenter expressed that the Act, specifically 47 U.S.C. 1442(e)(3)(C)–(D), requires that the State demonstrate specific criteria in its alternative plan in order to be approved by the FCC and NTIA and to enter a spectrum capacity lease with FirstNet. Therefore, while the commenter agrees that the FirstNet-proposed State plan does not constitute a contract between the State and FirstNet, the commenter believes that the State should expect certainty regarding these specific criteria for an alternative plan. Without such a guarantee, the commenter asserts that States will not be provided with the information needed to make an appropriate RAN deployment decision.

Response: FirstNet, as discussed in the *Second Notice*, intends to include at least certain outcomes of the RFP process as well as sufficient information to enable NTIA to make comparisons of cost-effectiveness, security, coverage, and quality of service.

Comment #38: Several commenters disagreed that FirstNet’s State plan does not form a contract between FirstNet and the State. A few commenters argued that FirstNet’s presentation of a State plan to a State constituted an “offer” to the Governor, with “acceptance” of such offer occurring when the Governor

chooses to participate in the offered plan. One commenter suggested that FirstNet’s State plan in essence creates an “unconscionable contract of adhesion” by not containing what the commenter considered to be “material elements of the contract.” Furthermore, these commenters contended that without the State plan presentation and acceptance being considered a binding contract, the State cannot obtain the necessary certainty with which to make an informed decision pursuant to 47 U.S.C. 1442(e)(2).

Response: FirstNet disagrees with this comment and concludes, as discussed in the *Second Notice*, that the presentation of a proposed plan to a State from FirstNet does not create any type of contract. First, the applicable provisions of the Act do not use, nor make any reference to, any contract terminology in describing the State plan, thus suggesting that Congress did not intend for such plans to create a contract between FirstNet and the States. Next, as analyzed in the *Second Notice*, the presentation of the State plan does not constitute the necessary elements of “offer and acceptance” to create a contract. Finally, unlike the plan itself that does not mandate any entity subscribe to any eventual FirstNet service offering, if public safety entities ultimately decide to purchase FirstNet services, at that time a contract will be established between the parties with the typical terms and conditions of a contractual relationship.

Final Interpretations Regarding the State’s Development of an Alternative Plan

47 U.S.C. 1442(e)(3)(B) requires, not later than 180 days after a Governor provides notice to FirstNet, NTIA, and the FCC pursuant to 47 U.S.C. 1442(e)(3)(A), that the Governor develop and complete RFPs for construction, maintenance, and operation of the RAN within the State. Similar to the requirement that FirstNet must notify the State upon the “completion” of the RFP process,⁵² section 1442(e)(3)(B) does not further define the phrase “complete requests for proposals” that the State must accomplish within the 180-day timeline.

As stated in the *Second Notice*, FirstNet understands that States, like FirstNet, will potentially have gaps in information at the time of their RFP process, and subsequently at the time of their submission of an alternative plan. For instance, because States will not have negotiated a spectrum capacity lease with FirstNet upon the initial

⁴⁹ See Oxford Dictionary of English (3 ed. 2014), <http://www.oxforddictionaries.com/definition/english/plan> (last visited Aug. 30, 2015).

⁵⁰ See 47 U.S.C. 1442(e)(2)(A).

⁵¹ See 47 U.S.C. 1442(e)(2).

⁵² See 47 U.S.C. 1442(e)(1).

submission of their alternative plan, certain final terms within the States' own covered leasing agreements with their respective partners will likely not have been fully negotiated. FirstNet believes this should not preclude a State from submitting an alternative plan, so long as within the 180-day time period the State has progressed to the extent necessary to submit an alternative plan in accordance with the requirements described in section 1442(e)(3)(C)(i).

Accordingly, FirstNet makes the following conclusions regarding the State's development of an alternative plan:

1. FirstNet concludes that the phrase "complete requests for proposals" means that a State has progressed in such a process to the extent necessary to submit an alternative plan for the construction, maintenance, operation, and improvements of the RAN that demonstrates the technical and interoperability requirements in accordance with 47 U.S.C. 1442(e)(3)(C)(i).

2. FirstNet concludes that where a State fails to "complete" its RFP within the 180-day period pursuant to the Act, the State forfeits its ability to submit an alternative plan pursuant to 47 U.S.C. 1442(e)(3)(C), and the construction, maintenance, operations, and improvements of the RAN within the State shall proceed in accordance with the FirstNet proposed State plan for such State.

Analysis of and Responses to Comments Regarding the State's Development of an Alternative Plan

The majority of respondents agreed with FirstNet's conclusion that, due to the similar nature of the States' responsibility to "complete requests for proposals" and FirstNet's requirement to notify the States upon "completion of the request for proposal process," States should similarly only need to progress to the point in its RFP process to be able to submit an alternative plan for the construction, maintenance, operation, and improvements of the RAN that also demonstrates the technical and interoperability requirements described in the FCC's evaluation criteria pursuant to section 1442(e)(3)(C)(i). Similarly, the majority of commenters agreed with FirstNet's conclusion that the Act's interest in timely network deployment compels the State and FirstNet to proceed in accordance with FirstNet's proposed State plan if the State is unable to submit an alternative plan within 180 days as required pursuant to section 1442(e)(3)(C)(i).

Several commenters, however, maintained that the 180-day timeline is

too short of a period for a State to realistically complete its RFP process and that the State should not have to forfeit its ability to submit an alternative plan if it does not complete the RFP process within the 180 days. Several commenters seemed to suggest that States must be "complete" enough in their RFP process to provide information over and above that which FirstNet had concluded was required within the 180-day timeline.

Comment #39: Numerous commenters expressed their frustration at the short time periods established by the Act, with several suggesting that FirstNet extend the 180-day deadline based on certain factors determined by FirstNet regarding consultation activities.

Response: FirstNet was created by Congress and is bound by the statutory language contained within the Act. The Act explicitly provides for a 180-day period following the Governor's decision to opt-out to "develop and complete requests for proposals for the construction, maintenance, and operation of the [RAN] within the State."⁵³ FirstNet has no ability to change the plain language of the Act and is not authorized to extend the 180-day time period.

FirstNet acknowledges the issues regarding timeframes raised in certain of the comments and therefore has concluded that such "completion" required pursuant to section 1442(e)(3)(B) is only required to the extent necessary to be able to submit an alternative plan for the construction, maintenance, operation, and improvements of the RAN that also demonstrates the technical and interoperability requirements in accordance with 47 U.S.C. 1442(e)(3)(C)(i).

Comment #40: Numerous respondents asserted that the State should not be required to forfeit its ability to submit an alternative plan if it fails to submit its alternative plan within the 180-day timeline.

Response: FirstNet disagrees with this statement based on the purpose and language of the Act. Throughout the Act, numerous references express the desire for timely network deployment.⁵⁴ In addition, the Act explicitly imposes timelines that a State must meet in order to proceed through the alternative plan process.⁵⁵

⁵³ See 47 U.S.C. 1442(e)(3)(B).

⁵⁴ See, e.g., 47 U.S.C. 1426(b)(1)(C) (describing the need for existing infrastructure to "speed deployment of the network"); see also e.g., 47 U.S.C. 1426(b)(3) (including partnerships to "speed deployment" in rural areas).

⁵⁵ See 47 U.S.C. 1442(e)(2)-(3).

The Act weighs a State's right to conduct its own RAN deployment in the State with public safety's need to expeditiously gain the benefit of interoperable communications across State borders. In doing so, it established a clear process relating to State assumption of RAN deployment. FirstNet does not have the authority to alter this statutory process and must adhere to the express language and intent of the Act to speed deployment of a nationwide broadband network for public safety. In keeping with the language and purpose of the Act, FirstNet concludes that where a State fails to "complete" its RFP in the 180-day period pursuant to the Act, the State forfeits its ability to submit an alternative plan in accordance with section 1442(e)(3)(C), which results in the State proceeding in accordance with the FirstNet-proposed State plan.

Comment #41: One commenter seems to confuse the State's forfeiture of its opportunity to assume RAN responsibilities with the supposition that FirstNet would be, in effect, forcing a State's first responders to subscribe to the NPSBN by proceeding with FirstNet's originally proposed State plan.

Response: FirstNet reiterates that the Act does not mandate public safety use of the NPSBN. Once FirstNet proceeds with the deployment of its proposed State plan, or a State takes on the RAN deployment and operation responsibility, all public safety entities across the country will have the choice whether to subscribe to the NPSBN.⁵⁶

Comment #42: Several commenters maintained that FirstNet must continue to ensure it is providing States with as much information as possible as soon as possible due to the tight timeframes established within the Act.

Response: FirstNet, as previously stated, is committed to continuing its consultation activities and coordinating with the States as it develops and presents the State plans.

Comment #43: One commenter suggested that a State should reasonably be required to sufficiently develop and complete the RFPs during the 180-day period and advance in such process to the extent necessary to not only enable the State to meet the requirements of section 1442(e)(3)(C), but also those of section 1442(e)(3)(D).

Response: FirstNet appreciates the tight timeframes included within the Act and has taken practical steps to help ensure that a State has a reasonable opportunity to proceed with deploying its own RAN in the State. States are not

⁵⁶ See generally 47 U.S.C. 1428(a)(1).

required to know all details of their alternative plan, but instead to have progressed to a point to be able to present an alternative plan for the construction, maintenance, operation, and improvements of the RAN that is also able to demonstrate the technical and interoperability obligations required pursuant to section 1442(e)(3)(C)(i). FirstNet agrees with the respondent that a State must provide information specified in section 1442(e)(3)(D) prior to NTIA being able to complete its section 1442(e)(3)(D) comparisons pursuant to the Act and for the State to seek to enter into a spectrum capacity lease with FirstNet.⁵⁷ FirstNet concludes, however, that within the 180-day timeframe, the State must only be able to submit an alternative plan for the construction, maintenance, operation, and improvements of the RAN that also demonstrates the technical and interoperability requirements within section 1442(e)(3)(C)(i).⁵⁸

Final Interpretations Regarding the Responsibilities of FirstNet and a State Upon a State Decision To Assume Responsibility for the Construction and Operation of Its Own RAN

Under 47 U.S.C. 1442(e)(3)(C)(iii), the FCC's decision to approve a State's alternative plan triggers the State's obligation to apply to NTIA to seek a spectrum capacity lease from FirstNet (while also allowing the State to apply for a grant to assist in the construction of the State's RAN). Several questions with respect to these provisions of the Act are discussed in the *Second Notice* regarding the implications and effects on FirstNet and a State of the FCC's decision to approve or disapprove a State's alternative plan.

Based on its analysis in the *Second Notice*, FirstNet makes the following conclusions regarding the responsibilities of FirstNet and a State upon a State's decision to assume responsibility for the construction and operation of its own RAN:

1. FirstNet concludes that once a plan has been disapproved by the FCC, subject only to the additional review described in 47 U.S.C. 1442(h), the opportunity for a State to conduct its own RAN deployment pursuant to 47 U.S.C. 1442(e) will be forfeited, and FirstNet shall proceed in accordance with its proposed plan for that State.

2. FirstNet concludes, following an FCC-approved alternative State RAN plan, it would have no obligation to

construct, operate, maintain, or improve the RAN within such State.

3. FirstNet concludes that if a State, following FCC approval of its alternative plan, is unable or unwilling to implement its alternative plan in accordance with all applicable requirements, then FirstNet may assume, without obligation, RAN responsibilities in the State.

Analysis of and Responses to Comments Regarding the Responsibilities of FirstNet and a State Upon a State Decision To Assume Responsibility for the Construction and Operation of Its Own RAN

Commenters generally agreed with FirstNet's conclusions regarding the responsibilities of a State and FirstNet following the FCC's decision to approve or disapprove a State's alternative plan. Almost all respondents agreed that if the FCC were to disapprove a State's alternative plan, subject to the judicial review allowed in section 1442(h), the State would proceed according to FirstNet's proposed plan.⁵⁹ Most commenters agreed that once the FCC approves an alternative plan, the State itself must assume the obligation for the construction, operation, maintenance, and improvement of the RAN in such State, and acknowledged FirstNet's rationale for concluding its obligation to deploy a State plan would be extinguished.

Additionally, several commenters stated that it was their belief that FirstNet should provide assurances that it will ensure every State has NPSBN service offerings, whether such State opts-in or fails in its attempt to deploy and operate the RAN. On the other hand, one commenter cautioned FirstNet against adopting interpretations that would allow for the "rescue of opt-out" States without clarifying that such a scenario should not be seen by the States as a "safety net."

Comment #44: One respondent maintained that the State should not be required to forfeit its ability to conduct its own RAN deployment and proceed with the FirstNet-proposed State plan following an FCC decision to disapprove the State's alternative plan pursuant to section 1442(e)(3)(C)(iv).

Response: FirstNet disagrees with this statement based on the plain language of the Act. Section 1442(e)(3) explicitly states that "[i]f the [FCC] disapproves [a State's alternative plan], the construction, maintenance, operation, and improvements of the network within the State shall proceed in accordance with the plan proposed by

[FirstNet]."⁶⁰ A State does have the right to appeal the FCC's decision to the U.S. District Court for the District of Columbia,⁶¹ but the Act's language makes it clear that deployment within the State shall proceed according to FirstNet's proposed State plan following FCC disapproval of the alternative plan.

Comment #45: One commenter expressed that it would be beneficial to have an appeals process following the submission to the FCC, in instances where the State plan was not approved, through which the decision could be referred to an independent third party for adjudication.

Response: Section 1442(h) already specifically designates an appeals process with respect to the FCC's disapproval of an alternative plan, whereby "[t]he United States District Court for the District of Columbia shall have exclusive jurisdiction to review a decision of the [FCC] pursuant to subsection (e)(3)(C)(iv)."⁶² Any additional appeals processes would contradict the express language of the Act that the U.S. District Court for the District of Columbia has "exclusive jurisdiction" to review the FCC's decision to disapprove a State's alternative plan, as well as simply add to the likely substantial delays that would result in the NPSBN deployment within the respective States.

Comment #46: Several commenters asserted that FirstNet's central obligation pursuant to the Act is to ensure the deployment of the NPSBN in every State, and that, even if a State gains all necessary approvals to implement its alternative plan and eventually fails, FirstNet's obligation to deploy the network nationwide is never extinguished and must proceed according to the FirstNet-proposed State plan.

Response: Each Governor is given the option to decide to participate in FirstNet's proposed State plan or to progress through a statutorily-mandated process to assume the obligation for constructing, maintaining, operating, and improving its own State RAN.⁶³ This process can infuse significant delays in the deployment based on the statutorily-mandated timeframes for the Governor's decision and the development of an alternative State plan by the State.⁶⁴ Further, the Act provides

⁶⁰ 47 U.S.C. 1442(e)(3)(C)(iv) (emphasis added).

⁶¹ See 47 U.S.C. 1442(h).

⁶² See *id.*

⁶³ See 47 U.S.C. 1442(e).

⁶⁴ See 47 U.S.C. 1442(e)(2), (3)(C)(i) (providing that the Governor has 90 days to make a decision on State RAN deployment and 180 days to complete

⁵⁷ See 47 U.S.C. 1442(e)(3)(D).

⁵⁸ See 47 U.S.C. 1442(e)(3)(B), (C)(i).

⁵⁹ See 47 U.S.C. 1442(e)(3)(C)(iv).

no explicit timelines for the FCC to review and approve or disapprove of an alternative plan, and affords an additional unspecified period of time to appeal any disapproval to the U.S. District Court for the District of Columbia.⁶⁵

Given the timeframes required by the Act to reach the point of the approval of an alternate plan by the FCC, it is critical that thereafter FirstNet and its eventual RFP partner(s) are able to rely on the State decision to proceed with RAN deployment so FirstNet can appropriately plan for the deployment throughout the rest of the nation. FirstNet cannot be in a position to further delay the nationwide availability of the NPSBN due to a single State's inability or unwillingness to deploy the RAN within that State. In addition, the Act does not provide a mechanism requiring FirstNet to assume responsibility for local RAN deployment after a State has elected, and been approved, to do so. Indeed, to the contrary, Congress indicated its clear intent in requiring FirstNet to proceed with its State plan only in the case where a State's alternative plan was disapproved by the FCC. Congress could have just as easily included a requirement that FirstNet proceed with a State plan if a State was unable or unwilling to proceed under its alternative plan. However, we believe Congress created a balance in favor of certainty and speed to deployment, which is consistent with the detailed process and steps Congress implemented in the Act to ensure alternative State plans initially met the necessary criteria for State deployment and operation of the RAN.⁶⁶

Therefore, FirstNet reiterates its conclusion that, following an FCC-approved alternative plan, it would have no obligation to construct, operate, maintain, or improve the RAN within such State, but if the State becomes unable or unwilling to implement its alternative plan in accordance with all applicable requirements, then FirstNet may assume, without obligation, the RAN responsibilities in the State.

the RFP process if the State is seeking to conduct its own RAN deployment).

⁶⁵ See 47 U.S.C. 1442(h).

⁶⁶ See U.S.C. 1442(e)(3)(C)(iv) (stating where the FCC disapproves an alternative plan, the State proceeds according to FirstNet's proposed plan); 47 U.S.C. 1442(e)(3)(D) (failing to assert that a State must proceed with the FirstNet proposed plan when a FCC-approved plan subsequently fails to demonstrate the requirements to NTIA pursuant to Section 1442(e)(3)(D) to seek a spectrum capacity lease from FirstNet).

D. Customer, Operational, and Funding Considerations Regarding State Assumption of RAN Construction and Operation

Customer Relationships in States Assuming RAN Construction and Operation

The Act does not expressly define which customer-facing roles are assumed by a State or FirstNet with respect to public safety entities in States that have assumed responsibility for RAN construction and operation. Generally speaking, all wireless network services to public safety entities will require technical operation of both the RAN, operated by the State in this case, and the core network, operated by FirstNet. The Act charges FirstNet with ensuring the establishment of the NPSBN, including the deployment of the core network, but provides States an opportunity, subject to certain conditions, to conduct the deployment of a RAN in a State.⁶⁷ A core network, for example, would typically control critical authentication, mobility, routing, security, prioritization rules, and support system functions, including billing and device services, along with connectivity to the Internet and public switched network. Conversely, the RAN would typically dictate, among other things, the coverage and capacity of last mile wireless communication to customer devices and certain priority and preemption enforcement points at the wireless interface of the network. The allocation of these technical and operational functions, however, does not entirely dictate who assumes public safety customer-facing roles, such as marketing, execution of customer agreements, billing, maintaining service responsibility, and generating and using fees from public safety customers. Thus, the conclusions below relate to FirstNet and the State's respective roles and approach with regard to customer relationships in States assuming responsibility for RAN construction and operation in that State.

1. FirstNet concludes that the Act provides sufficient flexibility to accommodate many types of customer relationships with public safety entities for States assuming RAN responsibility so long as the relationships meet the interoperability and self-sustainment goals of the Act.

2. FirstNet concludes that the Act does not require that States assuming RAN deployment responsibilities be the customer-facing entity entering into agreements with and charging fees to public safety entities in such States.

3. FirstNet concludes that the Act does not preclude States assuming RAN deployment responsibilities from charging subscription fees to public safety entities if FirstNet and such States agree to such an arrangement in the spectrum capacity lease.

4. FirstNet concludes that the Act provides sufficient flexibility to allow the determination of whether FirstNet or a State plays a customer-facing role to public safety entities in a State assuming RAN responsibilities, to be the subject of operational discussions between FirstNet and the State in negotiating the terms of the spectrum capacity lease.

5. FirstNet concludes that it will maintain a flexible approach to such functions and interactions in order to provide the best solutions to each State so long as the agreed upon approach meets the interoperability and self-sustainment goals of the Act.

Analysis of and Responses to Comments on Customer Relationships in States Assuming RAN Construction and Operation

Summary: All commenters generally agreed with FirstNet's interpretations relating to the nature of customer relationships in States assuming RAN construction and operation. Commenters concurred with the interpretation that by maintaining flexibility in determining whether FirstNet or States will be the customer-facing entity, it allows States to tailor their operations to meet their individual State public safety broadband needs, while still ensuring the achievement of the interoperability and self-sustainment goals of the Act.

Final Interpretation of FirstNet Analyzing Funding Considerations as Part of Its Determination To Enter Into a Spectrum Capacity Lease

FirstNet has number of funding sources, including: (1) Up to \$7 billion in cash; (2) user or subscriber fees; (3) fees from excess network capacity leases that allow FirstNet to lease capacity not being used by public safety to commercial entities under covered leasing agreements; and (4) lease fees related to network equipment and infrastructure.⁶⁸ Each of these funding sources is critical to offset the massive costs of building, operating, and maintaining the NSPBN envisioned in the Act and in meeting the self-sustainability requirements placed on FirstNet pursuant to the Act.

However, States seeking and receiving approval of alternative RAN plans could

⁶⁷ See 47 U.S.C. 1422(a), (e).

⁶⁸ See generally 47 U.S.C. 1428(a), 1457(b)(3).

materially affect FirstNet's funding sources and thus its ability to serve public safety, particularly in rural States. More precisely, a State that assumes RAN deployment responsibilities could benefit from, or supplant, these funding sources, by generating and retaining amounts in excess of that necessary to reasonably maintain the particular State RAN through monetization of FirstNet's licensed spectrum. By doing so, the excess value above that reasonably needed to operate and maintain the RAN would no longer be available to help ensure that nationwide deployment, particularly in higher cost rural areas, will occur. This undermines the intent of the Act and the express requirement for FirstNet to deploy in rural areas as part of each phase of implementation.⁶⁹

Accordingly, FirstNet concludes, based on the language and the intent of the Act, that Congress did not intend to permit alternative RAN plans that inefficiently utilize scarce spectrum resources to hinder the nationwide deployment of the NPSBN by depriving it of needed financial support. FirstNet further concludes that it must thus consider the effect of any such material inefficiencies, among other things, on the NSPBN in determining whether, and under what terms, to enter into a spectrum capacity lease.

Congress's intent in this regard is informed by 47 U.S.C. 1442(e)(3)(D) requiring a State that wishes to assume RAN responsibilities to demonstrate "the cost-effectiveness of the State plan" when applying to NTIA not just for grant funds, but also for spectrum capacity leasing rights from FirstNet, which are necessary for the implementation of a State RAN. Independent of NTIA's determination in assessing such an application, FirstNet, as the licensee of the spectrum and an independent authority within NTIA, must ultimately decide on what terms to enter into a spectrum capacity lease with a State. The conclusions below relate to FirstNet's role and responsibilities in negotiating a spectrum capacity lease with a State seeking to assume responsibilities for deploying its RAN.

1. FirstNet concludes, in fulfilling its duties and responsibilities under the Act, it can and must take into account funding considerations, including the "cost-effectiveness" of an alternative state plan as it may impact the national deployment of the NPSBN, in determining whether and under what

terms to enter into a spectrum capacity lease with a State.

2. FirstNet concludes as part of its cost-effectiveness analysis in determining whether and under what terms to enter into a spectrum capacity lease, it (i) must consider the impact of cost-inefficient alternative RAN plans, including inefficient use of scarce spectrum resources, on the NPSBN, and (ii) may require that amounts generated within a State in excess of those required to reasonably sustain the State RAN, be utilized to support the Act's requirement to deploy the NPSBN on a nationwide basis.

3. FirstNet concludes as part of its cost-effectiveness analysis it must consider State reinvestment and distribution of any user fees assessed to public safety entities or spectrum capacity revenues in determining whether and under what terms to enter into a spectrum capacity lease.

Analysis of and Responses to Comments on Funding Considerations Part of Determination To Enter Into a Spectrum Capacity Lease

Summary: Commenters generally agreed with these interpretations emphasizing, for example, that it would be entirely consistent with the Act for FirstNet to take into account its funding considerations, among other things, and impose conditions on such spectrum capacity leases to ensure that revenue from excess capacity arrangements and subscriber fees will be utilized in a manner that continues to facilitate the deployment of the NSPBN.

Certain commenters either disagreed with, or provided recommendations for, implementing these interpretations, particularly regarding whether and how FirstNet can and must take into account funding considerations, including the "cost-effectiveness" of the State plan, in order to guarantee the viability of a broadband network dedicated to public safety across the nation.

Comment #47: One commenter reasoned that FirstNet's proposed interpretation is unsupported by the Act's plain language, and potentially conflicts with existing federal authority over States.

Response: FirstNet disagrees that the interpretation is unsupported by the plain language of the Act. The Act directs the FCC to reallocate and grant a license to FirstNet for the use of the 700 MHz D block spectrum and existing public safety broadband spectrum.⁷⁰ FirstNet, as the designated licensee of the spectrum pursuant to the Act, has a statutory obligation to ensure the

establishment of an interoperable, nationwide public safety broadband network.⁷¹ To satisfy this obligation, FirstNet has been given broad authority to take actions it determines necessary, appropriate, or advisable to accomplish its mission.⁷² As discussed in the *Second Notice*, FirstNet has determined that it must ensure the efficient use of each of its limited funding resources in order to offset the massive costs to build, operate, and maintain the NSPBN envisioned in the Act and also to meet the statutory self-sustainability requirement imposed on FirstNet pursuant to the Act.

To assist FirstNet in protecting critical financial resources, the Act requires, among other things, a State seeking to assume RAN responsibilities to demonstrate "the cost-effectiveness of the State plan" when applying to NTIA for spectrum capacity leasing rights from FirstNet, which are necessary for the implementation of a State RAN.⁷³ Consistent with the intent of the Act to ensure the nationwide deployment, FirstNet must consider the cost-effectiveness of the alternative State plan on that nationwide deployment. Indeed, independent of NTIA's determination in assessing such an application, FirstNet, as the designated licensee of the spectrum pursuant to the Act and an independent authority within NTIA, must ultimately decide whether and pursuant to what terms to enter into a spectrum capacity lease with a State.⁷⁴ Accordingly, FirstNet has determined that it is necessary to take into account funding considerations, including the "cost-effectiveness" of an alternative state plan, and its impact on FirstNet's ability to deploy the national network, in determining whether and under what terms to enter into a spectrum capacity lease.

Comment #48: Several commenters reasoned that the proposed interpretation either acts as a tax or assigns additional costs to a State that

⁷¹ *Id.*

⁷² See 47 U.S.C. 1426(a)(6).

⁷³ See 47 U.S.C. 1442(e)(3)(D).

⁷⁴ We note that FirstNet's interpretation of this provision and its determination with regard to its duties based on the State's proposed demonstration is independent of and does not limit NTIA. To the extent the "spectrum capacity lease" described in section 1442(e)(3)(C)(iii)(II) is a lease of the spectrum itself, rather than capacity on the network, under applicable FCC rules, the FCC "will allow parties to determine precise terms and provisions of their contract" consistent with FirstNet's obligations as a licensee under such rules. See *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 03-113, 18 FCC Rcd 20604, 20637 (2003).

⁶⁹ See 47 U.S.C. 1426(b)(3).

⁷⁰ See 47 U.S.C. 1421.

has assumed responsibility for RAN deployment.

Response: FirstNet disagrees that its interpretation acts as a tax or results in any actual or additional costs to a State that assumes deployment for a RAN in the State. Rather, as discussed in the *Second Notice*, FirstNet's interpretations ensure that States are not able to retain excess value not reasonably needed for the RAN in that State, and are intended to protect the limited resources provided by Congress to ensure the establishment of a *nationwide* broadband network for public safety.

Comment #49: Several commenters noted generally that the terms of a spectrum capacity lease are vital to preserving the opportunity for a State to choose to conduct its own deployment of a RAN, and accordingly, the terms of the spectrum capacity lease agreement, although negotiated, should be conducted in an open and transparent manner. Such commenters also asserted that the terms should be reasonable and known at the same time FirstNet delivers its State plan in order to maintain a partnership between FirstNet and the States.

Response: FirstNet acknowledges the comments and will consider them, as appropriate, in the development of any processes or requirements related to a spectrum capacity lease.

Comment #50: Three commenters expressed concern that FirstNet would abuse its authority under this interpretation by leveraging its control of the spectrum to demand virtually any concession it wanted during the negotiation of a spectrum capacity lease, thereby creating a set of circumstances in which the opportunity for a State to conduct its own RAN deployment pursuant to the Act is not a meaningful opportunity.

Response: FirstNet recognizes that the Act strikes a balance between establishing a nationwide network and providing States an opportunity, under certain conditions, to maintain and operate the RAN portion of the network in their States. Accordingly, FirstNet intends to act in good faith with each of the States to explore "win-win" solutions with States desiring to assume RAN responsibilities, including in scenarios where potential revenue would materially exceed RAN and related costs in a State consistent with the requirements and intent of the Act.

Comment #51: One commenter, although recognizing FirstNet's responsibility to maximize the build out of a network in all States, disagreed that a State's alternative RAN plan, once approved by the FCC, should be subject

to spectrum capacity lease considerations that are outside the geographical area of the State.

Response: The Act expressly charges FirstNet with ensuring the establishment of a *nationwide* public safety broadband network.⁷⁵ To satisfy this mandate, FirstNet must consider and account for the use of the limited resources provided it in order to accomplish this mission. This includes ensuring that the scarce spectrum resources provided for the nationwide network are not used in a materially inefficient manner that could negatively impact the deployment of the entire network. Specifically, FirstNet has a duty to consider the effect of any such inefficiencies on, among other things, more rural States, and on the larger FirstNet program, in determining whether, and under what terms, to enter into a spectrum capacity lease.

Comment #52: One commenter stated that the benefit of requiring "opt-out" urban States to provide "excess" revenues to FirstNet for rural build out nationwide should not apply to a rural State that may want to take responsibility for its own RAN deployment.

Response: FirstNet's analysis of funding considerations must equally apply to all States that are able to generate value in excess of the reasonable costs of operating and maintaining the RAN when electing to assume RAN responsibility within the State, so as to ensure sufficient resources are available for the national deployment of the NPSBN. However, we acknowledge that likely only a limited number of jurisdictions will generate such excess value, which would be available to help support deployment, for example, in higher cost, rural areas.

Comment #53: One commenter stated it does not support FirstNet's interpretation and proposed that any "cost-effectiveness" evaluation of a State plan must begin and end with the effect on the State and argued that the Governor's obligation is to provide the best possible, most cost-effective, solution for that State's residents.

Response: FirstNet agrees that pursuant to the Act, a State Governor has the right to determine whether it is in the best interest of a State to participate in the State RAN plan as proposed by FirstNet, or instead seek to conduct the deployment of its own RAN within the State. Accordingly, a Governor may choose to independently evaluate whether it is more cost-effective to participate in the State RAN plan as proposed by FirstNet or conduct

its own deployment of a RAN in the State. In contrast, FirstNet has an obligation to ensure the establishment of a nationwide network and must take into consideration the interests of all States rather than only a single State. Accordingly, FirstNet, based on the reasoning in the *Second Notice*, has determined that as a part of its decision to enter into a spectrum capacity lease it must take into account the cost-effectiveness of the proposed alternative State plan, including the impact of the plan on the nationwide network.

Comment #54: One commenter recommended that the reinvestment analysis should define more clearly the network to ensure RANs that service both public safety entities and secondary users should be targeted first for reinvestment instead of being limited to a RAN for public safety only.

Response: FirstNet acknowledges this recommendation and will consider it as any applicable decisions are developed on the matter.

Comment #55: One commenter noted that any lease of excess capacity needs to recognize that the amount of such excess may very well vary by State and decrease over time, citing several studies that indicated 20 MHz of spectrum will be needed, and in some very large incidents, may not be totally sufficient for public safety use. Therefore, the commenter suggested that the amount of supplemental funding that can be attained from covered leasing agreements should follow a determination of the spectrum capacity required by public safety instead of having the amount of spectrum available to public safety be determined by the additional funding beyond the \$7 billion needed for the network.

Response: FirstNet acknowledges this recommendation and will consider it as any applicable decisions are developed on the matter.

Comment #56: One commenter requested clarification on whether the preliminary interpretation would mean that no excess revenues will ever be allowed to offset, in whole or part, public safety subscriber fees or if all of those revenues will only be reinvested back into the network to maintain or expand infrastructure.

Response: FirstNet's interpretation does not expressly foreclose the potential for excess revenues to offset, in whole or part, public safety user or subscriber fees provided such reinvestment comports with the requirements of 47 U.S.C. 1428(d), 1442(g).

Comment #57: Three commenters, although supporting the goal of ensuring build out in rural areas, requested more

⁷⁵ 47 U.S.C. 1422(a).

clarification on the general scope of the FirstNet spectrum capacity lease requirements, including the scope of the proposed “cost-effectiveness” analysis.

Response: FirstNet acknowledges the comments and will consider them, as appropriate, in the development of any processes or requirements related to a spectrum capacity lease.

Comment #58: One commenter indicated that NTIA, and not FirstNet, has the ultimate decision-making authority over the entry of spectrum capacity leases with States assuming RAN responsibilities. As support, the commenter referenced 47 U.S.C. § 1442(e)(3)(C)(iii), which provides that if the Commission approves a State plan, the State “shall apply to the NTIA to lease spectrum capacity from the First Responder Network Authority.” Accordingly, the Commenter contended that only NTIA has the authority to enter into spectrum capacity leases with opt-out States.

Response: FirstNet disagrees with the commenter and reiterates that independent of NTIA’s determination in assessing a spectrum capacity lease application, FirstNet, as the licensee of the spectrum pursuant to section 1421 and an independent authority within NTIA, must ultimately decide on what terms to enter into a spectrum capacity lease with a State, and in doing so, evaluate, for example, the State’s demonstration of cost-effectiveness of the State’s alternative plan on the national deployment per section 1442(e)(3)(D)(ii). The relevant language regarding spectrum capacity leases for States that assume RAN responsibility can be found at section 1442(e)(3)(C)(iii)(II), which provides that once the FCC approves an alternative State plan, the State “shall apply to the NTIA to lease spectrum capacity from the First Responder Network Authority.”⁷⁶ We emphasize language in this provision noting that the State would need to lease spectrum capacity from FirstNet. The Act is clear that the license for the public safety broadband spectrum has been granted exclusively to FirstNet.⁷⁷ As the exclusive licensee of the spectrum, FirstNet alone can negotiate and enter into an agreement to lease this spectrum. In addition, section 1442(e)(3)(D) sets forth the criteria a State must demonstrate in order to obtain spectrum capacity leasing rights. Accordingly, reading sections 1421, 1442(e)(3)(C), and 1442(e)(3)(D) of the Act together, the statute provides that a State assuming RAN responsibility must

(1) submit an application to NTIA in order to lease spectrum capacity, (2) demonstrate to NTIA compliance with all applicable criteria, including the cost-effectiveness of the alternative plan on the nationwide deployment, and (3) negotiate an agreement to lease this spectrum capacity from FirstNet, prior to being authorized to conduct RAN deployment in that State.

Reinvestment of User or Subscriber Fees

FirstNet has interpreted that the Act provides flexibility for FirstNet and a State assuming RAN responsibilities to reach an agreement regarding who serves as the customer facing entity and ultimately receives such user or subscription fees under the spectrum capacity lease, with respect to the user fees generated from public safety customers in a State. In accordance with the structure and purposes of the Act, which requires that the NSPBN be self-funded, and includes specific provisions requiring reinvestment of revenues in the network, FirstNet makes the following conclusions relating to the use of user or subscription fees assessed and collected by a State assuming responsibility for deploying the RAN:

1. FirstNet concludes that the Act requires that States assuming RAN deployment responsibilities and charging user or subscription fees to public safety entities must reinvest such fees into the network.

2. FirstNet concludes it could impose a reinvestment restriction within the terms of a spectrum capacity lease with a State.

Analysis of and Responses to Comments on Reinvestment of User or Subscription Fees

Summary: Commenters generally agreed with the interpretation that user or subscriptions fees must be reinvested in the network, recognizing that to achieve network sustainment, all fees, revenues, etc. would need to be reinvested into the network. The dissenting commenters, as documented below, did not typically disagree that the funds must be reinvested in the network, but rather wanted to limit the reinvestment of the funds solely to RAN construction, operation, and maintenance in the State where the fees were assessed rather than requiring reinvestment to include the nationwide network.

Comment #59: One commenter disagreed with the proposed interpretation that FirstNet could consider or impose a reinvestment restriction as part of a spectrum capacity lease, stating that such a conclusion is

not supported by the plain language of the Act.

Response: See the response to Comment #47 discussing the ability of FirstNet to negotiate the specific terms and conditions of a spectrum capacity lease.

Comment #60: One commenter disagreed with the proposed interpretation that a State choosing to conduct its own RAN deployment must pay a part of its subscriber fees to FirstNet, rather than retain and reinvest those funds directly in the State RAN.

Response: FirstNet’s interpretations leave flexibility for a State to generate or receive user or subscription fees from public safety customers and reinvest such fees into the RAN in the State. However, the specific arrangement will ultimately depend on many factors, including both a State’s proposed reinvestment of such fees and the cost-effectiveness considerations regarding the distribution of such fees that will be evaluated as part of any negotiation between FirstNet and a State seeking to enter into such a spectrum capacity lease. As discussed in the *Second Notice*, subscriber fees may ultimately exceed those amounts necessary to deploy a robust RAN in any one State. Accordingly, if the Act is interpreted to allow excess funds to be reinvested only in a specific State, there is a built-in incentive for a few States to conduct RAN deployment and retain, for reinvestment in that State, fees that could materially reduce FirstNet coverage and services in other States, including States with more rural areas. FirstNet believes, as a general matter, that Congress did not intend for a few States to be able to withhold material funding for all other States pursuant to the Act. Such an incentive structure, even if reinvestment in the State network were always required in States assuming RAN responsibilities, could result in networks that greatly exceed public safety requirements in a few such States and networks that do not meet public safety requirements and the goals of the Act in the vast majority of States. Accordingly, as concluded above, FirstNet, as part of its cost-effectiveness analysis, must consider a State’s reinvestment and distribution of any user fees assessed to public safety entities as part of the negotiated terms of any spectrum capacity lease between FirstNet and the State.

Comment #61: One commenter suggested the provisions for reinvestment should define more clearly the network to ensure the RAN that services dual purposes (*i.e.*, both public safety entities and secondary users) should be targeted first for reinvestment.

⁷⁶ 47 U.S.C. 1442(e)(3)(C)(iii) (emphasis added).

⁷⁷ 47 U.S.C. 1421.

Response: The RAN, whether deployed by FirstNet or a State, will be capable of being utilized by both public safety entities and secondary users. Thus, any funds reinvested in a State RAN will likely positively impact both public safety and secondary users. However, public safety entities are intended to be the primary users of the network. Therefore, to the extent that a RAN requires special modifications specifically for, or on behalf of public safety entities, such modifications will likely take priority over general investments in the RAN. Nevertheless, FirstNet anticipates gaining a better understanding of these specific needs and priorities as it continues both its ongoing consultation with its various stakeholders as well as part of any negotiation between FirstNet and a State to enter into a spectrum capacity lease.

Comment #62: One commenter disagreed with FirstNet's interpretation of the Act, expressing concern that reinvestments of subscriber fees is a tax on public safety responders and stating that any charges above and beyond what is necessary to maintain and improve a State's RAN should be returned to that State's public safety community in the form of rate reductions, training, and better equipment.

Response: See the responses to Comment #48 and Comment #56 above.

Reinvestment of Revenues From State Covered Leasing Agreements/Public-Private Partnerships

The Act includes certain provisions addressing the reinvestment of covered leasing agreement fees for States assuming RAN deployment opportunities that have both received approval from NTIA and entered into a spectrum capacity lease with FirstNet.⁷⁸ We analyzed, in the *Second Notice*, the parallels between FirstNet and the State provisions addressing the reinvestment of such fees pursuant to the Act. For example, section 1428(d) requires FirstNet to reinvest those amounts received from the assessment of fees pursuant to section 1428 in the NPSBN by using such funds only for constructing, maintaining, operating, or improving the network.⁷⁹ Parallel to section 1428(d), section 1442(g)(2) requires that any amounts gained from a covered leasing agreement between a State conducting its own deployment of a RAN and a secondary user must be used only for constructing, maintaining, operating, or improving the RAN of the State.⁸⁰

Section 1428(a)(2) authorizes FirstNet to charge lease fees related to covered leasing agreements. Other than such agreements, however, FirstNet is not expressly authorized to enter into other arrangements involving the sale or lease of network capacity. In potential contrast, section 1442(g)(1) precludes States from providing "commercial service to consumers or offer[ing] wholesale leasing capacity of the network within the State *except directly through public-private partnerships for construction, maintenance, operation, and improvement of the network within the State.*"⁸¹ Section 1442(g)(2), entitled "Rule of construction," provides that "[n]othing in this subsection shall be construed to prohibit the State and a secondary user from entering into a covered leasing agreement."⁸²

To reconcile the differences in these provisions, FirstNet, in accordance with its analysis in the *Second Notice*, makes the following interpretations relating the potential treatment of a covered leasing agreement and a public-private partnership for construction, maintenance, operation, and improvement of the network:

1. FirstNet concludes that, in practical effect, the literal statutory differences between a covered leasing agreement and public-private partnership as used in the Act result in no substantive difference between the Act's treatment of FirstNet and States that assume RAN responsibility.

2. FirstNet concludes that any revenues from public-private partnerships, to the extent such arrangements are permitted and different than covered leasing agreements, should be reinvested into the network and that the reinvestment provision of 47 U.S.C. § 1442(g) should be interpreted to require such reinvestment.

Analysis of and Responses to Comments on Reinvestment of Revenues From State Covered Leasing Agreements/Public-Private Partnerships

Commenters generally supported the interpretation, agreeing that through the provisions of and overall framework and policy goals of the Act, Congress intended that any revenues from public-private partnership, to the extent such arrangements are permitted and different than covered leasing agreements, should be subject to the reinvestment requirements of the Act. However, a few commenters, as discussed below, disagreed with the interpretation.

Comment #63: One commenter suggested the proposed interpretation regarding public-private partnerships is too narrow and will only serve to inhibit creative, customized solutions for RAN build out and maintenance within a State. Specifically, the commenter noted that the Act allows FirstNet to lease spectrum capacity to commercial providers who are free to offer commercial service and to profit from the arrangement, and likewise, the Act should be interpreted to permit opt-out States in connection with selected partners to have this same economic opportunity.

Response: FirstNet disagrees that its interpretation inhibits or limits customized solutions for RAN build out and maintenance within a State. The Act allows both FirstNet and States that have received approval of an alternative plan and entered into a spectrum capacity lease with FirstNet to enter into covered leasing agreements.⁸³ A covered leasing agreement, as the only instrument in the Act that permits access to network capacity on a secondary basis for non-public safety services, is a fundamental tool to attract entities to assist in the construction, management, and operation of the NPSBN, including State RANs. Consequently, a State that enters into a covered leasing agreement with a secondary user would be afforded the same benefits that are available to FirstNet pursuant to section 1428(a)(2)(B), including permitting the secondary user access to network capacity on a secondary basis for non-public safety services. Similarly, the only limitations on the covered leasing agreements between a State and secondary user would be those described in the Act, including reinvestment of such revenues in the RAN, and the terms and conditions agreed upon by FirstNet and the State as part of the spectrum capacity lease.⁸⁴ Thus, the same potential economic opportunity exists for States assuming RAN responsibilities as for FirstNet nationally, including rural States, to develop partnerships with broadband providers, local telecommunications providers, or other private sector entities within such States.

Comment #64: One commenter provided a general comment about covered leasing agreements and public-private partnerships, stating that the negotiating entity should seek to maximize the profit it can obtain from the 700 MHz spectrum allotted to public safety by leasing the spectrum capacity

⁷⁸ 47 U.S.C. 1442(g).

⁷⁹ 47 U.S.C. 1428(d).

⁸⁰ 47 U.S.C. 1442(g)(2).

⁸¹ 47 U.S.C. 1442(g)(1) (emphasis added).

⁸² 47 U.S.C. 1442(g)(2).

⁸³ See 47 U.S.C. 1428(a), 1442(g)(2).

⁸⁴ See *id.*

to secondary users on a statewide, regional, or national basis—whichever arrangement is most profitable.

Response: FirstNet agrees that it should evaluate various funding and deployment options in order to help speed deployment and ensure the establishment of a self-sustaining broadband network dedicated to public safety throughout the nation.

Comment #65: One commenter suggested that, although revenue generated from a covered leasing agreement is an important financial contribution to the construction and maintenance of the nationwide network, FirstNet should not allow the promise of secondary leasing agreements to single-handedly drive its strategic decisions.

Response: FirstNet acknowledges the comment and intends to analyze and determine the most efficient and effective way to utilize its various funding streams to ensure the deployment and operation of a nationwide broadband network for public safety.

Comment #66: One commenter suggested that State law, not FirstNet, should determine the ability of an opt-out State to profit from public-private partnerships or covered leasing agreements.

Response: The Act authorizes States to enter into covered leasing agreements with secondary users through public-private arrangements and establishes the parameters of those arrangements.⁸⁵ Indeed, the Act explicitly limits the use of any revenue gained by a State through a covered leasing agreement to constructing, maintaining, operating, or improving the RAN of that State.⁸⁶ Similarly, FirstNet has also concluded that section 1428(d), authorizing a State to enter into public-private partnerships, was intended by Congress to be read consistently, to the extent such an arrangement is considered something different from a covered leasing agreement, so as to ensure ongoing reinvestment of all revenues into the network. This is consistent with the overall purpose and intent of the Act to ensure the deployment and operation of the NPSBN.

Dated: October 15, 2015.

Jason Karp,

Chief Counsel (Acting), First Responder Network Authority.

[FR Doc. 2015-26622 Filed 10-19-15; 8:45 am]

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket Number: 140821696-5908-04]

RIN 0660-XC012

First Responder Network Authority; Final Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012

AGENCY: First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice; final interpretations.

SUMMARY: The First Responder Network Authority (“FirstNet”) publishes this Notice to issue final interpretations of its enabling legislation that will inform, among other things, forthcoming requests for proposals, interpretive rules, and network policies. The purpose of this Notice is to provide stakeholders FirstNet’s interpretations on many of the key preliminary interpretations presented in the proposed interpretations published on September 24, 2014.

DATES: Effective October 20, 2015.

FOR FURTHER INFORMATION CONTACT: Eli Veenendaal, First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce, 12201 Sunrise Valley Drive, M/S 243, Reston, VA 20192; 703-648-4167; or elijah.veenendaal@firstnet.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96, Title VI, 126 Stat. 256 (codified at 47 U.S.C. 1401 *et seq.*)) (the “Act”) established the First Responder Network Authority (“FirstNet”) as an independent authority within the National Telecommunications and Information Administration (“NTIA”). The Act establishes FirstNet’s duty and responsibility to take all actions necessary to ensure the building, deployment, and operation of a nationwide public safety broadband network (“NPSBN”).¹

One of FirstNet’s initial steps in carrying out this responsibility under the Act is the issuance of open, transparent, and competitive requests for proposals (“RFPs”) for the purposes of building, operating, and maintaining the network. We have sought—and will

continue to seek—public comments on many technical and economic aspects of these RFPs through traditional procurement processes, including requests for information (“RFIs”) and potential draft RFPs and Special Notices, prior to issuance of RFPs.²

As a newly created entity, however, we are also confronted with many complex legal issues of first impression under the Act that will have a material impact on the RFPs, responsive proposals, and our operations going forward. Generally, the Administrative Procedure Act (“APA”)³ provides the basic framework of administrative law governing agency action, including the procedural steps that must precede the effective promulgation, amendment, or repeal of a rule by a federal agency.⁴ However, 47 U.S.C. 1426(d)(2) provides that any action taken or decision made by FirstNet is exempt from the requirements of the APA.

Nevertheless, although exempted from these procedural requirements, on September 24, 2014, FirstNet published a public notice entitled “Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012” (hereinafter “the *First Notice*”),⁵ seeking public comments on preliminary interpretations, as well as technical and economic issues, on certain foundational legal issues to help guide our efforts in achieving our mission.

The purpose of this Notice is to provide stakeholders notice of the final legal interpretations on many of the key preliminary interpretations presented in the *First Notice*. Additional background and rationale for this action and explanations of FirstNet’s interpretations were included in the *First Notice* and are not repeated herein. The section immediately below labeled “Final Interpretations” summarizes FirstNet’s final interpretations with respect to the *First Notice*. Thereafter, the section labeled “Response to Comments” summarizes the comments

² The pronouns “we” or “our” throughout this Notice refer to “FirstNet” alone and not FirstNet, NTIA, and the U.S. Department of Commerce as a collective group.

³ See 5 U.S.C. 551-59, 701-06, 1305, 3105, 3344, 5372, 7521.

⁴ See 5 U.S.C. 551-559. The APA defines a “rule” as “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing.” 5 U.S.C. 551(4).

⁵ 79 FR 57058 (September 24, 2014).

⁸⁵ See 47 U.S.C. 1442(g)(2).

⁸⁶ See *id.*

¹ 47 U.S.C. 1426(b).

received on the preliminary interpretations contained in the *First Notice* and provides FirstNet's responses to such comments, including further explanations and any changes to FirstNet's interpretations.

II. Final Interpretations

A. FirstNet Network

Final Definitions of Core Network and Radio Access Network

1. FirstNet defines the core network in accordance with 47 U.S.C. 1422(b) of the Act, relevant sections of the Interoperability Board Report, and commercial standards, as including, without limitation, the standard Evolved Packet Core elements under the 3rd Generation Partnership Project ("3GPP") standards (including the Serving and Packet Data Network Gateways, Mobility Management Entity, Home Subscriber Server, and the Policy and Charging Rules Function), device services, location services, billing functions, and all other network elements and functions other than the radio access network.

2. FirstNet defines the radio access network in accordance with 47 U.S.C. 1422(b) of the Act, commercial standards, and the relevant sections of the Interoperability Board Report, as consisting of the standard E-UTRAN elements (e.g., the eNodeB) and including, but not limited to, backhaul to FirstNet designated consolidation points.

3. FirstNet concludes that a State choosing to conduct its own deployment of a radio access network under 47 U.S.C. 1442(e) must use the FirstNet core network to provide public safety services within the State.

B. Users

Network Users

4. FirstNet defines a "secondary user" as any user that seeks access to or use of the NPSBN for non-public safety services.

Prohibition on Providing Commercial Services to Consumers

5. The definition of "consumers" as used in 47 U.S.C. 1432 does not include:

- a. any public safety entity as defined in the Act;
- b. States when seeking access to or use of the core network, equipment, or infrastructure; or
- c. entities when seeking access to or use of equipment or infrastructure.

6. The language of the Act under 47 U.S.C. 1432 prohibiting FirstNet from directly serving "consumers" does not limit potential types of public safety

entities that may use or access the NPSBN for commercial telecommunications or information services.

7. The Act under 47 U.S.C. 1432 does not prohibit or act as a limit on secondary users with which FirstNet may enter into a covered leasing agreement.

8. The Act under 47 U.S.C. 1432 does not limit the pool of secondary users that may gain access to or use of the network on a secondary basis.

C. Requests for Proposals

Requests for Proposals Process

9. FirstNet, to the extent it utilizes the FAR, concludes that complying with the FAR satisfies the open, transparent, and competitive requirements of 47 U.S.C. 1426(b)(1)(B).

Minimum Technical Requirements

10. FirstNet concludes that it may make non-material changes or additions/subtractions to the minimal technical requirements developed by the Interoperability Board, including as necessary to accommodate advancements in technology as required by the Act.

Final Definition of "Rural"

11. FirstNet defines "rural," for the purposes of the Act, as having the same meaning as "rural area" in Section 601(b)(3) of the Rural Electrification Act of 1936, as amended ("Rural Electrification Act"). Section 601(b)(3) of the Rural Electrification Act provides that "[t]he term 'rural area' means any area other than—(i) an area described in clause (i) or (ii) of Section 1991(a)(13)(A) of this title [section 343(a)(13)(A) of the Consolidated Farm and Rural Development Act]; and (ii) a city, town, or incorporated area that has a population of greater than 20,000 inhabitants." In turn, the relevant portion of Section 343(a)(13)(A) of the Consolidated Farm and Rural Development Act explains that the "terms 'rural' and 'rural area' mean any area other than—(i) a city or town that has a population of greater than 50,000 inhabitants; and (ii) any urbanized area contiguous and adjacent to a city or town described in clause (i)." Thus, as defined herein, the term "rural" means any area that is *not*:

- A city, town, or incorporated area that has a population of greater than 20,000 inhabitants
- any urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants

12. FirstNet concludes that a lower boundary (e.g., "wilderness," "frontier")

is not necessary to satisfy its rural coverage requirements under the Act, and thus FirstNet does *not* intend to establish any such boundary.

Existing Infrastructure

13. FirstNet interprets that 47 U.S.C. 1426(b)(1)(B) is intended to require FirstNet to encourage, through its requests, that responsive *proposals* leverage existing infrastructure in accordance with the provision.

14. FirstNet interprets 47 U.S.C. 1426(b)(3) as requiring FirstNet to include in its RFPs that such proposals leverage partnerships with commercial mobile providers where economically desirable.

15. FirstNet concludes that factors other than, or in addition to, cost may be utilized in assessing whether existing infrastructure is "economically desirable," including:

- a. infrastructure type/characteristics
- b. security (physical, network, cyber, etc.)
- c. suitability/viability (ability to readily use, upgrade, and maintain)
- d. readiness for reuse (e.g., already in use for wireless communications)
- e. scope of use (e.g., range of coverage)
- f. availability/accessibility (time/obstacles to acquiring access/use)
- g. any use restrictions (e.g., prohibitions/limitations on commercial use)
- h. relationships with infrastructure owners/managers (e.g., ease/difficulty in working with owners/managers)
- i. available alternatives in the area

D. Fees

General

16. FirstNet interprets each of the fees authorized by the Act, including user or subscription fees authorized by 47 U.S.C. 1428(a)(1), covered leasing agreement fees authorized by 47 U.S.C. 1428(a)(2), lease fees related to network equipment and infrastructure authorized by 47 U.S.C. 1428(a)(3), and the fee for State use of elements of the core network authorized by 47 U.S.C. 1442(f), as distinct and separate from each other and may be assessed individually or cumulatively, as applicable.

Network User Fees

17. FirstNet concludes it may charge a user or subscription fee under 47 U.S.C. 1428(a)(1) to any user that seeks access to or use of the NPSBN.

State Core Network User Fees

18. FirstNet concludes that the fees assessed on States assuming RAN responsibilities for use of the core network authorized by 47 U.S.C. 1442(f)

are distinct from and can be assessed in addition to any other fees authorized under the Act.

Lease Fees Related to Network Capacity and Covered Leasing Agreements

19. FirstNet concludes that a covered leasing agreement under 47 U.S.C. 1428(a)(2) does not require a secondary user to “construct, manage, and operate” the entire FirstNet network, either from a coverage perspective or exclusively within a specific location.

20. FirstNet concludes that multiple covered leasing agreement lessees could coexist and be permitted access to excess network capacity in a particular geographic area.

21. FirstNet interprets that a covered leasing agreement lessee satisfies the definition under 47 U.S.C. 1428(a)(2) so long as the lessee does more than a nominal amount of constructing, managing, or operating the network.

22. FirstNet concludes that an entity entering into a covered leasing agreement under 47 U.S.C. 1428(a)(2) is not required to perform all three functions of constructing, managing, and operating a portion of the network, so long as one of the three is performed as part of the covered leasing agreement.

23. FirstNet interprets the reference to “network capacity” in the definition of covered leasing agreement under 47 U.S.C. 1428(a)(2)(B)(i) as a generic statement referring to the combination of spectrum and network elements, as defined by the Act, and including the core network as well as the radio access network of either FirstNet alone or that of the secondary user under a covered leasing agreement, whereby the core and radio access network are used for serving both FirstNet public safety entities and the secondary user’s commercial customers.

24. FirstNet interprets the term “secondary basis” under 47 U.S.C. 1428(a)(2)(B)(i) to mean that network capacity will be available to the secondary user unless it is needed for public safety entities as defined in the Act.

25. FirstNet interprets the phrase “spectrum allocated to such entity” found in 47 U.S. § 1428(a)(2)(B)(ii) as allowing all or a portion of the spectrum licensed to FirstNet by the Federal Communications Commission (“FCC”) under call sign “WQQE234” to be allocated for use on a secondary basis under a covered leasing agreement.

26. FirstNet concludes that the reference to “dark fiber” in 47 U.S.C. 1428(a)(2)(B)(ii) cannot literally be interpreted as such, and the reference should be interpreted to allow the covered leasing agreement lessee to

transport such traffic on otherwise previously dark fiber facilities.

Network Equipment and Infrastructure Fee

27. FirstNet interprets 47 U.S.C. 1428(a)(3) as being limited to the imposition of a fee for the use of static or isolated equipment or infrastructure, such as antennas or towers, rather than for use of FirstNet spectrum or access to network capacity.

28. FirstNet interprets the phrase “constructed or otherwise owned by [FirstNet]” under 47 U.S.C. 1428(a)(3) as meaning that FirstNet ordered or required the construction of such equipment or infrastructure, paid for such construction, simply owns such equipment, or does not own but, through a contract has rights to sublease access to, or use of, such equipment or infrastructure.

III. Response to Comments

FirstNet received 63 written comments to the *First Notice* from various stakeholders, including States, tribes, public safety organizations, commercial carriers, equipment vendors, utilities, and various associations. Comments on the *First Notice* included a large number of identical or similar written comments as well as oral statements made during meetings with FirstNet. FirstNet has carefully considered each of the comments submitted. It has grouped and summarized the comments according to common themes and has responded accordingly. All written comments can be found at www.regulations.gov.

A. FirstNet Network

1. Final Definitions of Core Network and Radio Access Network

The Act requires FirstNet to “ensure the establishment of a nationwide, interoperable public safety broadband network” that is “based on a single national network architecture.”⁶ This national network architecture must be capable of evolving with technological advancements and initially consists of two primary network components: A *core network* and a *radio access network*.⁷ The Act defines the “core network” as consisting of “the national and regional data centers, and other elements and functions that may be distributed geographically . . . and provid[ing] connectivity between (i) the radio access network; and (ii) the public Internet or public switched network, or

both”⁸ Comparably, the Act defines the “radio access network” as consisting of “all cell site equipment, antennas, and backhaul equipment . . . that are required to enable wireless communications with devices using the public safety broadband spectrum”⁹

In the *First Notice*, FirstNet made preliminary interpretations further describing the scope of the definitions of the core network and RAN. Although the vast majority of commenters agreed with the interpretations, some expressed concerns that many of the key elements of the network were either not referenced or did not meet the criteria described in the proposed definitions. In response to these comments, FirstNet has slightly modified its preliminary interpretation of the “core network” to include the Mobility Management Entity within the Evolved Packet Core elements under the 3GPP standards and its preliminary interpretation of “radio access network” to include backhaul to FirstNet designated consolidation points. Accordingly, FirstNet makes the following final interpretations related to the definitions of the core network and radio access network under the Act.

(1) FirstNet defines the core network in accordance with 47 U.S.C. 1422(b) of the Act, relevant sections of the Interoperability Board Report, and commercial standards, as including, without limitation, the standard Evolved Packet Core elements under the 3GPP standards (including the Serving and Packet Data Network Gateways, Mobility Management Entity, Home Subscriber Server, and the Policy and Charging Rules Function), device services, location services, billing functions, and all other network elements and functions other than the radio access network.

(2) FirstNet defines the radio access network in accordance with 47 U.S.C. 1422(b) of the Act, commercial standards, and the relevant sections of the Interoperability Board Report, as consisting of the standard E-UTRAN elements (*e.g.*, the eNodeB) and including, but not limited to, backhaul to FirstNet designated consolidation points.

Analysis of and Responses to Comments on Definition of Core Network and Radio Access Network

Summary: The majority of commenters agreed with FirstNet’s proposed definitions of “core network” and “radio access network” and supported FirstNet considering

⁶ 47 U.S.C. 1422.

⁷ 47 U.S.C. 1422(b).

⁸ 47 U.S.C. 1422(b)(1).

⁹ 47 U.S.C. 1422(b)(2)(B).

commercial standards, as well as the relevant sections of the Interoperability Board Report and relevant 3GPP standards, to provide further clarity around the elements and functions of the core network and radio access network.

Comment #1: A few commenters suggested that FirstNet simply use the definitions of the terms “core network” and “radio access network” that are provided in the statute. For example, one commenter recommended FirstNet use its wide discretion to consider other interpretations as it carries out its responsibilities to implement these network components and not use the Interoperability Board Report to help derive any legal interpretations of the Act.

Response: FirstNet agrees that the Act provides it with broad discretion to carry out its mission. In view of that discretion, FirstNet has determined that it is important to provide additional clarity around certain delineation points between the core network and RAN as defined in the Act. These delineation points become especially important in light of the provisions of 47 U.S.C. 1442(e) that allow a State the opportunity, under certain conditions, to conduct the deployment of a RAN within that State and require that State to pay a fee for use of elements of the core network. In response to the specific example, the Act commissioned the development of the Interoperability Board Report to provide recommended technical requirements to ensure a nationwide level of interoperability for the NPSBN.¹⁰ Under the Act, these recommendations are intended to be used by FirstNet to help develop and maintain the NPSBN.¹¹ Moreover, a State choosing to assume RAN responsibilities must demonstrate compliance with the minimum technical interoperability requirements of the Interoperability Board Report in order to receive approval of an alternative RAN plan.¹² Based on these provisions, FirstNet believes that it is important to give credence to the relevant sections of the Interoperability Board Report that relate to the definitions of the core network and RAN.

Comment #2: One commenter suggested the proposed definition of the core network is too expansive and recommended that FirstNet remove the language “device services” and “all other network elements and functions other than the radio access network”

from its proposed definition of the core network.

Response: FirstNet disagrees that the proposed definition of core network is too expansive and believes its proposed interpretation, including the language “device services” and “all other network elements and functions other than the radio access network,” is consistent with both the intent of the Act as well as commercially accepted standards for elements generally comprising a core network. Additionally, FirstNet’s inclusion of these terms and phrases in its interpretation assist in providing clarity relating to the definitions of core network and RAN that are critical to establishing the NPSBN and providing the scope of responsibility a State will assume should it decide to conduct its own RAN deployment. In delivering a plan to a Governor for a determination of whether to assume responsibilities for RAN construction, FirstNet must delineate between what elements of the network in the proposed plan comprise the core network versus the elements that comprise the RAN. Accordingly, an understanding of the elements that make up the core network and RAN are critical for a Governor to make an effective determination about whether the State should have FirstNet conduct the RAN deployment or seek to conduct its own RAN deployment.

Comment #3: One commenter expressed concern that the proposed definitions conflate issues of policy and technology and suggested FirstNet avoid rigid definitions of “core network” or “radio access network” and align their technical and business development efforts with standards that evolve with the long term evolution (“LTE”) broadband network.

Response: FirstNet acknowledges the comment, but believes its proposed definitions of core network and RAN provide additional certainty that is necessary in order to build, operate, and maintain the NPSBN, while, at the same time, preserving, as contemplated by the Act, the necessary flexibility to take into account new and evolving technological advancements. For example, FirstNet’s interpretations of both the core network and RAN are inclusive of the language of 47 U.S.C. 1422(b) that specifically states the national architecture must “*evolve[] with technological advancements and initially consists of*” the stated core network and RAN components.¹³ The use of the term “initially” and the phrase “evolve with technological advancements” in 47 U.S.C. 1422(b) indicate that Congress

understood that the definitions of the core network and RAN could not be static. Rather, the definitions of such terms would need to be modified throughout the life of the network in order to help ensure that public safety would have a network capable of supporting and providing access to new and evolving technologies.

Comment #4: Several commenters, although not disagreeing with the proposed definitions, expressed concerns that many of the key elements of the network were either not referenced or did not meet the criteria described in the proposed core network and radio access network definitions. To illustrate this point, multiple commenters reasoned that backhaul transport connecting the radio access network with the core network or the backhaul connecting the core network with geographically distributed databases and application servers, which are critical components of network integration, need to be addressed in the definitions.

Response: FirstNet acknowledges the comments and has modified its interpretation of the “core network” to include the Mobility Management Entity within the Evolved Packet Core elements under the 3GPP standards and its interpretation of “radio access network” to include backhaul to FirstNet designated consolidation points. To the extent additional clarity is necessary to provide, for example, more specific demarcation points or the services and facilities that will be provided by the various network elements, FirstNet intends to address such matters, as appropriate, in the development of relevant network policies.

2. State Radio Access Networks Must Use the FirstNet Core Network

As discussed above, the Act charges FirstNet with the duty to “ensure the establishment of a nationwide, interoperable public safety broadband network . . . based on a single, national network architecture” and defines the architecture of the network as initially consisting of a “core network” and a “radio access network.”¹⁴ In addition, FirstNet is required to take all actions necessary to ensure the building, deployment, and operation of the network, including issuing RFPs for the purposes of building, operating, and maintaining the network.¹⁵ Thus, overall, FirstNet is responsible for ensuring the core network and radio access network—subject to a State’s

¹⁰ See 47 U.S.C. 1423(c).

¹¹ See *id.*

¹² See 47 U.S.C. 1442(e)(3)(C)(i).

¹³ 47 U.S.C. 1422(b) (emphasis added).

¹⁴ 47 U.S.C. 1422.

¹⁵ 47 U.S.C. 1426(b).

ability to assume RAN responsibilities under 47 U.S.C. 1442—is built, deployed, and operated throughout the country.

As analyzed in the *First Notice*, the Act, although providing each State an opportunity to choose to conduct its own deployment of a RAN in such State, does not provide for State deployment of a core network separate from the core network that FirstNet is charged with deploying.¹⁶ Rather, according to the express language of the Act, FirstNet, is the only entity responsible for constructing a core network. This interpretation is further supported by the mandate that States that choose to build their own RAN must pay any user fees associated with such State's use of "the core network."¹⁷ Thus, based on the language of and overall interoperability goals of the Act, FirstNet makes the following conclusion related to State use of the core network that is constructed, operated, and maintained by FirstNet.

FirstNet concludes that a State choosing to conduct its own deployment of a radio access network under 47 U.S.C. 1442(e) must use the FirstNet core network to provide public safety services within the State.

Analysis of and Responses to Comments to Conclusions That State Radio Access Networks Must Use the FirstNet Core Network

Summary: The majority of commenters agreed with FirstNet's proposed interpretation that a State choosing to conduct its own deployment of a radio access network must use the FirstNet core network to provide services to public safety entities.

Comment #5: One commenter did not support FirstNet's preliminary conclusion, asserting that direct connectivity between the core network and the RAN is excluded from FirstNet's definitions and that such network element should be explicitly identified and included either in the definition of core network or radio access network.

Response: FirstNet acknowledges the comment and notes that, as detailed above, it has clarified the definition of RAN to include backhaul to FirstNet consolidation points.

Comment #6: One commenter agreed with the interpretation, but suggested FirstNet should remain open to the concept of a local "back-up" core network, particularly for States or localities with a high population

density, with this "back-up" core network being designed and purposed to protect against a total loss of connectivity to the FirstNet nationwide core network.

Response: The Act requires FirstNet to establish a network with adequate hardening, security, reliability, and resiliency requirements, including by addressing special considerations for areas and regions with unique homeland security or national security needs.¹⁸ Accordingly, FirstNet intends to construct the core network taking into account these considerations and does not anticipate the need to utilize a local "back-up" core network to serve public safety, which, among other things, potentially creates interoperability complexities and increases network security risks.

B. Network Users

1. Final Definition of "Secondary Users"

The Act in 47 U.S.C. 1428(a)(1) authorizes FirstNet to charge "user or subscription" fees to a "secondary user . . . that seeks access to or use of the [NPSBN]." Additionally, under 47 U.S.C. 1428(a)(2), FirstNet may enter into a covered leasing agreement with a "secondary user" that permits "access to network capacity on a secondary basis for non-public safety purposes."¹⁹ The Act does not expressly define the term "secondary user." However, based on the plain language of 47 U.S.C. 1428, FirstNet reaches the following conclusion with respect to the meaning of "secondary user":

FirstNet defines a "secondary user" as any user that seeks access to or use of the NPSBN for non-public safety services.

Analysis of and Responses to Comments on Definition of Secondary User

Summary: The majority of commenters agreed with the interpretation of a "secondary user" as a user that accesses network capacity on a secondary basis for non-public safety services. One such commenter noted that while secondary users are not public safety entities, they are important to the financial sustainability of the network. Similarly, another commenter remarked that such non-public safety secondary users are necessary to implement a sophisticated and expansive network.

Comment #7: One commenter expressed concern that FirstNet's proposed definition, as formulated, could be misconstrued and sought to clarify that "secondary user" captures

those using the NPSBN for services that are not related to public safety.

Response: FirstNet has attempted to clearly state in its final definition of "secondary user" (identified above) that such term refers to those users who access the NPSBN *only for non-public safety services*.

Comment #8: One commenter expressed concern not about FirstNet's definition of "secondary user," but about the potential for secondary users to adversely impact the performance of the NPSBN at the expense of public safety.

Response: FirstNet is committed to ensuring the establishment of a network that meets the needs of public safety and believes that the 20 MHz of available spectrum along with the expected priority/preemption capabilities of the network will allow secondary users to access the NPSBN without negatively impacting public safety's use of the NPSBN.

Comment #9: One commenter asserted that any user of the NPSBN that is not a "public safety entity" should be considered a "consumer" rather than a "secondary user." These "consumers" would use the network on a secondary basis and yield to the primary user public safety entities.

Response: While FirstNet certainly agrees with the general concept of public safety entities being the primary users of the NPSBN, we do not agree that the term "consumer" (which is also undefined in the Act) encompasses all other such users of the network on a secondary basis. First, the Act explicitly uses the term "secondary user" when referring to those entities or individuals that access or use the network "on a secondary basis for non-public safety services."²⁰ Secondly, this use of the term "consumer" is inconsistent with 47 U.S.C. 1432, which prohibits FirstNet from providing "commercial telecommunications or information services directly to consumers." Under 47 U.S.C. 1428, FirstNet is expressly authorized to assess a network user fee on secondary users. Thus, given the Act prohibits FirstNet from providing certain services directly to consumers while it permits FirstNet to charge user fees to secondary users, by definition all secondary users cannot be consumers.

2. Prohibition on Providing Commercial Services to Consumers

The Act in 47 U.S.C. 1432(a) specifies that FirstNet "shall not offer, provide, or market commercial telecommunications or information services directly to consumers." The Act does not define

¹⁶ See 47 U.S.C. 1422, 1426.

¹⁷ 47 U.S.C. 1442(f).

¹⁸ See 47 U.S.C. 1426(b)(2), (c)(2)(A).

¹⁹ 47 U.S.C. 1428(a)(2).

²⁰ 47 U.S.C. 1428(a).

the word “consumer” or indicate whether the word is limited to individuals or includes organizations and businesses. In addition, under the rule of construction specified in 47 U.S.C. 1432(b), nothing in 47 U.S.C. 1432(a) is intended to prohibit FirstNet from entering into covered leasing agreements with secondary users or to limit FirstNet from collecting lease fees for the use of network equipment and infrastructure. FirstNet makes the following conclusions with respect to these provisions of the Act:

(1) The definition of “consumers” as used in 47 U.S.C. 1432 does not include:

- a. Any public safety entity as defined in the Act;
- b. States when seeking access to or use of the core network, equipment, or infrastructure; or
- c. entities when seeking access to or use of equipment and infrastructure.

(2) The language of the Act under 47 U.S.C. 1432 prohibiting FirstNet from directly serving “consumers” does not limit potential types of public safety entities that may use or access the NPSBN for commercial telecommunications or information services.

(3) The Act under 47 U.S.C. 1432 does not prohibit or act as a limit on secondary users with which FirstNet may enter into a covered leasing agreement.

(4) The Act under 47 U.S.C. 1432 does not limit the pool of secondary users that may gain access to or use of the network on a secondary basis.

Analysis of and Responses to Comments on Prohibition on Providing Commercial Services to Consumers

Summary: The vast majority of commenters supported FirstNet’s conclusions that the prohibition in 47 U.S.C. 1432 on FirstNet offering, providing, or marketing commercial telecommunications or information services to consumers does not apply to public safety entities, secondary users, States seeking access to or use of the FirstNet core network, or entities or States seeking access to or use of network equipment and infrastructure. These commenters agreed that the intent of this provision, whether explicit or implicit, is to exclude these entities from the definition of consumer.

Comment #10: One commenter, while not disagreeing with FirstNet’s conclusions, expressed concern regarding the potential for network capacity to become saturated from non-public safety use.

Response: As noted above, FirstNet is committed to ensuring the establishment of a network that meets

the needs of public safety and believes that the 20 MHz of available spectrum along with the expected priority/preemption capabilities of the network will allow secondary users to access the NPSBN without negatively impacting public safety’s use of the NPSBN.

C. Requests for Proposals

1. Requests for Proposals Process

The Act in 47 U.S.C. 1426(b)(1)(B) requires FirstNet to issue “open, transparent, and competitive” RFPs. The procedural requirements for issuing such RFPs to meet the “open, transparent, and competitive” standard, however, are not defined in the Act. The Federal Acquisition Regulation (“FAR”), codified in 48 CFR parts 1–99, is the primary regulation used by federal executive agencies in their acquisition of supplies and services with appropriated funds. Thus, FirstNet makes the following conclusion with respect to its compliance with this provision:

FirstNet, to the extent it utilizes the FAR, concludes that complying with the FAR satisfies the open, transparent, and competitive requirements of 47 U.S.C. 1426(b)(1)(B).

Analysis of and Responses to Comments on Requests for Proposals

Summary: The overwhelming majority of commenters agreed with FirstNet’s proposed interpretation that using the FAR satisfies FirstNet’s statutory obligation to issue “open, transparent, and competitive requests for proposals to private sector entities for the purposes of building, operating, and maintaining the network . . .” In addition to commenting that compliance with the FAR is a reasonable way of meeting the Act’s requirements for an “open, transparent, and competitive” RFP process, commenters noted that the FAR is a well understood process, and that by using it, FirstNet will save time by not having to develop a new process for issuing RFPs. Given the size and scope of FirstNet’s task, commenters agreed that using the FAR was the most logical option. Some commenters agreed with using the FAR generally, but encouraged the use of only certain sections.

Comment #11: Some commenters suggested that FirstNet exceed the FAR’s requirements and reminded FirstNet of its authority to make agreements with States to use existing infrastructure.

Response: FirstNet believes that using the FAR satisfies the Act’s requirements. FAR Part 1.102 provides guiding principles of the Federal Acquisition

System, namely “promoting competition, and conducting business with integrity, fairness and openness.” The policies and procedures of the FAR embody these principles. Adherence to the FAR, therefore, ensures compliance with the Act’s mandate to issue “open, transparent, and competitive” RFPs. With respect to existing infrastructure, FirstNet plans to leverage such assets for the NPSBN to the extent it is economically desirable, as required by the Act (see below for a further discussion regarding existing infrastructure).

Comment #12: One commenter disagreed with FirstNet’s proposed interpretation, observing that the guidance in 47 U.S.C. 1426(b)(1)(B) would be unnecessary if Congress intended FirstNet to comply with the FAR, and that there is not a single reference to the FAR in the Act, despite the extensive statutory guidance the Act provides to FirstNet concerning the RFP process.

Response: FirstNet acknowledges this comment and notes that its final conclusion is *not* that FirstNet believes it is required to use the FAR. Rather, FirstNet’s interpretation merely is that by complying with the FAR, FirstNet is complying with this provision of the Act.

2. Minimum Technical Requirements

47 U.S.C. 1426(b)(1)(B) requires FirstNet to issue RFPs for the purposes of building, operating, and maintaining the network that use, *without materially changing*, the minimum technical requirements developed by the Interoperability Board. 47 U.S.C. 1422(b) and 47 U.S.C. 1426(c)(4) further obligate FirstNet to accommodate advancements in technology.²¹ With respect to these provisions, FirstNet makes the following final interpretation:

FirstNet concludes that it may make non-material changes or additions/subtractions to the minimal technical requirements developed by the

²¹ Note that the Interoperability Board Report states that “[g]iven that technology evolves rapidly, the network components and associated interfaces identified in the [Interoperability Board Report] . . . are also expected to evolve over time. As such, these aspects of the present document are intended to represent a state-of-the-art snapshot at the time of writing. In this context, the standards, functions, and interfaces referenced in the present document are intended to prescribe statements of intent. Variations or substitutions are expected to accommodate technological evolution consistent with the evolution of 3GPP and other applicable standards.” Interoperability Board, *Recommended Minimum Technical Requirements to Ensure Nationwide Interoperability for the Nationwide Public Safety Broadband Network* at 27 (May 22, 2012), available at <http://apps.fcc.gov/ecfs/document/view?id=7021919873>.

Interoperability Board, including as necessary to accommodate advancements in technology as required by the Act.

Analysis of and Responses to Comments on Minimum Technical Requirements

Summary: Commenters were virtually unanimous in agreeing with FirstNet's proposed interpretation regarding changes to the minimum technical requirements established by the Interoperability Board. Several commenters reasoned that such changes are necessary and fully contemplated (by Congress and the Interoperability Board itself) in order to keep pace with evolutions in technology, address issues that the Interoperability Board may not have considered, and fulfill requirements under the Act.

Comment #13: One commenter maintained that the minimum technical requirements developed by the Interoperability Board are so fundamental that they should be utilized in their entirety regardless of advancements in technology.

Response: FirstNet fully appreciates the value of the minimum technical requirements developed by the Interoperability Board and the critical role such requirements will have in the development and maintenance of the NPSBN. However, at the same time, FirstNet seeks to ensure that the most robust and technologically advanced network as possible is established for public safety in accordance with its statutory mission, and FirstNet is specifically directed by the Act to consider advancements in technology in the development and maintenance of the NPSBN.²² Accordingly, FirstNet intends to operate with those principles and directives in mind in forming the technical requirements for the network.

Comment #14: Multiple commenters urged FirstNet to use open standards in the implementation of advancements in technology, focusing on 3GPP architecture and interfaces that ensure operability, interoperability, and backwards compatibility. Some of these commenters pointed out that the Interoperability Board Report contemplates advancements in technology and supports the open standards process.

Response: This comment is outside the scope of this notice. However, FirstNet acknowledges this recommendation and will consider it as any applicable decisions are developed on the matter. We note that the Act requires that the NPSBN be based on commercial standards, including those

developed by 3GPP and that comply with the Interoperability Board Report.

Comment #15: A few commenters suggested that FirstNet rely on the Interoperability Board or a similar independent technical advisory board going forward to establish and maintain ongoing minimum technical requirements and compliance with those requirements, in light of technological advances.

Response: This comment is outside the scope of this notice. However, FirstNet acknowledges this recommendation and will consider it as any applicable decisions are developed on the matter.

Comment #16: Some commenters offered input as to what delineates non-material versus material changes in the minimum technical requirements. Most commenters focused on critical features or functions being backwards compatible, as well as avoiding any reduction in the quality of mission critical service to end users.

Response: FirstNet acknowledges these recommendations and will consider them as any applicable decisions are developed on the matter. FirstNet's goal is to ensure that the NPSBN operates in a manner that satisfies public safety's critical communication needs and is consistent with the material terms of the Interoperability Board report.

3. Final Definition of "Rural"

The Act directs that FirstNet "shall require deployment phases with substantial *rural* coverage milestones as part of each phase of the construction and deployment of the network . . . [and] utilize cost-effective opportunities to speed deployment in *rural* areas."²³ Additionally, the Act states, in relevant part, that FirstNet "shall develop . . . requests for proposals with appropriate . . . timetables for construction, including by taking into consideration the time needed to build out to *rural* areas."²⁴ Finally, the Act explains that FirstNet "shall develop . . . requests for proposals with appropriate . . . coverage areas, including coverage in *rural* and nonurban areas."²⁵

Since the Act does not define "rural," we found it necessary to define this term in order to fulfill our duties with respect to the above noted statutory rural coverage requirements.²⁶

²³ 47 U.S.C. 1426(b)(3) (emphasis added).

²⁴ 47 U.S.C. 1426(c)(1)(A)(i) (emphasis added).

²⁵ 47 U.S.C. 1426(c)(1)(A)(ii) (emphasis added).

²⁶ We appreciate the position the FCC has taken in this regard, and we are committed to fulfill our duties in a way that will meet these rural coverage requirements. See Implementing Public Safety Broadband Provisions of the Middle Class Tax

Accordingly, FirstNet makes the following final interpretation regarding the definition of "rural" under the Act:

(1) FirstNet defines "rural," for the purposes of the Act, as having the same meaning as "rural area" in Section 601(b)(3) of the Rural Electrification Act of 1936, as amended ("Rural Electrification Act" or "REA"). Section 601(b)(3) of the Rural Electrification Act provides that "[t]he term 'rural area' means any area other than—(i) an area described in clause (i) or (ii) of Section 1991(a)(13)(A) of this title [section 343(a)(13)(A) of the Consolidated Farm and Rural Development Act]; and (ii) a city, town, or incorporated area that has a population of greater than 20,000 inhabitants." In turn, the relevant portion of Section 343(a)(13)(A) of the Consolidated Farm and Rural Development Act explains that the "terms 'rural' and 'rural area' mean any area other than—(i) a city or town that has a population of greater than 50,000 inhabitants; and (ii) any urbanized area contiguous and adjacent to a city or town described in clause (i)." Thus, as defined herein, the term "rural" means any area that is *not*:

- A city, town, or incorporated area that has a population of greater than 20,000 inhabitants
- any urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants.

FirstNet also inquired whether there should be a lower boundary separate from the definition of "rural," such as "wilderness" or "frontier." Based in part on the comments received, FirstNet has reached the following final conclusion:

(2) FirstNet concludes that a lower boundary (e.g., "wilderness," "frontier") is not necessary to satisfy its rural coverage requirements under the Act, and thus FirstNet does *not* intend to establish any such boundary.

Relief and Job Creation Act of 2012 *et al.*, PS Docket 12-94 *et al.*, Notice of Proposed Rulemaking, 28 FCC Rcd 2715, 2728-29 ¶ 46 (2013) (Band 14 NPRM) (noting that, "We do not believe the Commission should specify rural milestones as a condition of FirstNet's license at this time. Rather, we recognize that at this early stage, the success of FirstNet requires flexibility with respect to deployment and planning, including deployment in rural areas. Moreover, FirstNet has an independent legal obligation under the Act to develop requests for proposals with appropriate timetables for construction, taking into account the time needed to build out in rural areas, and coverage areas, including coverage in rural and nonurban areas. In addition, in light of the Congressional oversight that will be exercised over FirstNet and its other transparency, reporting and consultation obligations, we do not believe it is necessary for the Commission to set specific benchmarks in this regard in these rules.").

²² See 47 U.S.C. 1422(b), 1426(c)(4).

Analysis of and Responses to Comments on Definition of Rural

Summary: Several commenters agreed with FirstNet's proposed definition of "rural," pointing to the logic in using the Rural Electrification Act definition. Many of these commenters noted that the Rural Electrification Act definition is widely known and used. Some specifically agreed that adopting the Rural Electrification Act definition makes sense in light of U.S. Department of Agriculture's ("USDA") use of the definition in the Rural Broadband Access Loan and Loan Guarantee Program.

However, several other commenters disagreed with FirstNet's proposed definition of rural, suggesting that the Rural Electrification Act definition was inadequate. Multiple commenters expressed concerns that the Rural Electrification Act definition would not accurately measure or reflect the rural areas of a State.

Comment #17: One commenter suggested that the geography of a State could complicate the Rural Electrification Act's application due to many remote, small but densely populated communities and areas without any defined government or established limits.

Response: FirstNet acknowledges this comment and recognizes that certain States may not agree that the Rural Electrification Act definition (or any other definition for that matter) adequately defines rural areas for that State due to unique geographic or other circumstances. However, because FirstNet's mission is to ensure the establishment of a *nationwide* public safety broadband network, it is necessary to formulate a single, objective definition that can be reasonably applied on a national basis. By way of example, the Rural Electrification Act definition of "rural area" has been adopted by other federal agencies in determining rural areas on a national basis, including by the USDA in its Rural Broadband Access Loan and Loan Guarantee Program, for application nationwide.²⁷

It is also important to note that the primary purpose of the definition of "rural" under the Act is to measure whether the statutory requirement to include "substantial rural coverage milestones" in each phase of network deployment has been met. The definition does not determine a state or territory's ultimate coverage, which

instead will be determined by the input obtained through the consultation process along with FirstNet's available resources.²⁸

Comment #18: Some commenters suggested that FirstNet adopt a modified or simplified aggregate population-derived definition utilizing various alternative methodologies. Specifically, a couple of commenters proposed the use of the U.S. Census Bureau's definition of "rural"—*i.e.*, all areas that are not "urban areas," which consist of Urbanized Areas (50,000 or more people) and Urban Clusters (at least 2,500 and less than 50,000 people).

Response: FirstNet recognizes that there are alternative definitions of "rural" utilized by other federal and state government entities and acknowledges that such definitions could be applied in the context of the nationwide public safety broadband network. Consistent with its analysis in the *First Notice*, FirstNet continues to believe, however, that the Rural Electrification Act's definition of "rural area" is sufficiently precise to allow for consistent application, as well as widely known and familiar to rural telecommunications providers, rural communities, and other stakeholders considering its utilization specifically with respect to rural broadband issues. In addition, other federal agencies have adopted the Rural Electrification Act definition. The USDA, in particular, utilizes this definition in a similar context through its implementation of the Rural Broadband Access Loan and Loan Guarantee Program, which funds the costs of construction, improvement, and acquisition of facilities and equipment to provide broadband service to eligible rural areas.

Comment #19: Another commenter proposed the adoption of the definition used by USDA's Rural Business Service, indicating that rural areas under such definition are those with 50,000 persons or less excluding areas adjacent to communities larger than 50,000 persons.

Response: See the response to Comment #18 above.

Comment #20: Based on concerns expressed regarding the omission of unincorporated areas and the potential confusion caused by the "adjacent and contiguous" clause in the definition, an additional commenter recommended that "rural" be defined as a city, town, incorporated area, or unincorporated area that has a population of 20,000 or less.

Response: FirstNet acknowledges the comment. To provide some additional clarity, we note that in identifying

cities, towns, incorporated areas, and urbanized areas, FirstNet intends to leverage the U.S. Census definition of "places," which is inclusive of towns, cities, villages, boroughs, and Census Designated Places (CDPs) (which in turn are inclusive, at least in part, of unincorporated areas).²⁹

Comment #21: A few commenters advocated for a definition based on population density on a per county basis, with varying formulations. For instance, one such commenter proposed to define rural as a county with a population density of less than 160 persons per square mile, while another commenter proffered any county (i) with a population density of 100 or fewer inhabitants or (ii) of less than 225 square miles. A couple of other commenters suggested using a density of 5/7 to 159 persons per square mile on a county-by-county basis. Similarly, another commenter recommended adopting the definition used by the School-to-Work Opportunities program (*i.e.*, a county, block number area in a nonmetropolitan county, or consortium of counties or such block number areas with a population density of 20 or fewer persons per square mile), reasoning that the definition is simple, from a program with a comparable process and approach (grant eligibility based on an approved State plan, intergovernmental cooperation, seed money for initial planning and development of school-to-work transition system), more objective, and more accurate in identifying rural areas.

Response: See the response to Comment #18 above.

Comment #22: Multiple commenters maintained that instead of adopting the Rural Electrification Act (or any other single definition), the definition of "rural" should be determined on a state-by-state basis.

Response: FirstNet recognizes the Act strikes a balance between establishing a nationwide network and providing States an opportunity to make certain decisions about local implementation. As noted above, however, the primary purpose of the definition of "rural" is for measuring whether "substantial rural coverage milestones" have been included in each phase of deployment, which is required on a national basis. Thus, as a practical matter, there must be a single, uniform, and objective definition of "rural" that can be applied nationwide to assess whether such milestones have been met by FirstNet deployment.

²⁷ The USDA was designated as the lead federal agency for rural development by the Rural Development Policy Act of 1980. See 7 U.S.C. 2204b.

²⁸ See 47 U.S.C. 1426(c)(2).

²⁹ See U.S. Census Bureau, *Geographic Terms and Concepts—Place*, http://www.census.gov/geo/reference/gtc/gtc_place.html.

4. Existing Infrastructure

Multiple provisions of the Act direct FirstNet to leverage existing infrastructure when “economically desirable.”³⁰ 47 U.S.C. 1426(b)(1)(C) requires FirstNet in issuing RFPs to “encourag[e] that such requests leverage, to the maximum extent economically desirable, existing commercial wireless infrastructure to speed deployment of the network.”

Similarly, 47 U.S.C. 1426(b)(3)—in addressing rural coverage and referring to FirstNet’s duty and responsibility to issue RFPs—requires that “[t]o the maximum extent economically desirable, such proposals shall include partnerships with existing commercial mobile providers to utilize cost-effective opportunities to speed deployments in rural areas.”

Finally, 47 U.S.C. 1426(c)(3) requires that in carrying out its various requirements related to the deployment and operation of the NPSBN, “the First Responder Network Authority shall enter into agreements to utilize, to the maximum extent economically desirable, existing (A) commercial or other communications infrastructure; and (B) Federal, State, tribal, or local infrastructure.” The Act, however, does not define or establish any criteria for determining economic desirability. FirstNet reaches the following conclusions regarding its obligations to leverage existing infrastructure under 47 U.S.C. 1426:

1. FirstNet interprets that 47 U.S.C. 1426(b)(1)(B) is intended to require FirstNet to encourage, through its requests, that responsive *proposals* leverage existing infrastructure in accordance with the provision.

2. FirstNet interprets 47 U.S.C. 1426(b)(3) as requiring FirstNet to include in its RFPs that such proposals leverage partnerships with commercial mobile providers where economically desirable.

3. FirstNet concludes that factors other than, or in addition to, cost may be utilized in assessing whether existing infrastructure is “economically desirable,” including:

- a. Infrastructure type/characteristics
- b. security (physical, network, cyber, etc.)
- c. suitability/viability (ability to readily use, upgrade, and maintain)
- d. readiness for reuse (*e.g.*, already in use for wireless communications)
- e. scope of use (*e.g.*, range of coverage)
- f. availability/accessibility (time/obstacles to acquiring access/use)

g. any use restrictions (*e.g.*, prohibitions/limitations on commercial use)

h. relationships with infrastructure owners/managers (*e.g.*, ease/difficulty in working with owners/managers)

i. available alternatives in the area

Analysis of and Responses to Comments on Leveraging Existing Infrastructure and Economic Desirability

Summary: All commenters on the subject agreed with FirstNet’s above interpretations of 47 U.S.C. 1426(b)(1)(C) and (b)(3) that the provisions are intended to require FirstNet to encourage, through its RFPs, that such responsive *proposals* leverage existing infrastructure and partnerships where economically desirable. Many of these commenters emphasized the importance of utilizing the RFP process to leverage existing assets and partnerships to lower costs and increase speed to market.

Comment #23: Some commenters provided input regarding the factors to be considered in making an economic desirability determination, focusing largely on cost.

Response: Although FirstNet agrees that cost is a major factor in assessing economic desirability, we do not believe it is the sole consideration. There are several other factors, as noted above, that are critical to making an informed determination as to whether the infrastructure should be leveraged. For instance, it is essential to understand the infrastructure’s suitability for FirstNet’s purposes, as well as its availability and readiness for use. Likewise, FirstNet’s financial sustainability model is based in large part on its ability to lease excess spectrum capacity to commercial entities for secondary use, and thus consideration of any limitations on commercial use of the infrastructure is imperative.

Comment #24: A couple of commenters suggested other factors besides cost in making an economic desirability determination of whether to leverage infrastructure. One such commenter recommended the consideration of geography and breadth of coverage in addition to cost. Another commenter urged that the requirements of public safety should be considered as a factor.

Response: FirstNet acknowledges these recommendations and believes they are encompassed within FirstNet’s final conclusion above regarding economic desirability factors.

D. Fees

FirstNet is required by the Act to be a self-funding entity and has been authorized to assess and collect certain fees for use of the network.³¹ Specifically, FirstNet has been authorized to assess and collect a (1) network user fee; (2) lease fee related to network capacity (also known as covered leasing agreement); (3) lease fees related to network equipment and infrastructure; and (4) a fee for State use of elements of the core network.³² In accordance with these provisions, FirstNet makes the following conclusions related to both the assessment and collection of fees authorized under the Act.

General

(1) FirstNet interprets each of the fees authorized by the Act, including user or subscription fees authorized by 47 U.S.C. 1428(a)(1), covered leasing agreement fees authorized by 47 U.S.C. 1428 (a)(2), lease fees related to network equipment and infrastructure authorized by 47 U.S.C. 1428(a)(3), and the fee for State use of elements of the core network authorized by 47 U.S.C. 1442(f), as distinct and separate from each other and may be assessed individually or cumulatively, as applicable.

Network User Fees

(2) FirstNet concludes it may charge a user or subscription fee under 47 U.S.C. 1428(a)(1) to any user that seeks access to or use of the nationwide public safety broadband network.

State Core Network User Fees

(3) FirstNet concludes that the fees assessed on States assuming RAN responsibilities for use of the core network authorized by 47 U.S.C. 1442(f) are distinct from and can be assessed in addition to any other fees authorized under the Act.

Lease Fees Related to Network Capacity and Covered Leasing Agreements

(4) FirstNet concludes that a covered leasing agreement under 47 U.S.C. 1428(a)(2) does not require a secondary user to “construct, manage, and operate” the entire FirstNet network, either from a coverage perspective or exclusively within a specific location.

(5) FirstNet concludes that multiple covered leasing agreement lessees could coexist and be permitted access to excess network capacity in a particular geographic area.

³¹ See 47 U.S.C. 1428, 1442(f); 1426(b)(4)(C).

³² 47 U.S.C. 1428, 1442(f).

³⁰ See 47 U.S.C. 1426(b)(1)(C), (b)(3), (c)(3).

(6) FirstNet interprets that a covered leasing agreement lessee satisfies the definition under 47 U.S.C. 1428(a)(2) so long as the lessee does more than a nominal amount of constructing, managing, or operating the network.

(7) FirstNet concludes that an entity entering into a covered leasing agreement under 47 U.S.C. 1428(a)(2) is not required to perform all three functions of constructing, managing, and operating a portion of the network, so long as one of the three is performed as part of the covered leasing agreement.

(8) FirstNet interprets the reference to “network capacity” in the definition of covered leasing agreement under 47 U.S.C. 1428(a)(2)(B)(i) as a generic statement referring to the combination of spectrum and network elements, as defined by the Act, and includes the core network as well as the radio access network of either FirstNet alone or that of the secondary user under a covered leasing agreement whereby the core and radio access network are used for serving both FirstNet public safety entities and the secondary user’s commercial customers.

(9) FirstNet interprets the term “secondary basis” under 47 U.S.C. 1428(a)(2)(B)(i) to mean that network capacity will be available to the secondary user unless it is needed for public safety entities as defined in the Act.

(10) FirstNet interprets the phrase “spectrum allocated to such entity” found in 47 U.S.C. 1428(a)(3)(B)(ii) as allowing all or a portion of the spectrum licensed to FirstNet by the FCC under call sign “WQQE234” to be allocated for use on a secondary basis under a covered leasing agreement.

(11) FirstNet concludes the reference to “dark fiber” in 47 U.S.C. 1428(a)(2)(B)(ii) cannot literally be interpreted as such, and the reference should be interpreted to allow the covered leasing agreement lessee to transport such traffic on otherwise previously dark fiber facilities.

Network Equipment and Infrastructure Fee

(12) FirstNet interprets 47 U.S.C. 1428(a)(3) as being limited to the imposition of a fee for the use of static or isolated equipment or infrastructure, such as antennas or towers, rather than for use of FirstNet spectrum or access to network capacity.

(13) FirstNet interprets the phrase “constructed or otherwise owned by [FirstNet]” under 47 U.S.C. 1428(a)(3) as meaning that FirstNet ordered or required the construction of such equipment or infrastructure, paid for such construction, simply owns such

equipment, or does not own but, through a contract has rights to sublease access to, or use of, such equipment or infrastructure.

Analysis of and Responses to Comments on Fees

Summary: The majority of commenters agreed with the various interpretations related to the assessment and collection of fees by FirstNet. The commenters generally understood the authority the Act gives FirstNet to assess and collect fees and the importance of such fees as a key funding resource necessary to build, operate, and maintain the NPSBN. However, a few commenters, as described and responded to below, either disagreed with certain interpretations or provided general comments relating to the assessment and collection of the various fees under the Act.

Comment #25: Two commenters agreed that FirstNet is authorized to assess a fee for use of the core network, but suggested that States assuming RAN deployment responsibilities should only pay the costs associated with using the core network and spectrum lease; they should not have to pay a network user or subscription fee, and that FirstNet is not allowed to, or should not, impose ‘user’ fees on opt-out States in a cumulative manner as interpreted by FirstNet.

Response: FirstNet disagrees and believes the Act authorizes FirstNet to assess a user or subscription fee to each entity, including a State choosing to deploy its own radio access network, that seeks access to or use of the network. Specifically, the Act authorizes FirstNet to collect a “user or subscription fee from *each* entity, including any public safety entity or secondary user, that seeks access to or use of the [NPSBN].”³³ Consequently, a plain reading of this provision does not appear to provide any exclusionary language that would limit which entities may be charged a fee for access to or use of the network. Rather, as discussed in the *First Notice*, the use of the term “including” rather than “consisting” when describing the scope of entities that may be charged a network user fee indicates that this group is not limited to only public safety entities or secondary users, but would include other entities such as a State. Thus, FirstNet believes the plain language of the Act supports the conclusion that FirstNet may charge a user or subscription fee to *any* eligible user who seeks access to or use of the nationwide public safety broadband network,

including, as appropriate, a State assuming responsibilities for radio access network deployment.

Comment #26: One commenter suggested that all public safety user fees should include nationwide coverage, and should be for unlimited use of the NPSBN. For example, a flat fee for unlimited usage (and no roaming fees) should be charged within each State, similar to today’s carrier billing model.

Response: This comment is outside the scope of this notice. However, FirstNet acknowledges the comment and will consider the recommendation as it continues planning for the deployment of the NPSBN.

Comment #27: One commenter suggested that while the Act is unambiguous on allowing FirstNet to assess a fee to States assuming RAN responsibilities for use of the core network, it is important that this fee not be set so high so as to discourage States from opting out of the NPSBN. The commenter further noted that the ability of States to construct their own RAN is clearly permissive under the Act and, in fact, could enable significant growth and adoption of the NPSBN as long as the user fees for opt-out states are reasonable and contemplate the budgets of State and local public safety entities.

Response: This comment is outside the scope of this notice. However, FirstNet acknowledges the comment and will consider the recommendation as it continues planning for the deployment of the NPSBN.

Comment #28: Two commenters disagreed that “all” of the FirstNet Band 14 spectrum can be allocated for secondary use under a covered leasing agreement.

Response: FirstNet believes its interpretation that the Act allows all or part of the spectrum licensed to FirstNet by the FCC under call sign “WQQE234” to be allocated for secondary use is supported by language of the Act. FirstNet is the entity created by the Act to ensure the establishment of the NPSBN, and as such has a duty to ensure the efficient use of the funding resources available to fulfill this duty, including the ability to permit access to spectrum capacity on a secondary basis. To best utilize these funding resources, the Act authorizes FirstNet to enter into covered leasing agreements which permit an entity entering into such an agreement to have access to, or use of, network capacity on a secondary basis for non-public safety services. The Act, as analyzed in the *First Notice*, does not provide any cap or limitation on how much of the network capacity may be allocated on a secondary basis. Thus, FirstNet believes the Act provides it

³³ 47 U.S.C. 1428(a)(1) (emphasis added).

flexibility to determine how best to utilize network capacity as a funding resource to ensure both the establishment and self-sustainability of the network. Despite this flexibility, however, it is important to note that public safety entities will always have priority use of the NPSBN over any non-public safety user that gains access to, or use of, the network on a secondary basis.

Comment #29: One commenter suggested that the States should determine how much capacity/spectrum is made available within its borders under a covered leasing agreement—rather than FirstNet making the determination.

Response: FirstNet is the entity created by the Act to ensure the establishment of the NPSBN and is also the sole licensee of the 700 MHz D block spectrum and the existing public safety broadband spectrum.³⁴ Thus, FirstNet is the sole entity responsible for determining how to allocate the spectrum under a covered leasing agreement.

Comment #30: One commenter cautioned FirstNet to ensure there is not an undue expectation by the covered leasing agreement lessee that its lease of the spectrum supersedes public safety's access to, and use of, that spectrum as a priority in all cases, and at all times.

Response: FirstNet acknowledges the comment and reiterates that its primary mission is to ensure the establishment of a nationwide, interoperable network for public safety. Accordingly, public safety will always have priority use of the NPSBN over any non-public safety user that gains access to, or use of, the network on a secondary basis through a covered leasing agreement.

Comment #31: One commenter recommended that FirstNet interpret 47 U.S.C. § 1428(a)(3) to only apply to the RAN hardware in States that choose to participate in the NPSBN as proposed by FirstNet.

Response: FirstNet interprets the phrase “constructed or otherwise owned by [FirstNet]” under 47 U.S.C. 1428(a)(3) as meaning that FirstNet ordered or required the construction of such equipment or infrastructure, paid for the construction, owns the equipment, or does not own the equipment, but, through a contract, has the right to sublease the equipment or infrastructure. Thus, unless the RAN hardware in any State falls within the criteria above, FirstNet would not have the authority to assess and collect a fee for use of such infrastructure or equipment.

Dated: October 15, 2015.

Jason Karp,

Chief Counsel (Acting), First Responder Network Authority.

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–134–2015]

Foreign-Trade Zone 142—Salem/ Millville, New Jersey; Application for Subzone; Nine West Holdings, Inc.; West Deptford, New Jersey

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the South Jersey Port Corporation, grantee of FTZ 142, requesting subzone status for the facilities of Nine West Holdings, Inc., located in West Deptford, New Jersey. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on October 14, 2015.

The proposed subzone would consist of the following sites: *Site 1* (27.18 acres) 1245 Forest Parkway West, West Deptford; and, *Site 2* (33.28 acres) 1250 Parkway West, West Deptford. The proposed subzone would be subject to the existing activation limit of FTZ 142. No authorization for production activity has been requested at this time.

In accordance with the FTZ Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is November 30, 2015. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 14, 2015.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the “Reading Room” section of the FTZ Board's Web site, which is accessible via www.trade.gov/ftz.

For further information, contact Kathleen Boyce at Kathleen.Boyce@trade.gov or (202) 482–1346.

Dated: October 14, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–26632 Filed 10–19–15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–67–2015]

Foreign-Trade Zone (FTZ) 183—Austin, Texas; Notification of Proposed Production Activity; Flextronics America, LLC (Automatic Data Processing Machines); Austin, Texas

Flextronics America, LLC (Flextronics) submitted a notification of proposed production activity to the FTZ Board for its facility in Austin, Texas within Subzone 183C. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on October 9, 2015.

Flextronics already has authority to produce automatic data processing machines within Subzone 183C. The current request would add finished products and foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Flextronics from customs duty payments on the foreign status materials/components used in export production. On its domestic sales, Flextronics would be able to choose the duty rates during customs entry procedures that apply to: Video card subassemblies; CPU and video card connector subassemblies; external power and USB port card subassemblies; main controller board subassemblies; and, internal power supply subassemblies (duty-free) for the foreign status materials/components noted below and in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The materials/components sourced from abroad include: Copper alloy screws; and, lithium batteries (duty rate ranges from 3.0 to 3.4%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The

³⁴ 47 U.S.C. 1421, 1422.

closing period for their receipt is November 30, 2015.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230-0002, and in the "Reading Room" section of the Board's Web site, which is accessible via www.trade.gov/ftz.

For further information, contact Elizabeth Whitman at Elizabeth.Whitman@trade.gov or (202) 482-0473.

Dated: October 13, 2015.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2015-26635 Filed 10-19-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Membership of the Bureau of Industry and Security Performance Review Board

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice of membership on the Bureau of Industry and Security's Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the Bureau of Industry and Security (BIS), Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of BIS's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for BIS's Performance Review Board begins on October 20, 2015.

FOR FURTHER INFORMATION CONTACT: Ruthie B. Stewart, Department of Commerce, Office of Human Resources Management, Office of Executive Resources, 14th and Constitution Avenue NW., Room 51010, Washington, DC 20230, at (202) 482-3130.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the Bureau of Industry and Security (BIS), Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of BIS's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for BIS's Performance Review Board begins on October 20, 2015. The name, position title, and type of appointment of each member of BIS's Performance Review Board are set forth below by organization:

Department of Commerce, Bureau of Industry and Security (BIS)

Daniel O. Hill, Deputy Under Secretary for Industry and Security, Career SES, Chairperson

Matthew S. Borman, Deputy Assistant Secretary for Export Administration, Career SES

Richard R. Majauskas, Deputy Assistant Secretary for Export Enforcement, Career SES

Carol M. Rose, Chief Financial Officer and Director of Administration, Career SES (New Member)

Department of Commerce, Office of the General Counsel (OGC)

Brian D. DiGiacomo, Chief, Employment and Labor Law Division, Career SES

Department of Commerce, Office of the Secretary (OS)

Theodore E. LeCompte, Deputy Chief of Staff, NonCareer SES, Political Advisor (New Member)

Denise A. Yaag,

Director, Office of Executive Resources, Office of Human Resources Management, Office of the Secretary/Office of the CFO/ASA, Department of Commerce.

[FR Doc. 2015-26583 Filed 10-19-15; 8:45 am]

BILLING CODE 3510-25-P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The meeting is scheduled for Thursday, November 12, 2015, at 8:30 a.m. Eastern Standard Time (EST).

ADDRESSES: The meeting will be held in Room 1412 at the U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Hinman, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue NW., Washington, DC 20230 (Phone: 202-482-0627; Fax: 202-482-3835; email: maureen.hinman@trade.gov)

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at (202) 482-5225 no less than one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The meeting will take place from 8:30 a.m. to 3:30 p.m. EDT. The general meeting is open to the public and time will be permitted for public comment from 3:00-3:30 p.m. EDT. Those interested in attending must provide notification by Monday, November 2, 2015 at 5:00 p.m. EDT, via the contact information provided above. Written comments concerning ETTAC affairs are welcome any time before or after the meeting. Minutes will be available within 30 days of this meeting.

Topics to be considered: The agenda for this meeting will include discussion of priorities and objectives for the committee, trade promotion programs within the International Trade Administration, and subcommittee working meetings.

Background: The ETTAC is mandated by Public Law 103-392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce

and the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently re-chartered until August 2016.

Dated: October 14, 2015.

Edward A. O'Malley,

Office Director, Office of Energy and Environmental Industries.

[FR Doc. 2015-26526 Filed 10-19-15; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

Membership of the International Trade Administration Performance Review Board

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of membership on the International Trade Administration's Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. § 4314(c)(4), the International Trade Administration (ITA), Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of ITA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for ITA's Performance Review Board begins on October 20, 2015.

FOR FURTHER INFORMATION CONTACT: Jennifer Munz, U.S. Department of Commerce, Office of Human Resources Management, Office of Executive Resources, 14th and Constitution Avenue NW., Room 51010, Washington, DC 20230, at (202) 482-4051.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. § 4314(c)(4), the International Trade Administration (ITA), Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of ITA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of

Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for ITA's Performance Review Board begins on October 20, 2015. The name, position title, and type of appointment of each member of ITA's Performance Review Board are set forth below by organization:

Department of Commerce, International Trade Administration (ITA)

Praveen M. Dixit, Deputy Assistant Secretary for Trade Policy and Analysis, Career SES (New Member)
Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, Career SES (New Member)
Jennifer L. Pilat, Director, Advocacy Center, Non-Career SES, Political Advisor, (New Member)
Timothy Rosado, Chief Financial and Administrative Officer, Career SES, Chairperson

Department of Commerce, Office of the Secretary (OS), Office of the Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA)

Gay G. Shrum, Director for Administrative Programs, Career SES (New Member)

Denise A. Yaag,

Director, Office of Executive Resources, Office of Human Resources Management, Office of the Secretary/Office of the CFO/ASA, Department of Commerce.

[FR Doc. 2015-26576 Filed 10-19-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-122-854]

Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of supercalendered paper (SC paper) from

Canada. The period of investigation is January 1, 2014, through December 31, 2014.

DATES: *Effective Date:* October 20, 2015.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or David Neubacher, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-1391 and (202) 482-5823, respectively.

SUPPLEMENTARY INFORMATION:

Background

The petitioner in this investigation is the Coalition for Fair Paper Imports. The Coalition for Fair Paper Imports is composed of Madison Paper Industries and Verso Corporation. In addition to the Government of Canada, the mandatory respondents in this investigation are (1) Port Hawkesbury Paper LP, 6879900 Canada Inc., Port Hawkesbury Investments Ltd., Port Hawkesbury Paper GP, Port Hawkesbury Paper Holdings Ltd., Port Hawkesbury Paper Inc., and Pacific West Commercial Corporation (collectively, Port Hawkesbury); and (2) Resolute FP Canada Inc., Fibrek General Partnership, Forest Products Mauricie LP, Produits Forestiers Petit-Paris Inc., and Société en Commandite Scierie Opitciwan (collectively, Resolute).

Case History

The events that have occurred since the Department published the *Preliminary Determination*¹ on August 3, 2015, are discussed in the Issues and Decision Memorandum.² The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>, and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and

¹ See *Supercalendered Paper from Canada: Preliminary Affirmative Countervailing Duty Determination*, 80 FR 45951 (August 3, 2015) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

² See Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding "Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Supercalendered Paper from Canada," dated concurrently with this notice (Issues and Decision Memorandum).

Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>.

Scope of the Investigation

The product covered by this investigation is SC paper. For a complete description of the scope of the investigation, see Appendix 1 to this notice.

Methodology

The Department conducted this countervailing duty investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues that parties have raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice as Appendix 2. Based on our analysis of the comments received and our findings at verification, we made certain changes to the respondents' subsidy rate calculations since the *Preliminary Determination*.

For this determination, we have relied partially on facts available for Resolute. Further, we have drawn an adverse inference in selecting from among the facts otherwise available to calculate the *ad valorem* rate for Resolute, because the company did not act to the best of its ability when responding to the Department's request for information.³ For further information, see "Use of Facts Otherwise Available and Adverse Inferences" in the Issues and Decision Memorandum.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated a rate for each individually investigated respondent company. Section 705(c)(5)(A)(i) of the Act states that, for companies not individually investigated, we will determine an "all others" rate equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act.

Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have calculated the "all others" rate as a weighted average of the rates of Port Hawkesbury and Resolute, using the publicly ranged values for each

company's exports of subject merchandise to the United States to calculate the weighted average, because to use the actual sales values risks disclosure of proprietary information.⁴

We determine the countervailable subsidy rates to be:

Company	Subsidy rate (percent)
Port Hawkesbury	20.18
Resolute	17.87
All Others	18.85

As a result of our *Preliminary Determination*, and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from Canada that were entered or withdrawn from warehouse, for consumption on or after August 3, 2013, the date of publication of the *Preliminary Determination* in the **Federal Register**, and to collect cash deposits of estimated countervailing duty at the rates determined in the *Preliminary Determination*.

In accordance with section 705(c)(1)(B)(ii) of the Act, we are directing CBP to continue to suspend liquidation of all imports of the subject merchandise from Canada that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The suspension of liquidation instructions will remain in effect until further notice. We are also directing CBP to collect cash deposit of estimated countervailing duty at the rates identified above.

We will issue a countervailing duty order pursuant to section 706(a) of the Act if the United States International Trade Commission (ITC) issues a final affirmative injury determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all

privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: October 13, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix 1

Scope of the Investigation

The merchandise covered by this investigation is supercalendered paper (SC paper). SC paper is uncoated paper that has undergone a calendering process in which the base sheet, made of pulp and filler (typically, but not limited to, clay, talc, or other mineral additive), is processed through a set of supercalenders, a supercalender, or a soft nip calender operation.¹

The scope of this investigation covers all SC paper regardless of basis weight, brightness, opacity, smoothness, or grade, and whether in rolls or in sheets. Further, the scope covers all SC paper that meets the scope definition regardless of the type of pulp fiber or filler material used to produce the paper.

Specifically excluded from the scope are imports of paper printed with final content of printed text or graphics.

Subject merchandise primarily enters under Harmonized Tariff Schedule of the United States (HTSUS) subheading 4802.61.3035, but may also enter under subheadings 4802.61.3010, 4802.62.3000, 4802.62.6020, and 4802.69.3000. Although the HTSUS subheadings are provided for convenience and customs purposes, the

¹ Supercalendering and soft nip calendering processing, in conjunction with the mineral filler contained in the base paper, are performed to enhance the surface characteristics of the paper by imparting a smooth and glossy printing surface. Supercalendering and soft nip calendering also increase the density of the base paper.

³ See sections 776(a) and (b) of the Act.

⁴ See Memorandum to the File, "Calculation of the All Others Rate for the Final Determination in the Countervailing Duty Investigation of the Supercalendered Paper from Canada," (October 13, 2015).

written description of the scope of the investigation is dispositive.

Appendix 2

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Investigation
- IV. Subsidies Valuation
 - a. Period of Investigation
 - b. Allocation Period
 - c. Attribution of Subsidies
 - d. Denominators
 - e. Loan Interest Rate Benchmarks and Discount Rates
- V. Use of Facts Otherwise Available and Adverse Inferences
- VI. Analysis of Programs
 - a. Programs Determined to be Countervailable
 - b. Programs Determined To Be Not Used or Not to Confer a Benefit During the POI
 - c. Program Determined To Be Not Countervailable
- VII. Analysis of Comments
 - Comment 1: The Department's Selection of Mandatory and Voluntary Respondents
 - Comment 2: The Calculation of the All Other's Rate
 - Comment 3: Whether the Department Should Allow Irving to Post Bonds Until the Final Results of an Expedited Review
 - Comment 4: Whether Port Hawkesbury is Creditworthy
 - Comment 5: Whether the GNS' Hot Idle Funding is Extinguished
 - Comment 6: Whether the GNS' FIF Funding is Extinguished
 - Comment 7: Whether Assistance Under the Outreach Agreement is Countervailable
 - Comment 8: Whether Port Hawkesbury's Private Stumpage Purchases Provide an Appropriate Benchmark for Port Hawkesbury's Crown Stumpage Purchases
 - Comment 9: Land for MTAR
 - Comment 10: Whether the NSUARB is an Authority
 - Comment 11: Whether the Government Entrusted or Directed NSPI to Provide a Financial Contribution
 - Comment 12: Whether to Use a Tier 1 Benchmark
 - Comment 13: Whether the Port Hawkesbury LRR is based on Market Principles
 - Comment 14: Whether Steam for LTAR Provides a Countervailable Subsidy
 - Comment 15: Whether the Property Tax Reduction in Richmond County Provides a Countervailable Subsidy
 - Comment 16: Whether the PWCC Indemnity Loan Program Should be Excluded from Port Hawkesbury's Cash Deposit Rate
 - Comment 17: Whether to Apply AFA to Resolute
 - Comment 18: Whether the Support for the Forest Industry Program (Investissement Québec Loans) Provides Countervailable Subsidies to Resolute's SC Paper Production
 - Comment 19: Whether Certain Programs Provides Countervailable Subsidies to Resolute's SC Paper Production

Comment 20: Whether Subsidies are Extinguished by Changes in Ownership

VIII. Conclusion

Appendix I: Acronym and Abbreviation Table

Appendix II: Litigation Table

Appendix III: Administrative Determinations and Notices Table

Appendix IV: Case-Related Documents

Appendix V: Miscellaneous Table (Regulatory, Statutory, Articles, *etc.*)

[FR Doc. 2015-26634 Filed 10-19-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[Court No. 12-00296]

Final Redetermination Pursuant to Court Remand, *Wheatland Tube Co. v. United States*

Summary

On August 3, 2015, the U.S. Court of International Trade (CIT or Court) granted the request of the Department of Commerce (Department) for a voluntary remand in the above-referenced proceeding.¹ The *Remand Order* involves a challenge to the Department's final determination in a proceeding conducted under Section 129 of the Uruguay Round Agreements Act (Section 129) related to the Department's final affirmative antidumping duty (AD) determination on circular welded carbon quality steel pipe (CWP) from the People's Republic of China (PRC) for the period October 1, 2006, through March 31, 2007.² The CIT granted the Department's request for a voluntary remand "in light of Commerce's remand redetermination in *Wheatland Tube Co. v. United States*, Consol. Court No. 12-00298,

¹ See *Wheatland Tube Co. v. United States*, Court No. 12-00296 (August 3, 2015) (*Remand Order*).

² See *Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People's Republic of China*, 77 FR 52683 (August 30, 2012) (*Implementation Notice*); See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Determination: Section 129 Proceeding Pursuant to the WTO Appellate Body's Findings in WTO DS379 Regarding the Antidumping and Countervailing Duty Investigations of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China," (July 31, 2012) (Final Determination Memorandum); see also *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970 (June 5, 2008) (*Final Determination*).

Redetermination Pursuant to Court Remand, April 27, 2015, ECF No. 70" (CVD Remand Redetermination), which dealt with the companion CWP countervailing duty (CVD) proceeding.³ In the CVD Remand Redetermination, the Department found "that there is no basis for making an adjustment to the companion AD rates under" 19 U.S.C. 1677f-1(f), because no party in the companion CVD proceeding responded to the Department's request for information concerning the issue of "double remedies."

In light of the CVD Remand Redetermination, we have reconsidered our finding regarding the double remedies adjustment afforded to respondents in the underlying AD proceeding, and found that there is no basis for making an adjustment to the AD rates under 19 U.S.C. 1677f-1(f). As such, in the draft redetermination, we denied the adjustment that we granted the respondents in the Final Determination Memorandum.

The Department offered interested parties an opportunity to comment on the Draft Remand.⁴ On September 23, 2015, Plaintiff Wheatland Tube Company (Wheatland) and Consolidated Plaintiff United States Steel Corporation (U.S. Steel Corporation) submitted comments on the Draft Remand.⁵ In their letter, they stated the following:

We support the Department's determination to "deny { } the adjustment that we granted respondents in the CWP AD Section 129 determination." We have no other comments.⁶ (footnote omitted)

No other interested party submitted comments.

For the reasons discussed below, our Draft Remand remains unchanged, and we continue to deny the adjustment that we granted the respondents in the Final Determination Memorandum.

Background

Section 129 Proceeding

On July 22, 2008, upon final affirmative determinations by the Department and the U.S. International Trade Commission, the Department published AD and CVD orders on CWP from the PRC.⁷ The Government of the

³ See *Remand Order*.

⁴ See "Draft Remand Redetermination, *Wheatland Tube Co. v. United States*, Consol. Court No. 12-00296," (September 18, 2015) (Draft Remand).

⁵ See Letter from the Domestic Interested Parties to the Department, "Comments On The Draft Remand Redetermination, *Wheatland Tube Co. v. United States*, Court No. 12-00296" (September 23, 2015).

⁶ *Id.* at 1.

⁷ See *Notice of Antidumping Duty Order: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 42547 (July 22, 2008).

People's Republic of China (GOC) challenged the CWP orders and three other sets of simultaneously imposed AD and CVD orders before the Dispute Settlement Body of the World Trade Organization (WTO). The WTO Appellate Body, in March 2011, found that the United States had acted inconsistently with its international obligations in several respects, including the potential imposition of overlapping remedies.⁸

The U.S. Trade Representative then announced the United States' intention to comply with the WTO's rulings and recommendations, and requested that the Department make a determination "not inconsistent with" the WTO AB Report.⁹ In the CVD proceeding, the GOC did not provide CWP-specific industry information for cost recovery and specific cost categories in the proceeding, but rather provided manufacturing-level data.

Based upon its preliminary findings in the companion CVD proceeding using the non-CWP specific information mentioned above, the Department issued a preliminary determination memorandum on May 31, 2012, granting a double remedies adjustment to all respondents.¹⁰

After allowing parties to the proceeding an opportunity to submit factual information and comment on the Preliminary Determination Memorandum, the Department on July 31, 2012, issued its Final Determination Memorandum in the Section 129 proceeding on, *inter alia*, the double remedies issue.¹¹ Based on its analysis, the Department found that there was a demonstration of:

{A} subsidy-(variable) cost-price link in the case of input price subsidies (*i.e.*, subsidized inputs) for the CWP industry during the period of investigation (POI), from which we preliminarily estimated that 63.07 percent of the value of the subsidies that have impacted variable costs were "passed

⁸ See *United States—Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, 611, WT/DS379/AB/R (Mar. 11, 2011) (WTO AB Report).

⁹ See *Implementation Notice*, 77 FR at 52684 (citing 19 U.S.C. 3538(b)(2)).

¹⁰ See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, "Section 129 Proceeding Pursuant to the WTO Appellate Body's Findings in WTO DS379 Regarding the Antidumping Duty Investigation of Circular Welded Carbon Quality Steel Pipe (CWP) from the People's Republic of China: Preliminary Determination of Adjustments to the Antidumping Duty Cash Deposit Rates" (May 31, 2012) (Preliminary Determination Memorandum), at 7–8 and Attachment 1.

¹¹ See Final Determination Memorandum.

through" to export prices for the CWP industry during the POI.¹²

As a result, the Department issued amended AD cash deposit rates, which reduced the weighted-average dumping margin for separate rate companies from 69.2 percent to 45.35 percent.¹³ The PRC-wide entity dumping margin also was reduced from 85.55 percent to 68.24 percent.¹⁴ Following consultations prescribed by Section 129, the Department, at the direction of the U.S. Trade Representative, published the *Implementation Notice* on August 30, 2012.

Wheatland, U.S. Steel Corporation, and Plaintiff-Intervenors Allied Tube and Conduit and TMK IPSCO Tubulars (collectively, the Domestic Interested Parties) challenged the Department's AD and CVD Section 129 CWP determinations. In the litigation concerning the CVD determination (CVD Litigation), the Domestic Interested Parties challenged the Department's decision that an adjustment to the AD duty on U.S. CWP imports from the PRC is warranted to account for remedies that overlap those imposed by the CVD order.

CVD Litigation

In November 2014, the CIT issued an opinion and order in the CVD Litigation remanding the CWP CVD Section 129 determination to the Department for further consideration of its finding that certain countervailable subsidies reduced the average price of U.S. CWP imports, such that the reduction warranted a "double remedies" adjustment to the companion AD rates.¹⁵ In April 2015, the Department filed its remand redetermination in the CVD case.¹⁶

In the CVD Remand Redetermination, the Department found "that there is no basis for making an adjustment to the companion AD rates under" 19 U.S.C. 1677f–1(f)(1)(b).¹⁷ In the CVD remand proceeding, the Department sent questionnaires to the original CVD respondents to obtain industry and respondent specific information necessary for its "double remedies" analysis.¹⁸ The Department also issued copies of the questionnaire to the GOC.¹⁹ Neither the CVD mandatory

¹² See Preliminary Determination Memorandum at 3; unchanged in the Final Determination Memorandum.

¹³ See *Implementation Notice*, 77 FR at 52687.

¹⁴ *Id.*

¹⁵ See *Wheatland Tube Co. v. United States*, 26 F. Supp. 3d 1372 (Ct. Int'l Trade 2014).

¹⁶ See CVD Remand Redetermination.

¹⁷ *Id.* at 10.

¹⁸ *Id.* at 2.

¹⁹ *Id.*

respondents nor the GOC, however, filed a questionnaire response, comments, or an extension request by the due date. Without the requested information from the respondents, the Department found that an adjustment under 19 U.S.C. 1677f–1(f) was not warranted.²⁰

In May 2015, the CIT sustained the Department's CVD Remand Redetermination and entered a final judgment in the CVD case.²¹ No party appealed the CIT's final judgment in the CVD case.

AD Litigation

On January 2, 2013, the CIT issued an order staying the litigation concerning the CWP AD Section 129 determination (AD Litigation), "pending the final disposition of *Wheatland Tube Co. v. United States*, Consol. Court No. 12–00298, including all appeals."²² Following the final disposition of the CVD Litigation, the CIT's stay of the AD Litigation lifted on July 8, 2015. On August 3, 2015, the CIT granted the Department's request for voluntary remand.²³

Final Redetermination

In light of the CVD Remand Redetermination, we have reconsidered our finding regarding the double remedies adjustment granted to respondents in the CWP AD Section 129 determination. In the CVD Remand Redetermination, we found that an adjustment under 19 U.S.C. 1677f–1(f) requires a demonstration of a reduction in the average price of imports, for which the Department, in part, examines the links between the countervailed subsidy programs and the impact on the respondents' costs.

Without the requested information from respondents in the CVD Remand Redetermination, the Department determined that such a demonstration has not been made at the CWP industry-specific level and there is no basis for making an adjustment to the AD rates under 19 U.S.C. 1677f–1(f). As such, for this final redetermination, we are denying the adjustment that we granted respondents in the CWP AD Section 129 determination.

Accordingly, we have revised the AD rates that we calculated in the CWP AD Section 129 determination. The revised AD rates are listed in the attached Appendix, "Revised Antidumping Duty

²⁰ *Id.* at 8–9.

²¹ *Wheatland Tube Co. v. United States*, Consol. Court No. 12–00298, slip op. 15–44 (Ct. Int'l Trade May 7, 2015).

²² *Wheatland Tube Co. v. United States*, Court No. 12–00296, Order, January 2, 2013, ECF No. 32.

²³ See *Remand Order*.

Cash Deposit Rates Pursuant to Remand Redetermination.”

Dated: October 8, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix: Revised Antidumping Duty Cash Deposit Rates Pursuant To Remand Redetermination

Exporter	Producer	Revised AD cash deposit rate (%)
BEIJING SAI LIN KE HARDWARE CO., LTD	XUZHOU GUANG HUAN STEEL TUBE PRODUCTS CO., LTD.	69.2
BENXI NORTHERN PIPES CO., LTD	BENXI NORTHERN PIPES CO., LTD	69.2
DALIAN BROLLO STEEL TUBES LTD	DALIAN BROLLO STEEL TUBES LTD	69.2
GUANGDONG WALSALL STEEL PIPE INDUSTRIAL CO. LTD.	GUANGDONG WALSALL STEEL PIPE INDUSTRIAL CO. LTD.	69.2
HENGSHUI JINGHUA STEEL PIPE CO., LTD	HENGSHUI JINGHUA STEEL PIPE CO., LTD	69.2
HULUDAO STEEL PIPE INDUSTRIAL CO	HULUDAO STEEL PIPE INDUSTRIAL CO	69.2
JIANGSU GUOQIANG ZINC-PLATING INDUSTRIAL CO., LTD.	JIANGSU GUOQIANG ZINC-PLATING INDUSTRIAL CO., LTD.	69.2
JIANGYIN JIANYE METAL PRODUCTS CO., LTD	JIANGYIN JIANYE METAL PRODUCTS CO., LTD	69.2
KUNSHAN HONGYUAN MACHINERY MANUFACTURE CO., LTD.	KUNSHAN HONGYUAN MACHINERY MANUFACTURE CO., LTD.	69.2
KUNSHAN LETS WIN STEEL MACHINERY CO., LTD	KUNSHAN LETS WIN STEEL MACHINERY CO., LTD	69.2
QINGDAO XIANGXING STEEL PIPE CO., LTD	QINGDAO XIANGXING STEEL PIPE CO., LTD	69.2
QINGDAO YONGJIE IMPORT & EXPORT CO., LTD	SHANDONG XINYUANGROUP CO., LTD	69.2
RIZHAO XINGYE IMPORT & EXPORT CO., LTD	SHANDONG XINYUAN GROUP CO., LTD	69.2
SHANGHAI METALS & MINERALS IMPORT & EXPORT CORP.	BENXI NORTHERN PIPES CO., LTD	69.2
SHENYANG BOYU M/E CO., LTD	BAZHOU DONG SHENG HOT-DIPPED GALVANIZED STEEL PIPE CO., LTD.	69.2
SHIJIAZHUANG ZHONGQING IMP & EXP CO., LTD	BAZHOU ZHUOFA STEEL PIPE CO. LTD	69.2
TIANJIN BAOLAI INT'L TRADE CO., LTD	TIANJIN JINGHAI COUNTY BAOLAI BUSINESS AND INDUSTRY CO. LTD.	69.2
TIANJIN NO. 1 STEEL ROLLED CO., LTD	TIANJIN HEXING STEEL CO., LTD	69.2
TIANJIN NO. 1 STEEL ROLLED CO., LTD	TIANJIN RUITONG STEEL CO., LTD	69.2
TIANJIN NO. 1 STEEL ROLLED CO., LTD	TIANJIN YAYI INDUSTRIAL CO	69.2
TIANJIN XINGYUDA IMPORT & EXPORT CO., LTD	TANGSHAN FENGNAN DISTRICT XINLIDA STEEL PIPE CO., LTD.	69.2
TIANJIN XINGYUDA IMPORT & EXPORT CO., LTD	TIANJIN LIFENGYUANDA STEEL GROUP	69.2
TIANJIN XINGYUDA IMPORT & EXPORT CO., LTD	TIANJIN LITUO STEEL PRODUCTS CO	69.2
TIANJIN XINGYUDA IMPORT & EXPORT CO., LTD	TIANJIN XINGYUNDA STEEL PIPE CO	69.2
WAH CIT ENTERPRISE	GUANGDONG WALSALL STEEL PIPE INDUSTRIAL CO. LTD.	69.2
WAI MING (TIANJIN) INT'L TRADING CO., LTD	BAZHOU DONG SHENG HOT-DIPPED GALVANIZED STEEL PIPE CO., LTD.	69.2
WEIFANG EAST STEEL PIPE CO., LTD	WEIFANG EAST STEEL PIPE CO., LTD	69.2
WUXI ERIC STEEL PIPE CO., LTD	WUXI ERIC STEEL PIPE CO., LTD	69.2
WUXI FASTUBE INDUSTRY CO., LTD	WUXI FASTUBE INDUSTRY CO., LTD	69.2
ZHANGJIAGANG ZHONGYUAN PIPE-MAKING CO., LTD	ZHANGJIAGANG ZHONGYUAN PIPE-MAKING CO., LTD	69.2
PRC-WIDE ENTITY .....	.....	85.55

[FR Doc. 2015-26601 Filed 10-19-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 150923882-5882-01]

Federal Information Processing Standard (FIPS) 186-4, Digital Signature Standard; Request for Comments on the NIST-Recommended Elliptic Curves

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice and request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) requests comments on Federal Information Processing Standard (FIPS) 186-4, Digital Signature Standard, which has been in effect since July 2013. FIPS 186-4 specifies three techniques for the generation and verification of digital signatures that can be used for the protection of data: the Rivest-Shamir-Adleman Algorithm (RSA), the Digital Signature Algorithm (DSA), and the Elliptic Curve Digital Signature Algorithm (ECDSA), along with a set of elliptic curves recommended for government use. NIST

is primarily seeking comments on the recommended elliptic curves specified in Appendix D of the FIPS, but comments on other areas of the FIPS will also be considered. FIPS 186–4 is available at <http://dx.doi.org/10.6028/NIST.FIPS.186-4>.

DATES: Comments on FIPS 186–4 must be received on or before December 4, 2015.

ADDRESSES: Comments on FIPS 186–4 may be sent electronically to FIPS186-comments@nist.gov with “Comment on FIPS 186” in the subject line. Written comments may also be submitted by mail to Information Technology Laboratory, ATTN: FIPS 186–4 Comments, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8930, Gaithersburg, MD 20899–8930.

The current FIPS 186–4 can be found at <http://dx.doi.org/10.6028/NIST.FIPS.186-4>.

Comments received in response to this notice will be published electronically at <http://csrc.nist.gov/>, so commenters should not include information they do not wish to be posted (e.g., personal or confidential business information).

FOR FURTHER INFORMATION CONTACT: Dr. Lily Chen, Computer Security Division, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8930, Gaithersburg, MD 20899–8930, email: Lily.Chen@nist.gov, phone: (301) 975–6974.

SUPPLEMENTARY INFORMATION: FIPS 186 was initially developed by NIST in collaboration with the National Security Agency (NSA), using the Digital Signature Algorithm (DSA). Later versions of the standard approved the use of the Elliptic Curve Digital Signature Algorithm (ECDSA) and the Rivest-Shamir-Adleman (RSA) algorithm. American Standards Committee (ASC) X9 developed standards specifying the use of both ECDSA and RSA, including methods for generating key pairs, which were used as the basis for the later versions of FIPS 186.

The ECDSA was included by reference in FIPS 186–2, the second revision to FIPS 186, which was announced in the **Federal Register** (65 FR 7507) and became effective on February 15, 2000. The FIPS was revised in order to align the standard with new digital signature algorithms included in ASC X9 standards. To facilitate testing and interoperability, NIST needed to specify elliptic curves that could be used with ECDSA. Working in collaboration with the NSA, NIST included three sets of

recommended elliptic curves in FIPS 186–2 that were generated using the algorithms in the ANS X9.62 standard and Institute of Electrical and Electronics Engineers (IEEE) P1363 standards. The provenance of the curves was not fully specified, leading to recent public concerns that there could be an unknown weakness in these curves. NIST is not aware of any vulnerability in these curves when they are implemented correctly and used as described in NIST standards and guidelines.

In the fifteen years since FIPS 186–2 was published, elliptic curve cryptography (ECC) has seen slow adoption outside certain communities. Past discussions on this topic have cited several possible reasons for this, including interoperability issues, performance characteristics, and concerns over intellectual property.

In addition, advances in the understanding of elliptic curves within the cryptographic community have led to the development of new elliptic curves and algorithms whose designers claim to offer better performance and are easier to implement in a secure manner. Some of these curves are under consideration in voluntary, consensus-based Standards Developing Organizations.

In 2014, NIST’s primary external advisory board, the Visiting Committee on Advanced Technology (VCAT), conducted a review of NIST’s cryptographic standards program. As part of their review, the VCAT recommended that NIST “generate a new set of elliptic curves for use with ECDSA in FIPS 186.”

In June 2015, NIST hosted the technical workshop on Elliptic Curve Cryptography Standards to discuss possible approaches to promote the adoption of secure, interoperable and efficient elliptic curve mechanisms. Workshop participants expressed significant interest in the development, standardization and adoption of new elliptic curves. As a result of this input, NIST is considering the addition of new elliptic curves to the current set of recommended curves in FIPS 186–4. Comments received in response to this solicitation will be used to identify the needs, processes and goals for possible future standards activities.

Request for Comments

NIST requests comments on the following questions regarding the elliptic curves recommended in FIPS 186–4, but comments on other areas of the FIPS will also be considered. The responses to this solicitation will be used to plan possible improvements to

the FIPS, including the set of algorithms and elliptic curves specified in the FIPS.

1. Digital Signature Schemes

a. Do the digital signature schemes and key sizes specified in FIPS 186–4 satisfy the security requirements of applications used by industry?

b. Are there other digital signature schemes that should be considered for inclusion in a future revision to FIPS 186? What are the advantages of these schemes over the existing schemes in FIPS 186?

2. Security of Elliptic Curves

a. Do the NIST-recommended curves satisfy the security requirements of applications used by industry?

b. Are there any attacks of cryptographic significance on Elliptic Curve Cryptography that apply to the NIST-recommended curves or other widely used curves?

3. Elliptic Curve Specifications and Criteria

a. Is there a need for new elliptic curves to be considered for standardization?

b. If there is a need, what criteria should NIST use to evaluate any curves to be considered for inclusion?

c. Do you anticipate a need to create, standardize or approve new elliptic curves on an ongoing basis?

4. Adoption

a. Which of the approved digital signature schemes and NIST-recommended curves have been used in practice?

b. Which elliptic curves are accepted for use in international markets?

5. Interoperability

a. If new curves were to be standardized, what would be the impact of changing existing implementations to allow for the new curves?

b. What is the impact of having several standardized curves on interoperability?

c. What are the advantages or disadvantages of allowing users or applications to generate their own elliptic curves, instead of using standardized curves?

6. Performance

a. Do the performance characteristics of existing implementations of the digital signatures schemes approved in FIPS 186–4 meet the requirements of applications used by industry?

7. Intellectual Property

a. What are the desired intellectual property requirements for any new

curves or schemes that could potentially be included in the Standard?

b. What impact has intellectual property concerns had on the adoption of elliptic curve cryptography?

Authority: In accordance with the Information Technology Management Reform Act of 1996 (Pub. L. 104–106) and the Federal Information Security Management Act of 2002 (FISMA) (Pub. L. 107–347), the Secretary of Commerce is authorized to approve FIPS. NIST activities to develop computer security standards to protect federal sensitive (unclassified) information systems are undertaken pursuant to specific responsibilities assigned to NIST by Section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3), as amended.

Richard Cavanagh,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2015–26539 Filed 10–19–15; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Cost-Earnings Survey of American Samoa Longline Fishery.

OMB Control Number: 0648–xxxx.

Form Number(s): None.

Type of Request: Regular (request for a new information collection).

Number of Respondents: 20.

Average Hours per Response: 30 minutes.

Burden Hours: 10.

Needs and Uses: This request is for a new information collection.

The National Marine Fisheries Service (NMFS) proposes to collect information about annual base fishing expenses in the American Samoa longline fishery with which to conduct economic analyses that will improve fishery management in those fisheries; satisfy NMFS' legal mandates under Executive Order 12866, the Magnuson-Steven Fishery Conservation and Management Act (U.S.C. 1801 *et seq.*), the Regulatory Flexibility Act, the Endangered Species Act, and the National Environmental Policy Act; and quantify achievement of the performances measures in the NMFS

Strategic Operating Plans. Respondents will include longline fishers in American Samoa and their participation in the economic data collection will be voluntary.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: October 14, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–26508 Filed 10–19–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Fishery Products Subject to Trade Restrictions Pursuant to Certification Under the High Seas Driftnet Fishing Moratorium Protection Act.

OMB Control Number: 0648–0651.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 60.

Average Hours per Response: 10 minutes.

Burden Hours: 100.

Needs and Uses: This request is for extension of a currently approved information collection.

Pursuant to the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act), if certain fish or fish products of a nation are subject to import prohibitions to facilitate enforcement, the National Marine Fisheries Service (NMFS) requires that other fish or fish products

from that nation that are not subject to the import prohibitions must be accompanied by documentation of admissibility. A duly authorized official/agent of the applicant's Government must certify that the fish in the shipments being imported into the United States (U.S.) are of a species that are not subject to an import restriction of the U.S. If a nation is identified under the Moratorium Protection Act and fails to receive a certification decision from the Secretary of Commerce, products from that nation that are not subject to the import prohibitions must be accompanied by the documentation of admissibility.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: October 14, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–26566 Filed 10–19–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Membership of the National Telecommunications and Information Administration's Performance Review Board

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice of Membership on the National Telecommunications and Information Administration's Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. § 4314(c)(4), the National Telecommunications and Information Administration (NTIA), Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of NTIA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of

Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for NTIA's Performance Review Board begins on October 20, 2015.

FOR FURTHER INFORMATION CONTACT:

Ruthie B. Stewart, Department of Commerce, Office of Human Resources Management, Office of Executive Resources, 14th and Constitution Avenue NW., Room 51010, Washington, DC 20230, at (202) 482-3130.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. § 4314(c)(4), the National Telecommunications and Information Administration (NTIA), Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of NTIA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

Dates: The period of appointment for those individuals selected for NTIA's Performance Review Board begins on October 20, 2015. The name, position title, and type of appointment of each member of NTIA's Performance Review Board are set forth below by organization:

Department of Commerce, National Telecommunications and Information Administration (NTIA)

Paige R. Atkins, Associate Administrator for Spectrum Management, Career SES (New Member)

Leonard M. Bechtel, Chief Financial Officer and Director of Administration, Career SES, Chairperson

Evelyn Remaley-Hasch, Deputy Associate Administrator for Policy Analysis and Development, Career SES, Advisor (New Member)

Department of Commerce, National Telecommunications and Information Administration, First Responder Network Authority (NTIA/FirstNet)

Frank Freeman, Chief Administrative Officer, FirstNet, Career SES
Jim Gwinn, Chief Information Officer, FirstNet, Career SES (New Member)

Department of Commerce, Office of the Secretary, Office of the Chief Financial Officer and Assistant Secretary for Administration, Office of the Deputy Chief Financial Officer for Financial Management (OS/CFO/ASA/OFM)

Gordon T. Alston, Director, Financial Reporting and Internal Controls, Career SES (New Member)

Department of Commerce, Office of the Secretary (OS)

Theodore C.Z. Johnston, Director, Office of Business Liaison, Non-Career SES, Political Advisor

Denise A. Yaag,

Director, Office of Executive Resources, Office of Human Resources Management, Office of the Secretary/Office of the CFO/ASA, Department of Commerce.

[FR Doc. 2015-26575 Filed 10-19-15; 8:45 am]

BILLING CODE 3510-25-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO-T-2015-0066]

Trademark Public Advisory Committee Public Hearing on the Proposed Trademark Fee Schedule

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of Public Hearing.

SUMMARY: Under Section 10 of the America Invents Act (AIA), the United States Patent and Trademark Office (USPTO) may set or adjust by rule any patent or trademark fee established, authorized, or charged under Title 35 of the United States Code or the Trademark Act of 1946, respectively. The USPTO currently is planning to set or adjust trademark fees pursuant to its Section 10 fee setting authority. As part of the rulemaking process to set or adjust trademark fees, the Trademark Public Advisory Committee (TPAC) is required under Section 10 of the AIA to hold a public hearing about any proposed trademark fees, and the USPTO is required to assist TPAC in carrying out that hearing. To that end, the USPTO will make its proposed trademark fees available as set forth in the Supplementary Information section

of this Notice before any TPAC hearing and will help the TPAC to notify the public about the hearing. Accordingly, this document announces the dates and logistics for the TPAC public hearing regarding USPTO proposed trademark fees. Interested members of the public are invited to testify at the hearing and/or submit written comments about the proposed trademark fees and the questions posed on the USPTO TPAC Web site page about the proposed fees.

DATES: *Public hearing:* November 3, 2015.

Comments: For those wishing to submit written comments on the fee proposal that will be published by October 27, 2015, but not requesting an opportunity to testify at the public hearing, the deadline for receipt of those written comments is November 10, 2015.

Oral testimony: Those wishing to present oral testimony at the hearing must request an opportunity to do so in writing no later than October 27, 2015.

Pre-scheduled speakers: Pre-scheduled speakers providing testimony at the hearing should submit a written copy of their testimony for inclusion in the record of the proceedings no later than November 10, 2015.

ADDRESSES: *Public hearing:* The TPAC will hold a public hearing on November 3, 2015 beginning at 1:30 p.m., Eastern Standard Time (EST), and ending at 3:00 p.m., EST, at the USPTO, Madison Auditorium South, Concourse Level, Madison Building, 600 Dulany Street, Alexandria, Virginia 22314.

Email: Written comments should be sent by email addressed to fee.setting@uspto.gov.

Postal mail: Comments may also be submitted by postal mail addressed to: United States Patent and Trademark Office, Mail Stop CFO, P.O. Box 1450, Alexandria, VA 22313-1450, ATTN: Brendan Hourigan. Although comments may be submitted by postal mail, the USPTO prefers to receive comments via email. Written comments should be identified in the subject line of the email or postal mailing as "Fee Setting." Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or telephone number should not be included in the comments.

Web cast: The public hearing will be available via Web cast. Information about the Web cast will be posted on the USPTO's Internet Web site (address: www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting) before the public hearing.

Transcripts: Transcript of the hearing will be available on the USPTO Internet

Web site (address: www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting) shortly after the hearing.

FOR FURTHER INFORMATION CONTACT: Brendan Hourigan, Office of the Chief Financial Officer, by phone (571) 272-8966, or by email at brendan.hourigan@uspto.gov.

SUPPLEMENTARY INFORMATION: Requests to testify should indicate the following: (1) The name of the person wishing to testify; (2) the person's contact information (telephone number and email address); (3) the organization(s) the person represents, if any; and (4) an indication of the amount of time needed for the testimony. Requests to testify must be submitted by email to Pamela Lloyd at Pamela.Lloyd@uspto.gov. Based upon the requests received, an agenda for witness testimony will be sent to testifying requesters and posted on the USPTO Internet Web site (address: www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting). If time permits, the TPAC may permit unscheduled testimony as well.

Effective September 16, 2011, with the passage of the AIA, the USPTO is authorized under Section 10 of the AIA to set or adjust by rule all patent and trademark fees established, authorized, or charged under Title 35 of the United States Code and the Trademark Act of 1946, respectively. Patent and trademark fees set or adjusted by rule under Section 10 of the AIA may only recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents and trademarks, respectively, including administrative costs of the Office with respect to each as the case may be.

Congress set forth the process for the USPTO to follow in setting or adjusting patent and trademark fees by rule under Section 10 of the AIA. Congress requires the relevant advisory committee to hold a public hearing about the USPTO fee proposals after receiving them from the agency. Congress likewise requires the relevant advisory committee to prepare a written report on the proposed fees and the USPTO to consider the relevant advisory committee's report before finally setting or adjusting the fees. Further, Congress requires the USPTO to publish its proposed fees and supporting rationale in the **Federal Register** and give the public not less than 45 days in which to submit comments on the proposed change in fees. Finally, Congress requires the USPTO to publish its final rule setting

or adjusting fees also in the **Federal Register**.

Presently, the USPTO is planning to exercise its fee setting authority to set or adjust trademark fees. The USPTO will publish a proposed trademark fee schedule and related supplementary information for public viewing no later than October 27, 2015, on the USPTO Internet Web site (address: www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting). In turn, the TPAC will hold a public hearing about the proposed trademark fee schedule on the date indicated herein. The USPTO will assist the TPAC in holding the hearing by providing resources to organize the hearing and by notifying the public about the hearing, such as through this notice. To gather information from the public about the USPTO's proposed trademark fees, the TPAC will post specific questions for the public's consideration on the TPAC's Internet Web site (address: www.uspto.gov/about/advisory/tpac) after the USPTO publishes its proposed trademark fee schedule. The public may wish to address those questions in its hearing testimony and/or in written comments submitted to TPAC as described herein.

Following the TPAC public hearing, the USPTO will publish a Notice of Proposed Rulemaking in the **Federal Register**, setting forth its proposed trademark fees. The publication of that Notice will open a comment window through which the public may provide written comments directly to the USPTO. Additional information about public comment to the USPTO will be provided in the USPTO's Notice of Proposed Rulemaking.

Dated: October 14, 2015.

Michelle K. Lee,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2015-26572 Filed 10-19-15; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF COMMERCE

Patent and Office

[Docket No. PTO-P-2015-0065]

Patent Public Advisory Committee Public Hearing on the Proposed Patent Fee Schedule

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

ACTION: Notice of Public Hearing.

SUMMARY: Under Section 10 of the America Invents Act (AIA), the United

States Patent and Trademark Office (USPTO) may set or adjust by rule any patent or trademark fee established, authorized, or charged under Title 35 of the United States Code or the Trademark Act of 1946, respectively. The USPTO currently is planning to set or adjust patent fees pursuant to its Section 10 fee setting authority. As part of the rulemaking process to set or adjust patent fees, the Patent Public Advisory Committee (PPAC) is required under Section 10 of the AIA to hold a public hearing about any proposed patent fees, and the USPTO is required to assist PPAC in carrying out that hearing. To that end, the USPTO will make its proposed patent fees available as set forth in the Supplementary Information section of this Notice before any PPAC hearing and will help the PPAC to notify the public about the hearing. Accordingly, this document announces the dates and logistics for the PPAC public hearing regarding USPTO proposed patent fees. Interested members of the public are invited to testify at the hearing and/or submit written comments about the proposed patent fees and the questions posed on PPAC's Web site about the proposed fees.

DATES: *Public hearing:* November 19, 2015.

Comments: For those wishing to submit written comments on the fee proposal that will be published by November 12, 2015, but not requesting an opportunity to testify at the public hearing, the deadline for receipt of those written comments is November 25, 2015.

Oral testimony: Those wishing to present oral testimony at the hearing must request an opportunity to do so in writing no later than November 12, 2015.

Pre-scheduled speakers: Pre-scheduled speakers providing testimony at the hearing should submit a written copy of their testimony for inclusion in the record of the proceedings no later than November 25, 2015.

ADDRESSES: *Public hearing:* The PPAC will hold a public hearing on November 19, 2015 beginning at 2:00 p.m., Eastern Standard Time (EST), and ending at 4:00 p.m., EST, at the USPTO, Madison Auditorium South, Concourse Level, Madison Building, 600 Dulany Street, Alexandria, Virginia 22314.

Email: Written comments should be sent by email addressed to fee.setting@uspto.gov.

Postal mail: Comments may also be submitted by postal mail addressed to: United States Patent and Trademark Office, Mail Stop CFO, P.O. Box 1450,

Alexandria, VA 22313-1450, ATTN: Brendan Hourigan. Although comments may be submitted by postal mail, the USPTO prefers to receive comments via email. Written comments should be identified in the subject line of the email or postal mailing as "Fee Setting." Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or telephone number, should not be included in the comments.

Web cast: The public hearing will be available via Web cast. Information about the Web cast will be posted on the USPTO's Internet Web site (address: www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting) before the public hearing.

Transcripts: Transcript of the hearing will be available on the USPTO Internet Web site (www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting) shortly after the hearing.

FOR FURTHER INFORMATION CONTACT: Brendan Hourigan, Office of the Chief Financial Officer, by phone (571) 272-8966, or by email at brendan.hourigan@uspto.gov.

SUPPLEMENTARY INFORMATION: Requests to testify should indicate the following: (1) The name of the person wishing to testify; (2) the person's contact information (telephone number and email address); (3) the organization(s) the person represents, if any; and (4) an indication of the amount of time needed for the testimony. Requests to testify must be submitted by email to Jennifer Lo at Jennifer.Lo@uspto.gov. Based upon the requests received, an agenda for witness testimony will be sent to testifying requesters and posted on the USPTO Internet Web site (address: www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting). If time permits, the PPAC may permit unscheduled testimony as well.

Effective September 16, 2011, with the passage of the AIA, the USPTO is authorized under Section 10 of the AIA to set or adjust by rule all patent and trademark fees established, authorized, or charged under Title 35 of the United States Code and the Trademark Act of 1946, respectively. Patent and trademark fees set or adjusted by rule under Section 10 of the AIA may only recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents and trademarks, respectively, including administrative costs of the Office with respect to each as the case may be.

Congress set forth the process for the USPTO to follow in setting or adjusting

patent and trademark fees by rule under Section 10 of the AIA. Congress requires the relevant advisory committee to hold a public hearing about the USPTO fee proposals after receiving them from the agency. Congress likewise requires the relevant advisory committee to prepare a written report on the proposed fees and the USPTO to consider the relevant advisory committee's report before finally setting or adjusting the fees. Further, Congress requires the USPTO to publish its proposed fees and supporting rationale in the **Federal Register** and give the public not less than 45 days in which to submit comments on the proposed change in fees. Finally, Congress requires the USPTO to publish its final rule setting or adjusting fees also in the **Federal Register**.

Presently, the USPTO is planning to exercise its fee setting authority to set or adjust patent fees. The USPTO will publish a proposed patent fee schedule and related supplementary information for public viewing no later than November 12, 2015, on the USPTO Internet Web site (address: www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting). In turn, the PPAC will hold a public hearing about the proposed patent fee schedule on the date indicated herein. The USPTO will assist the PPAC in holding the hearing by providing resources to organize the hearing and by notifying the public about the hearing, such as through this notice. To gather information from the public about the USPTO's proposed patent fees, the PPAC will post specific questions for the public's consideration on the PPAC's Internet Web site (address: <http://www.uspto.gov/about/advisory/ppac>) after the USPTO publishes its proposed patent fee schedule. The public may wish to address those questions in its hearing testimony and/or in written comments submitted to PPAC as described herein.

Following the PPAC public hearing, the USPTO will publish a Notice of Proposed Rulemaking in the **Federal Register**, setting forth its proposed patent fees. The publication of that Notice will open a comment window through which the public may provide written comments directly to the USPTO. Additional information about public comment to the USPTO will be provided in the USPTO's Notice of Proposed Rulemaking.

Dated: October 14, 2015.

Michelle K. Lee,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2015-26574 Filed 10-19-15; 8:45 am]

BILLING CODE 3510-16-P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 ("PRA"), this notice announces that the Information Collection Request ("ICR") abstracted below has been forwarded to the Office of Management and Budget ("OMB") for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before November 19, 2015.

ADDRESSES: Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs ("OIRA") in OMB, within 30 days of the notice's publication, by email at OIRASubmissions@omb.eop.gov. Please identify the comments by OMB Control No. 3038-0101. Please provide the Commission with a copy of all submitted comments at the address listed below. Please refer to OMB Reference No. 3038-0101, found on <http://reginfo.gov>. Comments may also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW., Washington, DC 20503, and to the Commission through the Agency's Web site at <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Web site.

Comments may also be mailed to: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 or by Hand Delivery/Courier at the same address.

A copy of the supporting statements for the collection of information discussed above may be obtained by visiting <http://reginfo.gov>. All comments must be submitted in

English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT:

Duane C. Andresen, Associate Director, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418-5492; email: dandresen@cftc.gov.

SUPPLEMENTARY INFORMATION: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the Commission's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on August 7, 2015 (80 FR 47475).

Title: Information Management Requirements for Registration of Foreign Boards of Trade (OMB Control No. 3038-0101). This is a request for extension of a currently approved information collection.

Abstract: Section 738 of the Dodd-Frank Act amended section 4(b) of the Commodity Exchange Act to provide that the Commission may adopt rules and regulations requiring Foreign Boards of Trade ("FBOTs") that wish to provide their members or other participants located in the United States with direct access to the FBOT's electronic trading and order matching system to register with the Commission. Pursuant to this authorization, the Commission adopted a final rule requiring FBOTs that wish to permit trading by direct access to provide certain information to the Commission in applications for registration and, once registered, to provide certain information to meet quarterly and annual reporting requirements.

Burden Statement: The respondent burden for this collection is estimated to range from 1000 hours for the submission of a new registration application to two to eight hours per response for submission of required reports. These estimates include the time to locate, compile, validate, and verify and disclose and to ensure such information is maintained.

Respondents/Affected Entities: Foreign Boards of Trade.

Estimated number of respondents: 27.¹

¹ The Commission notes that the 60-day Notice addressing the proposed collection and comment request with respect to foreign board of trade registration contained a typographical error in that it reflected 271 as the estimated number of

Estimated total annual burden on respondents: 11,756 hours.

Frequency of collection: Once for new applications, quarterly and annually for required reports.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: October 14, 2015.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2015-26507 Filed 10-19-15; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Advisory Committee Meetings

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board will meet in closed session on November 4-5, 2015, from 8:00 a.m. to 5:00 p.m. at the Pentagon, Room 3E863, Washington, DC.

DATES: November 4-5, 2015, from 8:00 a.m. to 5:00 p.m.

ADDRESSES: The Pentagon, Room 3E863, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Debra Rose, Executive Officer, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301-3140, via email at debra.a.rose20.civ@mail.mil, or via phone at (703) 571-0084.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Board will discuss interim findings and recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture and homeland security.

respondents. 80 FR 47476 (August 7, 2015). The correct number, as indicated above, is 27.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. App. 2) and 41 CFR 102-3.155, the Department of Defense has determined that the Defense Science Board meeting for November 4-5, 2015, will be closed to the public. Specifically, the Under Secretary of Defense (Acquisition, Technology, and Logistics), in consultation with the DoD Office of General Counsel, has determined in writing that all sessions of meeting for November 4-5, 2015, will be closed to the public because it will consider matters covered by 5 U.S.C. 552b(c)(1) and (4).

In accordance with 41 CFR 102-3.140 and section 10(a)(3) of the Federal Advisory Committee Act, interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed in **FOR FURTHER INFORMATION CONTACT**; at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

Dated: October 15, 2015.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015-26567 Filed 10-19-15; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2015-ICCD-0124]

Agency Information Collection Activities; Comment Request; Integrated Postsecondary Education Data System (IPEDS) 2015-2016 Pension Liabilities Update

AGENCY: Institute of Education Sciences (IES)/National Center of Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction of 1995 (44 U.S.C. chapter 3507(j)), ED is requesting the Office of Management and Budget (OMB) to conduct an emergency review

of a revision of an existing information collection.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. chapter 3507 (j)), due to an unanticipated event. Approval by the Office of Management and Budget (OMB) has been requested by November 20, 2015; therefore, comments are requested on or before November 10, 2015. A regular clearance process is also hereby being initiated. Interested persons are invited to submit comments on or before December 21, 2015.

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-2015-ICCD-0124. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202-4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela at 202-502-7411 or by email kashka.kubzdela@ed.gov.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed

information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Integrated Postsecondary Education Data System (IPEDS) 2015-2016 Pension Liabilities Update.

OMB Control Number: 1850-0582.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, local and tribal governments, Private Sector.

Total Estimated Number of Annual Responses: 71,867.

Total Estimated Number of Annual Burden Hours: 1,050,870.

Abstract: The Integrated Postsecondary Education Data System (IPEDS) is a web-based data collection system designed to collect basic data from all postsecondary institutions in the United States and the other jurisdictions. IPEDS enables The National Center of Education Statistics (NCES) to report on key dimensions of postsecondary education such as enrollments, degrees and other awards earned, tuition and fees, average net price, student financial aid, graduation rates, revenues and expenditures, faculty salaries, and staff employed. The IPEDS web-based data collection system was implemented in 2000-01, and it collects basic data from approximately 7,500 postsecondary institutions in the United States and the other jurisdictions that are eligible to participate in title IV Federal financial aid programs. All title IV institutions are required to respond to IPEDS (section 490 of the Higher Education Amendments of 1992; Pub. L. 102-325). IPEDS allows other (non-title IV) institutions to participate on a

voluntary basis. About 200 institutions elect to respond. IPEDS data are available to the public through the College Navigator and IPEDS Web sites.

Additional Information: ED is requesting emergency processing due to an unanticipated event. The Government Accounting Standards Board (GASB) changed the reporting standards for pensions such that unfunded pension liabilities are now included in the financial statements (GASB Standard 68). In the initial reporting year (2015), institutions will report the total amount of accrued pension liabilities. This will result in a dramatic increase in reported expenses for the 2015 year. In subsequent years, reporting will show only the incremental increase in unfunded pension liabilities. The approximately 2,000 public institutions using GASB accounting standards that have ever participated in pension systems will be particularly affected by this change in reporting standards when the IPEDS collection opens on December 9, 2015. To accommodate this change, NCES proposes to add to the IPEDS Finance survey a new screening question and three new fields related to the unfunded pension liabilities to allow the affected institutions to provide information that will allow NCES to correctly calculate cost per Full-Time Enrolled Student for these institutions. This addition is expected to increase IPEDS reporting burden for approximately 2,000 Public GASB institutions by an average of 30 minutes. ED requests approval of this emergency request by November 20, 2015.

Dated: October 15, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer (OCPO), Office of Management.

[FR Doc. 2015-26598 Filed 10-19-15; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Supplemental Notice of Technical Conference

	Docket Nos.
Public Citizen, Inc. v. Midcontinent Independent System Operator, Inc	EL15-70-000
The People of the State of Illinois By Illinois Attorney General Lisa Madigan v. Midcontinent Independent System Operator, Inc.	EL15-71-000
Southwestern Electric Cooperative, Inc. v. Midcontinent Independent System Operator, Inc., Dynegy, Inc., and Sellers of Capacity into Zone 4 of the 2015-2016 MISO Planning Resource Auction.	EL15-72-000
Illinois Industrial Energy Consumers v. Midcontinent Independent System Operator, Inc ..	EL15-82-000

As announced in the notice issued on October 1, 2015, the Federal Energy Regulatory Commission will hold a technical conference on October 20, 2015, at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, between 9:00 a.m. and 4:15 p.m. (EST). An updated agenda identifying panelists for this conference is attached.

The technical conference will be transcribed. Transcripts will be available for a fee from Ace-Federal Reports, Inc. (202-347-3700).

There will be a free webcast of the conference. The webcast will allow persons to listen to the technical conference, but not participate. Anyone with internet access who wants to listen to the conference can do so by navigating to the Calendar of Events at www.ferc.gov and locating the technical conference in the Calendar. The technical conference will contain a link to its webcast. The Capitol Connection provides technical support for the webcast and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit

www.CapitolConnection.org or call 703-993-3100. The webcast will be available on the Calendar of Events on the Commission's Web site www.ferc.gov for three months after the conference.

Advance registration is not required but is highly encouraged. If you have not already done so, those who plan to attend may register in advance at the following Web page: <https://www.ferc.gov/whats-new/registration/10-20-15-form.asp>. Attendees should allow time to pass through building security procedures before the 9:00 a.m. (EST) start time of the technical conference. In addition, information on this event will be posted on the Calendar of Events on the Commission's Web site, www.ferc.gov, prior to the event.

Discussions at the conference may address matters at issue in the following Commission proceeding(s) that are either pending or within their rehearing period: Midcontinent Independent System Operator, Inc., Docket No. ER11-4081-000, *et al.*

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to accessibility@ferc.gov or call toll free (866) 208-3372 (voice) or (202) 502-8659 (TTY), or send a FAX to (202) 208-2106 with the required accommodations.

Following the technical conference, the Commission will consider post-technical conference comments regarding the matters discussed at the

conference submitted on or before November 4, 2015.

For more information about this technical conference, please contact Elizabeth Shen, 202-502-6545, elizabeth.shen@ferc.gov, regarding legal issues; or Angelo Mastrogiacommo, 202-502-8689, angelo.mastrogiacommo@ferc.gov, and Emma Nicholson, 202-502-8846, emma.nicholson@ferc.gov, regarding technical issues; or Sarah McKinley, 202-502-8368, sarah.mckinley@ferc.gov, regarding logistical issues.

Dated: October 14, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015-26546 Filed 10-19-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16-3-000]

NRG Power Marketing LLC v. Midcontinent Independent System Operator, Inc.; Notice of Complaint

Take notice that on October 9, 2015, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824(e) and 825(e) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, NRG Power Marketing LLC (Complainant), filed a formal complaint against Midcontinent Independent System Operator, Inc. (MISO or Respondent), alleging that the Respondent violated its Open Access Transmission, Energy and Operating Reserve Markets Tariff by collapsing the Commercial Pricing Nodes in the MISO South region, thereby nullifying the value of Financial Transmission Rights purchased by the Complainant, as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of corporate officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer

and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 p.m. Eastern Time on October 29, 2015.

Dated: October 13, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015-26541 Filed 10-19-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at Southwest Power Pool Regional Entity Trustee, Regional State Committee, Members' and Board of Directors' Meetings

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of its staff may attend the meetings of the Southwest Power Pool, Inc. (SPP) Regional Entity Trustee (RE), Regional State Committee (RSC), SPP Members Committee and Board of Directors, as noted below. Their attendance is part of the Commission's ongoing outreach efforts.

All meetings will be held at the Southwest Power Pool Corporate Center, 201 Worthen Drive, Little Rock, AR 72223.

SPP RE

October 26, 2015 (8:00 a.m.–2:00 p.m.)

SPP RSC

October 26, 2015 (1:00 p.m.–5:00 p.m.)

SPP Members/Board of Directors

October 27, 2015 (8:00 a.m.–3:00 p.m.)

The discussions may address matters at issue in the following proceedings:

Docket No. EL05–19, *Southwestern Public Service Company*
 Docket No. ER05–168, *Southwestern Public Service Company*
 Docket No. ER06–274, *Southwestern Public Service Company*
 Docket No. EL11–34, *Midcontinent Independent System Operator, Inc.*
 Docket No. ER11–1844, *Midcontinent Independent System Operator, Inc.*
 Docket No. EL12–28, *Xcel Energy Services Inc., et al.*
 Docket No. EL12–59, *Golden Spread Electric Cooperative, Inc.*
 Docket No. EL12–60, *Southwest Power Pool, Inc., et al.*
 Docket No. ER12–480, *Midcontinent Independent System Operator, Inc.*
 Docket No. ER12–1179, *Southwest Power Pool, Inc.*
 Docket No. ER12–1586, *Southwest Power Pool, Inc.*
 Docket No. ER13–1864, *Southwest Power Pool, Inc.*
 Docket No. ER13–1937, *Southwest Power Pool, Inc.*
 Docket No. ER13–1939, *Southwest Power Pool, Inc.*
 Docket No. EL14–30, *Midcontinent Independent System Operator, Inc.*
 Docket No. EL14–93, *Kansas Corporation Commission v. Westar Energy, Inc.*
 Docket No. EL15–66, *Southern Company Services, et al. v. Midcontinent Independent System Operator*
 Docket No. EL15–77, *Morgan Stanley Capital Group Inc. v. Midcontinent Independent System Operator, Inc.*
 Docket No. ER14–67, *Southwest Power Pool, Inc.*
 Docket No. ER14–781, *Southwest Power Pool, Inc.*
 Docket No. ER14–1174, *Southwest Power Pool, Inc.*
 Docket No. ER14–1713, *Midcontinent Independent System Operator, Inc.*
 Docket No. ER14–2022, *Midcontinent Independent System Operator, Inc.*
 Docket No. ER14–2363, *Southwestern Public Service Company*
 Docket No. ER14–2445, *Midcontinent Independent System Operator, Inc.*
 Docket No. ER14–2553, *Southwest Power Pool, Inc.*
 Docket No. ER14–2570, *Southwest Power Pool, Inc.*
 Docket No. ER14–2850, *Southwest Power Pool, Inc.*

Docket No. ER14–2851, *Southwest Power Pool, Inc.*
 Docket No. ER15–1163, *Southwest Power Pool, Inc.*
 Docket No. ER15–1293, *Southwest Power Pool, Inc.*
 Docket No. ER15–1499, *Southwest Power Pool, Inc.*
 Docket No. ER15–1737, *Southwest Power Pool, Inc.*
 Docket No. ER15–1775, *Southwest Power Pool, Inc.*
 Docket No. ER15–1906, *Southwest Power Pool, Inc.*
 Docket No. ER15–1918, *Southwest Power Pool, Inc.*
 Docket No. ER15–2268, *Southwest Power Pool, Inc.*
 Docket No. ER15–2295, *Southwest Power Pool, Inc.*
 Docket No. ER15–2423, *Southwest Power Pool, Inc.*
 Docket No. ER15–2432, *Southwest Power Pool, Inc.*
 Docket No. ER15–2433, *Southwest Power Pool, Inc.*
 Docket No. ER15–2434, *Southwest Power Pool, Inc.*
 Docket No. ER15–2439, *Southwest Power Pool, Inc.*
 Docket No. ER15–2452, *Southwest Power Pool, Inc.*
 Docket No. ER15–2459, *Southwest Power Pool, Inc.*
 Docket No. ER15–2460, *Southwest Power Pool, Inc.*
 Docket No. ER15–2461, *Southwest Power Pool, Inc.*
 Docket No. ER15–2462, *Southwest Power Pool, Inc.*
 Docket No. ER15–2494, *Southwest Power Pool, Inc.*
 Docket No. ER15–2496, *Southwest Power Pool, Inc.*
 Docket No. ER15–2497, *Southwest Power Pool, Inc.*
 Docket No. ER15–2498, *Southwest Power Pool, Inc.*
 Docket No. ER15–2506, *Southwest Power Pool, Inc.*
 Docket No. ER15–2507, *Southwest Power Pool, Inc.*
 Docket No. ER15–2508, *Southwest Power Pool, Inc.*
 Docket No. ER15–2512, *Southwest Power Pool, Inc.*
 Docket No. ER15–2513, *Southwest Power Pool, Inc.*
 Docket No. ER15–2514, *Southwest Power Pool, Inc.*
 Docket No. ER15–2519, *Southwest Power Pool, Inc.*
 Docket No. ER15–2520, *Southwest Power Pool, Inc.*
 Docket No. ER15–2521, *Southwest Power Pool, Inc.*
 Docket No. ER15–2531, *Southwest Power Pool, Inc.*
 Docket No. ER15–2532, *Southwest Power Pool, Inc.*

Docket No. ER15–2540, *Southwest Power Pool, Inc.*
 Docket No. ER15–2542, *Southwest Power Pool, Inc.*
 Docket No. ER15–2543, *Southwest Power Pool, Inc.*
 Docket No. ER15–2560, *Southwest Power Pool, Inc.*
 Docket No. ER15–2596, *Southwest Power Pool, Inc.*
 Docket No. ER15–2629, *Southwest Power Pool, Inc.*
 Docket No. ER15–2624, *Southwest Power Pool, Inc.*
 Docket No. ER15–2636, *Southwest Power Pool, Inc.*
 Docket No. ER15–2646, *Southwest Power Pool, Inc.*
 Docket No. ER15–2652, *Southwest Power Pool, Inc.*
 Docket No. ER15–2669, *Southwest Power Pool, Inc.*
 Docket No. ER15–2690, *Southwest Power Pool, Inc.*
 Docket No. ER15–2705, *Southwest Power Pool, Inc.*
 Docket No. ER16–6, *Southwest Power Pool, Inc.*
 Docket No. ER16–7, *Southwest Power Pool, Inc.*
 Docket No. ER16–13, *Southwest Power Pool, Inc.*
 Docket No. ER16–25, *Southwest Power Pool, Inc.*
 Docket No. ER16–31, *Southwest Power Pool, Inc.*
 Docket No. ER16–37, *Southwest Power Pool, Inc.*

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or patrick.clarey@ferc.gov.

Dated: October 14, 2015.

Kimberly D. Bose,
 Secretary.

[FR Doc. 2015–26547 Filed 10–19–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 13642–003]

GB Energy Park, LLC; Notice of Application Tendered for Filing with the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Unconstructed Major Project.

- b. *Project No.*: 13642–003.
- c. *Date filed*: October 1, 2015.
- d. *Applicant*: GB Energy Park, LLC.
- e. *Name of Project*: Gordon Butte Pumped Storage Project.
- f. *Location*: Approximately 3 miles west of the City of Martinsdale, Meagher County, Montana. The proposed project would not occupy any federal lands.
- g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791(a)–825(r)
- h. *Applicant Contact*: Carl E. Borgquist, President, GB Energy Park, LLC, 209 Wilson Avenue, P.O. Box 309, Bozeman, MT 59771; (406) 585–3006; carl@absarokaenergy.com.
- i. *FERC Contact*: Mike Tust; (202) 502–6522; michael.tust@ferc.gov.
- j. Cooperating agencies: Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission’s policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC ¶ 61,076 (2001).
- k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission’s regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and

serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: November 30, 2015.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission’s eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. 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–13642–003.

m. The application is not ready for environmental analysis at this time.

n. The Gordon Butte Pumped Storage Project would consist of the following new facilities: (1) A manually operated head gate on an existing irrigation canal that provides initial fill and annual make-up water to the lower reservoir from the existing irrigation canal; (2) a 3,000-foot-long, 1,000-foot-wide upper reservoir created by a 60-foot-high, 7,500-foot-long concrete-faced rockfill dam; (3) a reinforced concrete intake/outlet structure at the upper reservoir with six gated intake bays converging into a central 18-foot-diameter, 750-foot-long vertical shaft; (4) an 18-foot-diameter, 3,000-foot-long concrete and steel-lined penstock tunnel leading from the upper reservoir to the lower reservoir; (5) a 2,300-foot-long, 1,900-foot-wide lower reservoir created by a combination of excavation and two 60-

foot-high, 500- and 750-foot-long concrete-faced rockfill dams; (6) a partially buried 338-foot-long, 109-foot-wide, 74-foot-high reinforced concrete and steel powerhouse with four 100-megawatt (MW) ternary Pelton turbine/pump/generators; (7) a 600-foot-long, 200-foot-wide substation at the powerhouse site with 13.8-kilovolt (kV) to 230-kV step-up transformers; (8) a 5.7-mile-long, 230-kV transmission line; (9) a substation with a 230-kV to 500-kV step-up transformer, connecting to an existing non-project 500-kV transmission line; and (11) appurtenant facilities. The project is estimated to provide 1,300 gigawatt-hours annually. No federal lands are included in the project.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission’s Web site at <http://www.ferc.gov> using the “eLibrary” link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. Procedural schedule: The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency Letter (if needed)	November 2015.
Request for Additional Information	November 2015.
Issue Notice of Acceptance/Notice of Ready for Environmental Analysis	January 2016.
Commission Issues EA	July 2016.
Comments on EA	August 2016.

Dated: October 14, 2015.
Kimberly D. Bose,
Secretary.
 [FR Doc. 2015–26544 Filed 10–19–15; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY
Federal Energy Regulatory
Commission

[Docket No. CP15–561–000]

Crescent Point Energy U.S. Corp.,
Eagle Rock Exploration Ltd.; Notice of
Application

Take notice that on September 29, 2015, Crescent Point Energy U.S. Corp. (Crescent Point), 555 17th Street, Suite 1800, Denver, Colorado 80202 and Eagle Rock Exploration Ltd. (Eagle Rock), 300, 340–12th Avenue SW., Calgary, Alberta T2R 1L5, filed a joint application in the

above-referenced docket seeking authorization under section 3 of the Natural Gas Act (NGA) and Part 153 of the Commission’s regulations to: (i) Transfer to Crescent Point the NGA section 3 authorization and Presidential Permit that were issued to Eagle Rock on August 5, 2008, in Docket No. CP08–90–000; and (ii) amend the section 3 Authorization and Permit so that it reflects Crescent Point as the current owner and operator of the existing border crossing facility located at the international boundary between Glacier County, Montana, and the Province of Alberta, Canada (Border Crossing Facility). Additionally, Crescent Point

requests the Commission to vacate its section 3 authorization and terminate its Presidential Permit so that it may properly abandon in-place the Border Crossing Facility, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Any questions concerning this application may be directed to Marcus Sisk, Dorsey & Whitney LLP, 1801 K Street NW., Suite 750, Washington, DC 20006, by telephone at (202) 442-3000, or by email at sisk.marcus@dorsey.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 five copies of filings made in the proceeding with the Commission and must mail 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, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and five copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: November 3, 2015.

Dated: October 13, 2015.

Kimberly D. Bose, Secretary.

[FR Doc. 2015-26540 Filed 10-19-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Cultural Resource Meeting

Beverly Lock and Dam Water Power	Project No. 13404-002
Devola Lock and Dam Water Power Project	Project No. 13405-002
Malta/McConnelsville Lock and Dam Water Power Project	Project No. 13406-002
Lowell Lock and Dam Water Power Project	Project No. 13407-002
Philo Lock and Dam Water Power Project	Project No. 13408-002
Rokeby Lock and Dam Water Power Project	Project No. 13411-002

a. *Project Name and Number:* Beverly Lock & Dam Water Power Project No. 13404; Devola Lock & Dam Water Power Project No. 13405; Malta Lock & Dam Water Power Project No. 13406; Lowell Lock & Dam Water Power Project No. 13407; Philo Lock & Dam Water Power Project No. 13408; and Rokeby Lock & Dam Water Power Project No. 13411.

b. *Date and Time of Meeting:* October 29, 2015; 1:00 p.m. Eastern Time.

c. *Place:* Telephone conference with the Seneca Nation.

d. *FERC Contact:* Colleen Corballis, colleen.corballis@ferc.gov or (202) 502-8598.

e. *Purpose of Meeting:* Tribal consultation meeting to provide an overview of the above-listed six projects (Muskingum River Projects) and to discuss the Seneca Nation's comments concerning the HPMPs.

f. A summary of the meeting will be prepared and filed in the Commission's public file for the project.

g. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate by phone. Please contact Colleen Corballis at colleen.corballis@ferc.gov or (202) 502-8598 by close of business October 27, 2015, to R.S.V.P. and to receive specific instructions on how to participate.

Dated: October 14, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015-26543 Filed 10-19-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Revised Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

Beverly Lock and Dam Water Power	Project No. 13404-002
Devola Lock and Dam Water Power	Project No. 13405-002
Malta/McConnelsville Lock and Dam Water Power	Project No. 13406-002
Lowell Lock and Dam Water Power	Project No. 13407-002
Philo Lock and Dam Water Power	Project No. 13408-002
Rokeby Lock and Dam Water Power	Project No. 13411-002

On September 10, 2015, the Federal Energy Regulatory Commission (Commission) issued notice of a proposed restricted service list for the preparation of a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at each of the following proposed projects: (1) Beverly Lock & Dam Water Power Project No. 13404; (2) Devola Lock & Dam Water Power Project No. 13405; (3) Malta Lock & Dam Water Power Project No. 13406; (4) Lowell Lock & Dam Water Power Project No. 13407; (5) Philo Lock & Dam Water Power Project No. 13408; (6) and Rokeby Lock & Dam Water Power Project No. 13411. Rule 2010(d)(1) of the Commission's Rules of Practice and Procedure, 18 CFR 385.2010(d)(1) (2014), provides for the establishment of such a list for a particular phase or issue in a proceeding to eliminate unnecessary expense or improve administrative efficiency. Under Rule 385.2010(d)(4), persons on the official service list are to be given notice of any proposal to establish a restricted service list and an opportunity to show why they should also be included on the restricted service list or why a restricted service list should not be established.

On October 2, 2015, Robin Dushane, Tribal Historic Preservation Officer for the Eastern Shawnee, requested that the Eastern Shawnee Tribe be added to the restricted service list for the above referenced projects.

On October 8, 2015, Jay Toth, Tribal archaeologist for the Seneca Nation, requested that the Seneca Nation be added to the restricted service list and be included as a consulting party in the section 106 of the National Historic Preservation Act consultation process so that it may stay apprised and provide project input.

Under Rule 385.2010(d)(2), any restricted service list will contain the names of each person on the official

service list, or the person's representative, who, in the judgment of the decisional authority establishing the list, is an active participant with respect to the phase or issue in the proceeding for which the list is established. The Eastern Shawnee Tribe and the Seneca Nation have identified an interest in issues relating to the management of historic properties at the Beverly Lock and Dam Water Power Project, Devola Lock and Dam Water Power Project, Malta/McConnelsville Lock and Dam Water Power Project, Lowell Lock and Dam Water Power Project, Philo Lock and Dam Water Power Project, and Rokeby Lock and Dam Water Power Project. Therefore, they and their representatives will be added to the restrictive service list.

Accordingly, the restricted service list issued on September 10, 2015, for Projects Nos. 13404, 13405, 13406, 13407, 13408, and 13411 is revised to add the following persons:

Robin Dushane or representative, Historic Preservation Officer, Eastern Shawnee Tribe, 12705 S. 705 Rd., Wyandotte, OK 74370.

Jay Toth, or representative, Tribal Archaeologist, Seneca Nation, 90 Ohiyo Way, Salamanca, NY 14779.

In addition, the zip code for the following address from the restricted service list issued on September 10, 2015 is corrected as follows:

John Eddins or Representative, Advisory Council on Historic Preservation, 401 F Street NW., Suite 803, Washington, DC 20001-2637.

Dated: October 13, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015-26542 Filed 10-19-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP15-560-000; PF15-13-000]

Cameron LNG, LLC; Notice of Application

Take notice that on September 28, 2015, Cameron LNG, LLC (Cameron LNG) filed an application in Docket No. CP15-560-000 pursuant to section 3(a) of the Natural Gas Act (NGA), and Parts 153 and 380 of the Commission's regulations, for authority to site, construct, and operate facilities to provide additional natural gas processing, storage, and liquefaction capability at the site of the existing Cameron LNG liquefied natural gas terminal located in Cameron and Calcasieu Parishes, Louisiana. The expansion project would increase the Cameron LNG terminal's maximum natural gas liquefaction and export capabilities from 14.95 to 24.92 million tonnes per annum (MPTA), all as more fully set forth in the application, which is on file with the Commission and open to public inspection. This 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, (886) 208-3676 or TYY, (202) 502-8659.

Any questions regarding this application should be directed to Blair Woodward, General Counsel, Cameron LNG, LLC, 2925 Briarpark Drive, Suite 1000, Houston, Texas 77042, or by calling (832) 783-5582 (telephone), or email bwoodward@cameronlng.com.

On March 2, 2015, the Commission staff granted Cameron LNG's request to use the pre-filing process and assigned Docket No. PF15-13-000 to staff

activities involving the project. Now, as of the filing of this application on September 28, 2015, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP15-560-000 as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's regulations, 18 CFR 157.9, within 90 days of this Notice, the Commission's 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's staff issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to reach a final decision on a request for federal authorization within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be

taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: November 3, 2015.

Dated: October 13, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015-26545 Filed 10-19-15; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2004-0019; FRL-OW-2015-9935-94-OW]

Reopening of Request for Scientific Views on the Draft Aquatic Life Ambient Water Quality Criterion for Selenium—Freshwater 2015

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; reopening of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is reopening the comment period for the Agency's draft recommended aquatic life water quality chronic criterion for selenium in freshwater. The draft criterion was announced in a July 27, 2015 notice entitled "Request for Scientific Views: Draft Recommended Aquatic Life Ambient Water Quality Chronic Criterion for Selenium—Freshwater 2015." In response to stakeholder request, EPA is reopening the comment period and will accept scientific views until October 30, 2015.

DATES: Comments must be received on or before October 30, 2015. Scientific views postmarked after this date may not receive the same consideration. The previous public comment period ended on October 10, 2015.

ADDRESSES: Written comments on the notice may be submitted to the EPA electronically, by mail, by facsimile or through hand delivery/courier. Please refer to the proposal (80 FR 44350-44354) for the addresses and detailed instructions.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the EPA-HQ-OW-2004-0019 Docket, EPA/DC, William Jefferson Clinton Building West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Water Docket is (202) 566-2426.

FOR FURTHER INFORMATION CONTACT: Kathryn Gallagher at U.S. EPA, Office of Water, Health and Ecological Criteria Division (4304T), 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone: (202) 564-1398; or email: gallagher.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION: On July 27, 2015, EPA announced the availability of the draft recommended aquatic life water quality criterion for selenium in a previous notice entitled "Request for Scientific Views: Draft Recommended Aquatic Life Ambient Water Quality Chronic Criterion for Selenium—Freshwater 2015" in the **Federal Register** (80 FR 44350). EPA's

recommended aquatic life water quality criteria provide technical information for states and authorized tribes to consider when adopting water quality standards under the Clean Water Act to protect aquatic life.

EPA is reopening the public comment period for the Draft Aquatic Life Ambient Water Quality Criterion for Selenium—Freshwater 2015 (EPA-822-P-15-001). The original 60-day comment period deadline was September 25, 2015. On September 24, 2015, EPA announced in the **Federal Register** a 15-day extension to October 10, 2015 (80 FR 57605). This action reopens the comment period, in response to stakeholder request for additional time to consider material that was added to the docket on October 6, 2015. Written scientific views must be received by October 30, 2015.

Following closure of the public comment period, EPA will consider the public comments and revise the document as necessary. EPA will then publish a **Federal Register** notice announcing the availability of the final updated selenium criterion.

Dated: October 14, 2015.

Robert K. Wood,

Acting Director, Office of Science and Technology.

[FR Doc. 2015-26595 Filed 10-19-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-ORD-2015-0611; FRL-9935-93-ORD]

Board of Scientific Counselors Sustainable and Healthy Communities Subcommittee; Notification of Public Teleconference Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public teleconference meeting and public comment.

SUMMARY: The U.S. Environmental Protection Agency, Office of Research and Development (ORD), hereby provides notice that the Board of Scientific Counselors (BOSC) Sustainable and Healthy Communities (SHC) Subcommittee will host a public teleconference meeting on Wednesday, November 4, 2015, from 11:00 a.m. to 2:00 p.m., Eastern Time. Deliberations will focus on a draft report summarizing the SHC Subcommittee findings and recommendations from its September 2015 meeting. Documents from the September meeting are available for viewing and downloading at [http://](http://www2.epa.gov/bosc/sustainable-and-healthy-communities-subcommittee-meeting-documents)

www2.epa.gov/bosc/sustainable-and-healthy-communities-subcommittee-meeting-documents.

There will be a public comment period from 11:45 a.m. to 12:00 p.m. Eastern Time. Members of the public are encouraged to provide comments. For additional information about registering to attend the meeting or to provide public comment, please see the **SUPPLEMENTARY INFORMATION** section below. Due to a limited number of telephone lines, attendance will be on a first-come, first-served basis. Pre-registration is required.

DATES: The BOSC SHC Subcommittee teleconference meeting on Wednesday, November 4, 2015, will begin promptly at 11:00 a.m. The conference call may adjourn early if all business is finished or may adjourn late if additional time is needed. Preregistration for the teleconference meeting closes at noon, Monday, November 2, 2015. The deadline to sign up to speak during the public comment period, or to submit written public comment, is also noon, Monday, November 2, 2015. All times noted are Eastern Time.

ADDRESSES: Participation in the conference call will be by teleconference only; meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the call from Jace Cujé, the Designated Federal Officer (DFO), via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section below.

Submitting Comments: Submit your comments, identified by Docket ID No. EPA-HQ-ORD-2015-0611, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email:* Send comments by electronic mail (email) to: *ORD.Docket@epa.gov*, Attention Docket ID No. EPA-HQ-ORD-2015-0611.
- *Fax:* Fax comments to: (202) 566-0224, Attention Docket ID No. EPA-HQ-ORD-2015-0611.
- *Mail:* Send comments by mail to: Board of Scientific Counselors (BOSC) Sustainable and Healthy Communities Subcommittee Docket, Mail Code: 2822T, 1301 Constitution Ave. NW., Washington, DC 20004, Attention Docket ID No. EPA-HQ-ORD-2015-0611.
- *Hand Delivery or Courier:* Deliver comments to: EPA Docket Center (EPA/DC), Room 3334, William Jefferson Clinton West Building, 1301 Constitution Ave. NW., Washington, DC, Attention Docket ID No. EPA-HQ-ORD-2015-0611. Note: this is not a

mailing address. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-ORD-2015-0611. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/dockets/>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at www.regulations.gov or in hard copy at the Board of Scientific Counselors (BOSC) Sustainable and Healthy Communities Subcommittee Docket, EPA/DC, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone

number for the Public Reading Room is (202) 566-1744, and the telephone number for the ORD Docket is (202) 566-1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer (DFO) via mail at: Jace Cujé, Mail Code 8104R, Office of Science Policy, Office of Research and Development, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; via phone/voice mail at: (202) 564-1795; or via email at: cuje.jace@epa.gov.

SUPPLEMENTARY INFORMATION: The Charter of the BOSC states that the advisory committee shall provide advice and recommendations on all aspects (technical and management) of the ORD's research program. The BOSC is federal advisory committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Additional information about the BOSC is available at: <http://www2.epa.gov/bosc>.

This meeting is open to the public. Any member of the public interested in receiving a draft agenda, joining the teleconference, or making a presentation during the teleconference may contact Jace Cujé, DFO, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. Proposed agenda items for the meeting include, but are not limited to, the following: presentation and discussion of the subcommittee's draft responses to the charge questions and approval of the final draft letter report prior to its submission to the BOSC Executive Committee.

Written Statements: Written comments for the public teleconference must be received by noon Monday, November 2, 2015, Eastern Time, so they can be distributed to the BOSC SHC Subcommittee prior to the teleconference. Written comments should be sent to Jace Cujé at the address listed in the **FOR FURTHER INFORMATION CONTACT** section or through regulations.gov, Docket ID No. EPA-HQ-ORD-2015-0611.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Jace Cujé at (202) 564-1795 or cuje.jace@epa.gov. To request accommodation of a disability, please contact Jace Cujé, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

Dated: October 15, 2015.

Fred S. Hauchman,

Director, Office of Science Policy.

[FR Doc. 2015-26597 Filed 10-19-15; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Relations Information Collection Requests

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Submission for OMB Review; Request for Comments.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13). The information collection request is the Notice to Mediation Agencies (Agency Form F-7), OMB control number 3076-0004. No comments were received pursuant to FMCS's prior 60-day notice in the **Federal Register** on August 5, 2015. This information collection request was previously approved by OMB.

OMB is interested in comments on specific aspects of the collection. The OMB is particularly interested in comments that:

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

(2) Evaluates the accuracy of the agency's estimates of the burden of the proposed collection information;

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

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic collection technologies or other forms of information technology.

Burden: FMCS receives approximately 14,400 responses to the form Notice to Mediation Agencies (OMB No. 3076-004).

Affected Entities: Private sector employers and labor unions involved in interstate commerce that file notices for mediation services to the FMCS and state, local and territorial agencies.

DATES: Comments must be submitted on or before November 19, 2015.

ADDRESSES: Submit written comments to: Email: oira_submissions@omb.eop.gov. Please include the FMCS form number, the information collection title, and the OMB control number in the subject line of the message.

Comments may also be sent to fax number 202.395.5806 to the attention of Desk Officer for FMCS.

SUPPLEMENTARY INFORMATION: For additional information, see the related 60-day notice published in the **Federal Register** at 88 FR 46581 on August 5, 2015.

Dated: October 14, 2015.

Jeannette Walters-Marquez,

Attorney Advisor.

[FR Doc. 2015-26513 Filed 10-19-15; 8:45 am]

BILLING CODE 6732-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-3325-N]

Medicare Program; Request for Nominations for Members for the Medicare Evidence Development & Coverage Advisory Committee

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: This notice announces the request for nominations for membership on the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC). Among other duties, the MEDCAC provides advice and guidance to the Secretary of the Department of Health and Human Services (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) concerning the adequacy of scientific evidence available to CMS in making coverage determinations under the Medicare program.

The MEDCAC reviews and evaluates medical literature and technology assessments, and hears public testimony on the evidence available to address the impact of medical items and services on health outcomes of Medicare beneficiaries.

DATES: Nominations must be received by Monday, December 7, 2015.

ADDRESSES: You may mail nominations for membership to the following address: Centers for Medicare & Medicaid Services, Center for Clinical Standards and Quality, Attention: Maria Ellis, 7500 Security Boulevard, Mail

Stop: S3-02-01, Baltimore, MD 21244 or send via email to MEDCACnomination@cms.hhs.gov.

FOR FURTHER INFORMATION CONTACT: Maria Ellis, Executive Secretary for the MEDCAC, Centers for Medicare & Medicaid Services, Center for Clinical Standards and Quality, Coverage and Analysis Group, S3-02-01, 7500 Security Boulevard, Baltimore, MD 21244 or contact Ms. Ellis by phone (410-786-0309) or via email at Maria.Ellis@cms.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary signed the initial charter for the Medicare Coverage Advisory Committee (MCAC) on November 24, 1998. A notice in the **Federal Register** (63 FR 68780) announcing establishment of the MCAC was published on December 14, 1998. The MCAC name was updated to more accurately reflect the purpose of the committee and on January 26, 2007, the Secretary published a notice in the **Federal Register** (72 FR 3853), announcing that the Committee's name changed to the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC). The current Secretary's Charter for the MEDCAC is available on the CMS Web site at: <http://www.cms.hhs.gov/FACA/Downloads/medcaccharter.pdf>, or you may obtain a copy of the charter by submitting a request to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

The MEDCAC is governed by provisions of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. App. 2), which sets forth standards for the formulation and use of advisory committees, and is authorized by section 222 of the Public Health Service Act as amended (42 U.S.C. 217A).

We are requesting nominations for candidates to serve on the MEDCAC. Nominees are selected based upon their individual qualifications and not solely as representatives of professional associations or societies. We wish to ensure adequate representation of the interests of both women and men, members of all ethnic groups, and physically challenged individuals. Therefore, we encourage nominations of qualified candidates who can represent these interests.

The MEDCAC consists of a pool of 100 appointed members including: 94 at-large standing members (6 of whom are patient advocates), and 6 representatives of industry interests. Members generally are recognized

authorities in clinical medicine including subspecialties, administrative medicine, public health, biological and physical sciences, epidemiology and biostatistics, clinical trial design, health care data management and analysis, patient advocacy, health care economics, medical ethics or other relevant professions.

The MEDCAC works from an agenda provided by the Designated Federal Official. The MEDCAC reviews and evaluates medical literature and technology assessments, and hears public testimony on the evidence available to address the impact of medical items and services on health outcomes of Medicare beneficiaries. The MEDCAC may also advise the Centers for Medicare & Medicaid Services (CMS) as part of Medicare's "coverage with evidence development" initiative.

II. Provisions of the Notice

As of June 2016, there will be 35 membership terms expiring. Of the 35 memberships expiring, 1 is an industry representative, 4 are patient advocates, and the remaining 30 membership openings are for the at-large standing MEDCAC membership.

All nominations must be accompanied by curricula vitae. Nomination packages should be sent to Maria Ellis at the address listed in the **ADDRESSES** section of this notice. Nominees are selected based upon their individual qualifications. Nominees for membership must have expertise and experience in one or more of the following fields:

- Clinical medicine including subspecialties
- Administrative medicine
- Public health
- Biological and physical sciences
- Epidemiology and biostatistics
- Clinical trial design
- Health care data management and analysis
- Patient advocacy
- Health care economics
- Medical ethics
- Other relevant professions

We are looking particularly for experts in a number of fields. These include cancer screening, genetic testing, clinical epidemiology, psychopharmacology, screening and diagnostic testing analysis, and vascular surgery. We also need experts in biostatistics in clinical settings, dementia treatment, minority health, observational research design, stroke epidemiology, and women's health.

The nomination letter must include a statement that the nominee is willing to serve as a member of the MEDCAC and

appears to have no conflict of interest that would preclude membership. We are requesting that all curricula vitae include the following:

- Date of birth
- Place of birth
- Social security number
- Title and current position
- Professional affiliation
- Home and business address
- Telephone and fax numbers
- Email address
- List of areas of expertise

In the nomination letter, we are requesting that nominees specify whether they are applying for a patient advocate position, for an at-large standing position, or as an industry representative. Potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of financial conflict of interest. Department policy prohibits multiple committee memberships. A federal advisory committee member may not serve on more than one committee within an agency at the same time.

Members are invited to serve for overlapping 2-year terms. A member may continue to serve after the expiration of the member's term until a successor is named. Any interested person may nominate one or more qualified persons. Self-nominations are also accepted. Individuals interested in the representative positions must include a letter of support from the organization or interest group they would represent.

Dated: October 13, 2015.

Patrick Conway,

CMS Chief Medical Officer and Director, Center for Clinical Standards and Quality, Centers for Medicare & Medicaid Services.

[FR Doc. 2015-26569 Filed 10-19-15; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice of reorganization.

SUMMARY: Statement of Organization, Functions, and Delegations of Authority. The Administration for Children and Families (ACF) has reorganized. The reorganization adds

the Chief of Staff, the Deputy Assistant Secretary for External Affairs, and the Associate Deputy Assistant Secretary for Early Childhood Development positions to the Office of the Assistant Secretary. It also renames the Inter-Departmental Liaison for Early Childhood Development position to the Deputy Assistant Secretary for Early Childhood Development. It eliminates the Office of the Deputy Assistant Secretary for Policy and External Affairs. The reorganization removes the Office of Human Services Emergency Preparedness and Response from within the Office of the Assistant Secretary and creates the Office of Human Services Emergency Preparedness and Response as a direct report to the Assistant Secretary. It renames the Office of Public Affairs to the Office of Communications. Lastly, it changes the reporting relationship of the Office of Regional Operations and the Office of Communications from the Assistant Secretary to a direct report to the Deputy Assistant Secretary for External Affairs. This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration for Children and Families (ACF), as follows: Chapter K, Administration for Children and Families (ACF), as last amended in 77 FR 23250–23260, April 18, 2012; Chapter KA, Office of the Assistant Secretary, as last amended in 80 FR 33269–33270, June 11, 2015; Chapter KJ, Office of Regional Operations, as last amended in 71 FR 59117–59123, October 6, 2006; and Chapter KN, Office of Public Affairs, as last amended in 77 FR 61002–61003, October 5, 2012.

I. Under Chapter K, Administration for Children and Families, delete K.00 Mission in its entirety and replace with the following:

K.00 Mission. The Administration for Children and Families (ACF) provides national leadership and direction to plan, manage, and coordinate the nationwide administration of comprehensive and supportive programs for vulnerable children and families. The Administration oversees and finances a broad range of programs for children and families, including Native Americans, persons with developmental disabilities, refugees, and legalized aliens, to help them develop and grow toward a more independent, self-reliant life. These programs, carried out by state, county, city, and tribal governments, and public and private local agencies, are designed to promote stability, economic security, responsibility, and self-sufficiency.

The Administration coordinates development and implementation of family-centered strategies, policies, and linkages

among its programs, and with other federal and state programs serving children and families. The Administration's programs assist families in financial crisis, emphasizing short-term financial assistance, and education, training and employment for the long term. Its programs for children and youth focus on those children and youth with special problems, including children of low-income families, abused and neglected children, those in institutions or requiring adoption or foster family services, runaway youth, children with disabilities, migrant children, and Native American children. The Administration promotes the development of comprehensive and integrated community and home-based modes of service delivery where possible. The Administration provides national leadership to develop and coordinate public and private programs and serves as a focal point for states in the provision of financial assistance and intervention programs that promote and support permanence for children and family stability. The Administration advises the Secretary on issues pertaining to children and families, including Native Americans, refugees, and legalized aliens.

II. Under Chapter K, Administration for Children and Families, delete K.10 Organization in its entirety and replace with the following:

K.10 Organization. The Administration for Children and Families (ACF) is a principal operating division of the Department of Health and Human Services (HHS). The Administration is headed by the Assistant Secretary for Children and Families, who reports directly to the Secretary. The Assistant Secretary also serves as the Director of Child Support Enforcement. In addition to the Assistant Secretary, the Administration consists of the Principal Deputy Assistant Secretary, the Chief of Staff, the Deputy Assistant Secretary for Administration, the Deputy Assistant Secretary for Policy, the Deputy Assistant Secretary for Early Childhood Development, the Deputy Assistant Secretary for External Affairs, and Staff and Program Offices. ACF is organized as follows:

Office of the Assistant Secretary for Children and Families (KA)
Administration on Children, Youth and Families (KB)
Administration for Native Americans (KE)
Office of Child Support Enforcement (KF)
Office of Community Services (KG)
Office of Family Assistance (KH)
Office of Regional Operations (KJ)
Office of Planning, Research and Evaluation (KM)
Office of Communications (KN)
Office of the Deputy Assistant Secretary for Administration (KP)
Office of Refugee Resettlement (KR)
Office of Legislative Affairs and Budget (KT)
Office of Head Start (KU)
Office of Child Care (KV)
Office of Human Services Emergency Preparedness and Response (KW)

III. Under Chapter KA, Office of the Assistant Secretary for Children and Families, delete KA.20 Functions,

Paragraph A in its entirety and replace with the following:

KA.20 Functions. A. Office of the Assistant Secretary for Children and Families: The Office of the Assistant Secretary for Children and Families is responsible to the Secretary for carrying out ACF's mission and provides executive supervision of the major components of ACF. These responsibilities include providing executive leadership and direction to plan and coordinate ACF program activities to ensure their effectiveness; approving instructions, policies, publications, and grant awards issued by ACF; and representing ACF in relationships with governmental and non-governmental organizations. The Principal Deputy Assistant Secretary serves as an alter ego to the Assistant Secretary for Children and Families on program matters and acts in the absence of the Assistant Secretary for Children and Families. The Chief of Staff advises the Assistant Secretary for Children and Families and provides executive leadership and direction to the operations of ACF. The Deputy Assistant Secretary for External Affairs provides executive leadership and direction to the Offices of Regional Operations and Communications. The Deputy Assistant Secretary for Early Childhood Development serves as a key liaison and representative to the Department for early childhood development on behalf of the Assistant Secretary, ACF, and to other agencies across the government on behalf of the Department. The Deputy Assistant Secretary for Policy has responsibility for cross-program coordination of ACF initiatives, including efforts to promote interoperability and program integration.

IV. Under Chapter KJ, Office of Regional Operations, delete KJ in its entirety and replace with the following:

KJ.00 Mission. The Office of Regional Operations (ORO) advises the Assistant Secretary for Children and Families through the Deputy Assistant Secretary for External Affairs on all strategic and operational activities related to implementation of agency goals and priorities at the regional level. ORO oversees the performance of the Offices of the Regional Administrators (ORA) on coordination of cross-cutting and special emphasis programs and initiatives, emergency preparedness, tribal government relations, state, and local ACF-related affairs, and administrative functions in Regions I–X, Offices of the Regional Administrators (ORA).

The ORAs are located in the ten HHS Regional Offices: Region I (Boston), Region II (New York), Region III (Philadelphia), Region IV (Atlanta), Region V (Chicago), Region VI (Dallas), Region VII (Kansas City), Region VIII (Denver), Region IX (San Francisco), and Region X (Seattle). Each ORA, through the Director, ORO, and in coordination with ACF Program Directors, represents ACF to states, counties, cities, or towns, territories, and tribal governments, grantees, and public and private local organizations. The ORA coordinates issues that may have significant regional or national impact. The ORA develops plans in conjunction with the

Program Directors to meet ACF goals and objectives and participates in regional activities to inform the public about ACF programs at the regional level in coordination with the ACF Office of Communications. The ORA contributes to the development of ACF national policy based on knowledge of services in the region.

KJ.10 Organization. The Office of Regional Operations (ORO) is headed by a Director who reports to the Assistant Secretary through the Deputy Assistant Secretary for External Affairs. The ORO is organized as follows:

Office of the Director (KJA)

Regional Operations Staff (KJB)

Office of the Regional Administrators (KJDI-X)

KJ.20 Functions. A. Office of the Director (KJA): The Office of the Director (OD) provides executive leadership and assistance on all strategic and operational activities related to implementation of the agency's national goals and priorities at the regional level. The Director is the principal advisor to the Assistant Secretary for Children and Families through the Deputy Assistant Secretary for External Affairs on regional matters involving special emphasis programs and initiatives, emergency preparedness, tribal government relations, state and local ACF partnership activities, and regional administrative functions. The Director represents the Assistant Secretary for Children and Families within HHS and with other federal agencies and task forces on regional activities.

The OD: (1) Oversees the Regional Administrators in administering regional activities and implementing cross-cutting program initiatives; (2) serves as a focal point for operational and long-range planning; and (3) coordinates with the ACF Central Office components to ensure that the Regional Administrators can help coordinate certain national priorities and initiatives, state and local partnership activities, special programs, and emergency preparedness and response operations.

B. Regional Operations Staff (KJB): The Regional Operations Staff: (1) Develops and manages liaison processes between ACF Regional Offices and the Assistant Secretary for Children and Families; (2) supports the Offices of the Regional Administrators (ORA) of each region by implementing and overseeing the management systems and procedures for communication and workload that emanate from ACF national priorities and initiatives, special emphasis programs, emergency preparedness, tribal government relations, and state and local ACF partnership activities; (3) monitors and evaluates ORA operations and makes plans for the utilization of regional resources to accomplish approved objectives; and (4) manages administrative and human resources functions, and salaries and expenses for the ORA.

C. Offices of the Regional Administrators (KJDI-X): Each of the ORAs is headed by a Regional Administrator who reports to the Deputy Assistant Secretary for External Affairs through the Director, ORO. Each Office: (1) Helps support ACF's key national goals and priorities; (2) communicates ACF's

regional interests, concerns, and relationships within HHS and among other federal agencies and focuses on state agency culture change, more effective partnerships, and improved customer service; (3) manages special and sensitive projects; (4) serves as a focal point for public affairs and contacts with the media, public awareness activities, information dissemination, and education campaigns in coordination with the ACF Office of Communications and in conjunction with the HHS Regional Director; (5) assists the ACF Regional Administrator in the management of cross-cutting initiatives and activities among the regional components; and (6) as appropriate, and in coordination with the ACF Central Office components, assists with activities relating to developmental disabilities, refugee resettlement, economic and community development, tribal and special initiative activities.

The Regional Administrators: (1) Oversee the management of ACF regional staff in the ORA; (2) coordinate activities across regional programs; (3) ensure that goals and objectives are carried out; and (4) alert the Assistant Secretary for Children and Families through the Director, ORO, the DAS of External Affairs, and/or Central Office ACF Program Directors to problems and issues that may have significant regional or national impact.

As requested by the Director of Regional Operations or Central Office ACF Program Directors, the ORA represents ACF at the regional level in executive communications within ACF, with the HHS Regional Director, other HHS Operating Divisions, other federal agencies, and public or private local organizations.

Within the ORA, an administrative staff: (1) develops regional work plans, in coordination with Central Office Program Directors, related to the overall ACF strategic plans, and tracks, monitors, and reports on regional progress in the attainment of ACF national goals and objectives; (2) coordinates routine budget, administrative, and human resource functions as required, including Executive Secretariat, ACF-controlled space, computer and computer peripheral equipment, and health and safety for the ORA; (3) coordinates ACF programs during emergencies in the regions, including natural disasters, pandemic flu, or other disasters; (4) serve as ACF's focal point for Continuity of Operations Program planning, implementation, and coordination; (5) coordinates regional ACF deployments of human services assessments and action teams during state and/or federally declared emergencies and disasters; and (6) coordinates resources for regional special emphasis activities with the HHS Regional Director's office.

V. Under Chapter KN, Office of Public Affairs, delete KN in its entirety and replace with the following:

KN.00 Mission. The Office of Communications (OC) develops, directs, and coordinates public affairs and communication services for ACF. It provides leadership, direction and oversight in promoting ACF's public affairs policies, programs, and initiatives. OC oversees

Freedom of Information Act requests, digital communications, and also provides printing and distribution services for ACF.

KN.10 Organization. OC is headed by a Director who reports to the Assistant Secretary through the Deputy Assistant Secretary for External Affairs. The Office is organized as follows:

Office of the Director (KNA)

Division of News and Media (KNB)

Division of Digital Information (KNC)

Division of Freedom of Information Act (KND)

KN.20 Functions. A. The Office of Director provides leadership and direction to the Office of Communications in administering its responsibilities. The Office provides direction and leadership in the areas of public relations policy and internal and external communications services. It serves as advisor to the Assistant Secretary for Children and Families through the Deputy Assistant Secretary for External Affairs in the areas of public affairs; provides advice on strategies and approaches to be used to improve public understanding of and access to ACF programs and policies; and coordinates and serves as ACF liaison with the Assistant Secretary for Public Affairs. The Office serves as Regional Liaison on public affairs issues.

B. Division of News and Media develops and implements public affairs strategies to achieve ACF program objectives in coordination with other ACF components. It coordinates news media relations strategy; responds to all media inquiries concerning ACF programs and related issues; develops fact sheets, news releases, feature articles for magazines and other publications on ACF programs and initiatives; and manages preparation and clearance of speeches and official statements on ACF programs. It coordinates regional public affairs policies and public affairs activities pertaining to ACF programs and initiatives.

C. Division of Digital Information manages the ACF Web site, social media accounts, audio-visual, publications, and printing management systems for ACF. It manages preparation and clearance of all ACF audio-visual product, publications, and graphic designs, including planning, budget oversight, and technical support. It provides centralized graphics design services to ACF. It reviews requests for proposals for contracts and grants that involve publications, audio-visual materials and/or public information, and education activity. It manages all ACF Web site content, 508 compliance, and other federal laws and regulations governing digital media.

D. Division of Freedom of Information Act (FOIA) implements elements of ACF's Open Government Initiative. The FOIA division receives requests under the FOIA statute, elicits the requested records from program offices, reviews the records and redacts accordingly, and provides responses to the requestor.

VI. Under Chapter KW, Create the Office of Human Services Emergency Preparedness and Response:

KW.00 Mission. The Office of Human Services Emergency Preparedness and

Response (OHSEPR) promotes resilience of vulnerable individuals, children, families, and communities impacted by disasters and public health emergencies and provides expertise in human services preparedness, response, and recovery through policy, planning, operations, and partnerships.

OHSEPR coordinates ACF's work in emergency preparedness, response, and recovery planning, policy, and operations, working in close partnership with ACF Program Offices and the Immediate Offices of the Regional Administrators. OHSEPR supports fulfillment of disaster human services within the integrated response and recovery operations of the Department of Health and Human Services (HHS). OHSEPR administers the Human Services Immediate Disaster Case Management Program, which is the FEMA HHS alternate of the Disaster Case Management Program.

KW.10 Organization. OHSEPR is headed by a Director, who reports to the Assistant Secretary, and consists of: Office of the Director (KW1) Division of Disaster Case Management (KW2) Division of Emergency Planning, Policy and Operations (KW3)

KW.20 Functions. A. The OD is responsible for the administrative oversight and strategic direction of all OHSEPR programs, projects, and activities. The Office of the Director implements the strategic vision of the Director, manages budgetary and legal matters affecting OHSEPR, administers human resources and program evaluation functions, and assures alignment of activities by all OHSEPR divisions with the Director's strategy and applicable laws, policies, doctrines, and frameworks related to the provision of HHS ACF disaster human services.

The Administrative Team provides administrative and budget support to OHSEPR. These responsibilities include, but are not limited to: (1) serving as the Executive Secretariat for OHSEPR, including managing correspondence, correspondence systems, and public requests; (2) coordinating human resources activities; and (3) as appropriate, development of internal policies and procedures relating to these activities.

B. Division of Disaster Case Management is responsible for administration of the Human Services Disaster Case Management Program to assist states, tribes, and territories in establishing the capacity to coordinate and provide case management services in the event of a presidentially declared disaster for which Individual Assistance is approved. This Division develops and maintains the capability to deploy Immediate Disaster Case Management (IDCM) teams upon activation by the Federal Emergency Management Agency (FEMA). The Division manages contracts for IDCM staffing assets and infrastructure, and for electronic case record to support provision of IDCM services to survivors in states and tribes as tasked by FEMA.

C. Division of Emergency Planning, Policy and Operations is responsible for administration of ACF human services preparedness, response, and recovery for disasters and public health emergencies, as

well as "steady state" capabilities necessary to maintain readiness for response or recovery operations to future events. The Division manages deployable and non-deployable capabilities for operations, including ACF's Watch Desk and threat analysis, situational awareness reporting, deployment of requested emergency response and recovery staffing assets, coordination of ACF support for federal emergency missions, and liaison with federal interagency and other partners in response and recovery. This Division is responsible for administration of OHSEPR's activities to promote emergency preparedness of ACF programs, community resilience to the human services impacts of disasters and public health emergencies, and participation in HHS-wide and government-wide emergency planning and policymaking. The Division manages preparedness activities and messaging. The Division coordinates fulfillment of ACF participation in Departmental and federal policy workgroups related to disasters, tools and guidance intended to promote preparedness of ACF programs and community resilience for ACF served populations, and training and exercise programs to continually improve ACF's capacity to support disaster human services for affected populations.

VII. Continuation of Policy

Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to organizational components affected by this notice within the Administration for Children and Families, heretofore issued and in effect on this date of this reorganization are continued in full force and effect.

VIII. Delegation of Authority

All delegations and re-delegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further re-delegations, provided they are consistent with this reorganization.

IX. Funds, Personnel, and Equipment

Transfer of organizations and functions affected by this reorganization shall be accompanied in each instance by direct and support funds, positions, personnel, records, equipment, supplies, and other resources.

This reorganization will be effective upon date of signature.

Dated: September 21, 2015.

Mark H. Greenberg,

Acting Assistant Secretary for Children and Families.

[FR Doc. 2015-26615 Filed 10-19-15; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Organ Transplantation; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of the following meeting:

Name: Advisory Committee on Organ Transplantation (ACOT).

Date and Time: November 17, 2015, from 12:00 p.m. to 4:00 p.m. Eastern Time.

Place: The meeting will be via audio conference call and Adobe Connect Pro.

Status: The meeting will be open to the public.

Purpose: Under the authority of 42 U.S.C. Section 217a, Section 222 of the Public Health Service Act, as amended, and 42 CFR 121.12 (2000), ACOT was established to assist the Secretary in enhancing organ donation, ensuring that the system of organ transplantation is grounded in the best available medical science, and assuring the public that the system is as effective and equitable as possible, thereby increasing public confidence in the integrity and effectiveness of the transplantation system. ACOT is composed of up to 25 members including the Chair. Members serve as Special Government Employees and have diverse backgrounds in fields such as organ donation, health care public policy, transplantation medicine and surgery, critical care medicine, and other medical specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, economics and statistics, as well as representatives of transplant candidates, transplant recipients, organ donors, and family members.

Agenda: The Committee will hear presentations including those on the following topics: Donor Management Research; the HOPE Act; and Program Updates. Agenda items are subject to change as priorities indicate.

After Committee discussions, members of the public will have an opportunity to comment. Because of the Committee's full agenda and timeframe in which to cover the agenda topics, public comment will be limited. All public comments will be included in the record of the ACOT meeting. Meeting summary notes will be posted on Department's organ donation Web site at <http://www.organdonor.gov/legislation/advisory.html#meetings>.

The draft meeting agenda will be posted on www.acotmeetings.net (but the timing of events may be subject to change). Those participating at this meeting should register by visiting www.acotmeetings.net. The deadline to register for this meeting is Monday, November 16, 2015. For all logistical questions and concerns, please contact Susie Gingrich, Leonard Resource Group, at 202-289-8322 or send an email to sgingrich@lrginc.com.

The public can join the meeting by:

1. (Audio Portion) Calling the Conference Phone Number (1-800-832-0736) and providing the Participant Code (1337210); and

2. (Visual Portion) Connecting to the ACOT Adobe Connect Pro Meeting using the following URL <https://lrg.adobeconnect.com/acot1115> (copy and paste the link into your browser if it does not work directly).

Participants should call and connect 15 minutes prior to the meeting for logistics to be set up. If you have never attended an Adobe Connect meeting, please test your connection using the following URL: https://hrsa.connect.solutions.com/common/help/en/support/meeting_test.htm and get a quick overview by following URL: http://www.adobe.com/go/connectpro_overview.

Call 202-289-8322 or send an email to sgingrich@lrginc.com if you are having trouble connecting to the meeting site.

Public Comment: It is preferred that persons interested in providing an oral presentation email a written request, along with a copy of their presentation to Patricia Stroup, MBA, MPA, Executive Secretary, Healthcare Systems Bureau, Health Resources and Services Administration, at pstroup@hrsa.gov. Requests should contain the name, address, telephone number, email address, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative.

The allocation of time may be adjusted to accommodate the level of expressed interest. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may request it during the public comment period. Public participation and ability to comment will be limited to time as it permits.

FOR FURTHER INFORMATION CONTACT: Patricia Stroup, MBA, MPA, Executive Secretary, Healthcare Systems Bureau, Health Resources and Services

Administration, 5600 Fishers Lane, Room 17W65, Rockville, MD 20857; telephone 301-443-1127.

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2015-26523 Filed 10-19-15; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Heritable Disorders in Newborns and Children; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, codified at 5 U.S.C. App.), notice is hereby given of the following meeting:

Name: Advisory Committee on Heritable Disorders in Newborns and Children.

Dates and Times: November 3, 2015, 9:00 a.m. to 4:00 p.m.

Place: Webinar.

Status: The meeting will be open to the public. Please register at <https://www.blsmmeetings.net/ACHDNC/November2015/>. The registration deadline is Friday, October 30, 2015, 11:59 p.m. Eastern Time.

Purpose: The Advisory Committee on Heritable Disorders in Newborns and Children (Committee), as authorized by the Public Health Service Act (PHS), Title XI, § 1111 (42 U.S.C. 300b-10), was established to advise the Secretary of the Department of Health and Human Services about the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. In addition, the Committee's recommendations regarding additional conditions/ inherited disorders for screening that have been adopted by the Secretary are included in the Recommended Uniform Screening Panel (RUSP) and constitute part of the comprehensive guidelines supported by the Health Resources and Services Administration. Pursuant to section 2713 of the Public Health Service Act, codified at 42 U.S.C. 300gg-13, non-grandfathered health plans and group and individual health insurance issuers are required to cover screenings included in the HRSA-supported comprehensive guidelines without charging a co-payment, co-insurance, or deductible for plan years (*i.e.*, policy years) beginning on or after

the date that is one year from the Secretary's adoption of the condition for screening.

Agenda: The meeting will include: (1) Discussion and vote on the statutory Committee's proposed bylaws, (2) a discussion of nomination process for prospective organizational representatives, (3) a presentation on the Notice of Proposed Rulemaking on Federal Policy for the Protection of Human Subjects and the potential impact on newborn screening research, (4) updates from the Pilot Study Workgroup, Cost Analysis Workgroup, and Timeliness Workgroup, (5) a presentation on transition models from pediatric to adult health care using innovative strategies, and (6) a presentation on current education activities within newborn screening and impact on families and children. There are no votes that involve proposed additions of a condition to the RUSP scheduled for this meeting.

Agenda items are subject to change as necessary or appropriate. The agenda, webinar information, Committee Roster, Charter, presentations, and other meeting materials will be located on the Advisory Committee's Web site at <http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders>.

Registration: Registration information will be on the Committee Web site at <https://www.blsmmeetings.net/ACHDNC/November2015/>. The registration deadline is Friday, October 30, 11:59 p.m. Eastern Time.

Public Comments: Members of the public may present oral comments and/or submit written comments. Comments are part of the official Committee record. Advance registration is required to present oral comments and/or submit written comments. Oral public comments are tentatively scheduled for November 3, 2015. Individuals who wish to present oral public comments must indicate this when registering. Written comments may be uploaded on the registration Web site and must be received by the registration deadline (October 30, 11:59 p.m. Eastern Time), as this will allow them to be included in the November meeting briefing book. Individuals who wish to present oral comments and/or provide written comments should identify on the registration Web site the individual's name, address, email, telephone number, professional or business affiliation, type of expertise (*i.e.*, parent, researcher, clinician, public health, etc.), and the topic/subject matter of comments. To ensure that all individuals who have registered to make oral comments can be accommodated,

the allocated time may be limited. Individuals who are associated with groups or have similar interests may be requested to combine their comments and present them through a single representative. No audiovisual presentations are permitted. For additional information or questions on public comments, please contact Lisa Vasquez, Maternal and Child Health Bureau, Health Resources and Services Administration; email: lvasquez@hrsa.gov.

Contact Person: Anyone interested in obtaining other relevant information should contact Debi Sarkar, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18W68, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; email: dsarkar@hrsa.gov.

More information on the Advisory Committee is available at http://www.hrsa.gov/advisorycommittees/mchb_advisory/heritabledisorders.

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2015-26524 Filed 10-19-15; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this Information Collection Request must be received no later than December 21, 2015.

ADDRESSES: Submit your comments to paperwork@hrsa.gov or mail the HRSA

Information Collection Clearance Officer, Room 10-29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email paperwork@hrsa.gov or call the HRSA Information Collection Clearance Officer at (301) 443-1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Enrollment and Re-Certification of Entities in the 340B Drug Pricing Program and Collection of Manufacturer Data to Verify 340B Drug Pricing Program Ceiling Price Calculations.

OMB No. 0915-0327—Revision.

Abstract: Section 602 of Public Law 102-585, the Veterans Health Care Act of 1992, enacted as Section 340B of the Public Health Service Act (PHS Act; “Limitation on Prices of Drugs Purchased by Covered Entities”), provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a Pharmaceutical Pricing Agreement (PPA) with the Secretary of Health and Human Services in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed an amount determined under a statutory formula (“ceiling price”). A manufacturer subject to a PPA must offer all covered outpatient drugs at no more than the ceiling price to a covered entity listed in the 340B Program database. The manufacturer shall rely on the information in the 340B database to determine if the covered entity is participating in the 340B Program or for any notifications of changes to eligibility that may occur within a quarter. By signing the PPA, the manufacturer agrees to comply with all applicable statutory and regulatory requirements.

The purpose of this revision is to include an addendum to the PPA to incorporate the administrative requirement for manufacturer integrity provisions directly addressed in the Affordable Care Act.

Need and Proposed Use of the Information: HRSA is proposing revisions to the current PPA to include an addendum in response to manufacturer integrity provisions

implemented in the Affordable Care Act. Section 7102(b) of the Affordable Care Act amends section 340B(a)(1) of the Public Health Service Act (PHSA) to add two new requirements for inclusion in the PPA with manufacturers of covered outpatient drugs:

I. “Each such agreement shall require that the manufacturer furnish the Secretary with reports, on a quarterly basis, of the price for each covered outpatient drug subject to the agreement that, according to the manufacturer, represents the maximum price that covered entities may permissibly be required to pay for the drug (referred to in this section as the “ceiling price”) and

II. “. . . shall require that the manufacturer offer each covered entity covered outpatient drugs for purchase at or below the applicable ceiling price if such drug is made available to any other purchaser at any price.”

These requirements shall be included in the PPA addendum to be signed by manufacturers participating in the 340B Program to ensure that the provisions of the 340B statute requiring inclusion in the PPA are satisfied. The execution of the addendum by manufacturers will fulfill the administrative requirement of the statute that these provisions be included in the PPA. The burden imposed on manufacturers by the proposed requirement of the PPA is minimal because the addendum does not impose requirements beyond review and a signature by the manufacturer.

Likely Respondents: Drug Manufacturers.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Hours per respondent	Total burden hours
Hospital Enrollment, Additions & Recertifications					
340B Program Registrations & Certifications for Hospitals	194	1	194	2	388
Certifications to Enroll Hospital Outpatient Facilities	697	8	5576	0.5	2788
Hospital Annual Recertifications	2134	6	12804	0.25	3201
Registrations and Recertifications for Entities Other Than Hospitals					
340B Registrations for Community Health Centers	427	3	1281	1	1281
340B Registrations for STD/TB Clinics	647	1	647	1	647
340B Registrations for Various Other Eligible Entity Types	405	1	405	1	405
Community Health Center Annual Recertifications	1204	5	6020	0.25	1505
STD & TB Annual Recertifications	3123	1	3123	0.25	780.75
Annual Recertification for entities other than Hospitals, Community Health Centers, and STD/TB Clinics	4899	1	4899	0.25	1224.75
Contracted Pharmacy Services Registration & Recertifications					
Contracted Pharmacy Services Registration	1758	5	8790	1	8790
Other Information Collections					
Submission of Administrative Changes for any Covered Entity	9396	1	9396	0.5	4698
Submission of Administrative Changes for any Manufacturer	350	1	350	0.5	175
Manufacturer Data Required to Verify 340B Ceiling Price Calculations	600	4	2400	0.5	1200
Pharmaceutical Pricing Agreement	200	1	200	1	200
Pharmaceutical Pricing Agreement (PPA) Addendum	620	1	620	0.5	310
Total	26,554	.....	56,705	.....	27593.5

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2015-26522 Filed 10-19-15; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS-OS-0945-0002-60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for extending the use of the approved information collection assigned OMB control number 0945-0002, which expires on 12/31/2015. Prior to submitting the ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before December 21, 2015.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690-6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690-6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS-OS-0945-0002-60D for reference.

Proposed Project: Complaint Forms for Discrimination; Health Information Privacy Complaints.

OMB No. 0945-0002—Extension—Office of Civil Rights.

Abstract: The Office for Civil Rights is seeking an extension on an approval for a 3-year clearance on a previous collection. Individuals may file written complaints with the Office for Civil Rights when they believe they have been discriminated against by programs or entities that receive Federal financial assistance from the Health and Human Service or if they believe that their right to the privacy of protected health information has been violated. Annual Number of Respondents frequency of submission is record keeping and reporting on occasion.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Civil Rights Complaint Form	Individuals or households, Not-for-profit institutions.	3493	1	45/60	2620
Health Information Privacy Complaint Form.	Individuals or households, Not-for-profit institutions.	10,286	1	45/60	7715
Total .....	.....	.....	.....	.....	10,335

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Darius Taylor,
Information Collection Clearance Officer.
 [FR Doc. 2015-26604 Filed 10-19-15; 8:45 am]
BILLING CODE 4153-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Privacy Act of 1974; System of Records Notice

AGENCY: Office of the Secretary (OS), Department of Health and Human Services (HHS).

ACTION: Notice to establish a new Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of Medicare Hearings and Appeals (OMHA) within the Office of the Secretary of Health and Human Services (HHS) is establishing a new system of records, System No. 09-90-1501, entitled "Administrative Law Judge (ALJ) Working File, Office of Medicare Hearings and Appeals," to cover OMHA ALJ working files previously maintained as part of the Social Security Administration's (SSA) ALJ Working File system of records 60-0005 (last published at 74 FR 19617). The working files covered under new System of Records Notice (SORN) 09-90-1501 are created and used by OMHA ALJs and members of their staffs for internal purposes, to document actions taken by OMHA at the hearing level in each Medicare appeal case that OMHA reviews. The working files are separate

from the official case files, which are covered under other SORNs (*i.e.*, HHS SORN 09-70-0566 covers case files on Medicare claims appeals, and SSA SORN 60-0089 covers case files on Medicare entitlement appeals).

DATES: This system notice is effective immediately, with the exception of the routine uses. The routine uses will be effective 30 days after publication, unless HHS receives comments that warrant a revision to this Notice.

ADDRESSES: Send public comments by mail or email to: Andrea Monson, Director, Division of Information Management and Systems, 1700 North Moore Street, Suite 1800, Arlington, VA 22209, 703-235-0635, *andrea.monson@hhs.gov*. Comments will be available for public inspection and copying at the above location.

FOR FURTHER INFORMATION CONTACT: Andrea Monson, Director, Division of Information Management and Systems, 1700 North Moore Street, Suite 1800, Arlington, VA 22209, 703-235-0635, *andrea.monson@hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on New System of Records

The Medicare claims appeals process consists of four levels of administrative review within HHS, and a fifth level of review with the federal district courts after administrative remedies within HHS have been exhausted. The first two levels of review are administered by the Centers for Medicare & Medicaid Services (CMS) and conducted by Medicare contractors. The third level of review is administered by OMHA and is conducted by ALJs. Subsequent reviews are conducted at the fourth level of appeal within the Departmental Appeals Board (DAB), and at the fifth level by the federal district courts.

The Medicare entitlement and premium appeals process consists of three levels of administrative review, and a fourth level of review with the federal district courts after administrative remedies have been exhausted. The first level is the reconsideration level conducted by

SSA. The second level of review is administered by OMHA and is conducted by ALJs. Subsequent reviews are conducted at the third level of appeal within the DAB and at the fourth level by the federal district courts.

The Department established OMHA in June, 2005, pursuant to section 931 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108-173) (MMA), which required the transfer of responsibility for the ALJ hearing function of the Medicare claims and entitlement appeals process from SSA to HHS. The MMA requires a unified case tracking system that facilitates the maintenance and transfer of case-specific data across both the fee-for-service and managed care components of the Medicare program. HHS' CMS operates the unified case tracking system required by MMA, which is covered by CMS System of Record Notice No. 09-70-0566, entitled "Medicare Appeals System" (MAS SORN).

OMHA's adjudication process uses a "case file" comprising the official agency record, and an ALJ working file. The case file will continue to be covered by CMS' MAS SORN for Medicare claims appeals. The case file for Medicare entitlement and premium appeals will continue to be covered by the SSA Claims Folders System, Social Security Administration Claims Folders System, Social Security Administration, Office of the General Counsel, Office of Public Disclosure (60-0089). The case file is used throughout the administrative appeals process by the various levels of review.

Only OMHA's ALJ working files will now be covered in the new system of records established by this Notice, to reflect that they are used only by OMHA.

II. The Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the U.S. Government collects, maintains, and uses information about individuals in a system of records. A "system of records" is a group of any records under the control of a federal agency from

which information about an individual is retrieved by the individual's name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a system of records notice (SORN) identifying and describing each system of records the agency maintains, including the purposes for which the agency uses the information about individuals in the system, the routine uses for which the agency discloses such information outside the agency, and how individual record subjects can exercise their rights under the Privacy Act (for example, to seek access to their records in the system).

SYSTEM NUMBER: 09–90–1501

SYSTEM NAME:

Administrative Law Judge (ALJ) Working File, Office of Medicare Hearings and Appeals (OMHA).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at OMHA headquarters and field offices. Address information is available by accessing the OMHA Web site: <http://www.hhs.gov/omha/>. Electronic records will be stored in a secured, FedRAMP-compliant, cloud service provider. Source documents will be destroyed once they are scanned and converted to electronic records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records pertain to individuals involved in Medicare appeals adjudicated by OMHA, including Medicare beneficiaries or enrollees; physicians; providers; practitioners; suppliers; State Medicaid agencies; other individuals involved in furnishing items and services to health insurance beneficiaries or enrollees; and authorized or appointed representatives of such individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

OMHA administers nationwide ALJ hearings for appeals of Medicare Part A and Part B claim determinations, Part C organization determinations, Part D coverage determinations that are made by CMS contractors, and appeals of Medicare entitlement and monthly premium determinations made by SSA.

OMHA establishes ALJ working files as a record of actions taken on each particular appeal. The file may contain copies of information from the administrative record, such as the request for hearing, hearing recording, notice of hearing, decision, and exhibit

list, as well as copies of post-adjudicative material received and any responses made. Official copies of these materials are placed in the official agency record (case file). The ALJ working file also may contain deliberative working papers such as notes taken during the hearing by the ALJ; case analyses prepared by field office employees; attorney work product; working papers of field office staff; and other case developmental and decision-related notes and instructional sheets. Information in these records that could pertain to individuals includes protected health information; Health Insurance Claim Number (HICN); Social Security Number (SSN); Provider Number, name, address, and other contact information; and billing, tax, and other financial information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under § 205 of Title II, §§ 1155 and 1156 of Title XI, §§ 1812, 1814, 1816, 1842, 1869, and 1872 of Title XVIII of the Social Security Act (the Act), as amended (42 United States Code (U.S.C.) sections 405, 1320c–4, 1320c–5, 1395d, 1395f, 1395h, 1395u, 1395ff, and 1395ii). Additional authority for this system is given under Title IX, Subtitle D of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law (Pub. L.) 108–173).

PURPOSE(S):

OMHA uses the records in this system of records to reference the actions OMHA takes in a particular case at the hearing level. For example, during the course of adjudication at the ALJ hearing level, ALJs and members of their staff often construct documents for internal purposes only regarding the evidence, testimony, legal theories, merits of the case, and opinions and advice regarding other factors involved in the case.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM OF RECORDS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information about an individual may be disclosed from this system of records to parties outside HHS, without the individual's prior, written consent, pursuant to these routine uses.

Note: Any information defined as "return or return information" under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be disclosed unless authorized by the IRC, the Internal Revenue Service (IRS), or IRS regulations.

1. To a Member of Congress or to a Congressional staffer in response to a

written inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained. The Member of Congress does not have any greater authority to obtain records than the individual would have if requesting the records directly.

2. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal, when:

(a) HHS or any component thereof; or
(b) any HHS employee in his or her official capacity; or

(c) any HHS employee in his or her individual capacity where DOJ (or HHS where it is authorized to do so) has agreed to represent the employee; or
(d) the United States Government,

is a party to litigation or has an interest in such litigation and, by careful review, HHS determines that the records are both relevant and necessary to the litigation and that, therefore, the use of such records by DOJ, the court or other tribunal, or another party before such tribunal is deemed by HHS to be compatible with the purpose for which HHS collected the records.

3. To IRS, as necessary, for the purpose of auditing HHS's compliance with safeguard provisions of the IRC, as amended.

4. To contractors and other federal agencies that have been engaged by HHS to assist in accomplishment of an HHS function relating to the purposes of the system of records and that have a need to have access to the records in order to assist HHS in performing the activity. Any contractor will be required to comply with the requirements of the Privacy Act of 1974.

5. To the National Archives and Records Administration (NARA) in records inspections conducted under the authority of 44 U.S.C. 2901 *et seq.*

6. To student volunteers and other workers performing functions for HHS but technically not having the status of agency employees, if they need access to the records in order to perform their assigned functions.

7. To federal, state, and local law enforcement agencies and private security contractors, as appropriate, if information is necessary

(a) to enable them to protect the safety of HHS employees and customers, the security of the HHS workplace, and the operation of HHS facilities; or

(b) to assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of HHS facilities.

8. To appropriate federal agencies and Department contractors that have a need to know the information for the purpose

of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, when the information disclosed is relevant and necessary for that assistance.

Information about an individual may also be disclosed to parties outside HHS without the individual's prior, written consent for any of the uses authorized directly in the Privacy Act at 5 U.S.C. 552a(b)(2) and (b)(4)–(11).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM—

STORAGE: Records are maintained in electronic and paper form. Currently, OMHA headquarters and field offices keep ALJ working files in paper form. New technology will allow OMHA to store information electronically in the Electronic Case Adjudication and Processing Environment (ECAPE). As a result, records in this system may be paper and electronic.

RETRIEVABILITY: Information is retrieved by name, Social Security Number (SSN), Health Insurance Claim Number (HICN), and assigned provider number or appeal number.

SAFEGUARDS: Only authorized OMHA personnel that have a need for the information in the performance of their official duties are permitted access to the information.

Security measures for electronic access include a minimum of a two-factor authentication solution (such as the use of a Personal Identity Verification (PIV) Card and Personal Identification Number (PIN)) to enter the computer system that will maintain the data, and storage of the computerized records in secured areas that are accessible only to employees who require the information in performing their official duties. Manually maintained records are kept in locked cabinets or in otherwise secure areas.

Personnel allowed access to the records have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system of records are instructed not to release data to an authorized recipient until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable federal laws and regulations and federal and HHS policies and

standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal and HHS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL: OMHA will destroy electronic and paper records by deleting or shredding them 3 years after the final action is taken (see NARA-approved records schedule DAA–0468–2012–0003).

SYSTEM MANAGER AND ADDRESS:

Andrea Monson, Director, Division of Information Management and Systems, 1700 North Moore Street, Suite 1800, Arlington, VA 22209.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him or her by making a written notification request to the System Manager, showing proof of identity, and providing the system name, the subject individual's name, HICN, address, date of birth, and gender. Furnishing the SSN is voluntary.

RECORD ACCESS PROCEDURE:

An individual can obtain access to a record about him or her by using the same procedures outlined in Notification Procedures above and specifying the record contents sought.

CONTESTING RECORD PROCEDURE:

The requesting individual should contact the System Manager named above, and reasonably identify the records and specify the information contested. In addition, the individual should state the corrective action sought and the reasons for the correction and provide supporting justification.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from individuals who complete a form requesting a Medicare

hearing or appeal, from CMS and its contractors, and from SSA.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

This system of records is not a type of system eligible to be exempted from certain Privacy Act requirements under subsections (j) and (k) of the Privacy Act (5 U.S.C. 552a(j)(k)); however, to the extent that records contained in the ALJ working files constitute material compiled in reasonable anticipation of a civil action or proceeding, they will be exempt from the Privacy Act's access requirement under 5 U.S.C. 552a(d)(5).

Dated: October 13, 2015.

Eileen McDaniel,

Director of Programs, Office of Medicare Hearings and Appeals.

[FR Doc. 2015–26631 Filed 10–19–15; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; Training and Education.

Date: November 19, 2015.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Martina Schmidt, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Complementary & Integrative Health, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–594–3456, schmidma@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training

in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: October 14, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-26503 Filed 10-19-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following 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 Human Genome Research Institute Initial Review Group; Genome Research Review Committee, GNOM-G & CEGS.

Date: November 5-6, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, Lakeside Ballroom, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402-0838.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: November 13, 2015.

Time: 11:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Camilla E. Day, Ph.D., Scientific Review Officer, CIDR, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4075, Bethesda, MD 20892, 301-402-8837, camilla.day@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 14, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-26557 Filed 10-19-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; ELSI Centers of Excellence.

Date: December 4, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda Downtown, 7335 Calvert I & II Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402-0838, pozatttr@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 14, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-26564 Filed 10-19-15; 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 (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, NIAAA Review of Phase II SBIR.

Date: November 18, 2015.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIAAA, NIH, 5635 Fishers Lane, CR 2098, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ranga Srinivas, Ph.D., Scientific Review Officer, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 2085, Rockville, MD 20852, 301-451-2067, srinivar@mail.nih.gov.

(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: October 14, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-26551 Filed 10-19-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of MIRA Applications.

Date: November 9–10, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.12P, Bethesda, MD 20892, 301–594–2048, pikbr@mail.nih.gov.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of MIRA Applications.

Date: November 9–10, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Lisa A. Dunbar, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.12C, Bethesda, MD 20892, 301–594–2048, dunbarl@mail.nih.gov.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of MIRA Applications.

Date: November 9–10, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Saraswathy Seetharam Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.12C, Bethesda, MD 20892, 301–594–2048, seetharams@nigms.nih.gov.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of MIRA Applications.

Date: November 9–10, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Robert Horowitz, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.12H, Bethesda, MD 20892, 301–594–2048, horowitr@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology,

Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 14, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–26550 Filed 10–19–15; 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 (5 U.S.C. App.), 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; Drug Discovery for the Nervous System.

Date: November 10, 2015.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Geoffrey G. Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, geoffreys@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Immunology.

Date: November 12, 2015.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jin Huang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1230, jh377p@nih.gov.

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS

Molecular and Cellular Biology Study Section.

Date: November 16, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Kenneth A. Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, roebuckk@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Drug Development and Therapeutics.

Date: November 16–17, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Lilia Topol, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, ltopol@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular and Surgical Devices.

Date: November 16, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Crystal City, 2399 Jefferson Davis Hwy., Arlington, VA 22202.

Contact Person: Jan Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892, 301.435.1049, lij21@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 14, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–26502 Filed 10–19–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following 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 Human Genome Research Institute Special Emphasis Panel; Diversity Action Plan (DAP).

Date: November 9, 2015.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, 3rd Floor Conference Room, 5635 Fishers Lane, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301-594-4280.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; High Quality Genome Sequences.

Date: November 19, 2015.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, 3rd Floor Conference Room, 5635 Fishers Lane, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lita Proctor, Ph.D., Extramural Research Programs Staff, Program Director, Human Microbiome Project, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20892, 301 496-4550, proctorlm@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 14, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-26559 Filed 10-19-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Announcement of Requirements and Registration for the Open Science Prize

Authority: 15 U.S.C. 3719

Award Approving Official: Philip E. Bourne, Associate Director, NIH OD.

SUMMARY: The National Institutes of Health (NIH) Office of the Associate

Director for Data Science (ADDS) announces a collaboration with the Wellcome Trust (WT) and the Howard Hughes Medical Institute (HHMI) to launch the “Open Science Prize” (the “Challenge”) to encourage and support the prototyping and development of services, tools and/or platforms that enable open content—including publications, datasets, code and other research outputs—to be discovered, accessed and re-used in ways that will advance research, spark innovation, and generate new societal benefits. The Challenge is necessary to accelerate the field of “open” biomedical research beyond what current funding mechanisms can achieve. For the NIH, this Challenge is being launched under the America COMPETES Reauthorization Act of 2010.

DATES:

February 29, 2016: Phase I submissions due

April 30, 2016: Announce Phase I winners; Phase II begins

December 1, 2016: Phase II submissions due

February 28, 2017: Phase II winner announced

The NIH will announce any changes to the timeline by amending this **Federal Register** notice.

ADDRESSES: To register for this Challenge, Challenge participants may access the registration on the Challenge Web site (www.openscienceprize.org). Access to this Web site may also be found by searching the www.challenge.gov site for the “Open Science Prize.”

FOR FURTHER INFORMATION CONTACT:

Audie A. Atienza, Ph.D. (NIH), Audie.Atienza@nih.gov; Vinay Pai, Ph.D. (NIH), paiv@mail.nih.gov; David Carr (Wellcome Trust), d.carr@wellcome.ac.uk.

SUPPLEMENTARY INFORMATION:

Subject of Challenge

In order to stimulate innovation, the National Institutes of Health (NIH) Office of the Associate Director for Data Science (ADDS), in conjunction with Challenge Partners, the Wellcome Trust (WT) and the Howard Hughes Medical Institute (HHMI), is launching the “Open Science Prize” (the “Challenge”); a prize competition to inspire the prototyping and development of services, tools, or platforms that enable open content—including publications, datasets, code and other research outputs—to be discovered, accessed and re-used in ways that will advance research, spark innovation and generate new societal benefits. The NIH is using the America Creating Opportunities to

Meaningfully Promote Excellence in Technology, Education, and Science (COMPETES) Reauthorization Act of 2010 to support this Challenge.

The goal of this Challenge is to stimulate the development of novel and ground-breaking tools and platforms to enable the reuse and repurposing of open digital research objects (e.g. data, publications, other research outputs) relevant to biomedical or health applications. The volume of digital objects for research available to researchers and the wider public is greater now than ever before, and so, consequently, are the opportunities to mine and extract value from existing open content and to generate new discoveries and other societal benefits. A key obstacle in realizing these benefits is the discoverability of open content, and the ability to access and utilize it.

This Challenge provides a new and innovative avenue for developing the best ideas in this arena. Through the Challenge, the NIH, WT, and HHMI hope to encourage novel ideas and innovations that seek to unlock the vast potential benefits of making biomedical/health content and data open and re-useable, to demonstrate the huge potential value of open science approaches, and to generate excitement, momentum, and further investment. This Challenge also encourages international collaborations among technology innovators, health researchers, and biomedical informatics entities to address “Open Science” development. In building partnerships between innovators in the U.S. and abroad, unique resources can be combined and leveraged to facilitate global health research objectives relevant to the mission of the NIH, increase rapid adoption of Open Science research tools across the globe, and enhance the generalizability of data sharing among researchers and practitioners internationally.

The NIH, WT, and HHMI are seeking to utilize the developer challenge model in the area of “Open Science” that is as open, flexible, and interactive as possible, so as to encourage the development of new collaborations as well as new ideas. Solvers are invited to use innovative approaches to develop applications and platforms that integrate, repurpose and/or repackage open digital resources relevant to health and biomedical research. The Challenge is open both to those who have new ideas and require some funding to take it to the prototype stage, and those with initial early-stage prototypes who wish to develop them further for cross-national or international adoption.

There will be two (2) phases to this Challenge. For Phase I, Solvers will submit written proposals for prototype designs and development plans to enable the reuse and repurposing of open digital research objects relevant to biomedical or health applications. For Phase II, Solvers (*i.e.*, Phase I finalists) will submit their prototypes.

Statutory Authority

Pursuant to Section 402 of the Public Health Service Act, 42 U.S.C. 282(b)(12), the NIH is authorized to reserve funds to provide for research on matters that have not received significant funding relative to other matters, to respond to new issues and scientific emergencies, and to act on research opportunities of high priority. The Open Science Prize is designed to incentivize innovation at the intersection of Open Science (*i.e.*, making scientific data and research outputs available and accessible to all levels of society) and Data Science (*i.e.*, developing and utilizing research methods and designs that optimize the exploration and analysis of complex and/or large data sets; biomedical data in this case). Open Science and Data Science are two emerging fields within biomedical research and represent research opportunities of high priority within the NIH.

Official Rules

1. To Participate. This Challenge is open to any "Solver" where "Solver" is defined as (a) a group of individuals where at least one individual is a citizen or permanent resident of the United States, and at least one individual is citizen or permanent resident from a country other than the United States; or (b) a group of two or more public or private entities where at least one entity is incorporated in and maintains a primary place of business in the United States, and at least one entity is incorporated in and maintains a primary place of business in a country other than the United States. Phase II of this Challenge is open to Phase I winners only. Individuals participating in the Challenge who are younger than 18 years of age, whether as part of a team of individuals or a team of entities, must have their parent or legal guardian complete the Parental Consent Form found at www.openscienceprize.org.

2. Eligibility Rules for Winning the Challenge. To be eligible to win a prize for this Challenge, the Solver and its members, as applicable, shall have complied with all the Official Rules.

3. In addition to satisfying the above eligibility requirements—

a. The Solver shall have registered to participate in the Challenge under the

rules promulgated by the sponsoring organizations (NIH, WT, HHMI) (as published in this notice);

b. The Solver shall have complied with all the requirements under this section;

c. The Solver, including each entity member, may not be a U.S. federal entity;

d. The Solver, including each individual member, may not be a U.S. federal employee acting within the scope of his or her employment and further, in the case of the U.S. Department of Health and Human Services employees may not work on their Entries during assigned duty hours. Note: Federal ethical conduct rules may restrict or prohibit U.S. federal employees from engaging in certain outside activities, so any federal employee not excluded under the prior paragraph seeking to participate in this Challenge outside the scope of employment should consult his/her agency's ethics official prior to developing an Entry; and

e. The Solver, including each individual member, may not be an employee of the NIH, a judge of the Challenge, or any other party involved with the design, production, execution, or distribution of the Challenge or the immediate family member of such a party (*i.e.*, spouse, parent, step-parent, or step-child). Without limiting the generality of the foregoing, Expert Science Advisors who will provide comments on the entries and the NIH Judges, as well as their students, are not eligible to participate in the Challenge.

f. Note on Awards: Monetary prizes provided by the WT and HHMI for the Challenge will be awarded separately from the NIH monetary prizes.

i. NIH monetary prizes: In the case of individuals participating on a team of individuals, only individuals who are citizens or permanent residents of the United States are eligible for the NIH monetary prizes. Individuals who are not citizens or permanent residents of the United States can participate as a member of a team that otherwise satisfies the eligibility criteria but will not be eligible to win an NIH monetary prize (in whole or in part); however, their participation as part of a winning team, if applicable, may be recognized by the NIH when results are announced. In the case of private entities participating on a team of entities, only entities incorporated in and maintaining a primary place of business in the United States are eligible for the NIH monetary prizes. Private entities that are not incorporated in and do not maintain a primary place of business in the United States will not be eligible to win

an NIH monetary prize (in whole or in part); however, should such an entity collaborate with a winning, and otherwise eligible, team such an entity may be recognized by the NIH when results are announced.

ii. WT/HHMI monetary prizes. U.S. citizenship/residency (for individuals) or U.S. incorporation/place of business (for entities) is not a requirement to be eligible for the monetary prizes awarded by WT/HHMI.

4. Federal grantees may not use federal funds (*e.g.*, NIH grants) to develop Challenge Entries unless consistent with the purpose of their grant award and specifically requested to do so due to the Challenge design, and as announced in the **Federal Register**.

5. Federal contractors may not use federal funds from a contract (*e.g.*, NIH contract) to develop Challenge Entries or to fund efforts in support of a Challenge Entry.

6. Any Solver that is or has a member currently on the Excluded Parties List (https://www.sam.gov/sam/transcript/Public_-_Identifying_Excluded_Entities.pdf & <http://www.epa.gov/isdc/exclude.htm>) will not be selected as a prize winner.

7. Entries must not infringe upon any copyright or any other rights of any third party.

8. A Solver shall not be deemed ineligible to win because the Solver used U.S. federal facilities or consulted with U.S. federal employees during the Challenge, provided that such facilities and/or employees, as applicable, are made available on an equitable basis to all Solvers participating in the Challenge.

9. Each Solver agrees to follow applicable local, state, and federal laws, regulations, and policies.

10. Each Solver must comply with all terms and conditions of these rules, and participation in this Challenge constitutes each such Solver's full and unconditional agreement to abide by these rules, which may also be found on the Challenge Web site (www.openscienceprize.org). Winning is contingent upon fulfilling all requirements herein.

11. The NIH reserves the right, in its sole discretion, to (a) cancel, suspend, or modify the Challenge, and/or (b) not award prizes if no Entries are deemed worthy.

All questions regarding the Challenge should be directed to Dr. Atienza, Dr. Pai, or Mr. Carr identified above, and answers will be posted and updated as necessary at (www.openscienceprize.org) under Frequently Asked Questions.

Registration Process for Participants

To register for this Challenge, Solvers may access the registration on the Challenge Web site (www.openscienceprize.org). Access to this Web site may also be found by searching the www.challenge.gov site for the "Open Science Prize". As described above in the eligibility section of the Official Rules, Solvers must establish an international collaborative team; specifically, either (a) a team of two or more individuals where at least one individual is a citizen or permanent resident of the United States, and at least one individual is citizen or permanent resident from a country other than the United States; or (b) a group of two or more public or private entities where at least one entity is incorporated in and maintains a primary place of business in the United States, and at least one entity is incorporated in and maintains a primary place of business in a country other than the United States. Additional details about participating as a team are provided below:

1. Each team must have two team leaders; one from the U.S. and one from outside of the U.S.
2. All members of the team need to be listed during registration.
3. There is no maximum team size.

Challenge Entries

As used in this notice, "Entry" is the information submitted in the manner and format specified on the "Open Science Prize" Web site (www.openscienceprize.org) including without limitation computer programs, source code and object code. All Entries must be received by the applicable deadline. Entries submitted after a posted Challenge deadline will not be considered.

Entries may be submitted on behalf of a team by any of its members. It is up to each team to organize its Entry(ies) and to follow the Challenge submission requirements. On submission of an Entry of the Challenge, the Solver must include the team name under which the Entry is submitted.

All final Entries must be submitted through the Challenge Web site, following Web site instructions and should provide necessary and sufficient detail and annotation for reproduction of the submitted results.

Information accompanying each *Phase I* Entry should include:

1. Title of project.
2. Name of team.
3. Names, field of expertise and residency of the Solver's team members.
4. A written proposal describing the solution, no longer than 15,000

characters (not including spaces). This should include: An executive summary of 300 words maximum; identification of open content to be used; and a description of if, how, and under what license terms the team intends to make any of the computer code that is part of the Entry available to the public. Note: Executive summaries for all applications will be shared via the prize Web site without exception and licensed under the Creative Commons Attribution 4.0 License (CC BY 4.0), so applicants should not include proprietary information in their summary or any other information they are not prepared to be openly available.

5. Link to a Web presence of the proposed solution.
6. Information about how the Solver learned about the Challenge.

Information accompanying each *Phase II* Entry should include:

1. Title of project.
2. Name of team.
3. Names, field of expertise and residency of Solver's team members.
4. Description/specification of the prototype developed and potential future impact of the prototype, no longer than 15,000 characters (not including spaces).
5. Link to a Web presence of the prototype.
6. Web site URL to access the prototype and relevant instructions (1 page).

Only complete Entries, which follow application instructions, will be reviewed and eligible to win. The NIH and Challenge Partners reserve the right to disqualify any Challenge participants in instances where cheating or other misconduct is identified. Details regarding the dispute resolution process are provided on the Challenge Web site (www.openscienceprize.org).

Warranties

By submitting an Entry to the Challenge, each Solver represents and warrants that all information provided in the Entry and as a result of the Challenge registration process is true and complete, that Solver has the right and authority to submit such Entry on the Solver's own behalf or on behalf of the persons and entities specified within the Entry, and that the Entry:

1. Is the Solver's own original work, or is used by permission with full and proper credit given within the Entry;
2. Does not contain confidential information or trade secrets (the Solver's or anyone else's);

3. Does not violate or infringe upon the patent rights, industrial design rights, copyrights, trademarks, rights of privacy, publicity or other intellectual property or other rights of any person or entity;
4. Does not contain malicious code, such as viruses, timebombs, cancelbots, worms, trojan horses or other potentially harmful programs or other material or information;
5. Does not and will not violate any applicable law, statute, or regulation; and
6. Does not trigger any reporting or royalty obligation to any third party.

Amount of the Prize

During Phase I, up to six (6) winners may be identified. The NIH may award up to three (3) winning teams monetary prizes of \$80,000 per team. The WT/HHMI may award up to three (3) winning teams monetary prizes of \$80,000 per team.

During Phase II, one (1) Entry will be awarded a grand prize of up to \$230,000. The NIH will award \$115,000 to the U.S. member(s) of the winning team, and the WT/HHMI will award \$115,000 to the winning team. For the NIH awards, prizes will be awarded by the NIH Contractor, Capital Consulting Corporation.

The top 6 Entries (grand prize winner and the 5 runner-ups) may be highlighted on the Challenge and the NIH ADDS Web sites pending selection by the NIH.

The NIH reserves the right to cancel, suspend, and/or modify this Challenge at any time through amendment to this **Federal Register** notice. In the event the Challenge is modified, Solvers registered in the Challenge will be notified by email and provided with a copy of the amended Challenge rules and a listing of the changes that were made. Any Solver who continues to participate in the Challenge following receipt of such a notice of amendment(s), will be deemed to have accepted any such amendment(s). If a Solver does not wish to continue to participate in the Challenge pursuant to the Official Rules, as amended, such Solver may terminate participation in the Challenge by not submitting additional Entries. The NIH reserves the right to not award prizes if no Entries are deemed worthy.

Basis Upon Which Winner Will Be Selected

Entries will be scored by the Challenge Judges using the criteria listed below.

- Advancement of Open Science—To what extent does the proposal/prototype advance the goals of open science in biomedical/health research, and fulfill the goals of openness in terms of the product and way of working? To what extent would it move the field forward?

- Impact—What level of impact and benefit could the proposal—if successful—deliver to the research enterprise and health research? Does the proposal/prototype address implementation in multiple settings in a cross-national manner?

- Innovation—What level of creativity and technological innovation does the entrant demonstrate?

- Originality—Is the technology or service genuinely novel and targeting an unmet need? Has the applicant evaluated other existing or alternative approaches, or delineated their approach in comparison to existing approaches (if applicable)?

- Technological viability—Is the approach proposed viable? Can the proposed technology deliver?

- Resource feasibility—Does the team have the required skills and resources?

Judges will rate each entry on five-point scale from Not-fundable (1) to Outstanding (5). The NIH and WT will hold separate judging panels, and then will discuss priorities for selection of the respective winners (in Phase I), and the final winner (in Phase II).

For Phase II, public voting will select the top 3 prototypes of the 6 Phase I finalist, followed by a review of the prototypes for feasibility and technical merit by external advisors with expertise in Open Science. Prototypes will then be scored by Judges using the initial Phase I criteria.

Intellectual Property

By submitting an Entry, each Solver warrants that he or she is the sole author and owner of any copyrightable works that the Entry comprises (or has obtained sufficient rights in any copyrightable works owned by third parties to satisfy its obligations set forth herein), that the works are wholly original with the Solver (or is an improved version of an existing work that the Solver has sufficient rights to use and improve), and that the Entry does not infringe any copyright or any other rights of any third party of which Solver is aware.

To receive an award, Solvers will not be required to transfer their intellectual property rights to the NIH or the Challenge Partners. Each Solver retains title to their Entry, including object and source code, and expressly reserves all intellectual property rights (*e.g.*, copyrights and rights to inventions and

patents that cover them) in their Entry, unless the Solver chooses an open license for the Entry. By participating in the Challenge each Solver grants to the U.S. government a nonexclusive, non-transferrable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any invention throughout the world owned or controlled by the Solver that covers the Entry, and grants to the U.S. government and others acting on behalf of the U.S. government, a royalty-free, irrevocable, non-exclusive worldwide license to use, reproduce, and display publicly all parts of the Entry for the purposes of the Challenge. This license includes without limitation posting or linking to the Entry on the official Challenge Web site and, except for object code or source code, making the Entry available for research use by the public. Notwithstanding the above and consistent with the principal objective of the challenge to make results widely available to the public, the NIH encourages the Solver to distribute any computer code (object code and preferably also source code) that is part of the Entry to the public under a liberal open source license that permits the public to benefit from and improve upon the Entry (see the licenses available at <http://opensource.org/licenses/>). The Solver should include in its submission a description of how and under what license terms it intends to make any computer code that is part of the Entry available to the public.

Solvers are free to discuss their Entry and the ideas or technologies that it contains with other parties, encouraged to share ideas/technologies publicly, and are free to contract with any third parties, as long as they do not sign any agreement or undertake any obligation that conflicts with the Challenge rules set forth herein. For the purpose of clarity, Solvers acknowledge that the intent of the Challenge is to encourage people to collaborate and share ideas and innovations.

Liability and Indemnification

By participating in this Challenge, each Solver agrees to assume any and all risks and waive claims against the U.S. federal government and its related entities (as defined in the COMPETES Act), including Capital Consulting Corporation, the Challenge Expert Science Advisors and Judges, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this Challenge, whether the injury, death, damage, or loss arises through negligence or

otherwise. By participating in this Challenge, each Solver agrees to indemnify the federal government and the Capital Consulting Corporation against third party claims for damages arising from or related to Challenge activities.

Insurance

Based on the subject matter of the Challenge, the type of work that it will possibly require, as well as an analysis of the likelihood of any claims for death, bodily injury, or property damage, or loss potentially resulting from competition participation, Solvers are not required to obtain liability insurance or demonstrate financial responsibility in order to participate in this Challenge.

Dated: September 28, 2015.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2015-26392 Filed 10-19-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: November 3, 2015.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Democracy Blvd., Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Yin Liu, Ph.D., MD, Scientific Review Officer Scientific Review Branch National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institute of Health Bethesda, MD 20892, 301-496-0505, liuy@mail.nih.gov.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: November 4, 2015.

Time: 9:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Democracy Blvd., Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Yin Liu, Ph.D., MD, Scientific Review Officer Scientific Review Branch National Institute of Arthritis, and Musculoskeletal and Skin Diseases National Institute of Health Bethesda, MD 20892, 301-496-0505, liuy@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 14, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-26563 Filed 10-19-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, October 26, 2015, 01:30 p.m. to October 26, 2015, 05:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on September 28, 2015, 80 FR 58272.

This meeting is being amended to add a panel name. The panel name is "Fellowships and Dissertation Grants." The meeting is closed to the public.

Dated: October 14, 2015.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-26560 Filed 10-19-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, October 14, 2015, 3:00 p.m. to October 14, 2015, 5:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 which was published in the

Federal Register on September 18, 2015, 80 FR 56474.

This meeting is being amended to add a panel name. The panel name is "Career Award." The meeting is closed to the public.

Dated: October 14, 2015.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-26561 Filed 10-19-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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: Microbiology, Infectious Diseases and AIDS Initial Review Group; Acquired Immunodeficiency Syndrome Research Review Committee.

Date: November 9-10, 2015.

Time: November 9, 2015, 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3F100, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Time: November 10, 2015, 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 8F100, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Brenda L. Fredericksen, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room #3G22A, National Institutes of Health/NIAD, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892-9823, (240) 669-5052, brenda.fredericksen@nih.gov.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Limited Competition: International Epidemiology Databases to Evaluate AIDS (IeDEA) (U01).

Date: November 16-17, 2015.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 4F100, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Kelly Y. Poe, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3F40B, National Institutes of Health, NIAD, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892-9823, (240) 669-5036, poeky@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 14, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-26555 Filed 10-19-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Transition to Independence Review Committee.

Date: November 5-6, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Giuseppe Pintucci, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892, 301-435-0287, Pintuccig@nhlbi.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases

and Resources Research, National Institutes of Health, HHS)

Dated: October 14, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-26504 Filed 10-19-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Risk Genes and Environment Interactions in NTDs.

Date: December 3, 2015.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Dennis E. Leszczynski, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892-9304, (301) 435-6884, leszczynski@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 14, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-26505 Filed 10-19-15; 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 (5 U.S.C. App.), 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; HIV/AIDS Innovative Research Applications.

Date: November 4-5, 2015.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20899, (Virtual Meeting).

Contact Person: Jingsheng Tuo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, Bethesda, MD 20892, 301-451-8754, tuoj@nei.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Discovery and Development of Therapeutics Study Section.

Date: November 5, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Olympic Hotel, 411 University Street, Seattle, WA 98119.

Contact Person: Shiv A. Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301-443-5779, prasads@csr.nih.gov.

Name of Committee: AIDS and Related Research Integrated Review Group; Behavioral and Social Science Approaches to Preventing HIV/AIDS Study Section.

Date: November 9-10, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301-435-1137, guerriej@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Obesity and Diabetes Topics.

Date: November 10, 2015.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Antonello Pileggi, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6166, Bethesda, MD 20892-7892, (301) 402-6297, pileggia@csr.nih.gov.

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS-associated Opportunistic Infections and Cancer Study Section.

Date: November 13, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Eduardo A. Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435-1168, montalve@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 14, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-26553 Filed 10-19-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; NIAMS P30 MSK Review Meeting.

Date: November 12–13, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Xincheng Zheng, MD, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 820, Bethesda, MD 20892, 301-451-4838, xincheng.zheng@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 14, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-26562 Filed 10-19-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following 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 Human Genome Research Institute Special Emphasis Panel; T32.

Date: November 24, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, 3rd Floor (Office), 5635 Fishers Lane, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Scientific Review

Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301-402-0838, nakamurk@mail.nih.gov.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Interpreting Variation in Human Non-Coding Genomic—FunVar (NCV RFA).

Date: November 24, 2015.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, 3rd Floor Conference Room, 5635 Fishers Lane, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301-594-4280, mckenneyk@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 14, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-26565 Filed 10-19-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of Biological and Physiological Effects of E-cigarette Aerosol Mixtures.

Date: November 16, 2015.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Victor Henriquez, Ph.D., Scientific Review Officer, DEA/SRB/NIDCR, 6701 Democracy Blvd., Room 668, Bethesda, MD 20892-4878, 301-451-2405, henriquv@nidcr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: October 14, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-26556 Filed 10-19-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR12-265 Ancillary Clinical Studies in Chronic Kidney Disease.

Date: November 12, 2015.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, 301-594-2242, jerkinsa@nidk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 14, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-26501 Filed 10-19-15; 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 (5 U.S.C. App.), 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; Dermatology and Rheumatology.

Date: November 6, 2015.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Aruna K Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301-435-6809, beheraak@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Risk, Prevention and Health Behavior.

Date: November 9-10, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Martha M Faraday, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, (301) 435-3575, faradaym@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Orthopedic and Skeletal Biology.

Date: November 9, 2015.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Baljit S Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301-435-1777, moongabs@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Health and Behavior.

Date: November 9, 2015.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Weijia Ni, Ph.D., Chief, Risk Prevention and Health Behavior IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 237-9918, niw@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Skeletal Muscle Exercise and Myalgia.

Date: November 10, 2015.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301-435-1212, kumarra@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR-15-024: Molecular Profiles and Biomarkers of Food and Nutrient Intake.

Date: November 10, 2015.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gregory S Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, Bethesda, MD 20892-7892, (301) 435-0492, shelnessgs@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Endocrinology, Metabolism, Nutrition and Reproductive Sciences.

Date: November 12, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301-435-1154, dianne.hardy@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member

Conflict: Cellular Mechanisms of Metabolism and Obesity.

Date: November 13, 2015.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301-435-0229, gary.hunnicutt@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 14, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-26552 Filed 10-19-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation Cooperative Agreements (U01).

Date: November 5, 2015.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3G61, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Brenda Lange-Gustafson, Ph.D., Scientific Review Officer, NIAID/NIH/DHHS, Scientific Review Program, 5601 Fishers Lane, Room 3G13, Rockville, MD

20852, 240-669-5047, bgustafson@niaid.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Lasker Clinical Research Scholars Program.

Date: November 12, 2015.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 5F100, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Amstad, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G41, NIAID/NIH/DHHS, 5601 Fishers Lane, Bethesda, MD 20892-7616, 240-669-5067, pamstad@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 14, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-26554 Filed 10-19-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following 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 Human Genome Research Institute Special Emphasis Panel, Undiagnosed Diseases Gene Function Research (R21).

Date: November 3, 2015.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, 3rd Floor Conference Room, 5635 Fishers Lane, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301-594-4280, mckenneyk@mail.nih.gov.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, Analysis Centers.

Date: November 4, 2015.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, 3rd Floor Conference Room, 5635 Fishers Lane, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lita Proctor, Ph.D., Extramural Research Programs Staff, Program Director, Human Microbiome Project, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20892, 301 496-4550, proctorlm@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 14, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-26558 Filed 10-19-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Automated Commercial Environment (ACE) Export Manifest for Vessel Cargo Test; Correction

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: General notice; correction.

SUMMARY: U.S. Customs and Border Protection (CBP) published in the **Federal Register** on August 20, 2015, a document announcing plans to conduct the Automated Commercial Environment (ACE) Export Manifest for Vessel Cargo Test, a National Customs Automation Program (NCAP) test concerning ACE export manifest capability. The notice misstated the technical capability requirements for submitting data to CBP. This document corrects this error.

FOR FURTHER INFORMATION CONTACT: Vincent C. Huang, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs & Border Protection, via email at cbpvessellexportmanifest@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

U.S. Customs and Border Protection (CBP) published in the **Federal Register**

on August 20, 2015 (80 FR 50644), a notice announcing plans to conduct the Automated Commercial Environment (ACE) Export Manifest for Vessel Cargo Test, a National Customs Automation Program (NCAP) test concerning ACE export manifest capability. The notice misstated the technical capability requirements for submitting data to CBP. The correct requirements are set forth below.

The August 20, 2015 notice stated that prospective ACE Export Manifest for Vessel Cargo Test participants must have the technical capability to electronically submit data to CBP and receive response message sets via Cargo-IMP, AIR CAMIR, XML, or Unified XML, and must successfully complete certification testing with their client representative. However, the correct acceptable message sets are Ocean CAMIR, ANSI X12, or Unified XML. Prospective ACE Export Manifest for Vessel Cargo Test participants must have the technical capability to electronically submit data to CBP and receive response message sets via Ocean CAMIR, ANSI X12, or Unified XML, and must successfully complete certification testing with their client representative.

Correction

In notice document FR Doc. 2015-20614 published on August 20, 2015 (80 FR 50644), make the following correction on page 50647, third column, second full paragraph, third sentence in the “*Eligibility Requirements*” section:

Remove “Cargo-IMP, AIR CAMIR, XML, or Unified XML,” and add in its place, “Ocean CAMIR, ANSI X12, or Unified XML.”. The revised sentence reads as follows: “Prospective ACE Export Manifest for Vessel Cargo Test participants must have the technical capability to electronically submit data to CBP and receive response message sets via Ocean CAMIR, ANSI X12, or Unified XML, and must successfully complete certification testing with their client representative.”

Dated: October 14, 2015.

Joanne Roman Stump,

Acting Director, Regulations and Disclosure Law Division, U.S. Customs and Border Protection.

[FR Doc. 2015-26538 Filed 10-19-15; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Entry Type 52 and Certain Other Modes of Transportation

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to modify the National Customs Automation Program (NCAP) test concerning Cargo Release in the Automated Commercial Environment (ACE) to allow importers and brokers to file electronically entry type 52, in addition to entry types 01, 03, and 11 that are already available for electronic filing, for merchandise arriving by truck, rail, vessel, and air, as well as arriving by mail, pedestrian, and passenger (hand-carried).

DATES: The ACE Cargo Release test modifications set forth in this document will begin on or about November 19, 2015. This test will continue until concluded by way of a document published in the **Federal Register**. Public comments are invited and will be accepted for the duration of the test.

ADDRESSES: Comments concerning this notice and any aspect of this test may be submitted at any time during the test via email to Josephine Baiamonte, Director, Business Transformation, ACE Business Office, Office of International Trade, at josephine.baiamonte@cbp.dhs.gov. In the subject line of your email, please use, "*Comment on Expansion of Automated Entry Type 52 for ACE Cargo Release.*"

FOR FURTHER INFORMATION CONTACT: For technical questions related to the Automated Commercial Environment (ACE) or Automated Broker Interface (ABI) transmissions, contact your assigned client representative. Interested parties without an assigned client representative should direct their questions to Steven Zaccaro at steven.j.zaccaro@cbp.dhs.gov with the subject heading "*Automated Entry Type 52 for ACE Cargo Release—Request to Participate.*"

SUPPLEMENTARY INFORMATION:

I. Background

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs

Modernization (Customs Modernization Act) in the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057 (19 U.S.C. 1411). Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for processing commercial trade data which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions.

CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace specific legacy ACS functions. Each release will begin with a test and, if the test is successful, will end with the mandatory use of the new ACE feature, thus retiring the legacy ACS function. Each release builds on previous releases and sets the foundation for subsequent releases.

For the convenience of the public, a chronological listing of **Federal Register** publications detailing ACE test developments is set forth below in Section XVI, entitled, "Development of ACE Prototypes." The procedures and criteria applicable to participation in the ACE Cargo Release test and prior ACE tests remain in effect except as explicitly changed by this notice or subsequent notices published in the **Federal Register**.

II. Authorization for Modification of the ACE Cargo Release Test

The Customs Modernization Act provides the Commissioner of CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The ACE Cargo Release Test, as modified in this notice, is authorized pursuant to § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)), which provides for the testing of NCAP programs or procedures. See Treasury Decision (T.D.) 95–21, 60 FR 14211 (March 16, 1995).

III. ACE Cargo Release Test

On November 9, 2011, CBP published in the **Federal Register** (76 FR 69755) a notice announcing an NCAP test

concerning ACE Simplified Entry to simplify the entry process for type "01" (consumption) and type "11" (informal) commercial entries by reducing the number of data elements required to obtain release for cargo imported by air. In a general notice titled "Modification of National Customs Automation Program Test Concerning Automated Commercial Environment (ACE) Cargo Release," published in the **Federal Register** (78 FR 66039) on November 4, 2013, CBP modified the ACE Simplified Entry Test and renamed it the ACE Cargo Release Test. The ACE Cargo Release Test provided additional capabilities to test participants and expanded eligibility by eliminating the Customs-Trade Partnership Against Terrorism (C-TPAT) status requirement for importer self-filers and customs brokers. On February 3, 2014, CBP published a notice in the **Federal Register** (79 FR 6210) announcing modification of the ACE Cargo Release Test to include the ocean and rail modes of transportation. CBP further modified the ACE Cargo Release Test in a notice published in the **Federal Register** on May 2, 2014 (79 FR 25142) to expand the enhanced functionality under the test to include cargo imported by truck. On February 10, 2015, CBP published a notice in the **Federal Register** (80 FR 7487) to modify the name of one data element (*i.e.*, consignee number) and allow authorized importer and customs brokers to submit the ACE Cargo Release entry and Importer Security Filing (ISF) in a combined transmission to CBP. On March 27, 2015, CBP published a notice in the **Federal Register** (80 FR 16414) modifying the ACE Cargo Release Test to include type 03 entries (for merchandise subject to antidumping or countervailing duties) for all modes of transportation and to file, for cargo transported in the truck mode, entries for split shipments or partial shipments, and entry on cargo that has been moved in-bond from the U.S. port of unloading.

IV. Modifications of ACE Cargo Release Test

This notice announces that CBP will modify the ACE Cargo Release test in order to allow brokers and importers, who are also ACE participants, to file electronically, for air, ocean, rail, and truck modes of transportation as well as for mail, pedestrian, and passenger (hand-carried) modes of transportation, a simplified entry for the release of cargo for entry type 52 (*i.e.*, Government—Dutiable (other than the Defense Contract Management Command (DCMAO))), in addition to filing a simplified entry for the release of cargo for entry types 01, 03, and 11.

V. Eligibility Requirements

To be eligible to apply for this test, the applicant must: (1) Be a self-filing importer or broker who has the ability to file ACE Cargo Release, the corresponding entry summary in ACE, and to file ACE Entry Summary certified for cargo release; or (2) have shown the intent to file ACE Cargo Release, the corresponding entry summary in ACE, and to file ACE Entry Summary certified for cargo release.

Parties seeking to participate in this test must use a software package that has completed Automated Broker Interface (ABI) certification testing for ACE and offers the ACE Cargo Release (SE) message set prior to transmitting data under the test. For a complete discussion on procedures for obtaining an ACE Portal Account, please see the General Notice, 73 FR 50337 (August 26, 2008). Any importers not self-filing must ensure its broker has the capability to file entry summaries in ACE.

VI. Test Participation Selection Criteria

The ACE Cargo Release test is open to all importers and customs brokers filing ACE Entry Summaries for cargo transported by air, ocean, rail, and truck modes of transportation, as well as by mail, pedestrian, and passenger (hand-carried) modes of transportation. If the volume of eligible applicants exceeds CBP's administrative capabilities, CBP will reserve the right to select importer and exporter participants based upon entry filing volume, diversity of clients or of industries represented, while giving consideration to the order in which CBP received the requests to participate.

Any party seeking to participate in this test must provide CBP, as part of its request to participate, its filer code and the port(s) at which it is interested in filing ACE Cargo Release transaction data. ACE Cargo Release data may be submitted at all ports of entry for entry type 52 as of November 19, 2015, and for authorized entry types, *i.e.*, entry types 01, 03, 11, which are already available for electronic filing.

Applicants will be notified by a CBP client representative if they have been selected to participate in this test.

VII. Filing Capabilities and Requirements

The filing capabilities and functionalities for the ACE Cargo Release tests that are set forth in the above-mentioned **Federal Register** notices (*i.e.*, 76 FR 69755, 78 FR 66039, 79 FR 6210, 79 FR 25142, 80 FR 7487, and 80 FR 16414) continue to apply and are now expanded to include ACE-

participating importers and customs brokers filing type 52 entries, to allow automated filing and processing for cargo conveyed by any mode of transportation, including by the air, ocean, rail, and truck modes of transportation. The ACE Cargo Release filing capabilities serve to assist the importer in completion of entry as required by the provisions of 19 U.S.C. 1484(a)(1)(B). Participants in this test who file ACE Cargo Release data must also file the corresponding entry summary in ACE. Alternatively, test participants may file an ACE Entry Summary certified for release in lieu of an ACE Cargo Release.

VIII. Functionality

Upon receipt of the ACE Cargo Release data, CBP will process the submission and will subsequently transmit its cargo release decision to the importer or entry filer. If a subsequent submission is submitted to CBP, CBP's decision regarding the original submission will no longer be controlling. The merchandise will then be considered to be entered upon its arrival in the port of entry with the intent to unlade, as provided by current 19 CFR 141.68(e).

IX. Test Duration

This modified ACE Cargo Release test will begin on or about November 19, 2015. This test will conclude by way of a document published in the **Federal Register**.

X. Comments

All interested parties are invited to comment on any aspect of this test at any time. CBP requests comments and feedback on all aspects of this test, including the design, conduct and implementation of the test, in order to determine whether to modify, alter, expand, limit, continue, end, or fully implement this program.

XI. Waiver of Regulations Under This Test

For purposes of this test, any provision in title 19 of the Code of Federal Regulations including, but not limited to, the provisions found in parts 18, 141, 142, and 143 thereof relating to entry filing and processing that are inconsistent with the requirements set forth in this notice are waived for the duration of the test. *See* 19 CFR 101.9(b). This document does not waive any recordkeeping requirements found in part 163 of title 19 of the Code of Federal Regulations (19 CFR part 163) and the Appendix to part 163 (commonly known as the "(a)(1)(A) list").

XII. Previous Notices

All requirements, terms and conditions, and aspects of the ACE test discussed in previous notices are hereby incorporated by reference into this notice and continue to be applicable, unless changed by this notice.

XIII. Paperwork Reduction Act

The collection of information for the ACE Cargo Release Test and ISF have been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507). The OMB information collection number for the ACE Cargo Release Test is 1651-0024 and the OMB information collection number for ISF is 1651-0001. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

XIV. Confidentiality

All data submitted and entered into ACE is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law. As stated in previous notices, participation in this or any of the previous ACE tests is not confidential and upon a written Freedom of Information Act (FOIA) request, a name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

XV. Misconduct Under the Test

A test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, or discontinuance from participation in this test for any of the following:

- (1) Failure to follow the terms and conditions of this test;
- (2) Failure to exercise reasonable care in the execution of participant obligations;
- (3) Failure to abide by applicable laws and regulations that have not been waived; or
- (4) Failure to deposit duties or fees in a timely manner.

If the Director, Business Transformation, ACE Business Office (ABO), Office of International Trade, finds that there is a basis for discontinuance of test participation privileges, the test participant will be provided a written notice proposing the discontinuance with a description of the facts or conduct warranting the action. The test participant will be offered the opportunity to appeal the Director's decision in writing within 10 calendar days of receipt of the written notice. The

appeal must be submitted to Acting Executive Director, ABO, Office of International Trade, by emailing *Deborah.Augustin@cbp.dhs.gov*.

The Acting Executive Director will issue a decision in writing on the proposed action within 30 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the proposed notice becomes the final decision of the Agency as of the date that the appeal period expires. A proposed discontinuance of a test participant's privileges will not take effect unless the appeal process under this paragraph has been concluded with a written decision adverse to the test participant.

In the case of willfulness or those in which public health, interest, or safety so requires, the Director, Business Transformation, ABO, Office of International Trade, may immediately discontinue the test participant's privileges upon written notice to the test participant. The notice will contain a description of the facts or conduct warranting the immediate action. The test participant will be offered the opportunity to appeal the Director's decision within 10 calendar days of receipt of the written notice providing for immediate discontinuance. The appeal must be submitted to Acting Executive Director, ABO, Office of International Trade, by emailing *Deborah.Augustin@cbp.dhs.gov*. The immediate discontinuance will remain in effect during the appeal period. The Executive Director will issue a decision in writing on the discontinuance within 15 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

XVI. Development of ACE Prototypes

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004); 70 FR 5199 (February 1, 2005).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).

- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).

- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).

- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).

- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).

- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).

- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).

- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).

- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).

- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).

- Modification of NCAP Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).

- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE): 78 FR 44142 (July 23, 2013).

- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction: 78 FR 53466 (August 29, 2013).

- Modification of NCAP Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).

- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434 (November 19, 2013).

- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection

Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).

- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).

- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release to Allow Importers and Brokers to Certify From ACE Entry Summary: 79 FR 24744 (May 1, 2014).

- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Truck Carriers: 79 FR 25142 (May 2, 2014).

- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System: 79 FR 36083 (June 25, 2014).

- Announcement of eBond Test: 79 FR 70881 (November 28, 2014).

- eBond Test Modifications and Clarifications: Continuous Bond Executed Prior to or Outside the eBond Test May Be Converted to an eBond by the Surety and Principal, Termination of an eBond by Filing Identification Number, and Email Address Correction: 80 FR 899 (January 7, 2015).

- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System Relating to Animal and Plant Health Inspection Service (APHIS) Document Submissions: 80 FR 5126 (January 30, 2015).

- Modification of National Customs Automation Program (NCAP) Test Concerning the use of Partner Government Agency Message Set through the Automated Commercial Environment (ACE) for the Submission of Certain Data Required by the Environmental Protection Agency (EPA): 80 FR 6098 (February 4, 2015).

- Announcement of Modification of ACE Cargo Release Test to Permit the Combined Filing of Cargo Release and Importer Security Filing (ISF) Data: 80 FR 7487 (February 10, 2015).

- Modification of NCAP Test Concerning ACE Cargo Release for Type 03 Entries and Advanced Capabilities for Truck Carriers: 80 FR 16414 (March 27, 2015).

- Automated Commercial Environment (ACE) Export Manifest for

Air Cargo Test; 80 FR 39790 (July 10, 2015).

- National Customs Automation Program (NCAP) Concerning Remote Location Filing Entry Procedures in the Automated Commercial Environment (ACE) and the Use of the Document Image System for the Submission of Invoices and the Use of eBonds for the Transmission of Single Transaction Bonds: 80 FR 40079 (July 13, 2015).

- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Partner Government Agency (PGA) Message Set Regarding Types of Transportation Modes and Certain Data Required by the National Highway Traffic Safety Administration (NHTSA): 80 FR 47938 (August 10, 2015).

- Modification of National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Food and Drug Administration (FDA) Using the Partner Government Agency (PGA) Message Set Through the Automated Commercial Environment (ACE): 80 FR 52051 (August 27, 2015).

- Automated Commercial Environment (ACE) Export Manifest for Rail Cargo Test: 80 FR 54305 (September 7, 2015).

Dated: October 15, 2015.

Cynthia F. Whittenburg,

Acting Assistant Commissioner, Office of International Trade.

[FR Doc. 2015-26610 Filed 10-19-15; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA-2015-0015; OMB No. 1660-0073]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Urban Search and Rescue Response System

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the

information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before November 19, 2015.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to oir.submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street SW., Washington, DC 20472-3100, or email address FEMA-Information-Collections-Management@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: This information collection previously published in the **Federal Register** on June 8, 2015, at 80 FR 32391 with a 60 day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: National Urban Search and Rescue Response System.

Type of information collection: Revision of a currently approved information collection.

OMB Number: 1660-0073.

Form Titles and Numbers: FEMA Form 089-0-10, Urban Search Rescue Response System Narrative Statement Workbook; FEMA Form 089-0-11, Urban Search Rescue Response System Semi-Annual Performance Report; FEMA Form 089-0-12, Urban Search Rescue Response System Amendment Form; FEMA Form 089-0-14, Urban Search Rescue Response System Task Force Self-Evaluation Scoresheet; FEMA Form 089-0-15, Urban Search Rescue Response System Task Force Deployment Data; FEMA Form 089-0-26, Vehicle Support Unit Purchase/Replacement/Disposal Justification.

Abstract: The information collection activity is the collection of financial, program and administrative information for US&R Sponsoring Agencies relating to readiness and response Cooperative Agreement awards.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 28.

Estimated Total Annual Burden Hours: 392 hours.

Estimated Cost: The estimated annual cost to respondents for the hour burden is \$16,832.48. There are no annual costs to respondents' operations and maintenance costs for technical services. There are no annual start-up or capital costs. The cost to the Federal Government is \$79,665.90.

Dated: October 14, 2015.

Richard W. Mattison,

Records Management Program Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2015-26618 Filed 10-19-15; 8:45 am]

BILLING CODE 9111-54-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0034]

Agency Information Collection Activities: Notice of Appeal of Decision Under Section 210 or 245A, Form I-694; Revision of a Currently Approved Collection Title of the Information Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on June 2, 2015, at 80 FR 31411, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 19, 2015. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be

directed to the OMB USCIS Desk Officer via email at oir_submission@omb.eop.gov. Comments may also be submitted via fax at (202) 395-5806. All submissions received must include the agency name and the OMB Control Number 1615-0034.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Laura Dawkins, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529-2140, Telephone number (202) 272-8377 (comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at (800) 375-5283; TTY (800) 767-1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at <http://www.regulations.gov> and enter USCIS-2007-0034 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Notice of Appeal of Decision Under Section 210 or 245A.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I-694; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Individuals or households. USCIS uses the information provided on Form I-694 in considering the appeal from a finding that an applicant is ineligible for legalization under section 210 and 245A of the Act or is ineligible for a related waiver of inadmissibility.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-694 is 50 and the estimated hour burden per response is 1.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 75 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* \$6,312.50.

Dated: October 14, 2015.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2015-26531 Filed 10-19-15; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

**[FWS-R4-R-2015-N056:
FXRS1265040000S3-123-FF04R02000]**

Cahaba River National Wildlife Refuge, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Cahaba River National Wildlife Refuge (NWR)

in Bibb County, Alabama for public review and comment. In this Draft CCP/EA, we describe the alternative we propose to use to manage this refuge for the 15 years following approval of the Final CCP.

DATES: To ensure consideration, we must receive your written comments by November 19, 2015.

ADDRESSES: You may obtain a copy of the Draft CCP/EA by downloading the document from our Internet Site at <http://fws.gov/southeast/planning/PDF/documents/cahaba-river-draft-ccp.pdf>. Comments on the Draft CCP/EA may also be submitted to Sarah Clardy-Draft CCP Comments at P.O. Box 5087, Anniston, AL 36205 or by email to: cahabariverccp@fws.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Clardy, Refuge Manager, Cahaba River NWR, P.O. Box 5087, Anniston, AL 36205; or cahabariverccp@fws.gov.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Cahaba River NWR started through a notice in the **Federal Register** on Tuesday, November 13, 2012 (77 FR 27526). For more about the refuge and our CCP process, please see that notice.

Cahaba River NWR was established in 2002 under the authority of the Cahaba River National Wildlife Refuge Establishment Act, Public Law 106-331, dated October 19, 2000. This legislation directed the Secretary of the Interior to acquire up to 3,500 acres of lands and waters to establish the refuge. In 2004, the Regional Director of the Service (Southeast Region) authorized the expansion of the acquisition boundary of the refuge to include an additional 340 acres of property at the confluence of the Cahaba and Little Cahaba Rivers. In 2006, Pub. Law 109-363 was signed by the President, authorizing further expansion of the acquisition boundary by 3,600 acres. In 2008, the Regional Director authorized a 360-acre expansion of the acquisition boundary. As of 2015, the refuge has an approved acquisition boundary of 7,784 acres of which 3,689.63 acres have been acquired in fee-title in Bibb County.

The refuge was established to: (1) Conserve, enhance, and restore the native aquatic and terrestrial community characteristics of the Cahaba River (including associated fish, wildlife, and plant species); (2) conserve, enhance, and restore habitat to maintain and assist in the recovery of plants and animals that are listed under the Endangered Species Act of 1973; (3) provide opportunities for compatible wildlife-dependent recreation; and (4)

facilitate partnerships among the Service, local communities, conservation organizations, and other non-Federal entities to encourage participation in the conservation of the refuge's resources.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Priority resource issues addressed in the Draft CCP/EA include: Fish and Wildlife Populations, Habitat Management, Resource Protections, Visitor Services, and Refuge Administration.

CCP Alternatives, Including Our Proposed Alternative

We developed three alternatives for managing the refuge (Alternatives A, B, and C), with Alternative B as our proposed alternative. A full description of each alternative is in the Draft CCP/EA. We summarize each alternative below.

Alternative A: Current Management—No Action

Wildlife and Habitat Management

There would be no management of riverine and Cahaba lily/water willow shoals habitats and exotic aquatic plants and Beaver Pond would not be managed.

There would be no management of the following habitats: Beech, oak, laurel and azalea forest; Cahaba riverwash herbaceous vegetation; canebrake; oak, beech and sedge forest; oak, hickory, and iris forest; oak, holly, and sparkleberry forest; and tuliptree and

sensitive fern forest. For interior longleaf pine woodland and longleaf pine plantations, prescribed fire would be applied to approximately 250 acres every few years to help reduce encroachment of hardwoods and support a more diverse groundcover. No management of planted loblolly pine stands to restore to longleaf pine historically found in the watershed would occur. There would be no management of invasive or exotic species within the refuge boundaries.

Genetic and population monitoring of Georgia aster that began in 2012 by the Atlanta Botanical Garden will continue. Ecological Services (FWS) would monitor and provide recommendations for management opportunities for Georgia rockcress or glades, however there would be no management implemented.

There would be no active management by the refuge of federally-listed fish, mussels, and snails, with the exception of management via communication and education with local landowners about sedimentation and nutrient loading of aquatic habitats and providing sediment control through regular road maintenance of River Trace Road. Additionally, we would coordinate access to potential aquatic animal release sites by the State or other partners for reintroduction purposes.

With the exception of occasional surveys and periodic management activities in select pine-dominated forest stands, no additional management would likely be conducted for migratory birds. For the endangered gray bat, surveys would be conducted sporadically.

Visitor Services

All hunting, fishing, environmental education, interpretation, wildlife observation, and wildlife photography opportunities would remain the same. Canoeing and kayaking would continue to occur on the refuge. The concrete basin used to launch boats upstream of the refuge would not be replaced if damaged.

Resource Protection

Several water resource management activities would likely continue. Currently, four water quality monitoring points are sampled quarterly (testing for heavy metals) as part of mine reclamation efforts. Testing would continue to occur from 2013 through 2015. In terms of protecting lands, the refuge would continue to explore conservation options with only willing landowners within acquisition boundary as funding and opportunities arise. These could include fee-title

purchases or less-than-fee options, such as easement purchases, management agreements, etc.

Currently, there are no known cultural resources, and a comprehensive assessment would probably not be conducted. However, if sites are identified, the refuge will ensure cultural resource management and protection strategies are implemented.

Refuge Administration

The refuge manager would continue to be stationed in Anniston, AL, with oversight duties also including Mountain Longleaf and Watercross Darter NWRs. A deputy manager position would likely not be filled. The zone officer would continue to conduct periodic law enforcement patrols and respond to reported incidents on the refuge.

On an as-needed basis, work crews from Wheeler NWR and possibly other refuges would periodically maintain and repair roads and unpaved parking areas, replace culverts, and maintain boundary markers. The refuge would solicit the help of volunteers to assist with maintenance of trails and repairing benches, etc. No facilities would be built on or near the refuge under this alternative.

The refuge would continue relationships with current partners to expand the refuge's capacity to protect and monitor biological resources, implement habitat improvement projects, enhance interaction and education of refuge visitors through on and off site events and encourage cooperative programs with academic institutions and nongovernmental organizations

Alternative B: Expand Habitat and Wildlife Management (Proposed Alternative)

Wildlife and Habitat Management

The refuge would monitor the health and distribution of the Cahaba Lily population and work to educate the public about the fragility of these habitats to human disturbance. We would chemically control alligator weed on an annual basis.

The refuge would re-inventory and create maps for the following habitats: Beech, oak, laurel and azalea forest; Cahaba riverwash herbaceous vegetation; canebrake; oak, beech and sedge forest; oak, hickory, and iris forest; oak, holly, and sparkleberry forest; and tuliptree and sensitive fern forest. The refuge would work to re-establish viable canebrake communities.

For interior longleaf pine woodland; loblolly pine plantation; and longleaf

pine plantation we would designate stand conditions for restoration purposes and reestablish a recurring fire regime. Surveys would be conducted to determine if glades habitat exists with the refuge boundary. The refuge would implement control measures and monitoring of invasive plant species (*Chinese Privet*, *Alligator Weed*, *Kudzu*, *Mimosa*, etc.) as appropriate.

For Georgia aster, we would work with partners to conduct additional surveys and create a GIS database to map Georgia aster distribution. We would work with partners to continue surveys for Georgia rockcress and implement management strategies (including timber management and invasive species removal) to increase population size and the number of locations.

The refuge would develop an educational program and evaluate overutilization of recreational use on the refuge and restore stream habitat that potentially impacts federally-listed mussels, snails, and fish. We would also work with partners to identify and provide access for reintroductions of these species.

For neotropical migratory birds, we would resume biotic inventories utilizing refuge staff, local universities and partners. Habitats would be restored for focal species where appropriate. In addition, use of prescribed fire would be utilized to improve conditions for focal species that are dependent upon pine-dominated habitats.

The refuge would inventory and monitor for gray bats, bald eagles, and other surrogate species.

Visitor Services

Opportunities for wildlife observation, wildlife photography, environmental education, and interpretation would be expanded. The refuge would maintain bicycle riding opportunities and the current launch site for canoeing and kayaking.

Resource Protection

The refuge would participate as stakeholder on regional water quality improvement efforts within the upper Cahaba Basin; work to improve water quality of refuge tributary streams through partnerships with adjacent land owners; and establish cooperative programs and partnerships with the University of Alabama for lands along the western refuge boundary. The refuge would also install a stream gage within the refuge boundary. Testing would continue to occur on four water quality monitoring points as part of mine reclamation efforts.

We would work with partners to identify and provide assistance to landowners to conserve priority lands within the Cahaba River watershed by providing long term protection of valued resources within the watershed. The refuge would work with the regional archaeologist to complete a comprehensive historical and archaeological resource survey.

Refuge Administration

Seven additional complex staff would be needed to carry out the proposed projects. These positions include: An assistant refuge manager, biologist, equipment operator, park ranger, forester, law enforcement officer and biological technician.

The refuge would improve River Trace Road (e.g. install low water crossings and culverts, improve road surface, etc.), protect the River Trace Road from erosion (undercutting by river), and improve Belcher Road through regular maintenance.

No facilities would be built on or near the refuge however, a new complex office and maintenance shop would be constructed in Anniston, AL.

The refuge would train volunteers to conduct interpretive programs (emphasizing the need for wildlife and habitat and wildlife management) and implement projects (interpretive signs, invasive species control, biological monitoring, etc.). The volunteer program would be expanded to include an Americorp team.

Alternative C: Emphasize Natural and Primitive Processes

Wildlife and Habitat Management

Management of riverine and Cahaba lily/water willow shoals habitats would remain the same as Alternative A. For Beaver Pond, we would evaluate feasibility for restoring its natural hydrology.

There would be no change in management for the following habitats: Beech, oak, laurel and azalea forest; Cahaba riverwash herbaceous vegetation; canebrake; oak, beech and sedge forest; oak, hickory, and iris forest; oak, holly, and sparkleberry forest; and tuliptree and sensitive fern forest. We would replace planted loblolly pine plantation stands, with longleaf pine, on an opportunistic basis. For interior longleaf pine woodland and longleaf pine plantation, we would use prescribed fire only to minimize threat of wildfire. There would be no surveys conducted for glades and no active management for Georgia aster.

Management for federally listed aquatic species, neotropical migratory

birds, gray bat, bald eagle, and other surrogate species would be the same as under Alternative B.

Visitor Services

River Trace Road would be closed to motor vehicles and converted to a trail. We would work with partners to develop and present educational programs that emphasize the role of natural ecological processes in shaping wildlife habitats.

We would develop interpretive materials and messages that emphasize the role of natural and primitive processes in shaping wildlife habitats. We would remove the concrete basin that is used to launch canoes and kayaks.

Resource Protection

For water quality, management would be similar to Alternative B, but we would also ensure that mine tailings do not contaminate groundwater through removal or other means. We would restore the natural hydrology on the refuge in areas where there is the greatest need.

Land protection efforts would focus on tracts within the acquisition boundary based on their potential role in creating a more connected and functional ecosystem.

Refuge Administration

Under this alternative, the following three additional staff would be required: Biologist, biological technician, and equipment operator.

We would evaluate which road-side ditches and culverts would need to be altered to restore the former hydrology and reduce sedimentation. No facilities would be leased, acquired, or built under this alternative.

Volunteers and Other Partnerships

We would offer our volunteers training to conduct interpretive programs that emphasize the role of natural and primitive processes in shaping wildlife habitat.

Next Step

After the comment period ends, we will analyze the comments and address them in the Final CCP.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying

information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*).

Dated: October 14, 2015.

Richard P. Ingram,

Acting Regional Chief, National Wildlife Refuge System.

[FR Doc. 2015-26614 Filed 10-19-15; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[156A2100DD/AAKC001030/
AOA501010.999900 253G]

Acceptance of Retrocession of Jurisdiction for the Yakama Nation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Department of Interior (Department) has accepted retrocession to the United States of partial civil and criminal jurisdiction over the Yakama Nation from the State of Washington.

DATES: The Department accepted retrocession on October 19, 2015. Complete implementation of jurisdiction will be effective April 19, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Darren Cruzan, Deputy Director—Office of Justice Services, Bureau of Indian Affairs, (202) 208-5787.

SUPPLEMENTARY INFORMATION: Under the authority of 25 U.S.C. 1323, vested in the Secretary of the Interior by Executive Order No. 11435 of November 21, 1968, 33 FR 17339, and re-delegated to the Assistant Secretary—Indian Affairs, the United States accepts partial civil and criminal jurisdiction over the Yakama Nation which was acquired by the State of Washington, under Public Law 83-280, 67 Stat. 588, codified as amended at 18 U.S.C. 1162, 28 U.S.C. 1360, and as provided in Revised Code of Washington 37.12.010, 37.12.021, 37.12.030, 37.12.040, and 37.12.060 (1963), and 37.12.050 (1957).

This retrocession was offered by the State of Washington in Proclamation by the Governor 14-01, signed on January 17, 2014, and transmitted to the Assistant Secretary-Indian Affairs in accordance with the process in Revised Code of Washington 37.12.160 (2012), and as provided by Tribal Council

Resolution No. T-117-12, dated July 5, 2012, in which the Yakama Nation requested that the State of Washington retrocede partial civil and criminal jurisdiction to the Tribe.

Dated: October 14, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015-26620 Filed 10-19-15; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO210000.16X.L11100000.PH0000
LXSISGST0000]

Notice of Proposed Withdrawal; Sagebrush Focal Areas; Idaho, Montana, Nevada, Oregon, Utah, and Wyoming and Notice of Intent To Prepare an Environmental Impact Statement

Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction Notice.

SUMMARY: This action corrects the language found in the **SUPPLEMENTARY INFORMATION** section of a notice published in the **Federal Register** on Thursday, September 24, 2015 (80 FR 57635 to 57637).

On page 57636, column 2, beginning on line 9, the text which reads “The Sagebrush Focal Areas include all public and National Forest System lands identified in the townships below:”, is hereby corrected to read, “The Sagebrush Focal Areas consist of those public and National Forest System lands within the townships below that are identified as Sagebrush Focal Areas on the map posted on the BLM Web site at <http://www.blm.gov/wo/st/en/prog/more/sagegrouse.html>:”

Steven A. Ellis,

Deputy Director, Operations.

[FR Doc. 2015-26633 Filed 10-19-15; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-19337:
PPWOCRADNO-PCU00RP14.R50000]

Notice of Inventory Completion: History Colorado, Formerly Colorado Historical Society, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: History Colorado, formerly Colorado Historical Society, has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to History Colorado. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to History Colorado at the address in this notice by November 19, 2015.

ADDRESSES: Sheila Goff, NAGPRA Liaison, History Colorado, 1200 Broadway, Denver, CO 80203, telephone (303) 866-4531, email sheila.goff@state.co.us.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of History Colorado, Denver, CO.

This notice is published as part of the National Park Service’s administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by History Colorado professional staff in consultation with representatives of the Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of

the Mescalero Reservation, New Mexico; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Clara, New Mexico; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Shoshone Tribe of the Wind River Reservation, Wyoming; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and Zuni Tribe of the Zuni Reservation, New Mexico. The Apache Tribe of Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Crow Tribe of Montana; Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pawnee Nation of Oklahoma; and Standing Rock Sioux Tribe of North & South Dakota were invited to consult but did not participate. Hereafter all tribes listed above are referred to as "The Consulted and Invited Tribes."

History and Description of the Remains

On November 13, 2013, human remains representing, at minimum, one individual were discovered in Weld County, CO. The Office of the State Archaeologist (OSAC) was notified that volunteers in St. Vrain Park in Weld County had discovered a cranium and a small number of post-cranial elements while cleaning flood debris following floods. There was no burial context. In January 2014, the human remains were transferred to OSAC by the Weld County Coroner, who ruled out forensic interest. They are identified as OAHF 302. Osteological analysis determined that the human remains are of Native American ancestry. No known individuals were identified. No associated funerary objects are present.

At the time of the discovery, the land on which the remains were discovered was not the tribal land of any Indian tribe. Between September and December 2014, History Colorado consulted with Indian tribes who are recognized as aboriginal to the area from which these Native American human remains were removed. These tribes are the Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana. None of these

Indian tribes agreed to accept control of the human remains. They requested in writing that this individual be dispositioned according to the Process for Consultation, Transfer and Reburial of Culturally Unidentifiable Native American Human Remains and Associated Funerary Objects Originating From Inadvertent Discoveries on Colorado State and Private Lands (Process). Consultation with the additional tribes listed under Consultation in this notice was conducted February to May 2015, to determine disposition. Under the Process, the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah agreed to accept disposition of the human remains.

History Colorado, in partnership with the Colorado Commission of Indian Affairs, Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah, conducted tribal consultations among the tribes with ancestral ties to the State of Colorado to develop the process for disposition of culturally unidentifiable Native American human remains and associated funerary objects originating from inadvertent discoveries on Colorado State and private lands. As a result of the consultation, a process was developed, Process for Consultation, Transfer, and Reburial of Culturally Unidentifiable Native American Human Remains and Associated Funerary Objects Originating From Inadvertent Discoveries on Colorado State and Private Lands, (2008, unpublished, on file with the Colorado Office of Archaeology and Historic Preservation). The tribes consulted are those who have expressed their wishes to be notified of discoveries in the Great Plains Consultation Region as established by the Process, where this individual originated.

The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. On November 3–4, 2006, the Process was presented to the Review Committee for consideration. A January 8, 2007, letter on behalf of the Review Committee from the Designated Federal Officer transmitted the provisional authorization to proceed with the Process upon receipt of formal responses from the Jicarilla Apache Nation, New Mexico, and the Kiowa

Indian Tribe of Oklahoma, subject to forthcoming conditions imposed by the Secretary of the Interior. On May 15–16, 2008, the responses from the Jicarilla Apache Nation, New Mexico, and the Kiowa Indian Tribe of Oklahoma were submitted to the Review Committee. On September 23, 2008, the Assistant Secretary for Fish and Wildlife and Parks, as the designee for the Secretary of the Interior, transmitted the authorization for the disposition of culturally unidentifiable human remains according to the Process and NAGPRA, pending publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

43 CFR 10.11 was promulgated on March 15, 2010, to provide a process for the disposition of culturally unidentifiable Native American human remains recovered from tribal or aboriginal lands as established by the final judgment of the Indian Claims Commission or U.S. Court of Claims, a treaty, Act of Congress, or Executive Order, or other authoritative governmental sources. As there is no evidence indicating that the human remains reported in this notice originated from tribal land and the tribes with aboriginal land ties did not wish to accept disposition, they are eligible for disposition under the Process.

Determinations Made by History Colorado

Officials of History Colorado have determined that:

- Based on osteological analysis, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- Pursuant to 43 CFR 10.11(c)(2)(ii) and the Process, the disposition of the human remains may be to the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Sheila Goff, NAGPRA

Liaison, History Colorado, 1200 Broadway, Denver, CO 80203, telephone (303) 866-4531, email sheila.goff@state.co.us by November 19, 2015. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah may proceed.

History Colorado is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: September 16, 2015.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2015-26619 Filed 10-19-15; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE-2015-0010; OMB Control Number 1014-0017; 15XE1700DX EEEE500000 EX1SF0000.DAQ000]

Information Collection Activities: Safety and Environmental Management Systems (SEMS); Submitted for Office of Management and Budget (OMB) Review; Comment Request

ACTION: 30-day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) is notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under subpart S, *Safety and Environmental Management Systems (SEMS)*. This notice also provides the public a second opportunity to comment on the revised paperwork burden of these regulatory requirements.

DATES: You must submit comments by November 19, 2015.

ADDRESSES: Submit comments by either fax (202) 395-5806 or email (OIRA_Submission@omb.eop.gov) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1014-0017). Please provide a copy of your comments to BSEE by any of the means below.

- Electronically go to <http://www.regulations.gov>. In the Search box, enter BSEE-2015-0010 then click search.

Follow the instructions to submit public comments and view all related materials. We will post all comments.

- Email cheryl.blundon@bsee.gov, fax (703) 787-1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Cheryl Blundon; 45600 Woodland Road, Sterling, VA 20166. Please reference ICR 1014-0017 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787-1607, to request additional information about this ICR. To see a copy of the entire ICR submitted to OMB, go to <http://www.reginfo.gov> (select Information Collection Review, Currently Under Review).

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart S, *Safety and Environmental Management Systems (SEMS)*.

Form(s): BSEE-0131.

OMB Control Number: 1014-0017.

Abstract: The Outer Continental Shelf (OCS) Lands Act at 43 U.S.C. 1334 authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. These responsibilities are among those delegated to the Bureau of Safety and Environmental Enforcement (BSEE).

In addition to the general rulemaking authority of the OCSLA at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the

Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to BSEE, 30 U.S.C. 1751 is included as additional authority for these requirements.

Regulations governing Safety and Environmental Management Systems (SEMS) are covered in 30 CFR 250, subpart S and are the subject of this collection.

Information on Form BSEE-0131 includes company identification, number of company/contractor injuries and/or illnesses suffered, company/contractor hours worked, EPA National Pollutant Discharge Elimination System (NPDES) permit noncompliances, and oil spill volumes for spills less than 1 barrel. All pieces of information are reported annually as collected during 1 calendar year and the information broken out quarterly. The information is used to develop industry average incident rates that help to describe how well the offshore oil and gas industry is performing. Using the produced data allows BSEE to better focus our regulatory and research programs on areas where the performance measures indicate that operators are having difficulty meeting our expectations. BSEE will be more effective in leveraging resources by redirecting research efforts, promoting appropriate regulatory initiatives, and shifting inspection program emphasis based on performance results.

In this ICR we have removed form BSEE-0130. BSEE has found that there have been no instances of organizations using form BSEE-0130 and that equivalent information can be submitted by organizations following the instructions in § 250.1922(a)(1), “. . . submit documentation to BSEE describing the process for assessing an ASP for accreditation and approving, maintaining, and withdrawing the accreditation of an ASP.” BSEE's Office of Offshore Regulatory Programs will then review the information, request other supporting documents as needed, and propose terms of BSEE oversight, in order to ensure conformance with the entirety of § 250.1922. Therefore, BSEE believes the intent of the form BSEE-0130 is already incorporated in the regulations and will remove the

duplicate information collection burden represented by form BSEE-0130. Therefore, since the requirement remains the same, removal of the form does not constitute a program change.

Regulations implementing these responsibilities are among those delegated to BSEE.

Responses are mandatory. No questions of a sensitive nature are asked. BSEE protects information considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and DOI's implementing regulations (43 CFR 2), and under regulations at 30 CFR part 250.197, *Data and information to be made available to the public or for limited inspection*, 30 CFR part 252, *OCS Oil and Gas Information Program*.

The information collected under subpart S is critical for us to monitor industry's operations record of safety and environmental management of the OCS. The subpart S regulations hold the

operator accountable for the overall safety of the offshore facility, including ensuring that all employees, contractors, and subcontractors have safety policies and procedures in place that support the implementation of the operator's SEMS program and align with the principles of managing safety. The SEMS program describes management commitment to safety and the environment, as well as policies and procedures to assure safety and environmental protection while conducting OCS operations (including those operations conducted by all personnel on the facility). BSEE will use the information obtained by submittals and observed via SEMS audits to ensure that operations on the OCS are conducted safely, as they pertain to both human and environmental factors, and in accordance with BSEE regulations, as well as industry practices. The ultimate work authority (UWA) and other recordkeeping will be reviewed

diligently by BSEE during inspections/ audits, etc., to ensure that industry is correctly implementing the documentation and that the requirements are being followed properly.

Frequency: On occasion and as required by regulations.

Description of Respondents: Potential respondents comprise OCS Federal oil, gas, or sulphur lessees and/or operators.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 2,238,164 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN TABLE

Citation 30 CFR 250 subpart S	Reporting and recordkeeping requirement +	Hour burden	Average number of annual responses	Additional annual burden hours (rounded)
1900-1933	High Activity Operator: Have a SEMS program, and maintain all documentation and records pertaining to your SEMS program, according to API RP 75, ISO 17011 in their entirety, the COS-2-01, 03, and 04 documents as listed in §250.198, and all the requirements as detailed in 30 CFR 250, Subpart S. Make your SEMS available to BSEE upon request.	27,054	15 operators	405,810
1900-1933	Moderate Activity Operator: Have a SEMS program, and maintain all documentation and records pertaining to your SEMS program, according to API RP 75, the three COS documents in their entirety, and all the requirements as detailed in 30 CFR 250, Subpart S. Make your SEMS available to BSEE upon request.	11,625	40 operators	465,000
1900-1933	Low Activity Operator: Have a SEMS program, and maintain all documentation and records pertaining to your SEMS program, according to API RP 75, the three COS documents in their entirety, and all the requirements as detailed in 30 CFR 250, Subpart S. Make your SEMS available to BSEE upon request.	1,525	75 operators	114,375
1911(b)	Immediate supervisor must conduct a JSA, sign the JSA, and ensure all personnel participating sign the JSA. The individual designated as being in charge of facility approves and signs all JSAs before job starts. NOTE: If activity is repeated, the 1st signed JSA is allowed.	15 mins	130 operators × 365 days × 50 JSA's per day = *2,372,500.	593,125
1914(e); 1928(d), (e); 1929	Submit Form BSEE-0131. Maintain a contractor employee injury/illness log in the operation area, retain for 2 years, and make available to BSEE upon request (this requirement is included in the form burden). Inform contractors of hazards.	15	130 operators	1,950

BURDEN TABLE—Continued

Citation 30 CFR 250 subpart S	Reporting and recordkeeping requirement +	Hour burden	Average number of annual responses	Additional annual burden hours (rounded)
1920(a), (b); 1921	ASP audit for High Activity Operator. ASP audit for Moderate Activity Operator. ASP audit for Low Activity Operator. NOTE: An audit is done once every 3 years.	15 operators × \$217,000 audit = \$3,255,000/3 = \$1,085,000 40 operators × \$108,000 audit = \$4,320,000/3 = \$1,440,000 75 operators × \$62,000 audit = \$4,650,000 3 = \$1,550,000		
1920(b)	Notify BSEE with audit plan/schedule 30 days prior to conducting your audit.	1	130 operators/once every 3 years = 44.	44
1920(c); 1925(a)	Submit to BSEE after completed audit, an audit report of findings and conclusions, including deficiencies and required supporting information/documentation.	4	44 operators	176
1920(d); 1925(b)	Submit/resubmit a copy of your CAP that will address deficiencies identified in audit within 60 days of audit completion.	10	170 submissions	1,700
1922(a)	Organization requests approval for AB; submits documentation for assessing, approving, maintaining, and withdrawing accreditation of ASP.	15	3 requests	45
1922(b)	Make available to BSEE upon request, conflict of interest procedures.	20 mins	12 requests	4
1924(b)	Make available to BSEE upon request, evaluation documentation and supporting information relating to your SEMS.	5	130 operators	650
1924(c)	Explain and demonstrate your SEMS during site visit if required; provide evidence supporting your SEMS implementation.	12	12 explanations	144
1925(a)	Pay for all costs associated with BSEE directed ASP audit approximately 10 percent per operator per category: 1 required audit for high operator (\$217,000 per audit × 1 audit = \$217,000); 4 required audits for moderate operator (\$108,000 per audit × 4 audits = \$432,000; and 8 required audits for low operator (\$62,000 per audit per 8 audits = \$496,000) = 13 required audits per year.		13 BSEE directed ASP audits—for a total of \$1,145,000	
1928	(1) Document and keep all SEMS audits for 6 years (at least two full audit cycles) at an onshore location.	6	130 operators	780
	(2) JSAs must have documented results in writing and kept onsite for 30 days or until release of the MODU; retain records for 2 years. (3) All MOC records (API RP Sec 4) must be documented, dated, and retained for 2 years. (4) SWA documentation must be kept onsite for 30 days; retain records for 2 years (5) Documentation of employee participation must be retained for 2 years.	62 hrs/mo × 12 mos/yr = 744 hrs.	838 manned facilities	623,472
	(6) All documentation included in this requirement must be made available to BSEE upon request.	2	1,620 unmanned facilities.	3,240
1930(c)	Document decision to resume SWA activities.	8	130 operators once every 2 wks = 130 × 52/2 = 3,380.	27,040
1933(a)	Personnel reports unsafe practices and/or health violations.	Burden covered under 30 CFR 250, Subpart A 1014–0022		0
1933(c)	Post notice where personnel can view their rights for reporting unsafe practices.	15 mins	2,435 facilities	609
TOTAL SUBPART S			2,381,721	2,238,164

BURDEN TABLE—Continued

Citation 30 CFR 250 subpart S	Reporting and recordkeeping requirement +	Hour burden	Average number of annual responses	Additional annual burden hours (rounded)
			\$5,220,000 Non-Hour Cost Burdens	

* We calculated operators conducting 50 JSAs a day (25 JSAs for each 12 hour shift). Some contractors may perform none for a particular day, whereas others may conduct more than 50 per day. This estimate is an average. Also, in Alaska, the Alaska Safety Handbook or ASH is followed on the North Slope, which is a book containing both safety standards and the permit to work process for North Slope operations. The ASH includes work permits which include a hazards analysis and mitigation measures section on the back of the permit.

+ In the future, BSEE may require electronic filing of some submissions.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified four non-hour cost burdens associated with the collection of information for a total of \$5,220,000. They are as follows:

§ 250.1925(a)—Pay for all costs associated with a BSEE directed audit due to deficiencies.

§ 250.1920(a)—ASP audits conducted for High, Moderate, and Low Activity Operator.

We have not identified any other non-hour cost burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency “. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .” Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on July 8, 2015, we published a **Federal Register** notice (80 FR 39152) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB Control Number for the information collection requirements imposed by the 30 CFR 250, subpart S regulations and form. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they

should send comments. We received one comment in response to the **Federal Register**, which was not germane to this ICR.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 13, 2015.

Robert W. Middleton,
Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2015–26613 Filed 10–19–15; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0352]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection National Standards To Prevent, Detect, and Respond to Prison Rape

AGENCY: Bureau of Justice Assistance, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Assistance, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 80 FR 44996, on July 28, 2015, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional days until November 19, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments on the estimated burden to facilities covered by the standards to comply with the regulation’s reporting requirements, suggestions, or need additional information, please contact Emily Niedzwiecki, Policy Advisor, Bureau of Justice Assistance, 810 Seventh Street NW., Washington, DC 20531 (phone: 202–305–9317). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to OIRA_submissions@omb.eop.gov.

SUPPLEMENTARY INFORMATION:

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* National Standards to Prevent, Detect, and Respond to Prison Rape (28 CFR part 115).

3. *The agency form number:* There is no form number associated with this information collection. The applicable component within the Department of Justice is the Bureau of Justice Assistance, in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* On June 20, 2012, the Department of Justice published a Final Rule to adopt national standards to prevent, detect, and respond to sexual abuse in confinement settings pursuant to the Prison Rape Elimination Act of 2003 (PREA) 42 U.S.C. 15601 *et seq.* These national standards, which went into effect on August 20, 2012, require covered facilities to retain certain specified information relating to sexual abuse prevention planning, responsive planning, education and training, investigations and to collect and retain certain specified information relating to allegations of sexual abuse within the facility. Covered facilities include: Federal, state, and local jails, prisons, lockups, community correction facilities, and juvenile facilities, whether administered by such government or by a private organization on behalf of such government. As the agency responsible for PREA implementation on behalf of the U.S. Department of Justice, the Bureau of Justice Assistance within the Office of Justice Programs is submitting this request to extend a currently approved collection.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The recordkeeping and reporting requirements established by the PREA standards are based on incidents of sexual abuse. An estimated 13,119 covered facilities nationwide are required to comply with the PREA standards. If all covered facilities were to fully comply with all of the PREA standards, the new burden hours associated with the staff time that would be required to collect and maintain the information and records required by the standards would be approximately 1.16 million in the first year of full compliance, or about 89 hours per facility.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden hours associated with this collection is 1.16 million in the first year of full compliance, or about 89 hours per facility.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: October 14, 2015.

Jerri Murray,
Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015-26506 Filed 10-19-15; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

[OMB Number 1121-0325]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: Research To Support the National Crime Victimization Survey (NCVS)

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 80 FR 62111, on October 15, 2015, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until November 19, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jennifer Truman, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (email: Jennifer.Truman@usdoj.gov; telephone: 202-307-0765). Written comments and/

or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to OIRA_submissions@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement of the Research to support the National Crime Victimization Survey (NCVS), with change, of a previously approved collection for which approval has expired.

(2) *The Title of the Form/Collection:* Methodological research to support the redesign of the National Crime Victimization Survey (NCVS).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form numbers not available for generic clearance. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Persons 12 years or older in sampled households located throughout the United States. The National Crime Victimization Survey (NCVS) collects, analyzes, publishes, and disseminates statistics on criminal victimization in the U.S.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimate of the total number of respondents is 21,200. The average length of interview will vary by the type of interview conducted. Completing the crime screener and incident report is estimated to take the average interviewed respondent 15–30 minutes to respond, while a cognitive interview for testing alternative methods for measuring victimization may take 1–2 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 11,150 total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: October 15, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–26573 Filed 10–19–15; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On October 15, 2015, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Rhode Island in the lawsuit entitled *United States of America v. Rhode Island Department of Transportation*, Civil Action No. CV–15–433–ML–PAS.

In the Complaint filed in this action, the United States, on behalf of the U.S. Environmental Protection Agency, alleges that the defendant Rhode Island Department of Transportation (“RIDOT”) has failed to comply with certain conditions and limitations of the municipal separate storm sewer system (“MS4”) permit applicable to it under the Clean Water Act, 33 U.S.C. 1251, *et seq.*, including by failing to (a) conduct required catchment area assessments and implement storm water pollution controls, including structural controls, to address RIDOT storm water discharges to water-quality impaired waters, (b) develop and implement an adequate program to detect and eliminate illicit discharges into the RIDOT MS4, (c) sweep all RIDOT roads

as required by the permit for pollution prevention, and (d) inspect, maintain, and repair catch basins and other components of RIDOT’s storm water drainage systems.

The Consent Decree requires RIDOT to (a) develop and implement storm water control plans to address RIDOT’s discharges to water-quality impaired waters, including impaired waters both with and without Total Maximum Daily Load determinations, (b) develop and implement an adequate program to detect and eliminate illicit discharges into the RIDOT MS4, (c) implement a street sweeping tracking system and sweep all RIDOT roads as required by the permit, with increased frequency street sweeping required in specified areas, and (d) implement a program to inspect, clean, and, as necessary, repair components of RIDOT’s storm water drainage system, including catch basins, manholes, outfalls, and storm water treatment units, and to provide for tracking of the inspection and maintenance work.

The Consent Decree also provides that RIDOT will pay a civil penalty of \$315,000 and perform two supplemental environmental projects (“SEPs”) valued, collectively, at \$234,600. The SEPs provide for the preservation of two forested parcels of land in watersheds of impaired waterways. The first parcel is approximately 55 acres and is located in Johnston, RI, abutting the Powder Mill Ledges Wildlife Refuge, in the watershed of Assumpset Brook and the Woonasquatucket River. The other parcel is approximately 25 acres and is located in Lincoln, RI, in the vicinity of Olney Pond in Lincoln Woods State Park, in the watershed of the Moshassuck River.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America v. Rhode Island Department of Transportation*, D.J. Ref. No. 90–5–1–1–10908. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: <http://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$33.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert E. Maher Jr.,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 2015–26593 Filed 10–19–15; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0097]

Agency Information Collection Activities; Proposed eCollection Activities Requested; Leased/Charter/Contract Personnel Expedited Clearance Request

AGENCY: U.S. Marshals Service, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), U.S. Marshals Service (USMS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 80 FR 45553, on July 30, 2015, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until November 19, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Nicole Feuerstein, Publications Specialist, U.S. Marshals Service, CS–3, 10th Floor, Washington, DC 20530–0001 (phone: 202–307–5168). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention

Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

Overview of this information collection:

1. *Type of Information Collection:* Extension of a currently approved collection.
2. *The Title of the Form/Collection:* Leased/Charter/Contract Personnel Expedited Clearance Request.
3. *The agency form number:* The form number is USM-271.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is to be completed by people applying to become contract personnel. It is required so that USMS can perform an expedited background check before workers may be hired to transport USMS and Bureau of Prisons prisoners.
5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 180 respondents will complete a 5 minute form.
6. *An estimate of the total public burden (in hours) associated with the collection:* 15 annual burden hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution

Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: October 15, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015-26571 Filed 10-19-15; 8:45 am]

BILLING CODE 4410-04-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (15-094)]

Notice of Intent To Grant a Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

CORRECTION: U.S. Non-Provisional Patent Application Serial Number corrected from 13/178,661 to 13/785,661 and Title corrected to say Automatic Dependent Surveillance Broadcast (ADS-B) System For Ownership and Traffic Situational Awareness.

SUMMARY: This notice 015-079 was previously published on September 23, 2015 and was issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant a partially exclusive license in the United States to practice the invention described and claimed in U.S. Non-Provisional Patent Application Serial No. 13/785,661, titled "Automatic Dependent Surveillance Broadcast (ADS-B) System For Ownership and Traffic Situational Awareness," NASA Case No. DRC-011-012, and any, divisional applications, continuation-in-part applications, or issued patents resulting therefrom, to Vigilant Aerospace Systems Inc., having its principal place of business in Oklahoma City, Oklahoma. Certain patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective partially exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the

grant of the contemplated partially exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, NASA Management Office, M/S 180-200, 4800 Oak Grove Drive, Pasadena, CA 91109; (818) 354-7770 (phone), (818) 393-3160 (fax).

FOR FURTHER INFORMATION CONTACT: Mark Homer, Patent Counsel, Office of Chief Counsel, NASA Management Office, M/S 180-200, 4800 Oak Grove Drive, Pasadena, CA 91109; (818) 354-7770 (phone), (818) 393-3160 (fax). Information about other NASA inventions available for licensing can be found online at <http://technology.nasa.gov>.

Mark P. Dvorscak,

Agency Counsel for Intellectual Property.

[FR Doc. 2015-26570 Filed 10-19-15; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's *ad hoc* Task Force on NEON Performance and Plans, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a meeting for the transaction of National Science Board business, as follows:

DATE AND TIME: Friday, October 23, 2015 at 12 noon to 1 p.m. EDT

STATUS: Closed.

PLACE: This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

MATTERS TO BE CONSIDERED: Task Force Chair's opening remarks; approval of minutes; review of NPP charge; interim update on NPP activities; NSB/NPP next steps; and Chair's closing remarks.

CONTACT PERSON FOR MORE INFORMATION: Please refer to the National Science Board Web site (www.nsf.gov/nsb) for information or schedule updates, or contact: Elise Lipkowitz (elipcowi@nsf.gov), National Science Foundation,

4201 Wilson Blvd., Arlington, VA
22230.

Kyscha Slater-Williams,
Program Specialist.

[FR Doc. 2015-26768 Filed 10-16-15; 4:15 pm]

BILLING CODE 7555-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016-5 and CP2016-5;
Order No. 2751]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Global Expedited Package Services—Non-Published Rates Contract 8 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 21, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Notice of Commission Action
- III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, and Order No. 2558,¹ the Postal Service filed a formal request and associated supporting information to add Global Expedited Package Services—Non-Published Rates Contract 8 (GEPS—NPR 8) to the competitive product list.² The Postal Service states the addition of

¹ Docket Nos. MC2015-55 and CP2015-83, Order Adding Global Expedited Package Services—Non-Published Rates 7 to the Competitive Product List, July 1, 2015, at 5-8 (Order No. 2558).

² Request of the United States Postal Service to Add Global Expedited Package Services—Non-Published Rates 8 (GEPS—NPR 8) to the Competitive Products List and Notice of Filing GEPS—NPR 8 Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal, October 9, 2015 (Request).

GEPS—NPR 8 to the competitive product list is necessary due to its creation of both a Management Analysis of the Prices and Methodology for Determining Prices for Negotiated Service Agreements under Global Expedited Package Services—Non-Published Rates 8 (GEPS—NPR 8 Management Analysis), and an accompanying financial model that revises the previously filed GEPS—NPR 7 Management Analysis and its financial model. Request at 2-3.

To support its Request, the Postal Service filed the following attachments:

- Attachment 1, an application for non-public treatment of materials filed under seal;
- Attachment 2A, a redacted version of Governors' Decision No. 11-6;
- Attachment 2B, a revised version of the Mail Classification Schedule section 2510.8 GEPS—NPR;
- Attachment 2C, a redacted version of GEPS—NPR 8 Management Analysis;
- Attachment 2D, Maximum and Minimum Prices for Global Express Guaranteed (GXG), Priority Express Mail International (PMEI), Priority Mail International (PMI), and First-Class Package International (FCPIS) under GEPS—NPR 8 Contracts;
- Attachment 2E, the certified statement concerning the prices for applicable negotiated service agreements under GEPS—NPR 8, required by 39 CFR 3015.5(c)(2);
- Attachment 3, a Statement of Supporting Justification, which is filed pursuant to 39 CFR 3020.32; and
- Attachment 4, a redacted version of the GEPS—NPR 8 model contract. *Id.* at 3-4.

In the Statement of Supporting Justification, Giselle Valera, Managing Director and Vice President, Global Business, asserts the product is designed to increase efficiency of the Postal Service's process, as well as enhance its ability to compete in the marketplace. Request, Attachment 3 at 1. She contends GEPS—NPR 8 belongs on the competitive product list as it is part of a market over which the Postal Service does not exercise market dominance,³ is not subsidized by market dominant products, covers costs attributable to it, and does not cause competitive products as a whole to fail to make the appropriate contribution to

³ The Postal Service claims it does not exercise sufficient market power to set the price of GXG, PMEI, PMI, and FCPIS substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products. *Id.* at 3-4; 39 U.S.C. 3642(b).

institutional costs. Request, Attachment 3 at 1.

The Postal Service included a redacted version of the GEPS—NPR 8 model contract with the Request. *Id.* Attachment 4. The Postal Service represents the GEPS—NPR 8 model contract is similar to the GEPS—NPR 7 model contract approved by the Commission in Order No. 2558. Request at 6.

The Postal Service represents it will notify each GEPS—NPR 8 customer of the contract's effective date no later than 30 days after receiving the signed agreement from the customer. *Id.* Attachment 4 at 4. Unless terminated sooner, each contract will expire the later of one calendar year from its effective date or from the last day of the month in which its effective date falls. *Id.* The Postal Service represents that the contract is in compliance with 39 U.S.C. 3633(a). Request at 4, 8; *id.* Attachment 3 at 2-3.

The Postal Service filed much of the supporting materials, including an unredacted model contract, under seal. Request at 7. It maintains that the redacted portions of the materials should remain confidential as sensitive business information. *Id.* This information includes sensitive commercial information concerning the incentive discounts and their formulation, applicable cost coverage, non-published rates, as well as some customer-identifying information in future signed agreements. *Id.* Attachment 1 at 5-8. The Postal Service asks the Commission to protect customer-identifying information from public disclosure for 10 years after the date of filing with the Commission, unless an order is entered to extend the duration of that status. *Id.* at 11.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016-5 and CP2016-5 to consider the Request pertaining to the proposed GEPS—NPR 8 product and the related model contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than October 21, 2015. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints JP Klingenberg to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–5 and CP2016–5 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, JP Klingenberg is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than October 21, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,
Acting Secretary.

[FR Doc. 2015–26548 Filed 10–19–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* October 20, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 14, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 148 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2016–6, CP2016–6.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–26511 Filed 10–19–15; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

International Product Change—Global Expedited Package Services—Non-Published Rates

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal

Regulatory Commission to add Global Expedited Package Services—Non-Published Rates 8 (GEPS—NPR 8) to the Competitive Products List.

DATES: *Effective date:* October 20, 2015.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, 202–268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642, on October 9, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to add Global Expedited Package Services—Non-Published Rates 8 (GEPS—NPR 8) to the Competitive Products List*, and *Notice of Filing GEPS—NPR 8 Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal*.

Documents are available at www.prc.gov, Docket Nos. MC2016–5 and CP2016–5.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–26512 Filed 10–19–15; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76150; File No. SR–C2–2015–024]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fees Schedule

October 14, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on October 2, 2015, C2 Options Exchange, Incorporated (the “Exchange” or “C2”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

C2 Options Exchange, Incorporated (the “Exchange” or “C2”) proposes to amend the Fees Schedule. The text of

the proposed rule change is available on the Exchange's Web site (<http://www.c2exchange.com/Legal/>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fees Schedule. Specifically, the Exchange proposes to make changes to the Continuing Education Fees section of the Fees Schedule to provide that continuing education for all registration except the Series 56 will be \$55 if conducted via Web-delivery. Continuing education for all registration except the Series 56 will remain \$100 if conducted at a testing center.

On August 8, 2015, the Securities and Exchange Commission approved SR–FINRA–2015–015 relating proposed changes to FINRA Rule 1250 to provide a Web-based delivery method for completing the Regulatory Element of the continuing education requirements.³ Pursuant to the rule change, effective October 1, 2015, the Regulatory Element of the Continuing Education Programs for the S106 for Investment Company and Variable Contracts Representatives, the S201 for registered principles and supervisors, and the S901 for Operations Professionals will be administered through Web-based delivery or such other technological manner and format as specified by FINRA. The Regulatory Element of these Continuing Education Programs will continue to be offered at testing centers through January 4, 2016. Pursuant to the

³ See Securities Exchange Act Release No. 75581 (July 31, 2015), 80 FR 47018 (August 6, 2015) (Order Approving a Proposed Rule Change to Provide a Web-based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements) (SR–FINRA–2015–015).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

Approval Order to SR-FINRA-2015-015, the fee for test-center delivery of the Regulatory Element of the S106, S201, and S901 Continuing Education Programs will continue to be \$100 per session through January 4, 2016 when the programs will no longer be offered at testing centers. The fee for Web-based delivery of the Regulatory Elements of the S106, S201, and S901 Continuing Education Programs, however, will be \$55.

The Exchange currently utilizes FINRA's Continuing Education Programs for its own continuing education requirements. Consistent with SR-FINRA-2015-015, the Exchange [sic] recently filed SR-CBOE-2015-084⁴ relating to continuing education. In that filing, the Exchange [sic] proposed to follow the changes set forth in SR-FINRA-2015-015 with respect to Web-based delivery of the Regulatory Element of the Continuing Education Programs for the S106 for Investment Company and Variable Contracts Representatives, the S201 for registered principles and supervisors, and the S901 for Operations Professionals. Consistent with SR-CBOE-2015-084, this proposed rule change, proposes to amend the Fees Schedule to provide that effective immediately, the fee for Web-based delivery of the Regulatory Elements of the S106, S201, and S901 Continuing Education Programs will be \$55. The fee test-center delivery of the Regulatory Element of the S106, S201, and S901 Continuing Education Programs will continue to be \$100 per session through January 4, 2016 when the programs will no longer be offered at testing centers. At that time, the Exchange will file another fee filing to remove the test center option for delivery of the Regulatory Element from the Fees Schedule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁶ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling,

processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Web-based delivery method for continuing education is in the interest of investors and free and open markets. In general, Web-based delivery will remove time parameters that exist with respect to taking continuing education at testing centers. Having additional time to take continuing education may result in better learning outcomes, which should enhance investor protection. In addition, the option to have Web-based delivery of the Regulatory Element of the S106, S201, and S901 Continuing Education Programs at a reduced cost lowers barriers to entry and removes impediments to a free and open market and national market system by making it easier and less costly for Trading Permit Holders to participate in the market. Accordingly, the Exchange believes that Web-based delivery of the Regulatory Element of the S106, S201, and S901 Continuing Education Programs and reducing the costs of continuing education in general are goals that are 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. As FINRA has stated, the proposed rule change is specifically intended to reduce the burdens of continuing education on market participants while preserving the integrity of the S106, S201, and S901 Continuing Education Programs. In general, reduction in cost and removal of barriers to entry encourages competition among market participants, particularly in situations where such rules are employed universally across the markets. By bringing the Exchange's fees structure in line with that of FINRA, the Exchange believes it is removing impediments to free and open markets and encouraging competition between the Exchange and other markets that use the S106, S201, and S901 Continuing Education Programs.

Accordingly, the Exchange further believes that the proposed rule change will relieve burdens on, and otherwise promote competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and paragraph (f) of Rule 19b-4⁹ 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 will institute proceedings 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-C2-2015-024 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-C2-2015-024. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the

⁴ Available at <http://www.cboe.com/publish/RuleFilingsSEC/SR-CBOE-2015-084.pdf>.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ *Id.*

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f).

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 Web site 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-C2-2015-024, and should be submitted on or before November 10, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-26521 Filed 10-19-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76146; File No. SR-MSRB-2015-11]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide a Web-Based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements Pursuant to Rule G-3(i)(i)

October 14, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 29, 2015, the Municipal Securities Rulemaking Board (the "MSRB" or "Board") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared

by the MSRB. 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 MSRB filed with the Commission proposed amendments to Rule G-3(i)(i), Continuing Education Requirements, Regulatory Element, to facilitate the Web-based delivery method for meeting the requirements of Rule G-3(i)(i) (the "proposed rule change"). The proposed rule change, which is based on Financial Industry Regulatory Authority ("FINRA") Rule 1250, has been filed for immediate effectiveness.³ In order to align the MSRB's implementation for Web-based delivery of the Regulatory Element with FINRA's, which begins on October 1, 2015, the MSRB requests that the Commission waive the 30 day operative requirement under Rule 19b-4(f)(6) and the proposed rule change become operative on October 1, 2015. The proposed rule change is not making any changes to the Firm Element component of the Continuing Education Requirements (Rule G-3(i)(ii)).

The text of the proposed rule change is available on the MSRB's Web site at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2015-Filings.aspx, at the MSRB'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 MSRB 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 MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

³ See Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008): The Commission believes that a proposed rule change appropriately may be filed as an immediately effective rule so long as it is based on and similar to another SRO's rule and each policy issue raised by the proposed rule (i) has been considered previously by the Commission when the Commission approved another exchange's rule (that was subject to notice and comment), and (ii) the rule change resolves such policy issue in a manner consistent with such prior approval.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The MSRB has established a professional qualifications program that establishes competency standards for municipal securities brokers and municipal securities dealers (collectively, "dealers") and their associated persons. Section 15B(b)(2)(A) of the Act provides that the rules of the MSRB shall require associated persons of dealers to meet such standards of training, experience, competence, and such other qualifications as the MSRB finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.⁴ The purpose of the continuing education requirements ("CE requirements") is to keep registered persons of dealers informed of issues that affect their job responsibilities and of product and regulatory developments. MSRB Rule G-3(i) sets forth a two-pronged approach for CE requirements consisting of a Regulatory Element and a Firm Element; the proposed rule change would amend only the Regulatory Element.

The requirements for compliance with the Regulatory Element component of the MSRB's CE requirements are identical to the requirements for the Regulatory Element component of FINRA's CE requirements. Both the MSRB and FINRA require certain registered persons,⁵ subsequent to their initial qualification and registration with a registered securities association, to complete a periodic computer-based training program within 120 days of the second anniversary of their registration approval dates and every three years thereafter. The computer-based training program is developed by the Securities Industry Regulatory Council on Continuing Education ("CE Council"), of which both the MSRB and FINRA are members.⁶ The training developed by the CE Council is focused on compliance, regulatory, ethical and sales practice standards. The Regulatory Element's content is derived from

⁴ 15 U.S.C. 78o-4(b)(2)(A).

⁵ The MSRB defines a registered person as any individual associated with a dealer maintaining a registration category pursuant to MSRB Rule G-3.

⁶ The CE Council is composed of up to 20 industry members from broker-dealers, representing a broad cross section of industry firms, and representatives from the MSRB and other SROs as well as liaisons from the SEC and the North American Securities Administrators Association. See <http://www.cecouncil.com>.

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

industry rules and regulations, as well as widely accepted standards and practices within the industry. Although the specific requirements of certain rules may differ slightly among the various self-regulatory organizations ("SROs"), the programs are based on standards and principles applicable to all.⁷ Currently, the Regulatory Element computer-based training may be delivered in a test center or in-firm subject to specified procedures.

On June 11, 2015 FINRA proposed changes to its CE requirements under FINRA Rule 1250(a)(6) to permit the Regulatory Element program to be administered through Web-based delivery or such other technological manner and format as specified by FINRA and to eliminate the requirements for in-firm and test center delivery of the Regulatory Element.⁸ After notice and comment, FINRA's proposed rule was approved by the SEC.⁹

Proposal

The CE Council believes that, with the advances in Web-based technology, in-firm delivery can be stream-lined, making it easier for registered persons to complete the Regulatory Element without having to travel to a testing center. The Board supports the CE Council's initiative and accordingly approved the proposed rule change. The proposed rule change is wholly consistent with FINRA's rule proposal amending FINRA Rule 1250 (Continuing Education Requirements) to provide a Web-based delivery method for completing the Regulatory Element of the CE Requirements, which was filed with the SEC on June 4, 2015 and approved by the SEC on July 31, 2015.¹⁰

⁷ There are currently four different Regulatory Element Programs developed by the CE Council, the Supervisor Program for Registered Principals and Supervisors (S201), the Series 6 Program for Investment Company Products/Variable Contracts Representatives (S106), the General Program for Series 7 Registered Persons and all other registrations (S101), and the Operations Professional Program for Series 99 Registered Persons. See <http://www.cecouncil.com/regulatory-element/>.

⁸ See FINRA's rule filing proposing Web-based delivery of the Regulatory Element component of CE filed under Section 19(b)(2) of the Exchange Act. Securities Exchange Act Release No. 75154 (June 11, 2015), 80 FR 34777 (June 17, 2015) (File No. SR-FINRA-2015-015) ("Proposing Release").

⁹ See Order Approving a Proposed Rule Change to Provide a Web-Based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements. Securities Exchange Act Release No. 75581 (July 31, 2015), 80 FR 47018 (August 6, 2015) (File No. SR-FINRA-2015-015) ("SEC Approval Order").

¹⁰ See SEC Approval Order. The Commission received four comment letters. All commenters supported FINRA's proposed rule change. In particular, the commenters noted that the proposal

The proposed Web-based delivery method will provide registered persons the flexibility to meet the Regulatory Element requirement of MSRB Rule G-3(i)(i) at a location of their choosing, including their private residence, at any time during their 120-day window for completion of the Regulatory Element.¹¹ The MSRB believes that the same time constraints and rigorous security measures taken at the testing centers, while appropriate for qualification examinations, are not warranted for the completion of the Regulatory Element. The proposed rule change would remove burdens associated with the test center delivery method (*e.g.*, the time spent traveling to a test center and the cost for time spent at a test center). The Web-based format of the Regulatory Element program, which will be administered by FINRA, is designed with safeguards to authenticate the identities of the CE candidates. For instance, prior to commencing a Web-based session, the candidate will be asked to provide a portion of their Social Security number (either first five or last four digits) and their date of birth. This information will only be used by FINRA for matching data in the CRD system for authentication purposes and the Web CE system will discard this information after the matching process.¹²

In its rule filing, FINRA outlined a timeline for phasing in Web-based delivery and guidance for any firms that currently utilize in-firm delivery for CE delivery.¹³ After the SEC's approval of FINRA's rule change, FINRA announced that it will launch the first phase of the Web-based delivery of Regulatory Element ("CE Online"), which will include the S106, S201 and S901 Regulatory Element programs, on October 1, 2015 and will launch the second phase of CE Online, which will include the S101 Regulatory Element program, on January 4, 2016.¹⁴ Before commencing a Web-based session, each candidate will be required to agree to

would modernize the CE requirements, remove burdens associated with the test center delivery method (*e.g.*, the time spent traveling to a test center), and reduce the fees and other costs associated with the Regulatory Element.

¹¹ Although the proposed rule change provides for flexibility, firms may impose additional conditions upon registered persons based on the firm's supervisory obligations and compliance controls.

¹² See Proposing Release.

¹³ *Id.*

¹⁴ See *Continuing Education, SEC Approves Amendments Relating to Web-based Delivery of the Regulatory Element*, FINRA Regulatory Notice 15-28 (August 2015). S106 is for Investment Company and Variable Contracts Representatives, the S201 is for registered principals and supervisors, and the S101 is for all other registration categories.

the Rules of Conduct for Web-based delivery. Among other things, the Rules of Conduct will require each candidate to attest that he or she is in fact the person who is taking the Web-based session and attest to compliance with the Rules of Conduct.

The MSRB endorses FINRA's timeline for phasing in the new Web-based delivery method and phasing-out the in-firm delivery of the Regulatory Element.¹⁵ The Board requests that the proposed rule change to the Regulatory Element CE Requirements pursuant to Rule G-3(i)(i) become operative on October 1, 2015 to coincide with the launch of the first Web-based modules for the Regulatory Element. In accordance with FINRA's rule proposal, delivery of the Regulatory Element at a test center would be phased out by no later than six months after January 4, 2016. Registered persons will continue to have the option of completing the Regulatory Element in a test center until the phase out of the test center delivery method, but they will be required to use the Web-based system after that date. Firms will not be able to establish new in-firm delivery programs after October 1, 2015. Moreover, firms that have pre-existing in-firm delivery programs established prior to October 1, 2015 would not be able to use that delivery method for the S106, S201 and S901 Regulatory Element programs after October 1, 2015, which is the anticipated launch date of the Web-based delivery for these programs. However, firms may continue to use their pre-existing in-firm delivery programs for the S101 Regulatory Element program until January 4, 2016, which is the anticipated launch date of Web-based delivery for the S101 program. The MSRB is not proposing any changes to the Firm Element CE Requirements under MSRB Rule G-3(i)(ii).

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with the provisions of Section 15B(b)(2)(A) of the Act,¹⁶ which authorizes the MSRB, in part, to prescribe for municipal securities brokers or municipal

¹⁵ *Id.* FINRA is proposing to phase out test-center delivery by no later than six months after January 4, 2016. Registered persons will continue to have the option of completing the Regulatory Element in a test center until the phase out of the test center delivery method, but they will be required to use the FINRA CE Online System after that date. Further, FINRA is proposing to phase out the current option for "in-firm delivery on a rolling basis as each Regulatory Element program becomes available for CE Online." FINRA CE Online System is accessible through the internet.

¹⁶ 15 U.S.C. 78o-4(b)(2)(A).

securities dealers and their associated persons “standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.” Section 15B(b)(2)(A) of the Act¹⁷ also provides, in part, that the Board may appropriately classify municipal securities brokers and municipal securities dealers and persons associated with such municipal securities brokers and municipal securities dealers to meet such standards of training, experience, competence, and such other qualifications as the MSRB finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.

The MSRB believes that the proposed rule change will permit registered persons to utilize the time saved attending test centers to focus on the content and learning objectives set forth in the CE modules, potentially leading to a better understanding of the modules and thus enhanced investor protections. The proposed rule change is designed to preserve the integrity of the Regulatory Element of the CE requirements while making compliance with the Regulatory Element less burdensome on firms by giving them and their covered associated persons additional flexibility and, as a result, a reduction in the cost of the Regulatory Element requirement.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The MSRB 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 MSRB notes that the proposed rule change is specifically intended to reduce the burden on firms while preserving the integrity of the Regulatory Element program. Web-based delivery will allow registered persons the flexibility to complete the Regulatory Element at any location and at any time during their 120-day window for completion of the Regulatory Element and offers cost savings over test centers.

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 on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)¹⁸ of the Act and Rule 19b-4(f)(6)¹⁹ thereunder, the MSRB has designated the proposed rule change as one that affects a change that does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative until 30 days after the date of filing.²⁰ However, Rule 19b-4(f)(6)(iii) permits the Commission to waive the 30 day operative delay if such action is consistent with the protection of investors and the public interest.²¹ The MSRB has requested that the Commission designate the proposed rule change operative on October 1, 2015, which is less than 30 days after the date of filing of the proposed rule change, as specified in Rule 19b-4(f)(6)(iii).²²

The MSRB has provided that the proposed rule change is based on FINRA Rule 1250, which was filed for effectiveness commencing October 1, 2015 and approved by the Commission on July 31, 2015.²³ The MSRB believes that an October 1, 2015 implementation date of the proposed rule change is necessary in order to align the MSRB’s implementation for Web-based delivery of the Regulatory Element with FINRA’s, which begins on October 1, 2015. The MSRB has stated that the Regulatory Element component of the MSRB’s CE requirements is identical to the Regulatory Element component of FINRA’s CE requirements and that the proposed rule change will provide registered persons with time and cost savings by eliminating the need to visit test centers to complete the Regulatory Element. The Commission believes that waiving the 30 day operative delay is consistent with the protection of investors and the public interest

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ *Id.*

²¹ In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change, along with a brief description and text of such proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Commission has designated a shorter time for delivery of such written notice.

²² See SR-MSRB-2015-11 (filed with the Commission on September 29, 2015).

²³ See *supra* note 14.

because it will allow for the consistent implementation of the MSRB’s CE requirements with FINRA’s and permit persons registered with both the MSRB and FINRA to fulfill their respective CE requirements in a uniform manner. Therefore, the Commission hereby waives the 30 day operative delay and designates the proposed rule change operative on October 1, 2015.²⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MSRB-2015-11 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-MSRB-2015-11. 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 Web site (<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

²⁴ For purposes only of waiving the 30-day operative delay for this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ *Id.*

available for Web site 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 MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2015-11 and should be submitted on or before November 10, 2015.

For the Commission, pursuant to delegated authority.²⁵

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-26516 Filed 10-19-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76149; File No. SR-CBOE-2015-085]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to End of Week/End of Month Expirations Pilot Program

October 14, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on October 1, 2015, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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

CBOE proposes to amend Rule 24.9(e) (End of Week/End of Month Expirations Pilot Program ("Program")) by clarifying the maximum numbers of expirations permitted to be listed under the Program and by deleting outdated text from Rule 24.9(e). The Exchange is not proposing to change the substantive content of Rule 24.9(e).

The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission.

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

On September 14, 2010, the Commission approved CBOE's proposal to establish a pilot program under which CBOE is permitted to list P.M.-settled options on broad-based indexes to expire on (a) any Friday of the month, other than the third Friday-of-the-month, and (b) the last trading day of the month.⁵ The terms of the Program are set forth in Rule 24.9(e) and End of Week Expirations ("EOWs") and End of Month Expirations ("EOMs") are permitted on any broad-based index that is eligible for standard options trading. EOWs and EOMs are cash-settled expirations with European-style exercise, and are subject to the same rules that govern the trading of standard index options.

Maximum Numbers of Expirations Permitted Under Program

This current filing proposes to amend Rule 24.9(e) by clarifying the maximum

numbers of expirations permitted to be listed under the Program. In support of this change, CBOE states that EOWs and EOMs are subject to the same rules governing standard options on the same broad-based index class. In the filing to establish the Program, CBOE provided example expirations for EOWs and EOMs and cited to Rule 24.9(a)(2) as the specific rule governing the expiration *months* that may be listed for index options.⁶ Because Rule 24.9(a)(2) is phrased in terms of "standard monthly expirations" (vs. the more general term "expirations"), CBOE believes that some ambiguity may exist as to the maximum numbers of EOWs and EOMs that may be listed under the Program. In addition, CBOE believes that providing for the maximum numbers of expirations permitted under the Program within Rule 24.9(e) would make that Program clearer on its face by eliminating any potential ambiguity about the maximum numbers of expirations permitted under the Program. As a result, CBOE proposes to amend the Program as follows.

Respecting EOWs, CBOE proposes to amend Rule 24.9(e)(1) by adding the following rule text:

The maximum numbers of expirations that may be listed for EOWs is the same as the maximum numbers of expirations permitted in Rule 24.9(a)(2) for standard options on the same broad-based index. EOW expirations shall be for the nearest Friday expirations from the actual listing date, other than the third Friday-of-the-month or that coincide with an EOM expiration. If the last trading day of a month is a Friday, the Exchange will list an EOM and not an EOW. Other expirations in the same class are not counted as part of the maximum numbers of EOW expirations for a broad-based index class.

In support of this change, CBOE states that under Rule 24.9(a)(2), the maximum numbers of expirations varies depending on the type of class or by specific class. Therefore, the maximum number of expirations permitted for EOWs on a given class would be determined based on the specific broad-based index option class. For example, if the broad-based index option class is used to calculate a volatility index, the maximum number of EOWs permitted in that class would be 12 expirations (as is permitted in Rule 24.9(a)(2)). For EOWs, CBOE proposes to require that the expirations be for weeks that are in the nearest Friday from the actual listing date, other than the third Friday-of-the-month or that coincide with an EOM expiration. CBOE proposes to set forth the listing hierarchy described in the original Program filing, which provides that if the last trading day of a month

²⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Securities Exchange Act Release No. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (order approving SR-CBOE-2009-075).

⁶ *Id.*, at note 5.

is a Friday, the Exchange would list an EOM and not an EOW.⁷ Finally, CBOE proposes to clarify that other expirations in the same class would not be counted as part of the maximum numbers of EOW expirations for a broad-based index class. CBOE states that this provision is similar to one recently adopted in connection with weekly CBOE Volatility Index (“VIX”) expirations, in that standard VIX expirations are not counted toward the maximum number of expirations permitted for weekly expiration in VIX options.⁸

Respecting EOMs, CBOE proposes to amend Rule 24.9(e)(2) by adding the following rule text:

The maximum numbers of expirations that may be listed for EOMs is the same as the maximum numbers of expirations permitted in Rule 24.9(a)(2) for standard options on the same broad-based index. EOM expirations shall be for the nearest end of month expirations from the actual listing date. Other expirations in the same class are not counted as part of the maximum numbers of EOM expirations for a broad-based index class.

In support of this change, CBOE states that under Rule 24.9(a)(2), the maximum numbers of expirations varies depending on the type of class or by specific class. Therefore, the maximum number of expirations permitted for EOMs on a given class would be determined based on the specific broad-based index option class. For example, if the broad-based index option class is used to calculate a volatility index, the maximum number of EOMs permitted in that class would be 12 expirations (as is permitted in Rule 24.9(a)(2)). For EOMs, CBOE proposes to require that the expirations be for the nearest end of month expirations from the actual listing date. Finally, CBOE proposes to clarify that other expirations in the same class would not be counted as part of the maximum numbers of EOM expirations for a broad-based index class. CBOE states that this provision is similar to one recently adopted in connection with weekly VIX expirations, in that standard VIX expirations are not counted toward the maximum number of expirations permitted for weekly expiration in VIX options.⁹

The above described changes hard code into CBOE’s rule its existing listing practice as to the maximum numbers of expirations permitted under the Program. Currently, the maximum numbers of expirations are not populated for EOWs and EOMs;

however, the same is true for standard expirations in certain broad-based index option classes. As a result, CBOE believes that setting forth the maximum potential of a rule is non-controversial and is consistent with how CBOE has treated EOWs and EOMs under the Program since its adoption in 2010. In any event, CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle any additional traffic associated with the listing the maximum numbers of expirations permitted under the Program.

Remove Outdate [sic] Rule Text

The Exchange proposes to make non-substantive changes to Rule 24.9(e) by deleting rule text that references items with dates in 2011 and 2015 that have passed. The Exchange represents that this rule text language is obsolete. Also, the Exchange is proposing to replace references to “regular options” with “standard options” to conform references to third-Friday expiring options (standard) between Rule 24.9(a) (which uses “standard” when referring to third-Friday expiring options) and Rule 24.9(e).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.¹⁰ In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that some ambiguity may exist as to the maximum numbers of EOWs and EOMs that may be listed under the Program. Setting forth the numbers of expirations permitted under the Program would benefit market participants by making that Program clearer on its face by eliminating any potential ambiguity about the maximum numbers of expirations permitted under the Program. The Exchange also believes

that the current proposal is designed to promote just and equitable principles of trade because it would hard code into CBOE’s rule its existing listing practice as to the maximum numbers of expirations permitted under the Program.

B. Self-Regulatory Organization’s Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, CBOE believes that providing clarification about the numbers of expirations permitted under the Program would benefit all market participants who trade expirations listed under the Program and does not impose any burden on competition.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6)¹³ 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 will institute proceedings 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.

⁷ *Id.*, at note 5.

⁸ See fourth bullet under Rule 24.9(a)(2).

⁹ See fourth bullet under Rule 24.9(a)(2).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

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-CBOE-2015-085 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-CBOE-2015-085. 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 Web site (<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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2015-085 and should be submitted on or before November 10, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-26520 Filed 10-19-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-263; OMB Control No. 3235-0275]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

Extension:

Rule 17Ad-13.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 17Ad-13 (17 CFR 240.17Ad-13), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17Ad-13 requires an annual study and evaluation of internal accounting controls under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). It requires approximately 100 registered transfer agents to obtain an annual report on the adequacy of their internal accounting controls from an independent accountant. In addition, transfer agents must maintain copies of any reports prepared pursuant to Rule 17Ad-13 plus any documents prepared to notify the Commission and appropriate regulatory agencies in the event that the transfer agent is required to take any corrective action. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. Small transfer agents are exempt from Rule 17Ad-13 as are transfer agents that service only their own companies' securities.

Approximately 100 independent, professional transfer agents must file the independent accountant's report annually. We estimate that the annual internal time burden for each transfer agent to comply with Rule 17Ad-13 by submitting the report prepared by the independent accountant to the Commission is minimal. The time required for the independent accountant to prepare the accountant's report varies with each transfer agent depending on the size and nature of the transfer agent's operations. The Commission estimates that, on average, each report can be completed by the independent accountant in 120 hours, resulting in a

total of 12,000 external hours annually (120 hours × 100 reports). The burden was estimated using Commission review of filed Rule 17Ad-13 reports. The Commission estimates that, on average, 120 hours are needed to perform the study, prepare the report, and retain the required records on an annual basis. Assuming an average hourly rate of an independent accountant of \$60, the average total annual cost of the report is \$7,200. The total annual cost for the approximate 100 respondents is approximately \$720,000.

The retention period for the recordkeeping requirement under Rule 17Ad-13 is three years following the date of a report prepared pursuant to the rule. The recordkeeping requirement under Rule 17Ad-13 is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information.

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

The public may view background documentation for this information collection at the following Web site, <http://www.reginfo.gov>. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: shagufta_ahmed@omb.eop.gov; and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to PRA_Mailbox@sec.gov. Comments must be submitted within 30 days of this notice.

Dated: October 13, 2015.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-26519 Filed 10-19-15; 8:45 am]

BILLING CODE 8011-01-P

¹⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Life Care Medical Devices Ltd., and New Leaf Brands, Inc.; Order of Suspension of Trading

October 16, 2015.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Life Care Medical Devices Ltd. (CIK No. 1508363), a defaulted Nevada corporation with its principal place of business listed as New Smyrna Beach, Florida, with stock quoted on OTC Link (previously, “Pink Sheets”) operated by OTC Markets Group, Inc. (“OTC Link”) under the ticker symbol LCMD, because it has not filed any periodic reports since the period ended January 31, 2013. On October 22, 2014, the Division of Corporation Finance sent Life Care Medical Devices a delinquency letter requesting compliance with its periodic filing obligations, but the letter was returned because of Life Care Medical Devices’ failure to maintain a valid address on file with the Commission, as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual).

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of New Leaf Brands, Inc. (CIK No. 806175), a revoked Nevada corporation with its principal place of business listed as Southbury, Connecticut, with stock quoted on OTC Link under the ticker symbol NLEF, because it has not filed any periodic reports since the period ended September 30, 2012. On June 9, 2014, New Leaf Brands received a delinquency letter sent by the Division of Corporation Finance requesting compliance with its periodic filing obligations.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on October 16, 2015, through 11:59 p.m. EDT on October 29, 2015.

By the Commission.

Brent J. Fields,
Secretary.

[FR Doc. 2015–26718 Filed 10–16–15; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76159; File No. SR–EDGX–2015–44]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Rule 3.20, Influencing or Rewarding Employees of Others, Concerning Gifts and Gratuities in Relation to the Business of the Employer of the Recipient

October 15, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on September 30, 2015, EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b–4(f)(6)(iii) thereunder,⁴ which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to adopt Rule 3.20 to conform to the rules of the Financial Industry Regulatory Authority, Inc. (“FINRA”) for purposes of an agreement between the Exchange and FINRA pursuant to Rule 17d–2 under the Act.⁵ The Exchange also proposes to adopt Rule 3.20 to conform to the rules of BATS Exchange, Inc. (“BZX”) and BATS Y-Exchange, Inc. (“BYX”).⁶

The text of the proposed rule change is available at the Exchange’s Web site at www.batstrading.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b–4(f)(6)(iii).

⁵ 17 CFR 240.17d–2.

⁶ See SR–BATS–2015–79 and SR–BYX–2015–43 (filed September 30, 2015) (Notice of Filing and Immediate Effectiveness to Amend Rule 3.22 to Conform to FINRA Rule 3220).

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**1. Purpose**

Pursuant to Rule 17d–2 under the Act,⁷ the Exchange and FINRA entered into an agreement to allocate regulatory responsibility for common rules (the “17d–2 Agreement”). The 17d–2 Agreement covers common members of the Exchange and FINRA and allocates to FINRA regulatory responsibility, with respect to common members, for the following: (i) Examination of common members of the Exchange and FINRA for compliance with certain federal securities laws, rules and regulations and rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules; (ii) investigation of common members of the Exchange and FINRA for violations of certain federal securities laws, rules or regulations, or Exchange rules that the Exchange has certified as identical or substantially identical to a FINRA rule; and (iii) enforcement of compliance by common members with certain federal securities laws, rules and regulations, and the rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules.⁸

The 17d–2 Agreement included a certification by the Exchange that states that the requirements contained in certain Exchange rules are identical to, or substantially similar to, certain FINRA rules that have been identified as comparable. The Exchange does not currently maintain a rule similar to FINRA Rule 3220 governing a Member’s giving of gifts. To conform to comparable FINRA rules for purposes of the 17d–2 Agreement, the Exchange

⁷ 17 CFR 240.17d–2.

⁸ See Securities and Exchange Release No. 62079 (May 11, 2010), 75 FR 28080 (May 19, 2010) (approving File No. 4–598).

proposes [sic] adopt Rule 3.20, Influencing or Rewarding Employees of Others, that is identical to FINRA Rule 3220. The proposed rule text is also identical to New York Stock Exchange, Inc. (“NYSE”) Rule 3220, which has been approved by the Commission.⁹

The Exchange believes that these changes will help to avoid confusion among Members of the Exchange that are also members of FINRA by further aligning the Exchange Rules with FINRA Rule 3220. The proposed adoption of Rule 3.20 is designed to enable the Exchange to incorporate Rule 3.20 into the 17d–2 Agreement, further harmonizing regulation of Members that are also members of FINRA. For the avoidance of doubt, Rule 3.20 would equally apply to Exchange-only Members as the Exchange believes it appropriately protects against improprieties that might arise when substantial gifts or monetary payments are given to certain persons. The Exchange will issue a Regulatory Notice to its Members, including Exchange-only Members that may not also be FINRA Members, and those Members registered with FINRA, clarifying that FINRA’s interpretive guidance related to FINRA Rule 3220 is considered part of Exchange Rule 3.20, and that all Members are required to regulate their conduct according to Rule 3.20 and the interpretive guidance related to FINRA Rule 3220.¹⁰

As amended, like FINRA Rule 3220(a), proposed paragraph (a) of Rule 3.20 would prevent gifts in excess of \$100.00 per individual per year where the gift or gratuity is in relation to the business of the employee¹¹ of the recipient. A gift of any kind would be considered a gratuity. The Rule would also contain an express exclusion for payments made pursuant to bona fide, written employment contracts. Specifically, like FINRA Rule 3220(b), proposed paragraph (b) of Rule 3.20 would state that the rule would not apply to contracts of employment with or to compensation for services rendered by persons enumerated in paragraph (a) of the Rule, provided that

there is in existence prior to the time of employment or before the services are rendered, a written agreement between the member and the person who is to be employed to perform such services. Proposed paragraph (c) would require such agreement to include the nature of the proposed employment, the amount of the proposed compensation, and the written consent of such person’s employer or principal.

The Rule would also require each Member to maintain a separate record of all gifts or gratuities. Like FINRA Rule 3220(c), proposed paragraph (c) of Rule 3.20 would require a separate record of all payments or gratuities in any amount known to the member, the employment agreement referred to in proposed paragraph (b) of Rule 3.20 and any employment compensation paid as a result thereof shall be retained by the member for the period specified by Exchange Act Rule 17a–4.¹²

In early 2014, the Exchange and its affiliate, EDGA Exchange, Inc. (“EDGA”) received approval to effect a merger (the “Merger”) of the Exchange’s parent company, Direct Edge Holdings LLC, with BATS Global Markets, Inc., the parent of BZX and the BYX (together with BZX, EDGA and EDGX, the “BGM Affiliated Exchanges”).¹³ In the context of the Merger, the BGM Affiliated Exchanges are working to align their rules, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposed text of Rule 3.20 is also identical to recent rule changes filed with the Commission by BZX and BYX to adopt identical rule text to that proposed herein and FINRA Rule 3220. This proposed rule change would enable the Exchange to adopt rules that correspond to rules of BYX and BZX and provide a consistent rule set across each of the BGM Affiliated Exchanges.¹⁴

2. Statutory Basis

The Exchange believes that proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁵ which requires, among other things, that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities,

and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change will further these requirements by providing greater harmonization between Exchange and FINRA rules of similar purpose, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

In addition, the proposed rule change would provide greater harmonization between rules of similar purpose on the BGM Affiliated Exchanges, resulting in greater uniformity and less burdensome and more efficient regulatory compliance and understanding of Exchange Rules. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. Similarly, the Exchange also believes that, by harmonizing the rules across each BGM Affiliated Exchange, the proposal will enhance the Exchange’s ability to fairly and efficiently regulate its Members, meaning that the proposed rule change would promote just and equitable principles of trade in accordance with Section 6(b)(5) of the Act.¹⁶

(B) Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather to provide greater harmonization among Exchange and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for common members and facilitating FINRA’s performance of its regulatory functions under the 17d–2 Agreement. In addition, allowing the Exchange to implement substantively identical rules that apply to all members of the BGM Affiliated Exchanges across each of the BGM Affiliated Exchanges does not present any competitive issues, but rather is designed to provide greater

⁹ See Securities Exchange Act Release No. 59965 (May 21, 2009), 74 FR 25783 (May 29, 2009) (SR–NYSE–2009–25).

¹⁰ See, e.g., FINRA’s interpretive guidance concerning business entertainment expenses, including a June 24, 1999, Letter to Henry H. Hopkins and Sarah McCafferty, T. Rowe Price Investment Services, Inc. This interpretive letter and other interpretive guidance concerning gifts and gratuities expenses are currently available at FINRA’s Web site.

¹¹ The Commission notes that both FINRA Rule 3220 and proposed EDGX Rule 3.20 limit gifts and gratuities in relation to the employer of the recipient, rather than those in relation to the “employee” of the recipient as stated above.

¹² 17 CFR 240.17a–4.

¹³ See Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGX–2013–43; SR–EDGA–2013–34).

¹⁴ The Exchange notes that EDGA intends to file an identical proposal with the Commission to adopt Rule 3.20, Influencing or Rewarding Employees of Others.

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ *Id.*

harmonization among Exchange, BZX, BYX, and EDGA rules of similar purpose.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act¹⁷ and paragraph (f)(6) of Rule 19b-4 thereunder.¹⁸ The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include File No. SR-EDGX-2015-44 on the subject line.

Paper comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-EDGX-2015-44. 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 Web site (<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 Web site 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-EDGX-2015-44 and should be submitted on or before November 10, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-26580 Filed 10-19-15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76148; File No. SR-FINRA-2015-036]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 4210 (Margin Requirements) To Establish Margin Requirements for the TBA Market

October 14, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 6, 2015, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend FINRA Rule 4210 (Margin Requirements) to establish margin requirements for (1) To Be Announced ("TBA") transactions, inclusive of adjustable rate mortgage ("ARM") transactions, (2) Specified Pool Transactions, and (3) transactions in Collateralized Mortgage Obligations ("CMOs"), issued in conformity with a program of an agency or Government-Sponsored Enterprise ("GSE"), with forward settlement dates, as further defined herein (collectively, "Covered Agency Transactions," also referred to, for purposes of this filing, as the "TBA market"). The proposed rule change redesignates current paragraph (e)(2)(H) of FINRA Rule 4210 as new paragraph (e)(2)(I), adds new paragraph (e)(2)(H), makes conforming revisions to paragraphs (a)(13)(B)(i), (e)(2)(F), (e)(2)(G), (e)(2)(I), as redesignated by the rule change, and (f)(6), and adds to the rule new Supplementary Materials .02 through .05.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4.

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is proposing amendments to FINRA Rule 4210 (Margin Requirements) to establish requirements for (1) TBA transactions,³ inclusive of ARM transactions, (2) Specified Pool Transactions,⁴ and (3) transactions in CMOs,⁵ issued in conformity with a program of an agency⁶ or GSE,⁷ with

³ FINRA Rule 6710(u) defines "TBA" to mean a transaction in an Agency Pass-Through Mortgage-Backed Security ("MBS") or a Small Business Administration ("SBA")-Backed Asset-Backed Security ("ABS") where the parties agree that the seller will deliver to the buyer a pool or pools of a specified face amount and meeting certain other criteria but the specific pool or pools to be delivered at settlement is not specified at the Time of Execution, and includes TBA transactions for good delivery and TBA transactions not for good delivery. Agency Pass-Through MBS and SBA-Backed ABS are defined under FINRA Rule 6710(v) and FINRA Rule 6710(bb), respectively. The term "Time of Execution" is defined under FINRA Rule 6710(d).

⁴ FINRA Rule 6710(x) defines Specified Pool Transaction to mean a transaction in an Agency Pass-Through MBS or an SBA-Backed ABS requiring the delivery at settlement of a pool or pools that is identified by a unique pool identification number at the time of execution.

⁵ FINRA Rule 6710(dd) defines CMO to mean a type of Securitized Product backed by Agency Pass-Through MBS, mortgage loans, certificates backed by project loans or construction loans, other types of MBS or assets derivative of MBS, structured in multiple classes or tranches with each class or tranche entitled to receive distributions of principal or interest according to the requirements adopted for the specific class or tranche, and includes a real estate mortgage investment conduit ("REMIC").

⁶ FINRA Rule 6710(k) defines "agency" to mean a United States executive agency as defined in 5 U.S.C. 105 that is authorized to issue debt directly or through a related entity, such as a government corporation, or to guarantee the repayment of principal or interest of a debt security issued by another entity. The term excludes the U.S. Department of the Treasury in the exercise of its authority to issue U.S. Treasury Securities as defined under FINRA Rule 6710(p). Under 5 U.S.C. 105, the term "executive agency" is defined to mean an "Executive department, a Government corporation, and an independent establishment."

⁷ FINRA Rule 6710(n) defines GSE to have the meaning set forth in 2 U.S.C. 622(8). Under 2 U.S.C.

forward settlement dates, as further defined herein⁸ (collectively, "Covered Agency Transactions," also referred to, for purposes of this filing, as the "TBA market").

Most trading of agency and GSE MBS takes place in the TBA market, which is characterized by transactions with forward settlements as long as several months past the trade date.⁹ The agency and GSE MBS market is one of the largest fixed income markets, with approximately \$5 trillion of securities outstanding and approximately \$750 billion to \$1.5 trillion in gross unsettled and unmargined dealer to customer transactions.¹⁰

Historically, the TBA market is one of the few markets where a significant portion of activity is unmargined, thereby creating a potential risk arising from counterparty exposure. Futures markets, for example, require the posting of initial margin for new positions and, for open positions, maintenance and mark to market (also referred to as "variation") margin on all exchange cleared contracts. Market convention has been to exchange margin in the repo and securities lending markets, even when the collateral consists of exempt securities. With a view to this gap between the TBA market versus other markets, the TMPG recommended standards (the "TMPG best practices") regarding the margining of forward-settling agency MBS transactions.¹¹ The TMPG Report noted

622(8), a GSE is defined, in part, to mean a corporate entity created by a law of the United States that has a Federal charter authorized by law, is privately owned, is under the direction of a board of directors, a majority of which is elected by private owners, and, among other things, is a financial institution with power to make loans or loan guarantees for limited purposes such as to provide credit for specific borrowers or one sector and raise funds by borrowing (which does not carry the full faith and credit of the Federal Government) or to guarantee the debt of others in unlimited amounts.

⁸ See Item IIA.1(A)(1) *infra*.

⁹ See, e.g., James Vickery & Joshua Wright, TBA Trading and Liquidity in the Agency MBS Market, Federal Reserve Bank of New York ("FRBNY") Economic Policy Review, May 2013, available at: <<http://www.newyorkfed.org/research/epr/2013/1212vick.pdf>>; see also SEC's Staff Report, Enhancing Disclosure in the Mortgage-Backed Securities Markets, January 2003, available at: <http://www.sec.gov/news/studies/mortgagebacked.htm#footbody_36>.

¹⁰ See Treasury Market Practices Group ("TMPG"), Margining in Agency MBS Trading, November 2012, available at: <http://www.newyorkfed.org/tmpg/margining_tmpg_11142012.pdf> (the "TMPG Report"). The TMPG is a group of market professionals that participate in the TBA market and is sponsored by the FRBNY.

¹¹ See TMPG, Best Practices for Treasury, Agency, Debt, and Agency Mortgage-Backed Securities Markets, revised April 4, 2014, available at: <http://www.newyorkfed.org/tmpg/bestpractices_040414.pdf>.

that, to the extent uncleared transactions in the TBA market remain unmargined, these transactions "can pose significant counterparty risk to individual market participants" and that "the market's sheer size . . . raises systemic concerns."¹² The TMPG Report cautioned that defaults in this market "could transmit losses and risks to a broad array of other participants. While the transmission of these risks may be mitigated by the netting, margining, and settlement guarantees provided by a [central clearing counterparty], losses could nonetheless be costly and destabilizing. Furthermore, the asymmetry that exists between participants that margin and those that do not could have a negative effect on liquidity, especially in times of market stress."¹³

The TMPG best practices are recommendations and as such currently are not rule requirements.¹⁴ Unsecured credit exposures that exist in the TBA market today can lead to financial losses by dealers. Permitting counterparties to participate in the TBA market without posting margin can facilitate increased leverage by customers, thereby potentially posing a risk to the dealer extending credit and to the marketplace as a whole. Further, FINRA's present requirements do not address the TBA market generally.¹⁵ In view of the growth in volume in the TBA market, the number of participants and the credit concerns that have been raised in recent years, FINRA believes there is a need to establish FINRA rule requirements for the TBA market generally that will extend responsible practices to members that participate in this market.

Accordingly, to establish margin requirements for Covered Agency Transactions, FINRA is proposing to redesignate current paragraph (e)(2)(H) of Rule 4210 as new paragraph (e)(2)(I), to add new paragraph (e)(2)(H) to Rule 4210, to make conforming revisions to paragraphs (a)(13)(B)(i), (e)(2)(F), (e)(2)(G), (e)(2)(I), as redesignated by the rule change, and (f)(6),¹⁶ and to add to

¹² See TMPG Report.

¹³ See note 12 *supra*.

¹⁴ Absent the establishment of a rule requirement, member participants have made progress in adopting the TMPG best practices. However, full adoption will take time and in the interim would leave firms at risk.

¹⁵ See Interpretations/01 through/08 of FINRA Rule 4210(e)(2)(F), available at: <<http://www.finra.org/web/groups/industry/@ip/@reg/@rules/documents/industry/p122203.pdf>>. Such guidance references TBAs largely in the context of Government National Mortgage Association ("GNMA") securities. The modern TBA market is much broader than GNMA securities.

¹⁶ Paragraph (e)(2) of Rule 4210, broadly, addresses margin requirements as to exempted

the rule new Supplementary Materials .02 through .05. The proposed rule change is informed by the TMPG best practices. Further, the products the proposed amendments cover are intended to be congruent with those covered by the TMPG best practices and related updates that the TMPG has released.¹⁷ FINRA sought comment on the proposal in a *Regulatory Notice* (the “Notice”).¹⁸ As discussed further in Item II.C of this filing, commenters expressed concerns that the proposal would unnecessarily impede accustomed patterns of business activity in the TBA market, especially for smaller customers. In considering the comments, FINRA has engaged in discussions with industry participants and other regulators, including staff of the SEC and the FRBNY. In addition, as discussed in Item II.B, FINRA has engaged in analysis of the potential economic impact of the proposal. As a result, FINRA has revised the proposal as published in the *Notice* to ameliorate its impact on business activity and to address the concerns of smaller customers that do not pose material risk to the market as a whole, in particular those engaging in non-margined, cash account business. These revisions include among other things the establishment of an exception from the proposed margin requirements for any counterparty with gross open positions amounting to \$2.5 million or less, subject to specified conditions, as well as specified exceptions to the maintenance margin requirement and modifications to the de minimis transfer provisions.

The proposed rule change, as revised in response to comment on the *Notice*, is set forth in further detail below.

securities, non-equity securities and baskets. As discussed further below, paragraphs (e)(2)(F) and (e)(2)(G), in combination, address specified transactions involving exempted securities, mortgage related securities, specified foreign sovereign debt securities, and investment grade debt securities. Redesignated paragraph (e)(2)(I) of the rule sets forth specified limits on net capital deductions. Paragraph (f)(6) addresses the time within which margin or mark to market must be obtained. Paragraph (a)(13)(B)(i) addresses the net worth and financial assets requirements of persons that are exempt accounts for purposes of Rule 4210.

¹⁷ See, e.g., TMPG, Frequently Asked Questions: Margining Agency MBS Transactions, June 13, 2014, available at: <<http://www.newyorkfed.org/tmpg/marginingfaq06132014.pdf>>; TMPG Releases Updates to Agency MBS Margining Recommendation, March 27, 2013, available at: <<http://www.newyorkfed.org/tmpg/Agency%20MBS%20margining%20public%20announcement%2003-27-2013.pdf>>.

¹⁸ *Regulatory Notice* 14–02 (January 2014) (Margin Requirements: FINRA Requests Comment on Proposed Amendments to FINRA Rule 4210 for Transactions in the TBA Market).

(A) Proposed FINRA Rule 4210(e)(2)(H) (Covered Agency Transactions)

The proposed rule change is intended to reach members engaging in Covered Agency Transactions with specified counterparties. The core requirements of the proposed rule change are set forth in new paragraph (e)(2)(H).

(1) Definition of Covered Agency Transactions (Proposed FINRA Rule 4210(e)(2)(H)(i)c

Proposed paragraph (e)(2)(H)(i)c. of the rule defines Covered Agency Transactions to mean:

- TBA transactions, as defined in FINRA Rule 6710(u),¹⁹ inclusive of ARM transactions, for which the difference between the trade date and contractual settlement date is greater than one business day;²⁰
- Specified Pool Transactions, as defined in FINRA Rule 6710(x),²¹ for which the difference between the trade date and contractual settlement date is greater than one business day;²² and
- CMOs, as defined in FINRA Rule 6710(dd),²³ issued in conformity with a program of an agency, as defined in FINRA Rule 6710(k),²⁴ or a GSE, as defined in FINRA Rule 6710(n),²⁵ for which the difference between the trade date and contractual settlement date is greater than three business days.²⁶

The proposed definition of Covered Agency Transactions is largely as published in the *Notice* and, as discussed above, is intended to be congruent with the scope of products addressed by the TMPG best practices and related updates.²⁷ As further discussed in Item II.C.1, FINRA has been advised by the FRBNY staff that ensuring such congruence is necessary to prevent a mismatch between FINRA standards and the TMPG best practices that could result in perverse incentives in favor of non-margined products and thereby lead to distortions in trading behavior. Further, FINRA believes that

¹⁹ See note 3 *supra*.

²⁰ See proposed FINRA Rule 4210(e)(2)(H)(i)c.1. in Exhibit 5.

²¹ See note 4 *supra*.

²² See proposed FINRA Rule 4210(e)(2)(H)(i)c.2. in Exhibit 5.

²³ See note 5 *supra*.

²⁴ See note 6 *supra*.

²⁵ See note 7 *supra*.

²⁶ See proposed FINRA Rule 4210(e)(2)(H)(i)c.3. in Exhibit 5.

²⁷ For example, the TMPG has noted that agency multifamily and project loan securities such as Freddie Mac K Certificates, Fannie Mae Delegated Underwriting and Servicing bonds, Ginnie Mae Construction Loan/Project Loan Certificates, are all within the scope of the margining practice recommendation. See note 17 *supra*. The proposed definition of Covered Agency Transactions would cover these types of products as they are commonly understood to the industry.

congruence of product coverage helps stabilize the market by ensuring regulatory consistency.

(2) Other Key Definitions Established by the Proposed Rule Change (Proposed FINRA Rule 4210(e)(2)(H)(i))

In addition to Covered Agency Transactions, the proposed rule change establishes the following key definitions for purposes of new paragraph (e)(2)(H) of Rule 4210:

- The term “bilateral transaction” means a Covered Agency Transaction that is not cleared through a registered clearing agency as defined in paragraph (f)(2)(A)(xxviii) of Rule 4210;²⁸
- The term “counterparty” means any person that enters into a Covered Agency Transaction with a member and includes a “customer” as defined in paragraph (a)(3) of Rule 4210;²⁹
- The term “deficiency” means the amount of any required but uncollected maintenance margin and any required but uncollected mark to market loss;³⁰
- The term “gross open position” means, with respect to Covered Agency Transactions, the amount of the absolute dollar value of all contracts entered into by a counterparty, in all CUSIPs; provided, however, that such amount shall be computed net of any settled position of the counterparty held at the member and deliverable under one or more of the counterparty’s contracts with the member and which the counterparty intends to deliver;³¹
- The term “maintenance margin” means margin equal to two percent of the contract value of the net long or net short position, by CUSIP, with the counterparty;³²
- The term “mark to market loss” means the counterparty’s loss resulting from marking a Covered Agency Transaction to the market;³³
- The term “mortgage banker” means an entity, however organized, that engages in the business of providing real estate financing collateralized by liens on such real estate;³⁴
- The term “round robin” trade means any transaction or transactions

²⁸ See proposed FINRA Rule 4210(e)(2)(H)(i)a. in Exhibit 5. FINRA Rule 4210(f)(2)(A)(xxviii) defines registered clearing agency to mean a clearing agency as defined in SEA Section 3(a)(23) that is registered with the SEC pursuant to SEA Section 17A(b)(2).

²⁹ See proposed FINRA Rule 4210(e)(2)(H)(i)b. in Exhibit 5.

³⁰ See proposed FINRA Rule 4210(e)(2)(H)(i)d. in Exhibit 5.

³¹ See proposed FINRA Rule 4210(e)(2)(H)(i)e. in Exhibit 5.

³² See proposed FINRA Rule 4210(e)(2)(H)(i)f. in Exhibit 5.

³³ See proposed FINRA Rule 4210(e)(2)(H)(i)g. in Exhibit 5.

³⁴ See proposed FINRA Rule 4210(e)(2)(H)(i)h. in Exhibit 5.

resulting in equal and offsetting positions by one customer with two separate dealers for the purpose of eliminating a turnaround delivery obligation by the customer;³⁵ and

- The term “standby” means contracts that are put options that trade OTC, as defined in paragraph (f)(2)(A)(xxvii) of Rule 4210, with initial and final confirmation procedures similar to those on forward transactions.³⁶

(3) Requirements for Covered Agency Transactions (Proposed FINRA Rule 4210(e)(2)(H)(ii))

The specific requirements that would apply to Covered Agency Transactions are set forth in paragraph (e)(2)(H)(ii). These requirements address the types of counterparties that are subject to the rule, risk limit determinations, specified exceptions from the proposed margin requirements, transactions with exempt accounts,³⁷ transactions with non-exempt accounts, the handling of de minimis transfer amounts, and the treatment of standbys.

- *Counterparties Subject to the Rule.*

Paragraph (e)(2)(H)(ii)a. of the rule provides that all Covered Agency Transactions with any counterparty, regardless of the type of account to which booked, are subject to the

³⁵ See proposed FINRA Rule 4210(e)(2)(H)(i). in Exhibit 5.

³⁶ See proposed FINRA Rule 4210(e)(2)(H)(i). in Exhibit 5. FINRA Rule 4210(f)(2)(A)(xxvii) defines the term “OTC” as used with reference to a call or put option contract to mean an over-the-counter option contract that is not traded on a national securities exchange and is issued and guaranteed by the carrying broker-dealer. The term does not include an Options Clearing Corporation (“OCC”) Cleared OTC Option as defined in FINRA Rule 2360 (Options).

³⁷ The term “exempt account” is defined under FINRA Rule 4210(a)(13). Broadly, an exempt account means a FINRA member, non-FINRA member registered broker-dealer, account that is a “designated account” under FINRA Rule 4210(a)(4) (specifically, a bank as defined under SEA Section 3(a)(6), a savings association as defined under Section 3(b) of the Federal Deposit Insurance Act, the deposits of which are insured by the Federal Deposit Insurance Corporation, an insurance company as defined under Section 2(a)(17) of the Investment Company Act, an investment company registered with the Commission under the Investment Company Act, a state or political subdivision thereof, or a pension plan or profit sharing plan subject to the Employee Retirement Income Security Act or of an agency of the United States or of a state or political subdivision thereof), and any person that has a net worth of at least \$45 million and financial assets of at least \$40 million for purposes of paragraphs (e)(2)(F) and (e)(2)(G) of the rule, as set forth under paragraph (a)(13)(B)(i) of Rule 4210, and meets specified conditions as set forth under paragraph (a)(13)(B)(ii). FINRA is proposing a conforming revision to paragraph (a)(13)(B)(i) so that the phrase “for purposes of paragraphs (e)(2)(F) and (e)(2)(G)” would read “for purposes of paragraphs (e)(2)(F), (e)(2)(G) and (e)(2)(H).” See proposed FINRA Rule 4210(a)(13)(B)(i) in Exhibit 5.

provisions of paragraph (e)(2)(H) of the rule. However, paragraph (e)(2)(H)(ii)a.1. of the rule provides that with respect to Covered Agency Transactions with any counterparty that is a Federal banking agency, as defined in 12 U.S.C. 1813(z) under the Federal Deposit Insurance Act,³⁸ central bank, multinational central bank, foreign sovereign, multilateral development bank, or the Bank for International Settlements, a member may elect not to apply the margin requirements specified in paragraph (e)(2)(H) provided the member makes a written risk limit determination for each such counterparty that the member shall enforce pursuant to paragraph (e)(2)(H)(ii)b., as discussed below.³⁹

- *Risk Limits.*

Paragraph (e)(2)(H)(ii)b. of the rule provides that members that engage in Covered Agency Transactions with any counterparty shall make a determination in writing of a risk limit for each such counterparty that the member shall enforce.⁴⁰ The rule provides that the risk limit determination shall be made by a designated credit risk officer or credit risk committee in accordance with the member’s written risk policies and procedures. Further, in connection with risk limit determinations, the proposed rule establishes new Supplementary Material .05, which, in response to comment, FINRA has revised vis-à-vis the version published in the *Notice*.⁴¹ The new Supplementary

³⁸ 12 U.S.C. 1813(z) defines “Federal banking agency” to mean the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

³⁹ See proposed FINRA Rule 4210(e)(2)(H)(ii)a.1. in Exhibit 5. As proposed in the *Notice*, central banks and other similar instrumentalities of sovereign governments would be excluded from the proposed rule’s application. FINRA believes that revising the proposal so members may *elect* not to apply the margin requirements to such entities, provided members make and enforce the specified risk limit determinations, should help provide members flexibility to manage their risk vis-à-vis the various central banks and similar entities that participate in the market. Further, FINRA believes the rule language, as revised, is more clear as to the types of entities with respect to which such election would be available. For further discussion, see Item I.I.C.7 *infra*.

⁴⁰ FINRA has made minor revisions to the language vis-à-vis the version as published in the *Notice* to clarify that the member must make, and enforce, a written risk limit determination for each counterparty with which the member engages in Covered Agency Transactions.

⁴¹ FINRA believes the proposed requirement is necessary because risk limit determinations help to ensure that the member is properly monitoring its risk. FINRA believes the Supplementary Material, as revised, responds to commenter concerns by, among other things, permitting members flexibility to make the required risk limit determinations without imposing burdens at the sub-account level. For further discussion of Supplementary Material

Material provides that, for purposes of any risk limit determination pursuant to paragraphs (e)(2)(F), (e)(2)(G)⁴² or (e)(2)(H) of the rule:

- If a member engages in transactions with advisory clients of a registered investment adviser, the member may elect to make the risk limit determination at the investment adviser level, except with respect to any account or group of commonly controlled accounts whose assets managed by that investment adviser constitute more than 10 percent of the investment adviser’s regulatory assets under management as reported on the investment adviser’s most recent Form ADV;⁴³

- Members of limited size and resources that do not have a credit risk officer or credit risk committee may designate an appropriately registered principal to make the risk limit determinations;⁴⁴

- The member may base the risk limit determination on consideration of all products involved in the member’s business with the counterparty, provided the member makes a daily record of the counterparty’s risk limit usage;⁴⁵ and

- A member shall consider whether the margin required pursuant to the rule is adequate with respect to a particular counterparty account or all its counterparty accounts and, where appropriate, increase such requirements.⁴⁶

- *Exceptions from the Proposed Margin Requirements: (1) Registered Clearing Agencies; (2) Gross Open Positions of \$2.5 Million or Less in Aggregate.*

Paragraph (e)(2)(H)(ii)c. provides that the margin requirements specified in paragraph (e)(2)(H) of the rule shall not apply to:

- Covered Agency Transactions that are cleared through a registered clearing agency, as defined in FINRA Rule 4210(f)(2)(A)(xxviii),⁴⁷ and are subject

.05, as revised vis-à-vis the version published in the *Notice*, see Item I.I.C.4 *infra*.

⁴² As discussed further below, FINRA is proposing as part of this rule change revisions to paragraphs (e)(2)(F) and (e)(2)(G) of Rule 4210 to align those paragraphs with new paragraph (e)(2)(H) and otherwise make clarifying changes in light of the rule change.

⁴³ See proposed FINRA Rule 4210.05(a)(1) in Exhibit 5.

⁴⁴ See proposed FINRA Rule 4210.05(a)(2) in Exhibit 5.

⁴⁵ See proposed FINRA Rule 4210.05(a)(3) in Exhibit 5.

⁴⁶ See proposed FINRA Rule 4210.05(a)(4) in Exhibit 5.

⁴⁷ See note 28 *supra*.

to the margin requirements of that clearing agency; and

- any counterparty that has gross open positions in Covered Agency Transactions with the member amounting to \$2.5 million or less in aggregate, if the original contractual settlement for all such transactions is in the month of the trade date for such transactions or in the month succeeding the trade date for such transactions and the counterparty regularly settles its Covered Agency Transactions on a Delivery Versus Payment (“DVP”) basis or for cash; provided, however, that such exception from the margin requirements shall not apply to a counterparty that, in its transactions with the member, engages in dollar rolls, as defined in FINRA Rule 6710(z),⁴⁸ or round robin trades, or that uses other financing techniques for its Covered Agency Transactions.

As discussed further in Items II.B and II.C of this filing, FINRA is establishing the \$2.5 million per counterparty exception to address commenter concern that the scope of Covered Agency Transactions subject to the proposed margin requirements would unnecessarily constrain non-risky business activity of market participants or otherwise unnecessarily alter participants’ trading decisions. FINRA believes that transactions that fall within the proposed amount and that meet the specified conditions do not pose systemic risk. Further, many of such transactions involve smaller counterparties that do not give rise to risk to the firm. Accordingly, FINRA believes it is appropriate to establish the exception.⁴⁹

- *Transactions with Exempt Accounts.*

Paragraph (e)(2)(H)(ii)d. of the rule provides that, on any net long or net short position, by CUSIP, resulting from bilateral transactions with a counterparty that is an exempt account, no maintenance margin shall be

required.⁵⁰ However, the rule provides that such transactions must be marked to the market daily and the member must collect any net mark to market loss, unless otherwise provided under paragraph (e)(2)(H)(ii)f. of the rule.⁵¹ The rule provides that if the mark to market loss is not satisfied by the close of business on the next business day after the business day on which the mark to market loss arises, the member shall be required to deduct the amount of the mark to market loss from net capital as provided in SEA Rule 15c3–1 until such time the mark to market loss is satisfied.⁵² The rule requires that if such mark to market loss is not satisfied within five business days from the date the loss was created, the member must promptly liquidate positions to satisfy the mark to market loss, unless FINRA has specifically granted the member additional time.⁵³ Under the rule, members may treat mortgage bankers that use Covered Agency Transactions to hedge their pipeline of mortgage commitments as

⁵⁰ The proposed rule change adds to FINRA Rule 4210 new Supplementary Material .04, which provides that, for purposes of paragraph (e)(2)(H) of the rule, the determination of whether an account qualifies as an exempt account must be based upon the beneficial ownership of the account. The rule provides that sub-accounts managed by an investment adviser, where the beneficial owner is other than the investment adviser, must be margined individually. As discussed further in Item II.C.5, commenters expressed concerns regarding the proposed requirement. Supplementary Material .04 as proposed in this filing is as proposed in the *Notice*, as FINRA believes individual margining is fundamental sound practice. However, in response to comment, and as further discussed in Item II.C.4, FINRA has revised the proposed rule change to provide that risk limit determinations may be made at the investment adviser level, subject to specified conditions. See discussion of Risk Limits *supra*.

⁵¹ As discussed further below, paragraph (e)(2)(H)(ii)f. addresses the treatment of de minimis transfer amounts.

⁵² FINRA has made minor revisions to the language as to timing of the specified deduction so as to better align with corresponding provisions under FINRA Rule 4210(g)(10)(A) in the context of portfolio margining.

⁵³ See note 56 *infra*. Further, to conform with the proposed rule change, FINRA is revising paragraph (f)(6) of FINRA Rule 4210, which currently permits up to 15 business days for obtaining the amount of margin or mark to market, unless FINRA has specifically granted the member additional time. As revised, the phrase “other than that required under paragraph (e)(2)(H) of this Rule” would be added to paragraph (f)(6) so as to accommodate the five days specified under the proposed rule change. As discussed further in Item II.C.8 of this filing, commenters expressed concern that the specified five day period, both as to exempt accounts under paragraph (e)(2)(H)(ii)d., and as to non-exempt accounts under paragraph (e)(2)(H)(ii)e., is too aggressive. FINRA believes the five day period is appropriate in view of the potential counterparty risk in the TBA market. The rule makes express allowance for additional time, which FINRA notes is consistent with longstanding practice under current FINRA Rule 4210(f)(6).

exempt accounts for purposes of paragraph (e)(2)(H) of this Rule.⁵⁴

- *Transactions with Non-Exempt Accounts.*

Paragraph (e)(2)(H)(ii)e. of the rule provides that, on any net long or net short position, by CUSIP, resulting from bilateral transactions with a counterparty that is not an exempt account, maintenance margin,⁵⁵ plus any net mark to market loss on such transactions, shall be required margin, and the member shall collect the deficiency, as defined in paragraph (e)(2)(H)(i)d. of the rule, unless otherwise provided under paragraph (e)(2)(H)(ii)f. of the rule. The rule provides that if the deficiency is not satisfied by the close of business on the next business day after the business day on which the deficiency arises, the member shall be required to deduct the amount of the deficiency from net capital as provided in SEA Rule 15c3–1 until such time the deficiency is satisfied.⁵⁶ Further, the rule provides that if such deficiency is not satisfied within five business days from the date the deficiency was created, the member shall promptly liquidate positions to

⁵⁴ The proposed rule change adds to Rule 4210 new Supplementary Material .02, which provides that for purposes of paragraph (e)(2)(H)(ii)d. of the rule, members must adopt written procedures to monitor the mortgage banker’s pipeline of mortgage loan commitments to assess whether the Covered Agency Transactions are being used for hedging purposes. This provision is largely as proposed in the *Notice*. Discussion of the proposed rule’s potential impact on mortgage bankers is discussed further in Item II.B. The proposed requirement is appropriate to ensure that, if a mortgage banker is permitted exempt account treatment, the member has conducted sufficient due diligence to determine that the mortgage banker is hedging its pipeline of mortgage production. In this regard, FINRA notes that the current Interpretations under Rule 4210 already contemplate that members evaluate the loan servicing portfolios of counterparties that are being treated as exempt accounts. See Interpretation/02 of FINRA Rule 4210(e)(2)(F).

⁵⁵ As discussed above, the proposed definition of “maintenance margin” specifies margin equal to two percent of the contract value of the net long or net short position. See proposed FINRA Rule 4210(e)(2)(H)(i)f. in Exhibit 5.

⁵⁶ The proposed rule change adds to FINRA Rule 4210 new Supplementary Material .03, which provides that, for purposes of paragraph (e)(2)(H) of the rule, to the extent a mark to market loss or deficiency is cured by subsequent market movements prior to the time the margin call must be met, the margin call need not be met and the position need not be liquidated; provided, however, if the mark to market loss or deficiency is not satisfied by the close of business on the next business day after the business day on which the mark to market loss or deficiency arises, the member shall be required to deduct the amount of the mark to market loss or deficiency from net capital as provided in SEA Rule 15c3–1 until such time the mark to market loss or deficiency is satisfied. See note 52 *supra*. FINRA believes that the proposed requirement should help provide clarity in situations where subsequent market movements cure the mark to market loss or deficiency.

⁴⁸ FINRA Rule 6710(z) defines “dollar roll” to mean a simultaneous sale and purchase of an Agency Pass-Through MBS for different settlement dates, where the initial seller agrees to take delivery, upon settlement of the re-purchase transaction, of the same or substantially similar securities.

⁴⁹ FINRA notes, however, that it is revising the provisions with respect to limits on net capital deductions as set forth in redesignated paragraph (e)(2)(I) so that amounts excepted pursuant to the \$2.5 million exclusion must be included toward the concentration thresholds as set forth under new paragraph (e)(2)(I). See Item II.A.1(C) *infra*. FINRA believes that this is appropriate in the interest of limiting excessive risk. Further, FINRA notes that the proposed exceptions under paragraph (e)(2)(H)(ii)c. are exceptions to the *margin* requirements under paragraph (e)(2)(H). The requirement to determine a risk limit pursuant to paragraph (e)(2)(H)(ii)b. would apply.

satisfy the deficiency, unless FINRA has specifically granted the member additional time.⁵⁷

As discussed further in Item II.B and Item II.C of this filing, commenters expressed concern regarding the potential impact of the proposed maintenance margin requirement and its implications for non-exempt accounts versus exempt accounts. FINRA believes that the maintenance margin requirement is appropriate because it aligns with the potential risk as to non-exempt accounts engaging in Covered Agency Transactions and the specified two percent amount is consistent with other measures in this area. By the same token, to tailor the requirement more specifically to the potential risk, and to ameliorate potential burdens on market participants, FINRA has revised the proposed maintenance margin requirement vis-à-vis the version published in the *Notice*. Specifically, as revised, the rule provides that no maintenance margin is required if the original contractual settlement for the Covered Agency Transaction is in the month of the trade date for such transaction or in the month succeeding the trade date for such transaction and the customer regularly settles its Covered Agency Transactions on a DVP basis or for cash; provided, however, that such exception from the required maintenance margin shall not apply to a non-exempt account that, in its transactions with the member, engages in dollar rolls, as defined in FINRA Rule 6710(z), or round robin trades, as defined in proposed FINRA Rule 4210(e)(2)(H)(i)., or that uses other financing techniques for its Covered Agency Transactions.⁵⁸

• *De Minimis Transfer Amounts.*

Paragraph (e)(2)(H)(ii)f. of the rule provides that any deficiency, as set forth in paragraph (e)(2)(H)(ii)e. of the rule, or mark to market losses, as set forth in paragraph (e)(2)(H)(ii)d. of the rule, with a single counterparty shall not give rise to any margin requirement, and as such need not be collected or charged to net capital, if the aggregate of such amounts with such counterparty does not exceed \$250,000 (“the de minimis transfer amount”). The rule provides that the full amount of the sum of the required maintenance margin and any mark to market loss must be collected when such sum exceeds the de minimis transfer amount.

FINRA has revised the proposed de minimis transfer provisions vis-à-vis the

proposal as published in the *Notice*. As discussed in the *Notice*, FINRA intends the de minimis transfer provisions to reduce potential operational burdens on members. However, some commenters expressed concerns that the provisions could among other things result in imposing forced capital charges.⁵⁹ FINRA believes that the proposal, as revised, should help clarify that any deficiency or mark to market loss, as set forth under the proposed rule, with a single counterparty shall not give rise to any margin requirement, and as such need not be collected or charged to net capital, if the aggregate of such amounts with such counterparty does not exceed \$250,000. FINRA believes this is appropriate because the de minimis transfer amount, by permitting members to avoid a capital charge that would otherwise be required absent the provision, is designed to help prevent smaller members from being subject to a potential competitive disadvantage and to maintain a level playing field for all members. FINRA does not believe that it is necessary for systemic safety to impose a capital charge for amounts within the specified thresholds. However, FINRA believes it is necessary to set a parameter for limiting excessive risk and as such is retaining the \$250,000 amount as originally proposed in the *Notice*.⁶⁰

• *Unrealized Profits; Standbys.*

Paragraph (e)(2)(H)(ii)g. of the rule provides that unrealized profits in one Covered Agency Transaction position may offset losses from other Covered Agency Transaction positions in the same counterparty’s account and the amount of net unrealized profits may be used to reduce margin requirements. With respect to standbys, only profits (in-the-money amounts), if any, on long standbys shall be recognized. The proposed language is largely as proposed in the *Notice*.

(B) Conforming Amendments to FINRA Rule 4210(e)(2)(F) (Transactions With Exempt Accounts Involving Certain “Good Faith” Securities) and FINRA Rule 4210(e)(2)(G) (Transactions With Exempt Accounts Involving Highly Rated Foreign Sovereign Debt Securities and Investment Grade Debt Securities).

The proposed rule change makes a number of revisions to paragraphs

(e)(2)(F) and (e)(2)(G) of FINRA Rule 4210 in the interest of clarifying the rule’s structure and otherwise conforming the rule in light of the proposed revisions to new paragraph (e)(2)(H) as discussed above:

• The proposed rule change revises the opening sentence of paragraph (e)(2)(F) to clarify that the paragraph’s scope does not apply to Covered Agency Transactions as defined pursuant to new paragraph (e)(2)(H). Accordingly, as amended, paragraph (e)(2)(F) states: “Other than for Covered Agency Transactions as defined in paragraph (e)(2)(H) of this Rule . . .” FINRA believes that this clarification will help demarcate the treatment of products subject to paragraph (e)(2)(F) versus new paragraph (e)(2)(H). For similar reasons, the proposed rule change revises paragraph (e)(2)(G) to clarify that the paragraph’s scope does not apply to a position subject to new paragraph (e)(2)(H) in addition to paragraph (e)(2)(F) as the paragraph currently states. As amended, the parenthetical in the opening sentence of the paragraph states: “[O]ther than a position subject to paragraph (e)(2)(F) or (e)(2)(H) of this Rule.”

• Current, pre-revision paragraph (e)(2)(H)(i) provides that members must maintain a written risk analysis methodology for assessing the amount of credit extended to exempt accounts pursuant to paragraphs (e)(2)(F) and (e)(2)(G) of the rule which shall be made available to FINRA upon request. The proposed rule change places this language in paragraphs (e)(2)(F) and (e)(2)(G) and deletes it from its current location. Accordingly, FINRA proposes to move to paragraphs (e)(2)(F) and (e)(2)(G): “Members shall maintain a written risk analysis methodology for assessing the amount of credit extended to exempt accounts pursuant to [this paragraph], which shall be made available to FINRA upon request.” Further, FINRA proposes to add to each: “The risk limit determination shall be made by a designated credit risk officer or credit risk committee in accordance with the member’s written risk policies and procedures.”⁶¹ FINRA believes this amendment makes the risk limit determination language in paragraphs (e)(2)(F) and (e)(2)(G) more congruent with the corresponding language proposed for new paragraph (e)(2)(H) of the rule.

• The proposed rule change revises the references in paragraphs (e)(2)(F) and (e)(2)(G) to the limits on net capital deductions as set forth in current

⁶¹ See proposed FINRA Rule 4210(e)(2)(F) and Rule 4210(e)(2)(G) in Exhibit 5.

⁵⁷ See notes 53 and 56 *supra*.

⁵⁸ See Item II.B and Item II.C.2 for further discussion of the potential economic impact of the proposed requirement and comments received in response to the *Notice*.

⁵⁹ See Item II.C.3 for further discussion.

⁶⁰ In this regard, FINRA notes further that it is revising the provisions with respect to limits on net capital deductions as set forth in redesignated paragraph (e)(2)(I) so that the de minimis transfer amount, though it would not give rise to any margin requirement, must be included toward the concentration thresholds as set forth under the rule. See Item II.A.1(C) *infra*.

paragraph (e)(2)(H) to read “paragraph (e)(2)(I)” in conformity with that paragraph’s redesignation pursuant to the rule change.

(C) Redesignated Paragraph (e)(2)(I) (Limits on Net Capital Deductions)

Under current paragraph (e)(2)(H) of FINRA Rule 4210, in brief, a member must provide prompt written notice to FINRA and is prohibited from entering into any new transactions that could increase the member’s specified credit exposure if net capital deductions taken by the member as a result of marked to the market losses incurred under paragraphs (e)(2)(F) and (e)(2)(G), over a five day business period, exceed: (1) For a single account or group of commonly controlled accounts, five percent of the member’s tentative net capital (as defined in SEA Rule 15c3–1); or (2) for all accounts combined, 25 percent of the member’s tentative net capital (again, as defined in SEA Rule 15c3–1). As discussed earlier, the proposed rule change redesignates current paragraph (e)(2)(H) of the rule as paragraph (e)(2)(I), deletes current paragraph (e)(2)(H)(i), and makes conforming revisions to paragraph (e)(2)(I), as redesignated, for the purpose of clarifying that the provisions of that paragraph are meant to include Covered Agency Transactions as set forth in new paragraph (e)(2)(H). In addition, the proposed rule change clarifies that de minimis transfer amounts must be included toward the five percent and 25 percent thresholds as specified in the rule, as well as amounts pursuant to the specified exception under paragraph (e)(2)(H) for gross open positions of \$2.5 million or less in aggregate.⁶²

Accordingly, as revised by the rule change, redesignated paragraph (e)(2)(I) of the rule provides that, in the event that the net capital deductions taken by a member as a result of deficiencies or marked to the market losses incurred under paragraphs (e)(2)(F) and (e)(2)(G) of the rule (exclusive of the percentage requirements established thereunder), plus any mark to market loss as set forth under paragraph (e)(2)(H)(ii)d. of the rule and any deficiency as set forth under paragraph (e)(2)(H)(ii)e. of the rule, and inclusive of all amounts excepted from margin requirements as set forth under paragraph (e)(2)(H)(ii)c.2. of the rule or any de minimis transfer amount as set forth under paragraph (e)(2)(H)(ii)f. of the rule, exceed:

- For any one account or group of commonly controlled accounts, 5 percent of the member’s tentative net capital (as such term is defined in SEA Rule 15c3–1),⁶³ or
- for all accounts combined, 25 percent of the member’s tentative net capital (as such term is defined in SEA Rule 15c3–1),⁶⁴ and,
- such excess as calculated in paragraphs (e)(2)(I)(i)a. or b. of the rule continues to exist on the fifth business day after it was incurred,⁶⁵ the member must give prompt written notice to FINRA and shall not enter into any new transaction(s) subject to the provisions of paragraphs (e)(2)(F), (e)(2)(G) or (e)(2)(H) of the rule that would result in an increase in the amount of such excess under, as applicable, paragraph (e)(2)(I)(i) of the rule.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶⁶ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with the Act because, by establishing margin requirements for Covered Agency Transactions (the TBA market), the proposed rule change will help to reduce the risk of loss due to counterparty failure in one of the largest fixed income markets and thereby help protect investors and the public interest by ensuring orderly and stable markets. As FINRA has noted, unsecured credit exposures that exist in the TBA market today can lead to financial losses by members. Permitting members to deal with counterparties in the TBA market without collecting margin can facilitate increased leverage by customers, thereby potentially posing a risk to FINRA members that extend credit and

to the marketplace as a whole. FINRA believes that, in view of the growth in volume in the TBA market, the number of participants and the credit concerns that have been raised in recent years, particularly since the financial crises of 2008 and 2009, and in light of regulatory efforts to enhance risk controls in related markets, there is a need to establish FINRA rule requirements that will extend responsible practices to all members that participate in the TBA market. In preparing this rule filing, FINRA has undertaken economic analysis of the proposed rule change’s potential impact and has made revisions to the proposed rule change, vis-à-vis the version as originally published in *Regulatory Notice* 14–02, so as to ameliorate the proposed rule change’s impact on business activity and to address the concerns of smaller customers that do not pose material risk to the market as a whole. These revisions include among other things the establishment of an exception from the proposed margin requirements for any counterparty with gross open positions amounting to \$2.5 million or less, subject to specified conditions, as well as specified exceptions to the proposed maintenance margin requirement and modifications to the de minimis transfer provisions.

B. Self-Regulatory Organization’s Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, FINRA published *Regulatory Notice* 14–02 (January 2014) (the “*Notice*”) to request comment⁶⁷ on proposed amendments to FINRA Rule 4210 to establish margin requirements for transactions in the TBA market. FINRA noted that the proposal is informed by the TMPG best practices.

The proposed rule change aims to reduce firm exposure to counterparty credit risk stemming from unsecured credit exposure that exists in the market today. A significant portion of the TBA market is non-centrally cleared, exposing parties extending credit in a transaction to significant counterparty risk between trade and settlement dates.⁶⁸ To the extent that the proposed

⁶² As discussed earlier, FINRA believes that inclusion of the de minimis transfer amounts and amounts pursuant to the \$2.5 million per counterparty exception is appropriate in view of the rule’s purpose of limiting excessive risk.

⁶³ See proposed FINRA Rule 4210(e)(2)(I)(i)a. in Exhibit 5.

⁶⁴ See proposed FINRA Rule 4210(e)(2)(I)(i)b. in Exhibit 5.

⁶⁵ See proposed FINRA Rule 4210(e)(2)(I)(i)c. in Exhibit 5.

⁶⁶ 15 U.S.C. 78o–3(b)(6).

⁶⁷ All references to commenters are to commenters as listed in Exhibit 2b and as further discussed in Item ILC of this filing.

⁶⁸ See, e.g., TMPG Recommends Margining of Agency MBS Transactions to Reduce Counterparty and Systemic Risks, November 14, 2012, available at: <<http://www.newyorkfed.org/tmpg/marginmbs.pdf>> see also TMPG Report.

rule change encourages better risk management practices, the loss given default by a counterparty with substantial positions in Covered Agency Transactions should decrease.

The unmarginated positions in the TBA market may also raise systemic concerns. Were one or more counterparties to default, the interconnectedness and concentration in the TBA market may lead to potentially broadening losses and the possibility of substantial disruption to financial markets and participants.

The repercussions of unmarginated bilateral credit exposures were demonstrated in the Bear Stearns and Lehman Brothers failures in 2008. Since the financial crisis of 2008–09, margining regimes on bilateral credit transactions have been strengthened by regulatory bodies and adopted as a part of best practices by industry groups. For example, margining has become a widespread practice—especially after the adoption of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act)⁶⁹—in repurchase agreements, securities lending and derivatives markets.⁷⁰ Thus, the lack of mandatory margining currently between dealers and their customers in the TBA market is out of step with regulatory developments in other markets with forward settlements. To address this gap, TMPG urged implementation of its margining recommendations by the end of 2013.⁷¹

As discussed above, the proposed rule change would require member firms to collect, as to exempt accounts, mark to market margin and, as to non-exempt accounts, both mark to market margin and maintenance margin, as specified by the rule. Based on discussions with industry participants, FINRA expects that very few accounts would be treated as non-exempt accounts under the rule, and hence most would not be subject to the maintenance margin requirement.⁷²

Therefore, the economic impact assessment as set forth below is centered on the impact of the proposed mark to market margin.

1. Economic Baseline

To better understand the TBA market, FINRA analyzed data from two sources. The first dataset contains approximately 2.06 million TBA market transactions reported to TRACE by 223 broker-dealers from March 1, 2012 to July 31, 2013. Of the 2.06 million trades, approximately 1.10 million were interdealer trades, and 960,000 were dealer-to-customer trades.⁷³ Approximately 26.65% of the interdealer trades and 28.87% of the dealer-to-customer trades were designated as dollar rolls, a funding mechanism in which there is a simultaneous sale and purchase of an Agency Pass-Through Mortgage-Backed Security with different settlement dates. The mean trade size was \$19.33 million (the median was \$19.34 million) and the median daily trading volume was \$199 billion, totaling \$49.3 trillion annually. The mean difference between the trade and contractual settlement date was 29.5 days (the median was 26 days).

Based on FINRA's analysis of the transactions in the TRACE dataset, market participation by broker-dealers is highly concentrated, as the top ten broker-dealers account for more than approximately 77% of the dollar trading volume in the trades analyzed. These are primarily broker-dealers affiliated with large bank holding companies and include FINRA's ten largest members. Five are members of the TMPG.⁷⁴ Non-FINRA members are not required to report transactions in TRACE.

FINRA understands that most interdealer transactions in the TBA market are subject to mark to market margin between members of the

identify the motivation for the trade to validate this statement, FINRA understands, based on discussions with market participants, that most Covered Agency Transactions will be excepted from the proposed maintenance margin requirement.

⁷³ FINRA understands that dealer-to-customer trades in the TRACE data include a significant volume of transactions where the broker dealer is counterparty to the FRBNY. While such trades are not directly distinguishable within the data from other dealer-to-customer trades in TRACE, the FRBNY publishes a list of its transactions available at: <http://www.newyorkfed.org/markets/ambs/ambs_schedule.html>. Based on this public information, FINRA estimates that the FRBNY transacted in 44 of the 2,677 distinct CUSIPs reported in TRACE, and accounted for 1.63% of the overall trades in the sample. However, FRBNY trades are quite large in size, and account for, on average, 24.80% of the daily volume for those CUSIPs on the days it trades.

⁷⁴ Besides broker-dealers, TMPG members also include banks, buy-side firms, market utilities, foreign central banks, and others.

Mortgage-Backed Securities Division (“MBSD”) of the Fixed Income Clearing Corporation (“FICC,” a subsidiary of the Depository Trust & Clearing Corporation (“DTCC”)), which acts as a central counterparty. Also, FINRA understands that, as of June, 2014, TMPG member firms had, on average, margining agreements with approximately 65% of their counterparties.⁷⁵ FINRA understands that these firms' activities account for approximately 70% of transactions in the TBA market, and 85% of notional trading volume. However, full adoption of mark to market margining practices by TMPG member firms is yet to be achieved. The lack of market-wide adoption of margin practices may put some market participants at a disadvantage, as they incur the costs associated with implementation of mark to market margin, while unmarginated participants are able to transact at lower economic cost.

To assess the likely impact of the proposal, FINRA estimated the daily margin requirement that broker-dealers and their customers would have had to post under the proposed requirement, using transaction data in the TBA market that are available from TRACE and were made available by a major clearing broker. FINRA notes that there are several limitations to the analysis due to data availability. Among these, the data are not granular enough to contain sufficient detail on contractual settlement terms, with respect to which the proposed rule change establishes parameters for specified exceptions to apply,⁷⁶ or as to whether the trade is a specified financing trade (we note that, other than dollar roll trades, TRACE does not require a special code for round robin, repurchase or reverse repurchase, or financing trades), with respect to which specified exceptions under the proposal are not available.⁷⁷

⁷⁵ See TMPG Meeting Minutes, June 25, 2014, available at: <http://www.newyorkfed.org/tmpg/june_minutes_2014.pdf>.

⁷⁶ To recap, the rule's margin requirements would not apply to any counterparty that has gross open positions in Covered Agency Transactions amounting to \$2.5 million or less in aggregate, if the original contractual settlement for all such transactions is in the month of the trade date for such transactions or in the month succeeding the trade date for such transactions and the counterparty regularly settles its Covered Agency Transactions DVP or for cash, subject to specified conditions. See proposed FINRA Rule 4210(e)(2)(H)(ii)c.2. in Exhibit 5.

⁷⁷ To recap, the \$2.5 million per counterparty exception and, with respect to non-exempt accounts, the proposed relief from maintenance margin, are not available to a counterparty that, in its transactions with the member, engages in dollar rolls or round robin trades, or that uses other financing techniques for its Covered Agency Transactions. See proposed FINRA Rule

⁶⁹ Public Law 111–203, 124 Stat. 1376 (2010).

⁷⁰ See Bank for International Settlements, Margin Requirements for Non-centrally Cleared Derivatives—Final Report Issued by the Basel Committee and IOSCO, September 2, 2013, available at: <<http://www.bis.org/press/p130902.htm>>.

⁷¹ See TMPG Releases Updates to Agency MBS Margining Recommendation, March 27, 2013, available at: <<http://www.newyorkfed.org/tmpg/Agency%20MBS%20margin%20public%20announcement%2003-27-2013.pdf>>.

⁷² As discussed above, the proposed rule permits members to treat mortgage bankers that use Covered Agency Transactions to hedge their pipeline of mortgage commitments as exempt accounts for purposes of the rule. Based on discussions with industry participants, FINRA believes that a great majority of mortgage bankers transact in the market to hedge their loans, and engage in very little speculative trading. While TRACE data do not

Therefore, FINRA notes that it is able to make only limited inference about the current level of trading that would be subject to the specified exceptions. Moreover, unique customer identity is not available in TRACE, meaning FINRA is unable to assess the activities in individual accounts to determine which, if any, exceptions might apply.

The second dataset, containing TBA transactions, was provided to FINRA by a major clearing broker and contains 5,201 open positions as of May 30, 2014, in 375 customer accounts from ten introducing broker-dealers. These data represent 4,211 open short positions and 990 open long positions. The mean sizes for long and short positions were \$2.02 million and \$1.69 million, respectively, while the median open position size was \$1.00 million for both long and short positions. In the sample, an account had a mean of 13.87 open positions (a median of 10) where the mean gross exposure was \$24.31 million (a median of \$12 million). This dataset enables FINRA to make inferences about the potential margin obligations that individual customer accounts would incur, which is not possible using TRACE, since unique customer identifications are not available. As such, these customer accounts may provide better understanding of customer, particularly mortgage banker, activity. However, the data do not identify whether trades include a special financing technique, such as dollar roll or other financing techniques, or whether the trades are settled DVP or for cash.

2. Economic Impact

The proposed rule change is expected to enhance sound risk management practices for all parties involved in the TBA market. Further, the standardization of margining practice should create a fairer environment for all market participants. Ultimately, the proposed rule change is expected to mitigate counterparty risk to protect both sides to a transaction from a potential default.

As discussed earlier, FINRA has made revisions to the proposed rule change as published in the *Notice* to ameliorate the proposal's impact on business activity and to address the concerns of smaller customers that do not pose material risk to the market as a whole, in particular those engaging in non-margining, cash only business. After considering comments received in response to the *Notice*, as well as extensive discussions with industry

participants and other regulators, FINRA's proposed revisions include among other things the establishment of an exception from the proposed margin requirements for any counterparty with gross open positions amounting to \$2.5 million or less, subject to specified conditions, as well as specified exceptions to the maintenance margin requirement and modifications to the de minimis transfer provisions.

FINRA understands that there will likely be direct and indirect costs of compliance associated with the proposed rule change as revised. Some of the direct costs are largely fixed in nature, and mostly include initial start-up costs, such as acquiring systems, software or technical support, and allocating staff resources to manage a margining regime. Direct costs would also entail developing necessary procedures and establishing monitoring mechanisms. FINRA anticipates that a significant cost of the proposed rule change is the commitment of capital to meet the margin requirements. The magnitude of this cost depends on the trading activity of each party, each party's access to capital, and each party's having the capital reserves necessary to fulfill margin obligations. FINRA's experience with supervision of risk controls at larger firms suggests that at present substantially all such firms have systems in place for managing the margining of Covered Agency Transactions, and thus the system costs of the proposed rule change would result from extending the systems to the margining of transactions covered by the proposed rule change for those firms. In addition, as discussed above, FINRA understands that TMPG members at present require a substantial portion of their counterparties to post mark to market margin, implying that those firms should already have the systems and staff to facilitate margining practices and manage capital allocated. Therefore, FINRA believes that most start-up costs are likely to be incurred by smaller market participants that might have to establish the necessary systems for the first time.

FINRA understands that the margin requirements for TBA market transactions may also impose indirect costs. These costs may result from changed market behavior of some participants. Some parties who currently transact in the TBA market may choose to withdraw from or limit their participation in the TBA market. Reduced participation may lead to decreased liquidity in the market for certain issues or settlement periods, potentially restricting access to end users and increasing costs in the

mortgage market. These market-wide impacts on liquidity would be limited if exiting market participants represent a small proportion of market transactions while market participants that choose to remain, or new participants that choose to enter the market, increase their activities and thereby offset the impact of participants that exit the market.

The potential impacts of the proposed rule change on mortgage bankers, broker-dealers, investors and consumers of mortgages are discussed in turn below.

(a) Mortgage Bankers

Based on discussions with market participants and other regulators, FINRA understands that mortgage bankers are among the largest group of customers in the TBA market—following institutional buyers—as the forward-settling nature of MBS transactions provides mortgage bankers with the opportunity to lock in interest rates as new loans are originated. These transactions give mortgage lenders an opportunity to hedge their exposures to interest rate risk between the time of origination and the sale of the home loan in the secondary market.

To estimate the potential burden on mortgage bankers, FINRA analyzed the data described above that was provided by a major clearing broker. As discussed earlier, the proposed rule change establishes a \$250,000 de minimis transfer amount below which the member need not collect margin, subject to specified conditions,⁷⁸ and establishes an exception from the proposed margin requirements for any counterparty with gross open positions amounting to \$2.5 million or less, subject to specified conditions.⁷⁹ FINRA believes that it may reasonably estimate the trades that would be subject to the \$2.5 million per counterparty exception in the sample even though information describing the specified contractual settlement terms that are elements of the exception are not available.⁸⁰

⁷⁸ See proposed FINRA Rule 4210(e)(2)(H)(ii)f. in Exhibit 5.

⁷⁹ See proposed FINRA Rule 4210(e)(2)(H)(ii)c.2. in Exhibit 5.

⁸⁰ For purposes of this analysis, FINRA assumes that these positions include no financing trades, and thus all aggregate positions with a single counterparty under the \$2.5 million threshold would be excepted from the mark to market margining requirements. FINRA considers this assumption as reasonable because FINRA understands from subject matter experts that mortgage bankers do not traditionally employ TBA contracts for financing. Further, this assumption does not materially affect estimates of margin obligation under the rule, since only a few positions would have to post margin due to the \$250,000 de minimis transfer amount exception.

For these data, FINRA finds that only nine of the 375 accounts would have an obligation to post margin on a total of 35 days for their open positions as of May 30, 2014 if subject to the proposed rule change. By this analysis, less than 0.01% of the 14,001 account-day combinations in the sample would be required to provide margin on their TBA positions. For those accounts that would be required to post margin on any day during the period studied, FINRA estimates the average (median) net daily margin to be posted on these 35 days to be \$595,191 (\$384,180) for an average (median) gross exposure of \$246,901,235 (\$253,111,500).⁸¹ The ratio of the estimated margin to the gross exposure ranges between 0.06% and 4.34% and has a mean (median) of 0.54% (0.29%). The gross positions across all days studied for the remaining 366 accounts result in an estimated mark to market obligation that is less than the de minimis transfer amount, and hence no obligations would be incurred.

To the extent that the sample considered in this analysis is representative, it appears that mortgage bankers have smaller gross exposures, on average, and more positions that would generate margin obligations that are less than the \$250,000 de minimis transfer amount. Accordingly, FINRA expects that the majority of the mortgage bankers' positions would be excepted from the proposed margin requirements.

The *Notice* invited commenters to provide information concerning the potential costs and burdens that the amendments could impose. As discussed earlier, the proposed rule change would permit members to treat mortgage bankers that use Covered Agency Transactions to hedge their pipeline of mortgage commitments as exempt accounts. Members would be required to adopt procedures to monitor the mortgage banker's pipeline of mortgage loan commitments to assess whether the Covered Agency Transactions are being used for hedging purposes.⁸² Some commenters in response to the *Notice* expressed concern that this would harm the ability

⁸¹ For a given customer account at a broker-dealer, margin (assuming the application of mark to market margin) is computed for each net long or short position, by CUSIP, in Covered Agency Transactions by multiplying the net long or short contract amount by the daily price change. The margin for all Covered Agency Transactions is the sum of the margin required on each net long or net short position. On the day following the start of the contract, the price change is measured as the difference between the original contract price and the end of day closing price.

⁸² See proposed FINRA Rule 4210(e)(2)(H)(ii)d. and Rule 4210.02 in Exhibit 5.

of mortgage bankers to compete. Commenters suggested that mortgage bankers should be permitted flexibility to negotiate their margin obligations, that they should be treated as exempt accounts regardless of the extent to which they are hedging, that monitoring hedging by mortgage bankers would be too burdensome, that the costs of compliance would drive mortgage bankers to shift to non-FINRA member counterparties, that margin requirements should be modified to reflect the costs of hedging, and that the \$250,000 de minimis transfer threshold would be too restrictive.⁸³

In response, FINRA understands the importance of the role of mortgage bankers in the mortgage finance market and for that reason designed the proposed rule change to include the provision for members to treat mortgage bankers as exempt accounts with respect to their hedging. However, FINRA believes that it would work against the rule's overall purposes to create a pathway for a mortgage banker that is not otherwise an exempt account to engage in speculation in the TBA market, which could create incentives leading to distortions in trading behavior. In the presence of such incentives, FINRA believes it reasonable to expect a party to more frequently enter into transactions that are primarily speculative in nature. In fact, where other market participants would be constrained by the rule, these types of transactions might be more profitable than they are today. As noted earlier, the proposed rule change accommodates the business of mortgage bankers by providing exempt account treatment to the extent the member has conducted sufficient due diligence to determine that the mortgage banker is hedging its pipeline of mortgage production. Again, as discussed earlier, FINRA notes that the current Interpretations under Rule 4210 already contemplate that members evaluate the loan servicing portfolios of counterparties that are being treated as exempt accounts.⁸⁴

(b) Broker-Dealers

FINRA believes that currently broker-dealers are the main providers of liquidity in the TBA market and their trading behavior impacts nearly all market participants. While the direct costs of margin requirements will be similar to those of mortgage bankers, the initial costs are likely much lower in aggregate as many of these firms have

⁸³ Baum, BB&T, BDA, Brean, Duncan-Williams, MBA, MountainView, Shearman and SIFMA.

⁸⁴ See note 54 *supra*.

systems in place to manage margining practices.

FINRA understands that, currently, there are 153 members of MBSB that already follow mark to market margining procedures required by MBSB. Of those 153 firms, 38 are FINRA members, including the ten most active broker-dealers in the TBA market, who collectively account for approximately 77% of the dollar trading volume reported in TRACE. FINRA believes that start-up costs will likely be incurred by smaller and regional members that are not MBSB members. Some of these smaller and regional firms may already be in the process of establishing in-house solutions or outsourcing margining management in order to follow the TMPG recommendations.

FINRA computed bilateral interdealer TBA exposures using approximately 1.10 million TBA trades between March 1, 2012 and July 31, 2013 reported to TRACE and estimated the mark to market margin that counterparties would have been required to post if the proposed margin requirements existed during the sample period. The mean (median) interdealer trade size is \$33.98 million (\$5.31 million) and the mean (median) difference between the trade date and contractual settlement date is 25.2 days (20 days).⁸⁵ Estimated margin obligations below the \$250,000 de minimis transfer amount account for approximately 85.68% of all transactions. This result suggests that a great majority of the aggregate gross exposures held by broker-dealers could be excepted from the proposed margin requirements, subject to specified conditions.⁸⁶ As expected, broker-dealers with relatively smaller aggregate exposures in the TBA market have a relatively larger share of their transactions that would be subject to the de minimis transfer exception.⁸⁷

TRACE has a specific flag that identifies certain transactions as dollar rolls, a type of financing trade to which specified exceptions under the proposed rule change are not available. But dollar rolls are not the only type of financing

⁸⁵ For dollar roll transactions, the mean trade size is \$76.56 million (a median of \$21.01 million), whereas, for non-financing transactions, the mean trade size is \$20.28 million (a median of \$5.18 million).

⁸⁶ FINRA understands that a significant portion of the interdealer trades go through MBSB.

⁸⁷ For purposes of the analysis, FINRA sorted broker-dealers in descending order based on their aggregate positions and analyzed them in two subsamples. On average, approximately 99% of the aggregate gross exposures of smaller broker-dealers (the half with smaller aggregate positions) would result in a margin obligation below the \$250,000 threshold.

trades specified under the proposed rule. Therefore, the analysis above potentially underestimates the number and dollar value of transactions that would be subject to both maintenance and mark to market margin if held in non-exempt accounts under the proposed rule.

Using the same method employed above,⁸⁸ FINRA estimates that approximately half of the broker-dealers transacting in the TBA market would not have to post mark to market margin throughout the sample period due to the de minimis transfer amount exception. Of the remaining broker-dealers, 38% would have to post margin on less than 10% of the days for which they hold non-zero aggregate gross exposures. The remaining 12% would have to post margin on more than 10% of the days for which they hold non-zero aggregate gross exposure, although none of these broker-dealers would have had a mark to market margin requirement for more than 37.5% of the days for which they held non-zero aggregate gross exposures. In the sample of broker-dealers that would incur margin obligation, a broker-dealer would be required to post an average (median) daily margin of \$84,748 (\$0) for an average (median) gross exposure of \$1.29 billion (\$68.68 million). When the analysis is limited to the days that margin obligations would be incurred under the rule, the average (median) margin obligation to be posted to a counterparty is estimated to be \$1.14 million (\$591,952) for an average (median) exposure of \$5.71 billion (\$2.07 billion) and accounts for approximately 0.02% of the aggregate gross exposure value. Based on the entire sample, FINRA estimates that a broker-dealer would incur an average (median) monthly margin obligation of \$24,235,867 (\$0) for an average (median) aggregate gross counterparty exposure of approximately \$16.47 billion (\$239 million). When the analysis is limited to those broker-dealers that would have incurred a margin obligation under the rule in the sample period, the average (median) monthly margin obligation would be approximately \$33.76 million (\$1.29 million) for an average (median) aggregate gross exposure of \$22 billion (\$777 million). The sizeable differences between average and median values reported here are due to a few large broker-dealer positions in the sample.

In response to the *Notice*, some commenters expressed concern that the amendments would place small and mid-sized broker-dealers at a disadvantage. Specifically, commenters

suggested that smaller firms have limited resources to meet the anticipated compliance costs, that costs would fall disproportionately on smaller firms that are active in the MBS and CMO markets, that business would shift to non-FINRA members, that the proposal unfairly favors larger or “too big to fail” firms with easier access to resources, that the proposal would result in consolidation of the industry, that the system and infrastructure costs faced by smaller firms would be prohibitive, and that they have never observed a degradation in value of the products between trade date and settlement date.⁸⁹ Some commenters suggested such costs as: Up to \$500 per account for compliance; an outlay of \$600,000 to purchase necessary software; payments of up to \$100,000 in annual fees; payments of up to \$400,000 in outsourcing costs; total costs of up to \$1 million per year; or, according to one commenter, system costs as high as \$15 million per year.⁹⁰

FINRA is sensitive to the concerns expressed by firms. However, as discussed earlier, FINRA believes that to assert that no degradation has been observed in the TBA market (other than that associated with the collapse of Lehman) does not of itself demonstrate that there is no credit risk in this market. TBA market participants have exposure to significant counterparty credit risk, defined as the potential failure of the counterparty to meet its financial obligations.⁹¹ The lack of margining and proper risk management can lead to a buildup of significant counterparty exposure, which can create correlated defaults in the case of a systemic event. While the implementation of the proposed requirements creates a regulatory cost, incurred by establishing or updating systems for the management of margin accounts, the benefits should accrue over time and help maintain a properly functioning retail mortgage market even in stressed market conditions. FINRA believes that this, in turn, should help create a more stable business environment that should benefit all market participants.

With respect to the specific cost amounts suggested by commenters, FINRA notes that, though compliance with the proposed amendments will involve regulatory costs, as noted above,

most of these would be incurred as variable costs as margin obligations or fixed startup costs for purchase or upgrading of software. FINRA believes, based on discussions with providers, that the proffered estimates by commenters are plausible but fall towards the higher end of the cost range for building, upgrading or outsourcing the necessary systems. Further, FINRA believes that, particularly for smaller firms, the proposed \$250,000 de minimis amount and \$2.5 million per counterparty exception should serve to mitigate these costs.

(c) Retail Customers and Consumers

In response to the *Notice*, some commenters expressed concern that the amendments would result in higher costs to retail customers who participate in the MBS and CMO market. Commenters suggested that recordkeeping costs for investors with exposures to these securities would increase significantly; these increased costs would likely disincline them to participate in the market; and that those who wanted to maintain their exposure would face liquidity constraints in posting margin.⁹² On the other hand, one commenter did not agree that impact on retail customers would be significant as they rarely trade in the TBA market on a forward-settlement basis.⁹³

In response, FINRA notes that the purpose of the margin rules is to protect the market participants from losses that could stem from increased volatility and the ripple effects of failures. This is a by-product that provides direct protection to the customers of members.⁹⁴ Margin requirements protect other customers of a member firm from the speculation and losses of other large customers.

Other commenters drew attention to potential negative impacts to the consumer market, suggesting that the amendments would chill the mortgage market and impose liquidity constraints because mortgage bankers would face higher costs that would be passed on to consumers of mortgages.⁹⁵ However, FINRA notes that there is mixed evidence regarding the impact of margin requirements on trading volume and market liquidity. For instance, in one of the earlier studies, researchers found that margin requirements negatively

⁸⁹ Ambassador, Baird, BB&T, BDA, Brean, Clarke, Duncan-Williams, FirstSouthwest, Mischler, Pershing, Shearman, SIFMA and Simmons.

⁹⁰ Baird, Baum, BDA, Clarke and Sandler.

⁹¹ Counterparty credit risk increases axiomatically during volatile market conditions, as recently experienced in the TBA market in the summer of 2011.

⁹² Ambassador, Baum, BDA and Coastal.

⁹³ BB&T.

⁹⁴ See discussion of the original objectives of margin regulation in Jules I. Bogen & Herman Edward Krooss, *Security Credit: Its Economic Role and Regulation* 88–89 (Englewood Cliffs, NJ Prentice-Hall 1960).

⁹⁵ MBA and MetLife.

⁸⁸ See note 81 *supra* for the margin calculation methodology.

affect trading volume in the futures market, a finding consistent with expectations from theory.⁹⁶ More recently, other researchers have provided evidence from a foreign derivatives market that margin has no impact on trading volume.⁹⁷ Thus, claims that the margin requirement will have a negative impact on market activity, and hence on mortgage rates, are not fully supported by empirical findings in other similar markets.

3. Interest Rate Volatility and Margin Requirements

The historically low and stable interest rates that the United States has experienced over the last several years might lead FINRA to underestimate the margin that market participants would have to post in a more volatile market, and thus underestimate the impact of the rule proposal.

To assess the likely impact of the rule on the margin obligation in a more volatile interest rate environment, FINRA has estimated the volatility⁹⁸ in the TBA market across two periods with different interest rate characteristics, relying on Deutsche Bank's TBA index.⁹⁹ The first period that FINRA analyzed is from July 1, 2012, to June 30, 2014. The average yield on the 10-year U.S. Treasury note in this period was measured at 2.25%. The second period FINRA analyzed is from June 1, 2004 to May 31, 2006. This second period was marked by a substantially higher average 10-year U.S. Treasury yield, measured at 4.14%. However, FINRA estimates the volatility in the TBA index to have been effectively the same, at 3.95%, in both periods. FINRA believes this analysis suggests that volatility in the TBA market is not expected to significantly increase if interest rates increase in the future.¹⁰⁰ Therefore, a margin obligation for broker-dealers of approximately 2% of

the contract value over the life of a TBA market security appears to be a reasonable estimate.

4. Indirect Costs of the Proposed Margin Requirements

There are several provisions in the proposal that may potentially alter market participants' behavior in order to minimize the anticipated costs associated with the proposed rule. Such changes in behavior could potentially make trading more difficult for some settlement periods or contract sizes.

As proposed in the *Notice*, the proposed rule change provides a \$250,000 de minimis transfer amount below which the member need not collect margin, subject to specified conditions. FINRA notes that this might create an incentive to trade contract sizes smaller than the threshold amount by splitting large contracts into contracts with smaller sizes. This behavior can potentially make larger contracts harder to trade, and hence decrease liquidity in such trades. FINRA does not anticipate that such a reaction would impact the total liquidity in the TBA market. Rather, the impact could manifest itself in increased transaction costs for trading a larger position in smaller lots.

With respect to the \$2.5 million per counterparty exception, FINRA notes that the parameters for the settlement periods specified in the proposed rule may create an incentive to time trading (so that the original contractual settlement is in the month of the trade date or in the month succeeding the trade date, as provided in the rule) and thereby alter trading patterns in order to avoid margin obligations. For example, FINRA identified 582,435 trades from TRACE where the difference between the settlement date and the trade date is longer than 30 days but less than 61 days. Assuming that these trades meet all other conditions specified in the rule, approximately 78% of them would qualify for the \$2.5 million per counterparty by virtue of settling within the specified timeframes. In the presence of the proposed rule, FINRA anticipates that some traders might alter the timing of their trades, others might incur higher costs to achieve the same economic exposure, and others yet might choose not to enter into trades with those costs.

As discussed further in Item I.I.C of this filing, some commenters in response to the *Notice* suggested that market participants, in response to the costs imposed by the rule, might shift their trades to other counterparties that are not required by regulation to collect

margin.¹⁰¹ As discussed above, there are significant efforts among TMPG institutions to impose mark to market margin on these transactions. Based on discussions with market participants, FINRA understands, as discussed earlier, that members of the TMPG have begun imposing mark to market margin requirements on some of their clients in order to adhere to the best practices suggested by the group. However, FINRA understands, based on the TMPG Report, that the daily average customer-to-dealer transaction volume is around \$100 billion, of which approximately two-thirds is unmargined.¹⁰² FINRA also understands that there is a small number of financial institutions that currently deal in the TBA market but are not broker-dealers or members of TMPG. FINRA anticipates that there would be limited scope for such institutions to participate in the TBA market on a large scale without facing a counterparty that would require margin. FINRA will recommend to the agencies supervising such dealers that they similarly apply margin requirements.

5. Alternatives Considered

FINRA considered a number of alternatives in developing the proposed rule change. As discussed further in Item I.I.C of this filing, FINRA considered, among other things, alternative formulations with respect to concentration limits, excepting certain product types from the margin requirements, excepting trades with longer settlement cycles from the margin requirements, modifications to the de minimis transfer provisions, modifications to the proposed risk limit determination provisions and establishing exceptions for mortgage brokers from some or all provisions of the proposed rule. For example, FINRA considered establishing an exception from the proposed margin requirements for transactions settling within an extended settlement cycle. However, FINRA has been advised by market participants and other regulators, including the staff of the FRBNY, that such an exception could potentially result in clustering of trades around the specified settlement cycles in an effort to avoid margin expenses. Such a practice would fundamentally undermine FINRA's goal of improving counterparty risk management. Accordingly, as discussed further in Item I.I.C, FINRA determined to retain the specified settlement cycles in the

⁹⁶ See Hans R. Dutt & Ira L. Wein, Revisiting the Empirical Estimation of the Effect of Margin Changes on Futures Trading Volume, 23 *The Journal of Futures Markets*, (Issue 6) 561–76 (2003).

⁹⁷ See Kate Phylaktis & Antonis Aristidou, Margin Changes and Futures Trading Activity: A New Approach, 19 *European Financial Management*, (Issue 1) 45–71 (2013).

⁹⁸ For purposes of this section, volatility refers to the standard deviation, statistically computed, of the distribution of a dataset.

⁹⁹ For further information, see DB US Mortgage TBA Index, available at: <<https://index.db.com/servlet/MBSHome>>.

¹⁰⁰ Alternatively, FINRA compared the first period with another, even more volatile interest rate environment, from June 1, 1999 to May 31, 2000, during which the average yield on the 10-year Treasury note was 6.14%. FINRA estimates that the volatility of the TBA index in that period was 4.30%, suggesting that volatility in the TBA market would not be expected to significantly increase in a more volatile interest rate environment.

¹⁰¹ Ambassador, Baird, BB&T, BDA, Brean, Clarke, Duncan-Williams, FirstSouthwest, Mischler, Pershing, Shearman, SIFMA and Simmons.

¹⁰² See note 10 *supra*.

proposed definition of Covered Agency Transactions as set forth in the *Notice* and, as an alternative, to establish the \$2.5 million per counterparty exception.

FINRA also evaluated various options for the proposed maintenance margin requirement. FINRA analyzed maintenance margin requirements imposed by regulators for other forward settling contracts. These regulators have adopted margin requirements that reflect the risk in these products, while balancing the cost of the margin requirements. Based on this analysis, as discussed above, FINRA has determined to propose 2% as the appropriate maintenance margin rate, as specified in the proposed rule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in *Regulatory Notice* 14-02 (January 2014) (the "*Notice*"). Twenty-nine comments were received in response to the *Notice*. A copy of the *Notice* is attached as Exhibit 2a. A list of commenters¹⁰³ is attached as Exhibit 2b. Copies of the comment letters received in response to the *Notice* are attached as Exhibit 2c. Detailed discussion of the comments received on the proposed rule change, and FINRA's response, follows below. A number of the comments that speak to the economic impact of the proposed rule change are addressed in Item II.B of this filing.

1. Scope of Products

As proposed in the *Notice*, the rule change would apply to: (1) TBA transactions,¹⁰⁴ inclusive of ARM transactions, for which the difference between the trade date and contractual settlement date is greater than one business day; (2) Specified Pool Transactions¹⁰⁵ for which the difference between the trade date and contractual settlement date is greater than one business day; and (3) transactions in CMOs,¹⁰⁶ issued in conformity with a program of an Agency or GSE, for which the difference between the trade date and contractual settlement date is greater than three business days.¹⁰⁷ As

¹⁰³ All references to commenters are to the commenters as listed in Exhibit 2b.

¹⁰⁴ See note 3 *supra*.

¹⁰⁵ See note 4 *supra*.

¹⁰⁶ See note 5 *supra*.

¹⁰⁷ As proposed in the *Notice*, the products covered by the proposed rule change are defined collectively as "Covered Agency Securities." FINRA has revised this term to read "Covered Agency Transactions," which FINRA believes is clearer and more consistent with the proposal's intent to reach

discussed in the *Notice* and in Item II.A of this filing, these product types and settlement cycles are congruent with the recommendations of the TMPG.

Commenters expressed concern that the scope of products proposed to be covered by the rule change is overbroad, that the TBA market has not historically posed significant risk and that regulation in this area is not necessary.¹⁰⁸ Commenters suggested that imposing margin requirements on these types of products would have detrimental effects on various market participants, in particular smaller member firms, mortgage bankers, investors and consumers of mortgages, and that these detrimental effects would outweigh the regulatory benefit.¹⁰⁹ Many commenters suggested FINRA should ameliorate the proposal's impact by excluding some of the product types altogether, or by specifying a longer excepted settlement cycle than the proposed one business day with respect to TBA transactions and Specified Pool Transactions and three business days with respect to CMOs.¹¹⁰ For example, some commenters suggested that by imposing requirements solely on TBA transactions, and eliminating Specified Pool Transactions, ARMs or CMOs from the proposal, FINRA would be able to address most of the risk that exists in the TBA market overall while at the same time avoid causing undue disruption.¹¹¹ Some commenters also recommended that, if FINRA determines to impose margin on the TBA market, then FINRA should specify, for all products covered by the proposal, three or five-day settlement cycles. Commenters suggested that margining for settlement cycles of less than three days would be too burdensome for smaller firms in particular, is unnecessary as it leads to margining of cash settled transactions, and does not truly address forward settling transactions.¹¹²

As discussed earlier, in response to commenter concerns, FINRA has engaged in extensive discussions with market participants and other

forward settling transactions, as discussed further below.

¹⁰⁸ Ambassador, BDA, Coastal, Duncan-Williams, FirstSouthwest, MetLife, Mischler, PIMCO and Vining Sparks.

¹⁰⁹ See Items II.B.2(a) through II.B.2(c) of this filing for discussion of the proposal's economic impact on mortgage bankers, broker-dealers and retail customers and consumers.

¹¹⁰ Ambassador, Baird, Baum, BB&T, BDA, Coastal, Crescent, FirstSouthwest, MBA, MetLife, Pershing, PIMCO and SIFMA.

¹¹¹ Ambassador, Baum, BDA, Coastal, FirstSouthwest and SIFMA.

¹¹² Baird, BB&T, BDA, FirstSouthwest, ICI, MetLife, PIMCO and SIFMA.

supervisors, including staff of the FRBNY. To ameliorate potential burdens on members, FINRA considered, among other things, various options for narrowing the covered product types. The FRBNY staff has advised FINRA that, such modifications to the proposal would result in a mismatch between FINRA standards and the TMPG best practices, thereby resulting in perverse incentives in favor of non-margined products and leading to distortions of trading behavior.

FINRA is proposing, as an alternative approach in response to commenter concerns, to establish an exception from the proposed margin requirements that would apply to any counterparty that has gross open positions¹¹³ in Covered Agency Transactions amounting to \$2.5 million or less in aggregate, if (1) the original contractual settlement for all the counterparty's Covered Agency Transactions is in the month of the trade date for such transactions or in the month succeeding the trade date for such transactions and (2) the counterparty regularly settles its Covered Agency Transactions on a DVP basis or for cash.¹¹⁴ This exception would not apply to a counterparty that, in its transactions with the member, engages in dollar rolls, as defined in FINRA Rule 6710(z),¹¹⁵ or round robin trades,¹¹⁶ or that uses other financing techniques for its Covered Agency Transactions.¹¹⁷

Though FINRA shares commenters' concerns regarding the potential effects of margin in the TBA market, FINRA believes that margin is needed because the unsecured credit exposures that exist in the TBA market today can lead to financial losses by members. Permitting counterparties to participate in the TBA market without posting margin can facilitate increased leverage by customers, thereby posing risk to the

¹¹³ The proposal defines "gross open positions" to mean, with respect to Covered Agency Transactions, the amount of the absolute dollar value of all contracts entered into by a counterparty, in all CUSIPs. The amount must be computed net of any settled position of the counterparty held at the member and deliverable under one or more of the counterparty's contracts with the member and which the counterparty intends to deliver.

¹¹⁴ See proposed FINRA Rule 4210(e)(2)(H)(ii)c.2. in Exhibit 5.

¹¹⁵ See note 48 *supra*.

¹¹⁶ The term "round robin" trade is defined in proposed FINRA Rule 4210(e)(2)(H)(i).i. to mean any transaction or transactions resulting in equal and offsetting positions by one customer with two separate dealers for the purpose of eliminating a turnaround delivery obligation by the customer.

¹¹⁷ FINRA believes that the exception would not be appropriate for dollar rolls, round robin trades or trades involving other financing techniques for the specified positions given that these transactions generate the types of exposure that the rule is meant to address.

member extending credit and to the marketplace and potentially imposing, in economic terms, negative externalities on the financial system in the event of failure. While the volatility in the TBA market seems to respond only slightly to the volatility in the U.S. interest rate environment (proxied by the 10-year U.S. Treasury yield),¹¹⁸ FINRA notes that price movements in the TBA market over the past five years suggest that the market still has potential for a significant amount of volatility.¹¹⁹ Accordingly, FINRA believes it would undermine the effectiveness of the proposal to modify the product types to which the proposal would apply or to modify the applicable settlement cycles. However, FINRA does not intend the proposal to unnecessarily burden the normal business activity of market participants, or to otherwise alter market participants' trading decisions. To that end, FINRA believes it is appropriate to establish the specified \$2.5 million per counterparty exception. Based on discussions with market participants and analysis of selected data,¹²⁰ FINRA believes that this should significantly reduce potential burdens on members by removing from the proposal's scope smaller intermediaries that do not pose systemic risk.¹²¹ Further, as discussed earlier, because many such intermediaries deal with smaller counterparties, this will reduce the burdens that would be associated with applying the new margin requirements for Covered Agency Transactions.

¹¹⁸ See Item II.B.3 of this filing.

¹¹⁹ To assess volatility in the TBA market, FINRA looked to several sources of information, including: (i) five-day price changes over the previous five years based on selected Deutsche Bank indices designed to track the TBA market (five days corresponds with the proposed settlement cycle and is consistent with the payment period under Regulation T); (ii) margin requirements for interest rate contracts traded on the Chicago Board of Trade ("CBOT") and cleared at Chicago Mercantile Exchange ("CME"); and (iii) margin requirements for repurchase contracts.

¹²⁰ Based on analyses of TRAC data, FINRA found that about 30 percent of customer trades over selected periods were in amounts under \$2.5 million. These trades amounted to approximately half of one percent of the total dollar volume of activity in the TBA market over the selected periods. See also discussion in Item II.B. of this filing.

¹²¹ FINRA believes that transactions falling within the proposed \$2.5 million per counterparty exception do not pose systemic risk given that, as noted above, such transactions are a small portion of the total dollar volume of activity in the TBA market. However, similar to de minimis transfer amounts as discussed further below, FINRA has revised the proposed rule change to clarify that amounts subject to the exception would count toward a member's concentration limits as set forth under paragraph (e)(2)(I) of the rule as redesignated. See Item II.C.6 of this filing.

2. Maintenance Margin

As proposed in the *Notice*, for transactions with non-exempt accounts, members would be required to collect mark to market margin and to collect maintenance margin equal to 2% of the market value of the securities.

Commenters expressed concerns about the proposed maintenance margin requirement. Some suggested that imposing a maintenance margin requirement would place FINRA members at a competitive disadvantage because investors, rather than bear these types of disproportionate costs, would prefer to leave the TBA market entirely or would take their business to banks or other entities not subject to the requirement.¹²² Commenters suggested that a maintenance margin requirement is unnecessary because the aggregate size of the TBA market makes the products easier to liquidate and defaulted positions easier to replace, that there is no precedent for maintenance margin in the TBA market, and that the proposed requirement is not within the scope of the TMPG's recommendations.¹²³ Some commenters suggested that maintenance margin would not provide significant protection and that the proposal should establish various tiered approaches, such as thresholds based on transaction amounts or permitting the members to negotiate the margin based on their risk assessments.¹²⁴ On the other hand, some commenters suggested they support or at least do not object to maintenance margin at specified percentages of market value or for some of the products.¹²⁵

In response to commenter concerns, FINRA is revising the proposed maintenance margin requirement for non-exempt accounts. Specifically, the member would be required to collect maintenance margin equal to two percent of the contract¹²⁶ value of the net long or net short position, by CUSIP, with the counterparty.¹²⁷ However, no maintenance margin would be required if the original contractual settlement for the Covered Agency Transaction is in

¹²² AIA, Clarke, Credit Suisse, Shearman, SIFMA and SIFMA AMG.

¹²³ AMG, BDA, Clarke, FIF, FirstSouthwest, Sandler and SIFMA.

¹²⁴ Baird, BB&T, Clarke, Duncan-Williams, Shearman and Vining Sparks.

¹²⁵ MountainView and Pershing.

¹²⁶ As proposed in the *Notice*, the rule would specify "market value." FINRA has replaced "market value" with "contract value" as more in keeping with industry usage.

¹²⁷ See the definition of "maintenance margin" under proposed FINRA Rule 4210(e)(2)(H)(i)f. and the treatment of non-exempt accounts pursuant to proposed FINRA Rule 4210(e)(2)(H)(ii)e. in Exhibit 5.

the month of the trade date for such transaction or in the month succeeding the trade date for such transaction and the customer regularly settles its Covered Agency Transactions on a DVP basis or for cash. Similar to the proposed \$2.5 million per counterparty exception, the exception from the required maintenance margin would not apply to a non-exempt account that, in its transactions with the member, engages in dollar rolls, as defined in FINRA Rule 6710(z), or round robin trades, or that uses other financing techniques for its Covered Agency Transactions.

The TMPG recommendations do not include maintenance margin. FINRA understands, however, that the TMPG does not oppose the proposed maintenance margin requirements. Commenters opposed maintenance margin because of its impact on non-exempt accounts.¹²⁸ However, FINRA believes the proposed two percent amount aligns with the potential risk in this area. FINRA's analysis of selected indices designed to track the TBA market over the past five years identified instances of price differentials of approximately two percent over a five-day period.¹²⁹ Further, FINRA notes that two percent aligns with the standard haircut for reverse repo transactions in FNMA, GNMA and FHLMC mortgage pass-through certificates¹³⁰ and approximates the amount charged by MBS. The two percent amount also approximates the initial margin charged by the CME Group for corresponding products.¹³¹ Accordingly, the two percent amount

¹²⁸ FINRA notes that the assertion that maintenance margin in this market is unprecedented is incorrect. Under current Interpretation/05 of Rule 4210(e)(2)(F), maintenance margin of five percent is required for non-exempt counterparties on transactions with delivery dates or contract maturity dates of more than 120 days from trade date.

¹²⁹ Indeed, the distribution of five-day price differentials is not a "normal" Gaussian Bell curve, but has a "fat tail" especially on the price decline side.

¹³⁰ FINRA notes reverse repos are a valid point of comparison because a TBA transaction is very similar in effect to a dealer firm repointing out securities to a counterparty for a term that ends at the date a TBA would settle in the future.

¹³¹ FINRA's information as to margin requirements for TBA transactions cleared by MBS and for repurchase transactions for FNMA, GNMA and FHLMC mortgage pass-through certificates is based on discussions the staff has had with market participants. Margin requirements on various interest rate futures contracts cleared by CME Group is available at: <www.cmegroup.com/trading/interest-rates/us-treasury/ultra-t-bond_performance_bonds.html> (for Ultra U.S. Treasury Bond contracts) and <http://www.cmegroup.com/trading/interest-rates/us-treasury/30-year-us-treasury-bond_performance_bonds.html> (for U.S. Treasury Bond contracts).

that FINRA proposes is consistent with other risk measures in this area. FINRA believes that transactions that are similar in economic purpose should receive the same economic treatment in the absence of a sound reason for a difference.

By the same token, in order to tailor the requirement more specifically to the potential risk, and to address commenters' concerns, FINRA believes that it is appropriate to create the exception for transactions where the original contractual settlement is in the month of the trade date for the transaction or in the month succeeding the trade date for the transaction and the customer regularly settles its Covered Agency Transactions DVP or for cash. FINRA believes that transactions that settle DVP or for cash in this timeframe pose less risk, thereby lessening the need for maintenance margin and reducing potential burdens on members. As discussed earlier, FINRA believes that the exception would not be appropriate for counterparties that, in their transactions with the member, engage in dollar rolls, round robin trades or trades involving other financing techniques for the specified positions given that these transactions generate the types of exposure that the rule is meant to address.

3. De Minimis Transfer

As proposed in the *Notice*, the proposed rule change would provide for a minimum transfer amount of \$250,000 (the "de minimis transfer") below which the member need not collect margin, provided the member deducts the amount outstanding in computing net capital as provided in SEA Rule 15c3-1 at the close of business the following business day.

Commenters voiced various concerns about the proposed de minimis transfer provisions. Some commenters said that members should be permitted to set their own thresholds or to negotiate the de minimis transfer amounts with the counterparties with which they deal.¹³² Some commenters proposed alternative amounts or suggested tiering the amount.¹³³ Some commenters argued that the de minimis transfer provisions would operate as a forced capital charge on uncollected deficiencies or mark to market losses below the threshold amount, which would unfairly burden smaller firms in particular when aggregated across accounts.¹³⁴ Commenters suggested that capital charges should not be required below

the threshold amount, or that the de minimis transfer provisions should be eliminated altogether.¹³⁵

In response, FINRA has revised the de minimis transfer provisions to provide that any deficiency or mark to market loss, as set forth under the proposed rule change, with a single counterparty shall not give rise to any margin requirement, and as such need not be collected or charged to net capital, if the aggregate of such amounts with such counterparty does not exceed \$250,000.¹³⁶ As explained in the *Notice*, the de minimis transfer provisions are intended to reduce the potential operational burdens on members. FINRA believes it is not essential to the effectiveness of the proposal to charge the uncollected de minimis transfer amounts to net capital, which should help provide members flexibility. FINRA believes that, by permitting members to avoid a capital charge that would otherwise be required absent the de minimis transfer provisions, the proposal should help to avoid disproportionate burdens on smaller members, which is consistent with the proposal's intention. However, FINRA believes it is necessary to set a parameter for limiting excessive risk and as such is retaining the proposed \$250,000 amount.¹³⁷

4. Risk Limit Determinations

As proposed in the *Notice*, members that engage in Covered Agency Transactions with any counterparty would be required to make a written determination of a risk limit to be applied to each such counterparty. The risk limit determination would need to be made by a credit risk officer or credit risk committee in accordance with the member's written risk policies and procedures. As proposed in the *Notice*, the rule change would further establish a new Supplementary Material .05 to Rule 4210, which would provide that members of limited size and resources would be permitted to designate an appropriately registered principal to make the risk limit determinations.

Some commenters said that the proposed provisions regarding risk limit determinations would be burdensome, that members should be permitted flexibility, that the proposal should

allow risk limits to be determined across all product lines (and not be limited to Covered Agency Transactions), and that members should be permitted to define risk limits at the investment adviser or manager level rather than the sub-account level.¹³⁸ One commenter said that risk limit determinations should be the responsibility of the broker that introduces the account to a carrying firm.¹³⁹

In response, FINRA has revised proposed Supplementary Material .05 to provide that, if a member engages in transactions with advisory clients of a registered investment adviser, the member may elect to make the risk limit determinations at the investment adviser level, except with respect to any account or group of commonly controlled accounts whose assets managed by that investment adviser constitute more than 10 percent of the investment adviser's regulatory assets under management as reported on the investment adviser's most recent Form ADV. The member may base the risk limit determination on consideration of all products involved in the member's business with the counterparty, provided the member makes a daily record of the counterparty's risk limit usage.¹⁴⁰ Further, FINRA is revising the Supplementary Material to apply not only to Covered Agency Transactions, as addressed under paragraph (e)(2)(H) of Rule 4210, but also to paragraph (e)(2)(F) (transactions with exempt accounts involving certain "good faith" securities") and paragraph (e)(2)(G) (transactions with exempt accounts involving highly rated foreign sovereign debt securities and investment grade debt securities). These revisions should provide members flexibility to make the required risk limit determinations without imposing burdens at the sub-account level and without limiting the risk limit determinations to Covered Agency Transactions.¹⁴¹ FINRA believes

¹³⁸ BB&T, FIF, Duncan-Williams and SIFMA.

¹³⁹ Pershing.

¹⁴⁰ In addition, as revised, the proposed rule change clarifies that the risk limit determination must be made by a designated credit risk officer or credit risk committee. See proposed FINRA Rule 4210(e)(2)(H)(ii)b. and Rule 4210.05 in Exhibit 5.

¹⁴¹ To clarify the rule's structure, FINRA is revising paragraphs (e)(2)(F) and (e)(2)(G) so that the risk analysis language that appears under current, pre-revision paragraph (e)(2)(H), and which currently by its terms applies to both paragraphs (e)(2)(F) and (e)(2)(G), would be placed in each of those paragraphs and deleted from its current location. Accordingly, FINRA proposes to move to paragraphs (e)(2)(F) and (e)(2)(G): "Members shall maintain a written risk analysis methodology for assessing the amount of credit extended to exempt accounts pursuant to [this paragraph], which shall be made available to FINRA upon request." FINRA

Continued

¹³² All, Baird, BDA, FIF, Shearman and SIFMA.

¹³³ Clarke, Crescent, ICI and MountainView.

¹³⁴ Clarke, Sandler and SIFMA.

¹³⁵ BDA and Sandler.

¹³⁶ See proposed FINRA Rule 4210(e)(2)(H)(ii)f.

¹³⁷ In this regard, FINRA notes that it has revised the proposal's provisions with respect to concentrated exposures to clarify that the de minimis transfer amount, though it would not give rise to any margin requirement, the amount must be included toward the concentration thresholds as set forth under paragraph (e)(2)(I) as redesignated. FINRA believes that this clarification is necessary as a risk control. See Item II.C.6 of this filing.

the 10 percent threshold is appropriate given that accounts above that threshold pose a higher magnitude of risk.

Separately, not in response to comment, as noted earlier¹⁴² FINRA has revised the opening sentence of proposed Rule 4210(e)(2)(H)(ii)b. to provide that a member that engages in Covered Agency Transactions with any counterparty shall make a determination in writing of a risk limit for each such counterparty that the member shall enforce. FINRA believes that this is appropriate to clarify that the member must make, and enforce, a written risk limit determination for each counterparty with which the member engages in Covered Agency Transactions. Further, FINRA is adding to Supplementary Material .05 a provision that, for purposes of any risk limit determination pursuant to paragraphs (e)(2)(F) through (H), a member must consider whether the margin required pursuant to the rule is adequate with respect to a particular counterparty account or all its counterparty accounts and, where appropriate, increase such requirements. FINRA believes that this requirement is consistent with the purpose of a risk limit determination to ensure that the member is properly monitoring its risk and that it is logical for a member to increase the required margin where it appears the risk is greater.

5. Determination of Exempt Accounts

As proposed in the *Notice*, the rule change provides that the determination of whether an account qualifies as an exempt account must be based on the beneficial ownership of the account. The rule change provides that sub-accounts managed by an investment adviser, where the beneficial owner is other than the investment adviser, must be margined individually.

Commenters expressed concern that exempt account determination and margining at the sub-account level would be onerous, especially for managers advising large numbers of clients.¹⁴³ In response, FINRA, as discussed above, is revising the proposed rule change so that risk limit determinations may be made at the investment adviser level, subject to

proposes to further add to each: "The risk limit determination shall be made by a designated credit risk officer or credit risk committee in accordance with the member's written policies and procedures." FINRA believes this is logical as it makes the risk limit language more congruent with the language proposed for paragraph (e)(2)(H) of the rule.

¹⁴² See note 40 *supra*.

¹⁴³ Baird, BB&T, BDA, Clarke, FIF, Mischler, Sandler, Shearman and SIFMA AMG.

specified conditions. FINRA believes that the proposed risk limit determination language, in combination with the proposed \$2.5 million per counterparty exception as discussed above, should reduce potential burdens on members. Individual margining of sub-accounts, however, would still be required given that individual margining is required in numerous other settings and is fundamental to sound practice. FINRA notes that, among other things, an investment adviser cannot use one advised client's money and securities to meet the margin obligations of another without that other client's consent and that current FINRA Rule 4210(f)(4) sets forth the conditions under which one account's money and securities may be used to margin another's debit.

6. Concentration Limits

Under current (pre-revision) paragraph (e)(2)(H) of Rule 4210, a member must provide written notification to FINRA and is prohibited from entering into any new transactions that could increase credit exposure if net capital deductions, over a five day business period, exceed: (1) For a single account or group of commonly controlled accounts, five percent of the member's tentative net capital; or (2) for all accounts combined, 25 percent of the member's tentative net capital. As proposed in the *Notice*, the proposed rule change would expressly include Covered Agency Transactions, within the calculus of the five percent and 25 percent thresholds.

Several commenters said that the five percent and 25 percent thresholds are too restrictive, that they would be easily reached in volatile markets, that they would have the effect of reducing market access by smaller firms, and that the limits should be raised.¹⁴⁴

In response, FINRA notes that the five percent and 25 percent thresholds are not new requirements. The thresholds are currently in use and are designed to address *aggregate* risk in this area. FINRA believes that the suggestion that the thresholds are easily reached in volatile markets, if anything, confirms that they serve an important purpose in monitoring risk. Accordingly, FINRA proposes to retain the thresholds, with non-substantive edits to further clarify that the provisions are meant to include Covered Agency Transactions. In addition, the proposed rule change would clarify that de minimis transfer amounts must be included toward the concentration thresholds, as well as all

amounts pursuant to the \$2.5 million per counterparty exception as discussed earlier.¹⁴⁵

7. Central Banks

As proposed in the *Notice*, the proposed rule change would not apply to Covered Agency Transactions with central banks. As explained in the *Notice*, FINRA would interpret "central bank" to include, in addition to government central banks and central banking authorities, sovereigns, multilateral development banks and the Bank for International Settlements. One commenter proffered language to expand the proposed exemption for central banks to include sovereign wealth funds.¹⁴⁶ The Federal Home Loan Banks (FHLB) requested exemption from the requirements on grounds of the low counterparty risk that they believe they present.¹⁴⁷ Two commenters suggested that in the interest of clarity the interpretive language in the *Notice* as to "central banks" should be integrated into the rule text.¹⁴⁸

In response, as noted earlier¹⁴⁹ FINRA has revised the proposed rule language as to central banks and similar entities to make the rule's scope more clear and to provide members flexibility to manage their risk vis-à-vis such entities. Specifically, proposed Rule 4210(e)(2)(H)(ii)a.1. provides that, with respect to Covered Agency Transactions with any counterparty that is a Federal banking agency, as defined in 12 U.S.C. 1813(z),¹⁵⁰ central bank, multinational central bank, foreign sovereign, multilateral development bank, or the Bank for International Settlements, a member may *elect* not to apply the margin requirements specified in paragraph (e)(2)(H) of the rule provided the member makes a written risk limit determination for each such counterparty that the member shall enforce pursuant to paragraph (e)(2)(H)(ii)b. FINRA believes that, in addition to providing members flexibility from the standpoint of managing their risk, the proposal as revised is more clear as to the types of entities that are included within the scope of the election that paragraph (e)(2)(H)(ii)a.1. makes available to members. Specifically, the terms Federal banking agency, central bank, multinational central bank, and foreign sovereign are consistent with usage in

¹⁴⁵ See proposed FINRA Rule 4210(e)(2)(I) in Exhibit 5.

¹⁴⁶ SIFMA.

¹⁴⁷ FHLB.

¹⁴⁸ SIFMA and SIFMA AMG.

¹⁴⁹ See note 39 *supra*.

¹⁵⁰ See note 38 *supra*.

¹⁴⁴ BB&T, BDA, FirstSouthwest, Mischler, Sandler, SIFMA and SIFMA AMG.

the “Volcker Rules” as adopted in January, 2014.¹⁵¹ As explained in the *Notice*, the inclusion of multilateral development banks and the Bank for International Settlements is consistent with usage by the Basel Committee on Banking Supervision (“BCBS”) and the Board of the International Organization of Securities Commissioners (“IOSCO”).¹⁵² FINRA does not propose to include sovereign wealth funds, as such entities engage in market activity as *commercial* participants. Informed by discussions with the FRBNY staff, FINRA does not propose to include other specific entities, other than the Bank for International Settlements on account of its role vis-à-vis central banks, given that FINRA has been advised that doing so would create perverse incentives for regulatory arbitrage. Further, absent a showing that an entity is expressly backed by the full faith and credit of a sovereign power or powers and is expressly limited by its organizing charter as to any speculative activity in which it may engage, including such an entity within the scope of the election made available under paragraph (e)(2)(H)(ii)a.1. would cut against the overall purpose of the rule amendments.

8. Timing of Margin Collection and Transaction Liquidation

The proposed rule change, with minor revision vis-à-vis the version as set forth in the *Notice*, provides that, unless FINRA has specifically granted the member additional time, the member would be required to liquidate positions if, with respect to exempt accounts, a mark to market loss is not satisfied within five business days, or, with respect to non-exempt accounts, a deficiency is not satisfied within such period.

Commenters suggested that the proposed five-day timeframe is too short, that the appropriate timeframe is 15 days, as set forth in current Rule 4210(f)(6), that firms may not be able to collect the margin within the specified timeframe, and that firms should be permitted to negotiate the timeframe with their customers.¹⁵³ One commenter sought clarification as to whether a member would be required to take a

capital charge on deficiencies on the day such deficiencies are cured.¹⁵⁴

In response, FINRA believes that the five-day period as proposed is appropriate in view of the potential counterparty risk in the TBA market.¹⁵⁵ Accordingly, the proposed requirement is largely as set forth in the *Notice*, with minor revision as noted earlier to better align the language with corresponding provisions under FINRA Rule 4210(g)(10)(A) in the context of portfolio margining.¹⁵⁶ Further, consistent with longstanding practice under current Rule 4210(f)(6), FINRA notes that the proposed rule makes allowance for FINRA to specifically grant the member additional time.¹⁵⁷ FINRA maintains, and regularly updates, the online Regulatory Extension System for this purpose. With respect to the curing of deficiencies, FINRA notes that the margin rules have consistently been interpreted so that a capital charge, once created, is removed when the deficiency is cured.

9. Miscellaneous Issues

(a) Cleared TBA Market Products

One commenter suggested that the proposed amendments should apply to Covered Agency Transactions cleared through a registered clearing agency.¹⁵⁸ FINRA does not propose to apply the requirements to cleared transactions at this time given that such requirements would appear to duplicate the efforts of the registered clearing agencies and increase burdens on members.

(b) Introducing and Carrying/Clearing Firms

One commenter sought clarification as to whether introducing firms or carrying/clearing firms would be responsible for calculating, collecting and holding custody of the customer’s margin under the proposed amendments.¹⁵⁹ In response, FINRA notes that Rule 4311 permits firms to allocate responsibilities under carrying agreements so that, for instance, an introducing firm could calculate margin and make margin calls, provided, however, that the carrying firm is responsible for the safeguarding of

funds and securities for the purposes of SEA Rule 15c3–3.¹⁶⁰

(c) Margining of Fails

Three commenters sought clarification as to whether members would be required to margin fails to deliver.¹⁶¹ In response, FINRA notes that currently Rule 4210 does not require the margining of fails to deliver. However, FINRA notes that members need to consider the relevant capital requirements under SEA Rule 15c3–1, in particular the treatment of unsecured receivables under Rule 15c3–1(c)(2)(iv). FINRA does not propose to address fails to deliver as part of the proposed rule change.

(d) Eligible Collateral

Several commenters suggested that FINRA should clarify that the proposal is not specifying what type of collateral a firm should accept and that there should be flexibility for parties to negotiate collateral via the terms of the Master Securities Forward Transaction Agreement (MSFTA).¹⁶² Some commenters suggested the proposal should impose limits with respect to types of collateral.¹⁶³ In response, FINRA believes that all margin eligible securities, with the appropriate margin requirement, should be permissible as collateral under Rule 4210 to satisfy required margin.

(e) Protection of Customer Margin; Two-Way Margining

One commenter suggested that, in light of the Bankruptcy Court decision concerning TBA products in the Lehman case,¹⁶⁴ FINRA should enhance protection of the margin that customers post by requiring that members hold the margin through tri-party custodial arrangements.¹⁶⁵ One commenter suggested that, as a way to manage the risk of Covered Agency Transactions, FINRA should implement two-way margining that would require members to post the same mark to market margin that would be required of counterparties, and that FINRA should, as part of the rule change, permit the

¹⁵¹ See OCC, Federal Reserve, FDIC and SEC, 79 FR 5536 (January 31, 2014) (Final Rule: Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds).

¹⁵² See BCBS and IOSCO, Margin Requirements for Non-Centrally Cleared Derivatives, September 2013, available at: <<http://www.bis.org/publ/bcbs261.pdf>>.

¹⁵³ AII, BB&T, BDA, Credit Suisse, Duncan-Williams, ICI, MetLife, Pershing, Sandler, Shearman, SIFMA and SIFMA AMG.

¹⁵⁴ SIFMA.

¹⁵⁵ In the interest of clarity, FINRA is revising paragraph (f)(6) of Rule 4210 so as to except paragraph (e)(2)(H) of the rule from the 15-day timeframe set forth in paragraph (f)(6).

¹⁵⁶ See notes 52, 53 and 56 *supra*.

¹⁵⁷ See proposed FINRA Rule 4210(e)(2)(H)(ii)d.

¹⁵⁸ Brevan.

¹⁵⁹ Sandler.

¹⁶⁰ With respect to any customer funds and securities, an introducing firm is subject to the obligation of prompt transmission or delivery.

¹⁶¹ Pershing, Sandler and SIFMA.

¹⁶² AII, Clarke, FIF and SIFMA.

¹⁶³ BB&T and Duncan-Williams.

¹⁶⁴ See Memorandum Decision Confirming the Trustee’s Determination of Claims Relating to TBA Contracts, In re Lehman Brothers, Inc., Debtor, 462 B.R. 53, 2011 Bankr. LEXIS 4753 (S.D.N.Y. December 8, 2011).

¹⁶⁵ Brevan.

use of tri-party custodial arrangements.¹⁶⁶

In response, though FINRA is supportive of enhanced customer protection wherever possible, implementation of such requirements at this time could impose substantial additional burdens on members, or otherwise raise issues that are beyond the scope of the proposed rule change. FINRA is considering the issue of tri-party arrangements but does not propose to address it as part of the proposed rule change. Further, FINRA supports the use of two-way margining as a means of managing risk but does not propose to address such a requirement as part of the rule change.

(f) Unrealized Profits; Standbys

The proposed rule change, with minor revision vis-à-vis the version as set forth in the *Notice*, provides that unrealized profits in one Covered Agency Transaction may offset losses from other Covered Agency Transaction positions in the same counterparty's account and the amount of net unrealized profits may be used to reduce margin requirements. Further, the rule provides that, with respect to standbys, only profits (in-the-money amounts), if any, on long standbys shall be recognized.

One commenter sought clarification as to whether for long standbys only profits, not losses, may be factored into the setoff.¹⁶⁷ In response, FINRA notes that this is correct.

(g) Definition of Exempt Account

One commenter suggested FINRA should revise the definition of "exempt" account under Rule 4210 to include the non-US equivalents of the types of entities set forth under the definition.¹⁶⁸ In response, FINRA notes that the definition of exempt account plays an important role under Rule 4210 and believes that issue is better addressed as part of a future, separate rulemaking effort.

(h) Standardized Pricing

One commenter suggested FINRA should suggest standardized sources for pricing and a calculation methodology for the TBA market.¹⁶⁹ In response, though FINRA agrees that market transparency is important, FINRA does not propose at this time to suggest or mandate sources for valuation, as this currently is a market function. FINRA notes that the FINRA Web site makes available extensive TRACE data and

other market data for use by the public.¹⁷⁰

(i) MSFTA

One commenter sought clarification as to whether FINRA would require a member to have an executed MSFTA in place prior to engaging in any Covered Agency Transactions.¹⁷¹ In response, FINRA does not propose to mandate the use of MSFTAs. FINRA notes, however, that members are obligated under, among other things, the books and records rules to maintain and preserve proper records as to their trading.

(j) Implementation

Commenters suggested implementation periods ranging from six to 24 months for the proposed rule change once adopted.¹⁷² In response, FINRA supports in general the suggestion of an implementation period that permits members adequate time to prepare for the rule change and welcomes further comment on this issue.¹⁷³

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 self-regulatory organization consents, the Commission will:

- (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

¹⁷⁰ See for instance bond data available on the FINRA Web site at: <http://finra-markets.morningstar.com/BondCenter/Default.jsp>.

¹⁷¹ Vining Sparks.

¹⁷² AII, BB&T, Credit Suisse, FIF, ICI and Pershing.

¹⁷³ FINRA understands that firms that are following the TMPG recommendations have been doing so since the recommendations took effect in December 2013.

- Send an email to rule-comments@sec.gov. Please include File Number SR-FINRA-2015-036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2015-036. 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2015-036 and should be submitted on or before November 10, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷⁴

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-26518 Filed 10-19-15; 8:45 am]

BILLING CODE 8011-01-P

¹⁶⁶ ICI.

¹⁶⁷ SIFMA.

¹⁶⁸ Shearman.

¹⁶⁹ BB&T.

¹⁷⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76147; File No. SR-BATS-2015-89]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

October 14, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 13, 2015, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members⁵ and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange’s Web site at www.batstrading.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 17, 2014, the Exchange filed a proposal to adopt rules to create a Lead Market Maker Program (the “Program”) on an immediately effective basis.⁶ The Program is designed to strengthen market quality for BATS-listed ETPs⁷ by offering enhanced rebates to market makers registered with the Exchange (“Market Makers”)⁸ that are also registered as a lead market maker (“LMM”) in an LMM Security⁹ and meet certain minimum quoting standards (“Minimum Performance Standards”).¹⁰ The purpose of this filing is to adopt such enhanced rebates and to adopt additional LMM credit tiers, effective immediately.¹¹

LMM Incentive Program

The Exchange proposes to modify its fee schedule applicable to use of the Exchange in order to provide pricing for orders that add displayed liquidity in LMM Securities entered by LMMs that meet the Minimum Performance Standards (a “Qualified LMM”). The Exchange is proposing to implement a tiered rebate structure that is based on the consolidated average daily volume (“CADV”) of the LMM Security.¹² Specifically, the Exchange is proposing that an LMM shall receive the following rebates for each share of added

displayed liquidity in each security for which they are a Qualified LMM (each an “LMM Rebate”): Where the CADV is less than 1,000,000, \$0.0045; where the CADV is 1,000,000 to 5,000,000, \$0.0040; where the CADV is greater than 5,000,000, \$0.0035. The Exchange also proposes to charge Qualified LMMs a fee of \$0.0025 per share to remove liquidity in each security for which they are a Qualified LMM (the “LMM Fee”). In addition, as proposed an LMM would not be charged or provided a rebate for executions occurring in the Exchange’s closing auction in securities for which it is a Qualified LMM.

As is the case for all Members, in the event that a Qualified LMM is ever eligible to receive a higher per share rebate or lower per share fee under other pricing, the Qualified LMM will receive such higher rebate or fee rather than the applicable LMM Rebate or LMM Fee. For example, as proposed and further described below, an LMM may be eligible to receive a higher rebate per share under the LMM Credit Tiers in combination with other incentives offered by the Exchange.

Under the proposal, CADV is calculated based on the three calendar months preceding the month for which the fees apply, meaning that when calculating the rebates that apply to a particular LMM Security, the CADV will be based on the three calendar months prior to the current trading month. For example, in calculating the rebates that will apply to an LMM for a particular LMM Security for October, the Exchange will look to the average daily volume reported for the LMM Security by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for July, August, and September. If that LMM Security was an initial listing on BATS (not a transfer listing from another listing market) and was listed beginning on September 15, the calculation of CADV used for October pricing would include all days from July 1 through September 14 with zero volume each trading day. For transfer listings, the determination of the rebates for a month will be based on the CADV for the past three months, regardless of where the ETP was listed during that period.

The Exchange notes that all volume, including volume in LMM Securities, will continue to be included in all volume calculations as it relates to other rebates and fees on the Exchange.

In connection with the changes described above, the Exchange proposes to add definitions of Qualified LMM and CADV to the fee schedule consistent with the definitions provided above. As the proposed rebates and fees

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

⁶ See Securities Exchange Act Release No. 72020 (April 25, 2014), 79 FR 24807 (May 1, 2014) (SR-BATS-2014-015).

⁷ As defined in Rule 11.8(e)(1)(A), ETP means any security listed pursuant to Exchange Rule 14.11.

⁸ See BATS Rule 11.5.

⁹ As defined in Rule 11.8(e)(1)(C), LMM Security means an ETP that has an LMM.

¹⁰ As defined in Rule 11.8(e)(1)(D), Minimum Performance Standards means a set of standards applicable to an LMM that may be determined from time to time by the Exchange.

¹¹ The Exchange initially filed the proposed fee change on October 1, 2015 (SR-BATS-2015-81). On October 9, 2015, the Exchange withdrew SR-BATS-2015-81 and submitted a new filing (SR-BATS-2015-88). On October 13, 2015, the Exchange withdrew SR-BATS-2015-88 and submitted this filing.

¹² As defined in the proposed fee schedule, “CADV” means consolidated average daily volume calculated as the average daily volume reported for a security by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the three calendar months preceding the month for which the fees apply and excludes volume on days when the market closes early and on the Russell Reconstitution Day.

will be included in footnote 14 of the fee schedule, the Exchange also proposes to append footnote 14 to fee codes applicable to the Exchange's closing auction, fee codes AC, AL and AN, the fee code applicable to adding liquidity in Tape B securities, fee code B, and the fee code applicable to removing liquidity in Tape B securities, fee code BB.

LMM Credit Tiers for Tape B

The Exchange proposes to adopt tier-based incremental credits for Members that are LMMs for their orders that provide displayed liquidity in Tape B securities. Specifically, Members that are LMMs for LMM Securities would receive an additional credit (an "LMM Credit") for orders that provide displayed liquidity in Tape B securities traded on the Exchange, including non-BATS-listed securities, except that such LMM Credits will not be applied to the LMM Rebates proposed above. As proposed, the LMM Credits and volume thresholds associated therewith would be as follows: (i) An LMM Credit of \$0.0001 per share where an LMM is a Qualified LMM in at least 50 ETPs; (ii) an LMM Credit of \$0.0002 per share where an LMM is a Qualified LMM in at least 75 ETPs; (iii) an LMM Credit of \$0.0003 per share where an LMM is a Qualified LMM in at least 150 ETPs; and (iv) an LMM Credit of \$0.0004 per share where an LMM is a Qualified LMM in at least 250 ETPs. The number of ETPs in which the Member is a Qualified LMM for the billing month will be based on whether the LMM met the Minimum Performance Standards for an LMM Security during the applicable billing month.

For example, a Member that is a Qualified LMM in 100 ETPs would be eligible to receive an LMM Credit of \$0.0002 per share in Tape B securities for which it is not a Qualified LMM, in addition to the rebate it would normally receive in accordance with the Exchange's fee schedule ("Normal Rebate"). For securities in which the Member is a Qualified LMM, the Member would instead receive the LMM Rebates proposed above. Where the LMM Credit plus the Normal Rebate would be greater than the LMM Rebate, the Member will receive this higher rebate instead of the LMM Rebate, which is consistent with the treatment of all other fees and rebates, as provided in the General Note that states "to the extent a Member qualifies for higher rebates and/or lower fees than those provided by a tier for which such Member qualifies, the higher rebates and/or lower fees shall apply." For instance, a Member could be eligible to

receive a Normal Rebate of \$0.0032 per share along with an additional \$0.0004 per share in LMM Credit for an LMM Security with a CADV greater than 5,000,000. For such security the LMM Rebate would be \$0.0035 per share. In such an instance, because the Normal Rebate combined with the LMM Credit would be \$0.0036 per share and greater than the LMM Rebate of \$0.0035 per share, the Member would receive a \$0.0036 per share rebate in the LMM Security.

Implementation Date

The Exchange proposes to implement these amendments to its fee schedule effective immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.¹³ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) and 6(b)(5) of the Act,¹⁴ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls and it does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

LMM Incentive Program

The Exchange believes that the proposed LMM Rebates are equitable and not unfairly discriminatory because they will incentivize and reward LMMs that make tangible commitments to enhancing market quality for securities listed on the Exchange. The Exchange also believes that the proposed LMM Rebates are reasonable because they are substantially similar to the rebates offered in a comparable lead market maker program currently offered by NYSE Arca, Inc. ("Arca"). The Exchange further believes that the proposal will provide a better trading environment for investors in ETPs and generally encourage greater competition between listing venues.

As described above, the Exchange proposes to provide rebates to Qualified

LMMs for adding displayed liquidity ranging from \$0.0035 to \$0.0045 per share. This range is based on an LMM Security's CADV such that as the CADV increases, the proposed rebate decreases. Typically, the lower a security's CADV, the higher the risks and costs to a market maker associated with making markets in the security, such as holding inventory in the security. As the CADV for a security increases, and thus the liquidity increases, typically these same costs associated with making markets in a security decrease. Similarly, the lower a security's CADV, the wider the bid-ask spread in that security will typically be, which means that anyone that wants to buy (sell) the security will have to pay a higher (receive a lower) price for the security. As a security's CADV increases, the narrower the bid-ask spread typically becomes, which means that a buyer (seller) pays (receives) a lower (higher) price when buying (selling) the security. As such, the Exchange's proposal to pay rebates between \$0.0035 and \$0.0045 per share to Qualified LMMs as the CADV of the LMM Security increases is designed to provide higher rebates to Qualified LMMs for meeting the Minimum Quoting Standards in securities that are most likely to cost them the most to make a market, which the Exchange believes will have the effect of shrinking the bid-ask spread in such securities and reducing (increasing) the price for anyone that wants to buy (sell) the security. As the CADV of a security increases, the cost of making markets in the security decreases, which is why the Exchange is proposing to offer smaller rebates to Qualified LMMs for LMM Securities with higher CADV, while still having the effect of tightening spreads. The Exchange believes that the tightened spreads and the increased liquidity from the proposal will benefit all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Similarly, the Exchange believes that providing the proposed LMM Fee and the ability to participate in closing auctions without charge will incentivize LMMs to participate in the program generally and will assist them in actively providing liquidity on the Exchange consistent with the Minimum Performance Standards.

Based on the foregoing, the Exchange believes that these rebates and fees will incent Qualified LMMs to narrow

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

spreads, increase liquidity, and generally enhance the quality of quoting in all LMM Securities, particularly in lower CADV LMM Securities, which will reduce trading costs and benefit investors generally. Accordingly, the Exchange believes that the proposal is equitably allocated and not unfairly discriminatory because the proposal is consistent with the overall goals of enhancing market quality.

The Exchange notes that the proposed pricing structure is not dissimilar from volume-based rebates and fees (“Volume Tiers”) that have been widely adopted, including those maintained on the Exchange, and are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide higher rebates and lower fees that are reasonably related to the value to an exchange’s market quality. While Volume Tiers are generally designed to incentivize higher levels of liquidity provision and/or growth patterns on the Exchange across all securities, the proposal is designed to more precisely garner the same benefits specifically in LMM Securities. Stated another way, while Volume Tiers aim to enhance market quality generally, the proposed rebates are designed to enhance market quality on a security by security basis and particularly in securities with a lower CADV. As such, the Exchange believes that the proposed changes will strengthen its market quality for BATS-listed securities by enhancing the quality of quoting in such securities and will further assist the Exchange in competing as a listing venue for issuers seeking to list ETPs. Accordingly, the Exchange believes that the proposal will complement the Exchange’s program for listing securities on the Exchange, which will, in turn, provide issuers with another option for raising capital in the public markets, thereby promoting the principles discussed in Section 6(b)(5) of the Act.¹⁵

LMM Credit Tiers for Tape B

The proposed fee change to adopt the LMM Credit Tiers for Tape B is intended to encourage Members to promote price discovery and market quality across all BATS-listed securities for the benefit of all market participants. The Exchange believes that the proposed credits are reasonable and appropriate in that they are based on the amount of business transacted on the Exchange. The Exchange notes that the proposed fee change is similar to market quality incentive programs already in place on other markets, such as the Qualified Market Maker incentive on

the NASDAQ Stock Market LLC (“NASDAQ”), which requires a member on that exchange to provide meaningful and consistent support to market quality and price discovery by quoting at the NBBO in a large number of securities. In return, NASDAQ provides such member with an incremental rebate.¹⁶ Arca also provides enhanced credits to market makers on a tiered basis based on the number of “Less Active ETP Securities” in which it is a registered lead market maker, which it defines as those securities with a CADV in the previous month of less than 100,000 shares. The more Less Active ETP Securities in which an LMM is registered and the higher the tier achieved, the greater the incremental rebate Arca provides to the LMM for orders that provide liquidity in Tape B securities.¹⁷ The Exchange believes that providing increased credits to Members that are LMMs that add liquidity in Tape B securities to the Exchange is reasonable because the Exchange believes that by providing increased rebates to such Members, more LMMs will register to quote and trade in as many BATS-listed ETPs as possible. In particular, by providing enhanced rebates tiered based on the number of securities for which a Member is registered as an LMM, it would provide an incentive for such Members not only to register as an LMM in more liquid securities, but also to register to quote in lower volume ETPs, which are traditionally less profitable for market makers than more liquid ETPs. The Exchange believes that the proposed incremental credit for adding liquidity is also reasonable because it will encourage liquidity and competition in Tape B securities quoted and traded on the Exchange. Moreover, the Exchange believes that the proposed fee change will incentivize LMMs to register as an LMM in more ETPs, including less liquid ETPs and, thus, add more liquidity in these and other Tape B securities to the benefit of all market participants.

The Exchange believes that the proposed incremental credits are equitable and not unfairly discriminatory because they are open to all Members on an equal basis and provide discounts that are reasonably related to the value to the Exchange’s market quality associated with higher volumes. The Exchange further believes that the proposed incremental rebate is not unfairly discriminatory because it is consistent with the market quality and

competitiveness benefits associated with the proposed fee program and because the magnitude of the additional rebate is not unreasonably high in comparison to the rebate paid with respect to other displayed liquidity-providing orders. The Exchange does not believe that it is unfairly discriminatory to offer increased rebates to LMMs as LMMs are subject to additional requirements and obligations (such as quoting requirements) that other market participants are not. The Exchange believes that it is also not unfairly discriminatory to provide increased rebates to Members based on the number of securities for which they are registered as an LMM because it will encourage broader registration as LMMs in all BATS-listed ETPs which will enhance liquidity and market quality in such BATS-listed ETPs to the benefit of all participants.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. With respect to the proposed new LMM Rebates, LMM Fee, pricing for LMMs participating in Exchange closing auctions, and the proposed LMM Credit Tier, the Exchange does not believe that the changes burden competition, but instead, enhance competition, as these changes are intended to increase the competitiveness of the Exchange’s listings program. The Exchange also believes the proposed changes would enhance competition because they are similar to pricing incentives provided by both Arca and NASDAQ, as noted above. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if the deemed fee structures to be unreasonable or excessive. The proposed changes are generally intended to enhance the fees and rebates in LMM Securities for Qualified LMMs and for those Members that are Qualified LMMs in multiple ETPs, which is intended to enhance market quality in BATS-listed securities. As such, the proposal is a competitive proposal that is intended to add additional liquidity to the Exchange, which will, in turn, benefit the Exchange and all Exchange participants.

¹⁶ See NASDAQ Rule 7014.

¹⁷ See SR-NYSEArca-2015-87, available at: <https://www.nyse.com/regulation/rule-filings?market=NYSE%20Arca>.

¹⁵ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁸ and paragraph (f) of Rule 19b-4 thereunder.¹⁹ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-BATS-2015-89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-BATS-2015-89. 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BATS-2015-89 and should be submitted on or before November 10, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-26517 Filed 10-19-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, October 22, 2015 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings;
- Formal orders of investigation; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551-5400.

Dated: October 15, 2015.

Brent J. Fields,
Secretary.

[FR Doc. 2015-26717 Filed 10-16-15; 11:15 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76156; File No. SR-BYX-2015-43]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 3.22, Concerning Gifts and Gratuities in Relation to the Business of the Employer of the Recipient, and Renaming the Rule "Influencing or Rewarding Employees of Others"

October 15, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 30, 2015, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 3.22, Gratuities, to conform to the rules of the Financial Industry Regulatory Authority, Inc. ("FINRA") for purposes of an agreement between

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

²⁰ 17 CFR 200.30-3(a)(12).

the Exchange and FINRA pursuant to Rule 17d-2 under the Act.⁵

The text of the proposed rule change is available at the Exchange's Web site at www.batstrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Rule 17d-2 under the Act,⁶ the Exchange and FINRA entered into an agreement to allocate regulatory responsibility for common rules (the "17d-2 Agreement"). The 17d-2 Agreement covers common members of the Exchange and FINRA and allocates to FINRA regulatory responsibility, with respect to common members, for the following: (i) Examination of common members of the Exchange and FINRA for compliance with certain federal securities laws, rules and regulations and rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules; (ii) investigation of common members of the Exchange and FINRA for violations of certain federal securities laws, rules or regulations, or Exchange rules that the Exchange has certified as identical or substantially identical to a FINRA rule; and (iii) enforcement of compliance by common members with certain federal securities laws, rules and regulations, and the rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules.⁷

The 17d-2 Agreement included a certification by the Exchange that states that the requirements contained in

certain Exchange rules are identical to, or substantially similar to, certain FINRA rules that have been identified as comparable. To conform to comparable FINRA rules for purposes of the 17d-2 Agreement, the Exchange proposes [sic] delete the current text of Rule 3.22, Gratuities, and adopt text that is identical to FINRA Rule 3220 and to rename the rule "Influencing or Rewarding Employees of Others". The proposed rule text is also identical to New York Stock Exchange, Inc. ("NYSE") Rule 3220, which has been approved by the Commission.⁸

Currently, Exchange Rule 3.22 is excluded from the 17d-2 Agreement because it is not identical, or substantially similar to, FINRA Rules 3220. Exchange Rule 3.22 prohibits Members from giving any compensation or gratuity in any one year in excess of \$50.00 to any employee of the Exchange or in excess of \$100.00 to any employee of any other Member or of any non-Member broker, dealer, bank or institution, without the prior consent of the employer and of the Exchange. FINRA Rule 3220 currently prevents gifts in excess of a fixed amount, currently \$100.00, where the gifts or gratuity is in relation to the business of the employee⁹ of the recipient. Unlike FINRA Rule 3220, current Exchange Rule 3.22 does not include record keeping requirements or an exclusion for payments made pursuant to bona fide, written employment contracts. Exchange Rule 3.22 was, therefore, excluded from the 17d-2 Agreement because it was not identical or substantially similar to FINRA Rule 3220. To harmonize its rules with FINRA, the Exchange proposes to delete the current text of Rule 3.22 and adopt text that is identical to FINRA Rule 3220 so that it may be incorporated into the 17d-2 Agreement in its entirety.

The Exchange believes that these changes will help to avoid confusion among Members of the Exchange that are also members of FINRA by further aligning the Exchange Rule 3.22 with FINRA Rule 3220. The proposed changes to Rule 3.22 are designed to enable the Exchange to incorporate Rule 3.22 into the 17d-2 Agreement, further reducing duplicative regulation of Members that are also members of FINRA. For the avoidance of doubt, Rule 3.22 would equally apply to

Exchange-only Members as the Exchange believes it appropriately protects against improprieties that might arise when substantial gifts or monetary payments are given to certain persons. The Exchange will issue a Regulatory Notice to its Members, including Exchange-only Members that may not also be FINRA Members, and those Members registered with FINRA, clarifying that FINRA's interpretive guidance related to FINRA Rule 3220 is considered part of Exchange Rule 3.22, and that all Members are required to regulate their conduct according to Rule 3.22 and the interpretive guidance related to FINRA Rule 3220.¹⁰

As amended, like FINRA Rule 3220(a), proposed paragraph (a) of Rule 3.22 would prevent gifts in excess of \$100.00 per individual per year where the gift or gratuity is in relation to the business of the employee of the recipient. A gift of any kind would be considered a gratuity. The Rule would also contain an express exclusion for payments made pursuant to bona fide, written employment contracts. Specifically, like FINRA Rule 3220(b), proposed paragraph (b) of Rule 3.22 would state that the rule would not apply to contracts of employment with or to compensation for services rendered by persons enumerated in paragraph (a) of the Rule, provided that there is in existence prior to the time of employment or before the services are rendered, a written agreement between the member and the person who is to be employed to perform such services. Proposed paragraph (c) would require such agreement to include the nature of the proposed employment, the amount of the proposed compensation, and the written consent of such person's employer or principal.

The Rule would also require each Member to maintain a separate record of all gifts or gratuities. Like FINRA Rule 3220(c), proposed paragraph (c) of Rule 3.22 would require a separate record of all payments or gratuities in any amount known to the member, the employment agreement referred to in proposed paragraph (b) of Rule 3.22 and any employment compensation paid as a result thereof shall be retained by the member for the period specified by Exchange Act Rule 17a-4.¹¹

¹⁰ See, e.g., FINRA's interpretive guidance concerning business entertainment expenses, including a June 24, 1999, Letter to Henry H. Hopkins and Sarah McCafferty, T. Rowe Price Investment Services, Inc. This interpretive letter and other interpretive guidance concerning gifts and gratuities expenses are currently available at FINRA's Web site.

¹¹ 17 CFR 240.17a-4.

⁵ 17 CFR 240.17d-2.

⁶ 17 CFR 240.17d-2.

⁷ See Securities and Exchange Release No. 63102 (October 14, 2010), 75 FR 64765 (October 20, 2010) (approving File No. 4-613).

⁸ See Securities Exchange Act Release No. 59965 (May 21, 2009), 74 FR 25783 (May 29, 2009) (SR-NYSE-2009-25).

⁹ The Commission notes that both FINRA Rule 3220 and proposed BYX Rule 3.22 limit gifts and gratuities in relation to the employer of the recipient, rather than those in relation to the "employee" of the recipient as stated above.

2. Statutory Basis

The Exchange believes that proposed rule change is consistent with Section 6(b)(5) of the Act,¹² which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change will further these requirements by providing greater harmonization between Exchange and FINRA rules of similar purpose, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system in accordance with Section 6(b)(5) of the Act.¹³

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather to provide greater harmonization among Exchange and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for common members and facilitating FINRA's performance of its regulatory functions under the 17d-2 Agreement.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act¹⁴ and paragraph (f)(6) of Rule 19b-4

thereunder.¹⁵ The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File No. SR-BYX-2015-43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File No. SR-BYX-2015-43. 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 Web site (<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 Web site 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BYX-2015-43 and should be submitted on or before October 23, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-26577 Filed 10-19-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

Accentia Biopharmaceuticals, Inc. and Biostem U.S. Corp., Order of Suspension of Trading

October 16, 2015.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Accentia Biopharmaceuticals, Inc. (CIK No. 1310094), a dissolved Florida corporation with its principal place of business listed as Tampa, Florida, with stock quoted on OTC Link (previously, "Pink Sheets") operated by OTC Markets Group, Inc. ("OTC Link") under the ticker symbol ABPI, because it has not filed any periodic reports since the period ended December 31, 2012. On October 27, 2014, Accentia Biopharmaceuticals received a delinquency letter sent by the Division of Corporation Finance requesting compliance with their periodic filing obligations.

¹² 15 U.S.C. 78f(b)(5).

¹³ *Id.*

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4.

¹⁶ 17 CFR 200.30-3(a)(12).

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Biostem U.S. Corp. (CIK No. 1455380), a revoked Nevada corporation with its principal place of business listed as Clearwater, Florida, with stock quoted on OTC Link under the ticker symbol HAIR, because it has not filed any periodic reports since the period ended November 30, 2012. On November 7, 2014, the Division of Corporation Finance sent Biostem U.S. a delinquency letter requesting compliance with their periodic filing obligations, but the letter was returned because of Biostem U.S.'s failure to maintain a valid address on file with the Commission, as required by Commission rules (Rule 301 of Regulation S-T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual).

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on October 16, 2015, through 11:59 p.m. EDT on October 29, 2015.

By the Commission.

Brent J. Fields

Secretary.

[FR Doc. 2015-26722 Filed 10-16-15; 11:15 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76139; File No. SR-NASDAQ-2015-116]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Mini Options

October 14, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 8, 2015, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by NASDAQ. 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

NASDAQ proposes to amend Supplementary Material .08 to Chapter IV, Section 6 (Series of Options Contracts Open for Trading), entitled “Mini Options Contracts.” Specifically, the Exchange proposes to replace the name “Google Inc.” with “Alphabet Inc.”

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).³

The text of the proposed rule change is available on the Exchange’s Web site at <http://www.nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Supplementary Material .08 to Chapter IV, Section 6, regarding Mini Options traded on Nasdaq, to replace the name “Google Inc.” with “Alphabet Inc.” Google Inc. (“Google”) recently announced plans to reorganize and create a new public holding company, which will be called Alphabet Inc. (“Alphabet”). As a result of the holding company reorganization, each share of Class A Common Stock (“GOOGL”), which the Exchange has listed as a Mini Option, will automatically convert into an equivalent corresponding share of Alphabet Inc. stock.⁴ The symbol “GOOGL” remains unchanged.

³ 17 CFR 240.19b-4(f)(6)(iii).

⁴ The Class C Capital Stock (“GOOG”) which is also impacted by the reorganization are not eligible

The Exchange is proposing to make this change to Supplementary Material .08 to Chapter IV, Section 6 to enable the continued trading of Mini Options on Google’s, now Alphabet’s Class A shares. The Exchange is proposing to make this change because, on October 5, 2015 Google reorganized and as a result underwent a name change.

The purpose of this change is to ensure that Supplementary Material .08 to Chapter IV, Section 6 reflects the intention and practice of the Exchange to trade Mini Options on only an exhaustive list of underlying securities outlined in Supplementary Material .08. This change is meant to continue the inclusion of Class A shares of Google in the current list of underlying securities that Mini Options can be traded on, while continuing to make clear that class C shares of Google are not part of that list as that class of options has not been approved for Mini Options trading. As a result, the proposed change will help avoid confusion.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁶ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change to change the name Google to Alphabet to reflect the new ownership structure is consistent with the Act because the proposed change is merely updating the current name associated

to be listed as Mini Options on the Exchange, only the Class A Common Stock.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ *Id.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

with the stock symbol GOOGL to allow for continued mini option trading on Google's class A shares. The proposed change will allow for continued benefit to investors by providing them with additional investment alternatives.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ 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 change does not impose any burden on intra-market competition because it applies to all members and member organizations uniformly. There is no burden on inter-market competition because the Exchange is merely attempting to continue to permit trading of GOOGL as a Mini Options, as is the case today. As a result, there will be no substantive changes to the Exchange's operations or its rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate 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 Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

A proposed rule change filed under Rule 19b-4(f)(6)¹⁰ normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)¹¹ the Commission may designate a shorter time if such

action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the Exchange to continue to list mini options on the Google Class A shares, now Alphabet's Class A shares, following Google's reorganization. For this reason, the Commission designates the proposed rule change to be operative upon filing.¹²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2015-116 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2015-116. 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 Web site (<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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2015-116, and should be submitted on or before November 10, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-26515 Filed 10-19-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-641, OMB Control No. 3235-0685]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

Extension:

Rules 3a68-2 and 3a68-4(c).

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("SEC") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for the following rules: Rules 3a68-2 and 3a68-4(c) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 3a68-2 creates a process for interested persons to request a joint interpretation by the SEC and the Commodity Futures Trading Commission ("CFTC") (together with

¹³ 17 CFR 200.30-3(a)(12).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

the SEC, the “Commissions”) regarding whether a particular instrument (or class of instruments) is a swap, a security-based swap, or both (*i.e.*, a mixed swap). Under Rule 3a68–2, a person provides to the Commissions a copy of all material information regarding the terms of, and a statement of the economic characteristics and purpose of, each relevant agreement, contract, or transaction (or class thereof), along with that person’s determination as to whether each such agreement, contract, or transaction (or class thereof) should be characterized as a swap, security-based swap, or both (*i.e.*, a mixed swap). The Commissions also may request the submitting person to provide additional information.

The SEC expects 25 requests pursuant to Rule 3a68–2 per year. The SEC estimates the total paperwork burden associated with preparing and submitting each request would be 20 hours to retrieve, review, and submit the information associated with the submission. This 20 hour burden is divided between the SEC and the CFTC, with 10 hours per response regarding reporting to the SEC and 10 hours of response regarding third party disclosure to the CFTC.¹ The SEC estimates this would result in an aggregate annual burden of 500 hours (25 requests × 20 hours/request).

The SEC estimates that the total costs resulting from a submission under Rule 3a68–2 would be approximately \$12,000 for outside attorneys to retrieve, review, and submit the information associated with the submission. The SEC estimates this would result in aggregate costs each year of \$300,000 (25 requests × 30 hours/request × \$400).

Rule 3a68–4(c) establishes a process for persons to request that the Commissions issue a joint order permitting such persons (and any other person or persons that subsequently lists, trades, or clears that class of mixed swap) to comply, as to parallel provisions only, with specified parallel provisions of either the Commodity Exchange Act (“CEA”) or the Securities Exchange Act of 1934 (“Exchange Act”), and related rules and regulations (collectively “specified parallel provisions”), instead of being required to comply with parallel provisions of both the CEA and the Exchange Act.

The SEC expects ten requests pursuant to Rule 3a68–4(c) per year. The SEC estimates that nine of these requests will have also been made in a request for a joint interpretation pursuant to Rule 3a68–2, and one will

not have been. The SEC estimates the total burden for the one request for which the joint interpretation pursuant to 3a68–2 was not requested would be 30 hours, and the total burden associated with the other nine requests would be 20 hours per request because some of the information required to be submitted pursuant to Rule 3a68–4(c) would have already been submitted pursuant to Rule 3a68–2. The burden in both cases is evenly divided between the SEC and the CFTC.

The SEC estimates that the total costs resulting from a submission under Rule 3a68–4(c) would be approximately \$20,000 for the services of outside attorneys to retrieve, review, and submit the information associated with the submission of the one request for which a request for a joint interpretation pursuant to Rule 3a68–2 was not previously made (1 request × 50 hours/request × \$400). For the nine requests for which a request for a joint interpretation pursuant to Rule 3a68–2 was previously made, the SEC estimates the total costs associated with preparing and submitting a party’s request pursuant to Rule 3a68–4(c) would be \$6,000 less per request because, as discussed above, some of the information required to be submitted pursuant to Rule 3a68–4(c) already would have been submitted pursuant to Rule 3a68–2. The SEC estimates this would result in an aggregate cost each year of \$126,000 for the services of outside attorneys (9 requests × 35 hours/request × \$400).

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

The public may view background documentation for this information collection at the following Web site: www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: Shagufta_Ahmed@omb.eop.gov; and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 13, 2015.

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015–26514 Filed 10–19–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76157; File No. SR–EDGA–2015–39]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Rule 3.20, Influencing or Rewarding Employees of Others, Concerning Gifts and Gratuities in Relation to the Business of the Employer of the Recipient

October 15, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on September 30, 2015, EDGA Exchange, Inc. (the “Exchange” or “EDGA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b–4(f)(6)(iii) thereunder,⁴ which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to adopt Rule 3.20 to conform to the rules of the Financial Industry Regulatory Authority, Inc. (“FINRA”) for purposes of an agreement between the Exchange and FINRA pursuant to Rule 17d–2 under the Act.⁵ The Exchange also proposes to adopt Rule 3.20 to conform to the rules of BATS Exchange, Inc. (“BZX”) and BATS Y-Exchange, Inc. (“BYX”).⁶

The text of the proposed rule change is available at the Exchange’s Web site

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b–4(f)(6)(iii).

⁵ 17 CFR 240.17d–2.

⁶ See SR–BATS–2015–79 and SR–BYX–2015–43 (filed September 30, 2015) (Notice of Filing and Immediate Effectiveness to Amend Rule 3.22 to Conform to FINRA Rule 3220).

¹ The burdens imposed by the CFTC are included in this collection of information.

at www.batstrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Rule 17d-2 under the Act,⁷ the Exchange and FINRA entered into an agreement to allocate regulatory responsibility for common rules (the "17d-2 Agreement"). The 17d-2 Agreement covers common members of the Exchange and FINRA and allocates to FINRA regulatory responsibility, with respect to common members, for the following: (i) Examination of common members of the Exchange and FINRA for compliance with certain federal securities laws, rules and regulations and rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules; (ii) investigation of common members of the Exchange and FINRA for violations of certain federal securities laws, rules or regulations, or Exchange rules that the Exchange has certified as identical or substantially identical to a FINRA rule; and (iii) enforcement of compliance by common members with certain federal securities laws, rules and regulations, and the rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules.⁸

The 17d-2 Agreement included a certification by the Exchange that states that the requirements contained in certain Exchange rules are identical to, or substantially similar to, certain FINRA rules that have been identified as comparable. The Exchange does not currently maintain a rule similar to

FINRA Rule 3220 governing a Member's giving of gifts. To conform to comparable FINRA rules for purposes of the 17d-2 Agreement, the Exchange proposes [sic] adopt Rule 3.20, Influencing or Rewarding Employees of Others, that is identical to FINRA Rule 3220. The proposed rule text is also identical to New York Stock Exchange, Inc. ("NYSE") Rule 3220, which has been approved by the Commission.⁹

The Exchange believes that these changes will help to avoid confusion among Members of the Exchange that are also members of FINRA by further aligning the Exchange Rules with FINRA Rule 3220. The proposed adoption of Rule 3.20 is designed to enable the Exchange to incorporate Rule 3.20 into the 17d-2 Agreement, further harmonizing regulation of Members that are also members of FINRA. For the avoidance of doubt, Rule 3.20 would equally apply to Exchange-only Members as the Exchange believes it appropriately protects against improprieties that might arise when substantial gifts or monetary payments are given to certain persons. The Exchange will issue a Regulatory Notice to its Members, including Exchange-only Members that may not also be FINRA Members, and those Members registered with FINRA, clarifying that FINRA's interpretive guidance related to FINRA Rule 3220 is considered part of Exchange Rule 3.20, and that all Members are required to regulate their conduct according to Rule 3.20 and the interpretive guidance related to FINRA Rule 3220.¹⁰

As amended, like FINRA Rule 3220(a), proposed paragraph (a) of Rule 3.20 would prevent gifts in excess of \$100.00 per individual per year where the gift or gratuity is in relation to the business of the employee¹¹ of the recipient. A gift of any kind would be considered a gratuity. The Rule would also contain an express exclusion for payments made pursuant to bona fide, written employment contracts. Specifically, like FINRA Rule 3220(b), proposed paragraph (b) of Rule 3.20 would state that the rule would not

apply to contracts of employment with or to compensation for services rendered by persons enumerated in paragraph (a) of the Rule, provided that there is in existence prior to the time of employment or before the services are rendered, a written agreement between the member and the person who is to be employed to perform such services. Proposed paragraph (c) would require such agreement to include the nature of the proposed employment, the amount of the proposed compensation, and the written consent of such person's employer or principal.

The Rule would also require each Member to maintain a separate record of all gifts or gratuities. Like FINRA Rule 3220(c), proposed paragraph (c) of Rule 3.20 would require a separate record of all payments or gratuities in any amount known to the member, the employment agreement referred to in proposed paragraph (b) of Rule 3.20 and any employment compensation paid as a result thereof shall be retained by the member for the period specified by Exchange Act Rule 17a-4.¹²

In early 2014, the Exchange and its affiliate, EDGX Exchange, Inc. ("EDGX") received approval to effect a merger (the "Merger") of the Exchange's parent company, Direct Edge Holdings LLC, with BATS Global Markets, Inc., the parent of BZX and the BYX (together with BZX, EDGA and EDGX, the "BGM Affiliated Exchanges").¹³ In the context of the Merger, the BGM Affiliated Exchanges are working to align their rules, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposed text of Rule 3.20 is also identical to recent rule changes filed with the Commission by BZX and BYX to adopt identical rule text to that proposed herein and FINRA Rule 3220. This proposed rule change would enable the Exchange to adopt rules that correspond to rules of BYX and BZX and provide a consistent rule set across each of the BGM Affiliated Exchanges.¹⁴

2. Statutory Basis

The Exchange believes that proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁵ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to

¹² 17 CFR 240.17a-4.

¹³ See Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR-EDGX-2013-43; SR-EDGA-2013-34).

¹⁴ The Exchange notes that EDGX intends to file an identical proposal with the Commission to adopt Rule 3.20, Influencing or Rewarding Employees of Others.

¹⁵ 15 U.S.C. 78f(b)(5).

⁷ 17 CFR 240.17d-2.

⁸ See Securities and Exchange Release No. 62078 (May 11, 2010), 75 FR 28078 (May 19, 2010) (approving File No. 4-597).

⁹ See Securities Exchange Act Release No. 59965 (May 21, 2009), 74 FR 25783 (May 29, 2009) (SR-NYSE-2009-25).

¹⁰ See, e.g., FINRA's interpretive guidance concerning business entertainment expenses, including a June 24, 1999, Letter to Henry H. Hopkins and Sarah McCafferty, T. Rowe Price Investment Services, Inc. This interpretive letter and other interpretive guidance concerning gifts and gratuities expenses are currently available at FINRA's Web site.

¹¹ The Commission notes that both FINRA Rule 3220 and proposed EDGA Rule 3.20 limit gifts and gratuities in relation to the employer of the recipient, rather than those in relation to the "employee" of the recipient as stated above.

promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change will further these requirements by providing greater harmonization between Exchange and FINRA rules of similar purpose, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

In addition, the proposed rule change would provide greater harmonization between rules of similar purpose on the BGM Affiliated Exchanges, resulting in greater uniformity and less burdensome and more efficient regulatory compliance and understanding of Exchange Rules. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. Similarly, the Exchange also believes that, by harmonizing the rules across each BGM Affiliated Exchange, the proposal will enhance the Exchange's ability to fairly and efficiently regulate its Members, meaning that the proposed rule change would promote just and equitable principles of trade in accordance with Section 6(b)(5) of the Act.¹⁶

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather to provide greater harmonization among Exchange and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for common members and facilitating FINRA's performance of its regulatory functions under the 17d-2 Agreement. In addition, allowing the Exchange to implement substantively identical rules that apply to all members of the BGM

Affiliated Exchanges across each of the BGM Affiliated Exchanges does not present any competitive issues, but rather is designed to provide greater harmonization among Exchange, BZX, BYX, and EDGA rules of similar purpose.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act¹⁷ and paragraph (f)(6) of Rule 19b-4 thereunder.¹⁸ The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File No. SR-EDGA-2015-39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-EDGA-2015-39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<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 Web site 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-EDGA-2015-39 and should be submitted on or before November 10, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-26578 Filed 10-19-15; 8:45 am]

BILLING CODE 8011-01-P

¹⁶ *Id.*

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4.

¹⁹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76158; File No. SR-BATS-2015-79]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 3.22, Concerning Gifts and Gratuities in Relation to the Business of the Employer of the Recipient, and Renaming the Rule “Influencing or Rewarding Employees of Others”

October 15, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 30, 2015, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 3.22, Gratuities, to conform to the rules of the Financial Industry Regulatory Authority, Inc. (“FINRA”) for purposes of an agreement between the Exchange and FINRA pursuant to Rule 17d-2 under the Act.⁵

The text of the proposed rule change is available at the Exchange’s Web site at www.batstrading.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Rule 17d-2 under the Act,⁶ the Exchange and FINRA entered into an agreement to allocate regulatory responsibility for common rules (the “17d-2 Agreement”). The 17d-2 Agreement covers common members of the Exchange and FINRA and allocates to FINRA regulatory responsibility, with respect to common members, for the following: (i) Examination of common members of the Exchange and FINRA for compliance with certain federal securities laws, rules and regulations and rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules; (ii) investigation of common members of the Exchange and FINRA for violations of certain federal securities laws, rules or regulations, or Exchange rules that the Exchange has certified as identical or substantially identical to a FINRA rule; and (iii) enforcement of compliance by common members with certain federal securities laws, rules and regulations, and the rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules.⁷

The 17d-2 Agreement included a certification by the Exchange that states that the requirements contained in certain Exchange rules are identical to, or substantially similar to, certain FINRA rules that have been identified as comparable. To conform to comparable FINRA rules for purposes of the 17d-2 Agreement, the Exchange proposes [sic] delete the current text of Rule 3.22, Gratuities, and adopt text that is identical to FINRA Rule 3220 and to rename the rule “Influencing or Rewarding Employees of Others”. The proposed rule text is also identical to New York Stock Exchange, Inc. (“NYSE”) Rule 3220, which has been approved by the Commission.⁸

⁶ 17 CFR 240.17d-2.

⁷ See Securities and Exchange Release No. 58818 (October 20, 2008), 73 FR 63752 (October 27, 2008) (approving File No. 4-569).

⁸ See Securities Exchange Act Release No. 59965 (May 21, 2009), 74 FR 25783 (May 29, 2009) (SR-NYSE-2009-25).

Currently, Exchange Rule 3.22 is excluded from the 17d-2 Agreement because it is not identical, or substantially similar to, FINRA Rule 3220. Exchange Rule 3.22 prohibits Members from giving any compensation or gratuity in any one year in excess of \$50.00 to any employee of the Exchange or in excess of \$100.00 to any employee of any other Member or of any non-Member broker, dealer, bank or institution, without the prior consent of the employer and of the Exchange. FINRA Rule 3220 currently prevents gifts in excess of a fixed amount, currently \$100.00, where the gifts or gratuity is in relation to the business of the employee⁹ of the recipient. Unlike FINRA Rule 3220, current Exchange Rule 3.22 does not include record keeping requirements or an exclusion for payments made pursuant to bona fide, written employment contracts. Exchange Rule 3.22 was, therefore, excluded from the 17d-2 Agreement because it was not identical or substantially similar to FINRA Rule 3220. To harmonize its rules with FINRA, the Exchange proposes to delete the current text of Rule 3.22 and adopt text that is identical to FINRA Rule 3220 so that it may be incorporated into the 17d-2 Agreement in its entirety.

The Exchange believes that these changes will help to avoid confusion among Members of the Exchange that are also members of FINRA by further aligning the Exchange Rule 3.22 with FINRA Rule 3220. The proposed changes to Rule 3.22 are designed to enable the Exchange to incorporate Rule 3.22 into the 17d-2 Agreement, further reducing duplicative regulation of Members that are also members of FINRA. For the avoidance of doubt, Rule 3.22 would equally apply to Exchange-only Members as the Exchange believes it appropriately protects against improprieties that might arise when substantial gifts or monetary payments are given to certain persons. The Exchange will issue a Regulatory Notice to its Members, including Exchange-only Members that may not also be FINRA Members, and those Members registered with FINRA, clarifying that FINRA’s interpretive guidance related to FINRA Rule 3220 is considered part of Exchange Rule 3.22, and that all Members are required to regulate their conduct according to Rule

⁹ The Commission notes that both FINRA Rule 3220 and proposed BATS Rule 3.22 limit gifts and gratuities in relation to the employer of the recipient, rather than those in relation to the “employee” of the recipient as stated above.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

⁵ 17 CFR 240.17d-2.

3.22 and the interpretive guidance related to FINRA Rule 3220.¹⁰

As amended, like FINRA Rule 3220(a), proposed paragraph (a) of Rule 3.22 would prevent gifts in excess of \$100.00 per individual per year where the gift or gratuity is in relation to the business of the employee of the recipient. A gift of any kind would be considered a gratuity. The Rule would also contain an express exclusion for payments made pursuant to bona fide, written employment contracts. Specifically, like FINRA Rule 3220(b), proposed paragraph (b) of Rule 3.22 would state that the rule would not apply to contracts of employment with or to compensation for services rendered by persons enumerated in paragraph (a) of the Rule, provided that there is in existence prior to the time of employment or before the services are rendered, a written agreement between the member and the person who is to be employed to perform such services. Proposed paragraph (c) would require such agreement to include the nature of the proposed employment, the amount of the proposed compensation, and the written consent of such person's employer or principal.

The Rule would also require each Member to maintain a separate record of all gifts or gratuities. Like FINRA Rule 3220(c), proposed paragraph (c) of Rule 3.22 would require a separate record of all payments or gratuities in any amount known to the member, the employment agreement referred to in proposed paragraph (b) of Rule 3.22 and any employment compensation paid as a result thereof shall be retained by the member for the period specified by Exchange Act Rule 17a-4.¹¹

2. Statutory Basis

The Exchange believes that proposed rule change is consistent with Section 6(b)(5) of the Act,¹² which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market

system. The Exchange believes that the proposed rule change will further these requirements by providing greater harmonization between Exchange and FINRA rules of similar purpose, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system in accordance with Section 6(b)(5) of the Act.¹³

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather to provide greater harmonization among Exchange and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for common members and facilitating FINRA's performance of its regulatory functions under the 17d-2 Agreement.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act¹⁴ and paragraph (f)(6) of Rule 19b-4 thereunder.¹⁵ The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the

proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File No. SR-BATS-2015-79 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-BATS-2015-79. 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 Web site (<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 Web site 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

¹⁰ See, e.g., FINRA's interpretive guidance concerning business entertainment expenses, including a June 24, 1999, Letter to Henry H. Hopkins and Sarah McCafferty, T. Rowe Price Investment Services, Inc. This interpretive letter and other interpretive guidance concerning gifts and gratuities expenses are currently available at FINRA's Web site.

¹¹ 17 CFR 240.17a-4.

¹² 15 U.S.C. 78f(b)(5).

¹³ *Id.*

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4.

filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BATS-2015-79 and should be submitted on or before November 10, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-26579 Filed 10-19-15; 8:45 am]
BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14495 and #14496]

South Carolina Disaster Number SC-00031

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of South Carolina (FEMA-4241-DR), dated 10/05/2015.

Incident: Severe Storms and Flooding.
Incident Period: 10/01/2015 and continuing.

Effective Date: 10/09/2015.

Physical Loan Application Deadline Date: 12/04/2015.

EIDL Loan Application Deadline Date: 07/05/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of SOUTH CAROLINA, dated 10/05/2015 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Bamberg, Colleton, Greenwood.
Contiguous Counties: (Economic Injury Loans Only): South Carolina: Abbeville, Allendale, Beaufort,

Edgefield, Hampton, Laurens, McCormick.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2015-26536 Filed 10-19-15; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14499 and #14500]

California Disaster #CA-00240

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of California (FEMA-4240-DR), dated 10/08/2015.

Incident: Valley Fire and Butte Fire.
Incident Period: 09/09/2015 and continuing.

Effective Date: 10/08/2015.

Physical Loan Application Deadline Date: 12/07/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 07/08/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/08/2015, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Calaveras, Lake.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625

	Percent
<i>For Economic Injury:</i>	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 144995 and for economic injury is 145005.

(Catalog of Federal Domestic Assistance Numbers 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015-26534 Filed 10-19-15; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14495 and #14496]

South Carolina Disaster Number SC-00031

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of South Carolina (FEMA-4241-DR), dated 10/05/2015.

Incident: Severe storms and flooding.
Incident Period: 10/01/2015 and continuing.

Effective Date: 10/13/2015.

Physical Loan Application Deadline Date: 12/04/2015.

EIDL Loan Application Deadline Date: 07/05/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of South Carolina, dated 10/05/2015 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Newberry.

Contiguous Counties: (Economic Injury Loans Only): South Carolina: Union.

All other information in the original declaration remains unchanged.

¹⁶ 17 CFR 200.30-3(a)(12).

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015-26537 Filed 10-19-15; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14495 and #14496]

South Carolina Disaster Number SC-00031

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of South Carolina (FEMA-4241-DR), dated 10/05/2015.

Incident: Severe storms and flooding.
Incident Period: 10/01/2015 and continuing.

Effective Date: 10/07/2015.

Physical Loan Application Deadline Date: 12/04/2015.

EIDL Loan Application Deadline Date: 07/05/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of South Carolina, dated 10/05/2015 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Calhoun, Darlington, Florence, Kershaw, Lee.

Contiguous Counties: (Economic Injury Loans Only):

South Carolina: Chesterfield, Lancaster, Marlboro.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2015-26535 Filed 10-19-15; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice: 9320]

Advisory Committee on Public-Private Partnerships; Notice of the Intent To Establish an Advisory Committee

This is notice of the intent to establish the Advisory Committee on Public-Private Partnerships. The Committee will serve the United States government in a solely advisory capacity concerning the development of public-private partnerships that promote shared value with the private sector worldwide. Functions will include, but will not be limited to, providing information and advice on how the Department of State can effectively explore and form public-private partnerships with the private sector on foreign policy issues, and reviewing and recommending public-private partnership opportunities for advancing foreign policy objectives. The Department of State affirms that establishment of the Committee is necessary and in the public interest.

The Committee will consult with other interested parties, agencies, and interagency committees and groups of the United States Government, foreign governments, and with national and international private sector organizations and individuals, as the Department of State and the Committee decides are necessary or desirable.

The Committee will be comprised of up to twenty-five distinguished citizens from the private sector, including leaders of for-profit businesses who are in a senior management role or who lead corporate social responsibility units; academics, scientists and innovators; diaspora, faith-based and community organizations; foundations and philanthropic organizations; and non-governmental organizations, providing the Secretary with a fresh perspective and insight apart from and independent of the State Department organization. It will not perform the function of any existing Department staff or committee.

For further information, please contact the Committee's Designated Federal Officer, Thomas Debass, at DebassT@state.gov.

Dated: October 14, 2015.

Thomas Debass,

Deputy Special Representative for Global Partnerships, Department of State.

[FR Doc. 2015-26627 Filed 10-19-15; 8:45 am]

BILLING CODE 4710-10-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2009-0124]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that by a document dated September 22, 2015, the Peninsula Corridor Joint Powers Board (JPB) has petitioned the Federal Railroad Administration (FRA) for a modification to its existing waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 238. FRA assigned the petition Docket Number FRA-2009-0124.

JPB, located in San Carlos, CA, seeks an amendment to its permanent waiver of compliance from 49 CFR 238.203, *Static end strength*, 238.205, *Anti-climbing mechanism*, and 238.207, *Link between coupling mechanism and car body*. JPB is considering purchasing non-FRA-compliant electric multiple unit (EMU) vehicles, constructed to European safety standards, for its Caltrain commuter rail service between San Francisco and Gilroy, CA. JPB seeks to amend two of the nine conditions specified in FRA's waiver decision letter dated May 27, 2010.

Specifically, JPB requests that Condition 1 (that EMUs that are the subject of this waiver meet or exceed the crashworthiness performance levels identified and presented in the petition) be modified to align with proposed rule text for alternatively compliant Tier I equipment developed through the Railroad Safety Advisory Committee and its Engineering Task Force. Secondly, JPB requests removal of Condition 7 (that JPB submit a comprehensive temporal separation plan to FRA for approval before the EMUs are operated).

JPB states that the proposed rule text does not require temporal separation because trains built to these new rules are considered as safe or safer in collisions than trains built to current Federal standards. In addition, JPB states that it is currently implementing Positive Train Control and new EMUs will be compatible with the system, thereby reducing the risk of an impact between freight and passenger trains.

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 party desires an opportunity for oral comment, 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 (e.g., Waiver Petition Docket Number FRA-2004-20000) and may be submitted by any of the following methods:

- **Web site:** <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 December 4, 2015 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to 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.). In accordance with 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 www.dot.gov/privacy. See also <http://www.regulations.gov/#!privacyNotice> for the privacy notice of [regulations.gov](http://www.regulations.gov).

Issued in Washington, DC, on October 15, 2015.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2015-26592 Filed 10-19-15; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 28, 2015, and comments were due by September 28, 2015. No comments were received.

DATES: Comments for this notice must be submitted on or before November 19, 2015.

ADDRESSES: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC 20503, Attention: MARAD Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: oira.submissions@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Deveeda Midgett, (202) 366-2354, Office of Sealift Support, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Request for Transfer of Ownership, Registry, and Flag, or Charter, Lease, or Mortgage of U.S.-Citizen Owned Documented Vessels.

OMB Control Number: 2133-0006.

Type of Request: Extension of currently approved collection.

Affected Public: Vessel owners who have applied for foreign transfer of U.S.-flag vessels.

Forms: MA-29, MA-29A, MA-29B (Note: MA-29A is used only in cases of a National emergency).

Abstract: This collection provides information necessary for MARAD to approve the sale, transfer, charter, lease, or mortgage of U.S. documented vessels to non-citizens, or the transfer of such vessels to foreign registry and flag, or

the transfer of foreign flag vessels by their owners as required by various contractual requirements. The information will enable MARAD to determine whether the vessel proposed for transfer will initially require retention under the U.S.-flag statutory regulations.

Annual Estimated Burden Hours: 170 hours.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (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 the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.93.

Dated: October 5, 2015.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2015-26206 Filed 10-19-15; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities; Proposed Revision; Comment Request; Annual Company-Run Stress Test Reporting Template and Documentation for Covered Institutions With Total Consolidated Assets of \$10 Billion to \$50 Billion Under the Dodd-Frank Wall Street Reform and Consumer Protection Act

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Notice.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on this continuing information collection, as required by the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for

public comment in response to the notice. An agency may not conduct or sponsor, and a respondent is 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 on proposed revisions to the collection titled "Annual Company-Run Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of \$10 Billion to \$50 Billion under the Dodd-Frank Wall Street Reform and Consumer Protection Act."

DATES: Comments must be received by December 21, 2015.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557-0311, 400 7th Street SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465-4326 or by electronic mail to regs.comments@occ.treas.gov. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. 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 hard of hearing, TTY, (202) 649-5597. 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.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt or Mary H. Gottlieb, Clearance Officers, (202) 649-5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219. In addition, copies of the templates referenced in this notice can be found on the OCC's Web site under Tools and Forms (<http://www.occ.gov/tools-forms/forms/bank-operations/stress-test-reporting.html>).

SUPPLEMENTARY INFORMATION:

The OCC is requesting comment on a revision to the following information collection:

Title: Annual Company-Run Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of \$10 Billion to \$50 Billion under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

OMB Control No.: 1557-0311.

Description: Section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act¹ (Dodd-Frank Act) requires certain financial companies, including national banks and Federal savings associations, to conduct annual stress tests² and requires the primary financial regulatory agency³ of those financial companies to issue regulations implementing the stress test requirements.⁴ A national bank or Federal savings association is a "covered institution," and therefore subject to the stress test requirements if its total consolidated assets exceed \$10 billion. Under section 165(i)(2), a covered institution is required to submit to the Board of Governors of the Federal Reserve System (Board) and to its primary financial regulatory agency a report at such time, in such form, and containing such information as the primary financial regulatory agency may require.⁵ On October 9, 2012, the OCC published in the **Federal Register** a final rule implementing the section 165(i)(2) annual stress test requirements.⁶ On October 22, 2013 the OCC published in the **Federal Register** a notice describing the reports and information required under section 165(i)(2) for covered institutions with average total consolidated assets between \$10 to \$50 billion.⁷

The OCC proposes the following revisions and clarifications for the OCC DFAST 10-50 report, effective for the 2016 stress test cycle: Changing the dates on the reporting templates to match the revised "as of" date from September 30 to December 31, changing the reporting submission due date from March 31 to July 31, and modifying the reporting instructions to clarify a number of items.⁸ Additionally, the line item "Qualifying subordinated debt and redeemable preferred stock" would be eliminated in the capital section of the

¹ Public Law 111-203, 124 Stat. 1376, July 2010.

² 12 U.S.C. 5365(i)(2)(A).

³ 12 U.S.C. 5301(12).

⁴ 12 U.S.C. 5365(i)(2)(C).

⁵ 12 U.S.C. 5365(i)(2)(B).

⁶ 77 FR 61238 (codified at 12 CFR 46).

⁷ 78 FR 62942.

⁸ See 79 FR 71630 (Dec. 3, 2014) (shifting the dates of the annual stress testing cycle).

balance sheet, and the report form would include updated references to specific reporting items on the Reports of Condition and Income (Call Report).

The OCC has worked closely with the Board and the Federal Deposit Insurance Corporation to make the agencies' respective rules implementing the annual stress testing requirements under the Dodd-Frank Act consistent and comparable by requiring similar standards for scope of application, scenarios, data collection and reporting forms. The OCC also has worked to minimize any potential duplication of effort related to the annual stress test requirements.

Type of Review: Revision to an existing collection.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 33.

Estimated Total Annual Burden: 15,477 hours.

The burden for each \$10 to \$50 billion covered institution that completes the revised results template was estimated to be 445 hours for a total of 14,685 hours. This burden included 20 hours to input these data and 425 hours for work related to modeling efforts. The estimated revised burden for each \$10 to \$50 billion covered institution that completes the annual DFAST Scenarios Variables Template was estimated to be 24 additional hours for a total of 792 hours.

Comments submitted in response to this notice will be summarized and 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 OCC, including whether the information has practical utility;

(b) The accuracy of the OCC'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 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: October 14, 2015.

Stuart Feldstein,

Director, Legislative and Regulatory Activities Division.

[FR Doc. 2015-26527 Filed 10-19-15; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Open Meeting of the Federal Advisory Committee on Insurance

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces that the Department of the Treasury's Federal Advisory Committee on Insurance ("Committee") will convene a meeting on Wednesday, November 4, 2015, in the Cash Room, 1500 Pennsylvania Avenue NW., Washington, DC 20220, from 1:00–5:00 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 Wednesday, November 4, 2015, from 1:00–5:00 p.m. Eastern Time.

ADDRESSES: The Federal Advisory Committee on Insurance meeting will be held in the Cash Room, Department of the Treasury, 1500 Pennsylvania Avenue 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/9fqnk0?ct=6128d144-9ad5-45f5-910c-c7b44560aae0&RefID=FACI+General+Registration> 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 Thursday, October 29, 2015.)

2. Contact the Federal Insurance Office (FIO), at (202) 622-5892, by 5:00 p.m. Eastern Time on Thursday, October 29, 2015, and provide registration information.

Requests for reasonable accommodations under section 504 of the Rehabilitation Act should be directed to Marcia Wilson, Office of Civil Rights and Diversity, Department of the Treasury at (202) 622-8177, or marcia.wilson@treasury.gov.

FOR FURTHER INFORMATION CONTACT: Brett D. Hewitt, Policy Advisor, FIO, Room 1410, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, at (202) 622-5892 (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. II, 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 Federal Advisory Committee on Insurance are invited to submit written statements by any of the following methods:

Electronic Statements

- Send electronic comments to faci@treasury.gov.

Paper Statements

- Send paper statements in triplicate to the Federal Advisory Committee on Insurance, Room 1410, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

In general, the Department of the Treasury will post all statements on its Web site <http://www.treasury.gov/about/organizational-structure/offices/Pages/Federal-Insurance.aspx> without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The Department of the Treasury will also make such statements available for public inspection and copying in the Department of the Treasury's Library, 1500 Pennsylvania Avenue NW., 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) 622-0990. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: This is a periodic meeting of the Federal Advisory Committee on Insurance. In this meeting, the Committee will discuss a number of issues, including: the forms and prevalence of alternative risk-sharing mechanisms; affordability in the National Flood Insurance Program; national and global developments on cybersecurity and the insurance sector; and important developments at the International Association of Insurance Supervisors. The Committee will also receive updates from its subcommittees.

Michael T. McRaith,

Director, Federal Insurance Office.

[FR Doc. 2015-26591 Filed 10-19-15; 8:45 am]

BILLING CODE 4810-25-P



FEDERAL REGISTER

Vol. 80

Tuesday,

No. 202

October 20, 2015

Part II

Environmental Protection Agency

40 CFR Parts 52 and 81

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; South Coast Moderate Area Plan and Reclassification as Serious Nonattainment for the 2006 PM_{2.5} NAAQS; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R09-OAR-2015-0204; FRL-9935-61-Region 9]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; South Coast Moderate Area Plan and Reclassification as Serious Nonattainment for the 2006 PM_{2.5} NAAQS

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve state implementation plan (SIP) revisions submitted by California to address Clean Air Act (CAA or Act) requirements for the 2006 24-hour fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS) in the Los Angeles-South Coast Air Basin (South Coast) Moderate PM_{2.5} nonattainment area. These SIP revisions are the 2012 PM_{2.5} Plan, submitted February 13, 2013, and the 2015 Supplement, submitted March 4, 2015. The EPA is also proposing to reclassify the South Coast PM_{2.5} nonattainment area, including reservation areas of Indian Country and any other area of Indian Country within it where the EPA or a tribe has demonstrated that the tribe has jurisdiction, as a Serious nonattainment area for the 2006 PM_{2.5} NAAQS based on EPA's determination that the area cannot practicably attain this standard by the applicable Moderate area attainment date of December 31, 2015. Upon final reclassification as a Serious area, California will be required to submit a Serious area plan including a demonstration that the plan provides for attainment of the 2006 PM_{2.5} NAAQS by the applicable Serious area attainment date, which is no later than December 31, 2019, or by the most expeditious alternative date practicable, in accordance with the requirements of part D of Title I of the CAA.

DATES: Any comments must arrive by November 19, 2015.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2015-0204, by one of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the on-line instructions.

- *Email:* tax.wienke@epa.gov.

- *Mail or deliver:* Wienke Tax, Office of Air Planning (AIR-2), U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or email. The www.regulations.gov Web site is an "anonymous access" system, and the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to the EPA, your email address will be automatically captured and included as part of the public comment. If the EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment.

Docket: The index to the docket (docket number EPA-R09-OAR-2015-0204) for this proposed rule is available electronically on the www.regulations.gov Web site and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region 9, (415) 947-4192, tax.wienke@epa.gov

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to the EPA.

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I. Background for Proposed Actions

On October 17, 2006, the EPA revised the 24-hour national ambient air quality standards (NAAQS or standard) for PM_{2.5}, particulate matter with a diameter of 2.5 microns or less, to provide increased protection of public health by lowering its level from 65 micrograms per cubic meter (µg/m³) to 35 µg/m³ (40 CFR 50.13).¹ Epidemiological studies have shown statistically significant correlations between elevated PM_{2.5} levels and premature mortality. Other important health effects associated with PM_{2.5} exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), changes in lung function and increased respiratory symptoms. Individuals particularly sensitive to PM_{2.5} exposure include older adults, people with heart and lung disease, and children (78 FR 3086 at 3088, January 15, 2013). PM_{2.5} can be emitted directly into the atmosphere as a solid or liquid particle ("primary PM_{2.5}" or "direct PM_{2.5}") or can be formed in the atmosphere as a result of various chemical reactions among precursor pollutants such as nitrogen oxides, sulfur oxides, volatile organic

¹ See 71 FR 61224 (October 17, 2006). The EPA set the first NAAQS for PM_{2.5} on July 18, 1997 (62 FR 36852), including annual standards of 15.0 µg/m³ based on a 3-year average of annual mean PM_{2.5} concentrations and 24-hour (daily) standards of 65 µg/m³ based on a 3-year average of 98th percentile 24-hour concentrations (40 CFR 50.7). In 2012, the EPA revised the annual standard to lower its level to 12 µg/m³ (78 FR 3086, January 15, 2013, codified at 40 CFR 50.18). Unless otherwise noted, all references to the PM_{2.5} standard in this notice are to the 2006 24-hour standard of 35 µg/m³ codified at 40 CFR 50.13.

compounds, and ammonia (“secondary PM_{2.5}”).²

Following promulgation of a new or revised NAAQS, the EPA is required by CAA section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. On November 13, 2009, the EPA designated the South Coast as nonattainment for the 2006 PM_{2.5} standard of 35 µg/m³ (74 FR 58688, November 13, 2009). This designation became effective on December 14, 2009 (40 CFR 81.305). The South Coast area is also designated nonattainment for the 1997 annual and 24-hour PM_{2.5} standards.³ On June 2, 2014, the EPA classified the South Coast area as Moderate nonattainment for both the 1997 PM_{2.5} standards and the 2006 PM_{2.5} standard under subpart 4 of part D, title I of the Act (79 FR 31566).

The South Coast PM_{2.5} nonattainment area is home to about 17 million people, has a diverse economic base, and contains one of the highest-volume port areas in the world. For a precise description of the geographic boundaries of the South Coast PM_{2.5} nonattainment area, see 40 CFR 81.305.

Ambient PM_{2.5} levels in the South Coast have declined considerably in the past 15 years to levels just above the 2006 PM_{2.5} NAAQS. For the 2011–2013 period, the 24-hour PM_{2.5} design value for the area, based on monitored readings at the Mira Loma monitor, is 36 µg/m³.⁴

The local air district with primary responsibility for developing a plan to attain the 2006 PM_{2.5} NAAQS in this area is the South Coast Air Quality Management District (District or SCAQMD). The District works cooperatively with the California Air Resources Board (CARB) in preparing these plans. Authority for regulating sources under state jurisdiction in the South Coast is split between the District, which has responsibility for regulating stationary and most area sources, and

CARB, which has responsibility for regulating most mobile sources.

II. Clean Air Act Requirements for PM_{2.5} Moderate Nonattainment Area Plans

In April 2007, the EPA issued the Clean Air Fine Particle Implementation Rule (“2007 PM_{2.5} Implementation Rule”) to assist states with the development of SIPs to meet the Act’s attainment planning requirements for the 1997 PM_{2.5} standards (72 FR 20583, April 25, 2007, codified at 40 CFR part 51, subpart Z). This rule was premised on the EPA’s prior interpretation of the Act as allowing for implementation of the PM_{2.5} NAAQS solely pursuant to the general nonattainment area provisions in subpart 1 of part D, title I of the CAA (“subpart 1”) and not the more specific provisions for particulate matter nonattainment areas in subpart 4 of part D, title I of the Act (“subpart 4”). Among other things, the 2007 PM_{2.5} Implementation Rule included nationally-applicable presumptions regarding the need to evaluate and potentially control emissions of certain PM_{2.5} precursors.⁵

In March of 2012, the EPA issued a guidance document to aid states in preparing SIPs to meet the Act’s attainment planning requirements for the 2006 24-hour PM_{2.5} standard.⁶ The 2012 guidance was based, in large part, on the requirements in the 2007 PM_{2.5} Implementation Rule, which the EPA based solely upon the statutory requirements of subpart 1.

California had three years from the December 14, 2009 effective date of the South Coast’s designation as nonattainment for the 2006 PM_{2.5} standard to submit a SIP for the South Coast that addressed the applicable requirements of the Act.⁷ On December 19, 2012, the District adopted the Final 2012 Air Quality Management Plan (AQMP), which addressed attainment of

the 2006 PM_{2.5} NAAQS, among other CAA requirements. We refer herein to the portions of the 2012 AQMP that address attainment of the 2006 PM_{2.5} NAAQS as the “2012 PM_{2.5} Plan.” On January 25, 2013, CARB adopted the 2012 PM_{2.5} Plan as an element of the California SIP and submitted it to the EPA on February 13, 2013.⁸

On January 4, 2013, several weeks after the District’s adoption of the Plan, the U.S. Court of Appeals for the DC Circuit issued its decision in a challenge to the EPA’s 2007 PM_{2.5} Implementation Rule (*NRDC v. EPA*, 706 F.3d 428 (D.C. Cir. 2013)). In *NRDC*, the court held that the EPA erred in implementing the 1997 PM_{2.5} standards solely pursuant to the general implementation requirements of subpart 1, without also considering the requirements specific to particulate matter nonattainment areas in subpart 4.⁹ The court reasoned that the plain meaning of the CAA requires implementation of the 1997 PM_{2.5} standards under subpart 4 because PM_{2.5} particles fall within the statutory definition of PM₁₀ and are thus subject to the same statutory requirements as PM₁₀. The court remanded the 2007 PM_{2.5} Implementation Rule in its entirety, including the presumptions concerning VOC and ammonia in 40 CFR 51.1002, and instructed the EPA “to repromulgate these rules pursuant to Subpart 4 consistent with this opinion.”

Consistent with the *NRDC* decision, on June 2, 2014 (79 FR 31566), the EPA published a final rule classifying all areas currently designated nonattainment for the 1997 and/or 2006 PM_{2.5} standards as “Moderate” under subpart 4 and establishing a deadline of December 31, 2014 for states to submit any attainment-related and nonattainment new source review (NNSR) SIP elements required for these areas pursuant to subpart 4. The EPA provided its rationale for these actions in both the proposed and final classification/deadline rule.¹⁰

On February 6, 2015, the District adopted the “Supplement to the 24-Hour PM_{2.5} State Implementation Plan for the South Coast Air Basin” (“2015

² See EPA, Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter (EPA-452/R-12-005, December 2012), p. 2–1.

³ See 70 FR 944 (January 5, 2005) and 40 CFR 81.305. In November 2007, California submitted the 2007 PM_{2.5} Plan to provide for attainment of the 1997 PM_{2.5} standards in the South Coast. In November 2011, the EPA approved all but the contingency measures in the 2007 PM_{2.5} Plan (76 FR 69928, November 9, 2011). In November 2011 and April 2013, the State submitted a revised contingency measure plan, which the EPA approved on October 29, 2013 (78 FR 64402, October 29, 2013).

⁴ See EPA, Air Quality System Report dated September 28, 2015 in the docket for today’s action. “Design value” means the calculated concentration according to the applicable appendix of 40 CFR part 50 for the highest site in an attainment or nonattainment area (40 CFR 58.1).

⁵ Specifically, in 40 CFR 51.1002(c), the EPA provided, among other things, that a state was “not required to address VOC [and ammonia] as . . . PM_{2.5} attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the State for control measures,” unless the State or the EPA provided an appropriate technical demonstration showing that emissions from sources of these pollutants “significantly contribute” to PM_{2.5} concentrations in the nonattainment area (40 CFR 51.1002(c)(3) and (4) and 72 FR 20586 at 20589–97 (April 25, 2007)).

⁶ See Memorandum, dated March 2, 2012 (withdrawn June 6, 2013), from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to EPA Regional Air Directors, Regions I–X re: “Implementation Guidance for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)” (“2012 Guidance”) Available at: http://epa.gov/ttn/naaqs/pm/pm25_guide.html.

⁷ See CAA section 172(b) and 40 CFR 51.1002(a).

⁸ See letter dated February 13, 2013, from James N. Goldstene, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region 9., with attachments, and CARB Board Resolution 13–3.

⁹ The *NRDC* decision also remanded the EPA’s 2008 final rule to implement the nonattainment New Source Review (NNSR) permitting requirements for PM_{2.5} (73 FR 28231, May 16, 2008) which, like the 2007 PM_{2.5} Implementation Rule, was premised on the requirements of subpart 1. Today’s proposal does not address requirements for NNSR programs.

¹⁰ See 79 FR 69806, 69809 (November 21, 2013) and 79 FR 31566, 31568 (June 2, 2014).

Supplement” or “Supplement”) as a revision to the 2012 PM_{2.5} Plan. The District adopted the Supplement to address subpart 4 requirements for the 2006 PM_{2.5} standard to the extent that these requirements were not adequately addressed in the 2012 PM_{2.5} Plan. CARB submitted the Supplement to the EPA on March 4, 2015. The Supplement includes information on the implementation of reasonably available controls for ammonia sources in the South Coast and the District’s demonstration that the 2012 PM_{2.5} Plan and 2015 Supplement satisfy the requirements of subpart 4. As a consequence of the *NRDC* decision, we are reviewing the 2012 PM_{2.5} Plan and 2015 Supplement for compliance with the applicable requirements of both subpart 1 and subpart 4.

The EPA provided its preliminary views on the CAA’s requirements for particulate matter plans under part D, title I of the Act in “State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990” (57 FR 13498, April 16, 1992) (“General Preamble”) and “State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990” (59 FR 41998, August 16, 1994) (“Addendum”). The General Preamble at 13538 discusses the relationship of subpart 1 and subpart 4 SIP requirements, and notes that attainment plans for moderate nonattainment areas must meet the general provisions in subpart 1 to the extent that these provisions are not otherwise “subsumed by, or integrally related to, the more specific [subpart 4] requirements.” Some subpart 1 provisions have no subpart 4 equivalent (*e.g.*, the emission inventories (CAA section 172(c)(3)) and contingency measures (CAA section 172(c)(9)) and for these provisions, subpart 1 continues to govern. Other provisions of subpart 1 are subsumed or superseded by more specific requirements in subpart 4 (*e.g.*, certain provisions concerning attainment dates).

Additionally, in a proposed rule published March 23, 2015 (80 FR 15340), the EPA provided further interpretive guidance on the statutory SIP requirements that apply to areas designated nonattainment for the PM_{2.5} standards (hereafter “Proposed PM_{2.5} Implementation Rule”). We discuss these preliminary interpretations of the Act as appropriate in our evaluation of

the 2012 PM_{2.5} Plan and 2015 Supplement in section IV of this proposed rule.

III. Clean Air Act Procedural Requirements for SIP Submittals

We are proposing action on two California SIP submittals. The first is the “2012 PM_{2.5} Plan,” submitted on February 13, 2013, and the second is the 2015 Supplement, submitted on March 4, 2015.^{11 12}

CAA sections 110(a)(1) and (2) and 110(l) require each state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submittal of a SIP or SIP revision. To meet this requirement, every SIP submittal should include evidence that adequate public notice was given and an opportunity for a public hearing was provided consistent with the EPA’s implementing regulations in 40 CFR 51.102.

Both the District and CARB satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption and submittal of the 2012 PM_{2.5} Plan. The District conducted public workshops, provided public comment periods, and held a public hearing prior to the adoption of the 2012 PM_{2.5} Plan on December 7, 2012.¹³ CARB provided the required public notice and opportunity for public comment prior to its January 25, 2013 public hearing on the 2012 PM_{2.5} Plan.¹⁴ The SIP submittal includes proof of publication of notices for these public hearings. We find, therefore, that the 2012 PM_{2.5} Plan meets the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l).

The District adopted the 2015 Supplement after reasonable public notice and hearing.¹⁵ CARB adopted the Supplement for submittal as a SIP

revision at its February 19, 2015 Board meeting after reasonable public notice.¹⁶

CAA section 110(k)(1)(B) requires the EPA to determine whether a SIP submittal is complete within 60 days of receipt. This section also provides that any plan that the EPA has not affirmatively determined to be complete or incomplete will become complete by operation of law six months after the date of submittal. The EPA’s SIP completeness criteria are found in 40 CFR part 51, Appendix V. A completeness review allows us to determine if the submittal includes all the necessary items and information we need to evaluate and act on it for substantive compliance with applicable requirements.

The February 13, 2013 submittal of the 2012 PM_{2.5} Plan became complete by operation of law on August 13, 2014. The 2015 Supplement became complete by operation of law on September 4, 2015 (*see* our Technical Support Document (TSD) at section I.B).

IV. Review of the South Coast 2012 PM_{2.5} Plan and 2015 Supplement

We summarize our evaluation of the 2012 PM_{2.5} Plan and 2015 Supplement below. Our detailed evaluation can be found in the TSD for this proposal which is available online at www.regulations.gov in docket number EPA–R09–OAR–2015–0204, on EPA Region 9’s Web site at <http://www.epa.gov/region9/air/actions/southcoast/#PM25>, or from the EPA contact listed at the beginning of this notice.

A. Emissions Inventory

1. Requirements for Emissions Inventories

CAA section 172(c)(3) requires that each SIP include a “comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in [the] area” By requiring an accounting of actual emissions from all sources of the relevant pollutants in the area, this section provides for the base year inventory to include all emissions that contribute to the formation of a particular NAAQS pollutant. For the 2006 24-hour PM_{2.5} NAAQS, this includes direct PM_{2.5} as well as the main chemical precursors to the formation of secondary PM_{2.5}: NO_x, SO₂, VOC, and ammonia (NH₃). Primary PM_{2.5} includes condensable and filterable particulate matter.

¹⁶ *See* CARB, Notice of Public Meeting to Consider a Minor Revision to the South Coast 2012 PM_{2.5} State Implementation Plan, and CARB Board Resolution 15–2, February 19, 2015.

¹¹ *See* footnote 8.

¹² *See* Letter dated March 4, 2015 from Richard W. Corey, Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional Administrator EPA Region 9, with attachments, and CARB Resolution 15–3.

¹³ *See* 2012 PM_{2.5} Plan, Public hearing notices, SCAQMD Governing Board Resolution 12–19, “A Resolution of the South Coast Air Quality Management District (AQMD or District) Governing Board Certifying the Final Program Environmental Impact Report for the 2012 Air Quality Management Plan (AQMP), adopting the Draft final 2012 AQMP, to be referred to after Adoption as the Final 2012 AQMP, and to be submitted into the California State Implementation Plan,” December 7, 2012.

¹⁴ *See* CARB Resolution 13–3, “South Coast Air Basin 2012 PM_{2.5} and Ozone State Implementation Plans,” January 25, 2013.

¹⁵ *See* Notice of Public Hearing to Adopt Supplemental Document to the 2012 PM_{2.5} Plan for the 2006 PM_{2.5} Standard.

A state should include in its SIP submittal documentation explaining how the emissions data were calculated. In estimating mobile source emissions, a state should use the latest emissions models and planning assumptions available at the time the SIP is developed. At the time the 2012 PM_{2.5} Plan and 2015 Supplement were developed, California was required to use EMFAC2011 to estimate tailpipe and brake and tire wear emissions of PM_{2.5}, NO_x, SO₂, and VOC from on-road mobile sources (78 FR 14533, March 6, 2013). States are required to use the EPA's AP-42 road dust method for calculating re-entrained road dust emissions from paved roads (76 FR 6328, February 4, 2011).

In addition to the base year inventory submitted to meet the requirements of CAA section 172(c)(3), the state must also submit future "baseline inventories" for the projected attainment year and each reasonable further progress (RFP) milestone year, and any other year of significance for meeting applicable CAA requirements. By "baseline inventories" (also referred to as "projected baseline inventories"), we mean projected emissions inventories for future years that account for, among other things, the ongoing effects of economic growth and adopted emissions control requirements. The SIP submission should include documentation explaining how the emissions projections were calculated.

2. Emissions Inventories in the 2012 PM_{2.5} Plan

The annual average planning inventories for direct PM_{2.5} and all PM_{2.5} precursors (NO_x, SO_x, VOC, and ammonia) for the South Coast PM_{2.5} nonattainment area together with documentation for the inventories are found in Chapter 3 and Appendices III and V of the South Coast 2012 PM_{2.5} Plan and in Attachment A to the 2015 Supplement. Additional inventory documentation specific to the air quality modeling is in Appendix V. Annual average inventories are provided for the 2008 base year, and for future years 2014 and the PM_{2.5} attainment year of 2015. (Additional years such as 2017, 2019, 2023 and 2030 are also provided, but these inventories are largely for the purposes of ozone attainment.) Baseline inventories reflect all control measures

adopted by the District prior to June 2012 and by CARB prior to August 2011. Growth factors used to project these baseline inventories are derived mainly from data obtained from the Southern California Association of Governments (SCAG), the metropolitan planning organization (MPO) for the Los Angeles area (2012 PM_{2.5} Plan, page 3–1).

Each inventory includes emissions from point, area, on-road, and non-road sources. Stationary sources include point and area sources. Point sources in the South Coast air basin that emit 4 tons per year or more of VOC, NO_x, SO_x or PM report annual emissions to the District. Point source emissions for the 2008 base year emission inventory were based on emissions reported from the SCAQMD's Annual Emissions Reporting Program.¹⁷ Area sources include smaller emissions sources distributed across the nonattainment area. CARB and the District estimate emissions for about 400 area source categories using activity information and emission factors. Activity data may come from national survey data or reports (e.g., from the DOE Energy Information Administration) or local sources such as the Southern California Gas Company, paint suppliers, and District databases. Emission factors can be based on a number of sources including source tests, compliance reports, and EPA's AP-42.¹⁸

Emissions inventories are constantly being revised and improved. Between the finalization of the South Coast 2007 AQMP and the development of the 2012 PM_{2.5} Plan, the District added new area source categories such as liquefied petroleum gas (LPG) transmission losses, storage tank and pipeline cleaning and degassing, and architectural colorants to the inventories in the 2012 PM_{2.5} Plan. We provide more detail on these updates and revisions in section II.A. of the TSD.

¹⁷ See <http://www.aqmd.gov/home/regulations/compliance/annual-emission-reporting>.

¹⁸ AP-42 is EPA's *Compilation of Air Pollutant Emission Factors*, and has been published since 1972 as the primary source of EPA's emission factor information. It contains emission factors and process information for more than 200 air pollution source categories. A source category is a specific industry sector or group of similar emitting sources. The emission factors have been developed and compiled from source test data, material balance studies, and engineering estimates.

The on-road mobile inventories use EMFAC2011 for estimating motor vehicle emissions (2012 PM_{2.5} Plan, p. 3–1).¹⁹ Since EMFAC2011 was released in 2011, CARB has adopted additional regulations to control air pollution from mobile sources. For the 2012 PM_{2.5} Plan, the State adjusted EMFAC2011 emissions estimates for the advanced clean cars program, reformulated gasoline rules, and Smog Check program to reflect these new measures (2012 PM_{2.5} Plan, p. 3–5). Re-entrained paved road dust emissions were calculated using EPA's AP-42 road dust methodology (2012 PM_{2.5} Plan, Appendix III, p. III-1–13 and 2015 Supplement, Attachment B). SCAG, the MPO for the Los Angeles area, provided transportation activity data from the adopted 2012 Regional Transportation Plan (RTP).

Off-road emissions such as construction, mining, gardening and agricultural equipment emissions were calculated using CARB's 2011 In-Use Off-Road Fleet Inventory Model. The off-road equipment population was adjusted due to the recession, and equipment hours of use were adjusted based on reported activity. Equipment load factors were updated using a 2009 academic study and information provided by engine manufacturers. External adjustments were made to CARB's off-road emissions estimates for locomotives, large-spark ignition engines, and nonagricultural internal combustion engines. CARB also calculated emissions from ocean-going vessels, commercial harbor craft, locomotives, and cargo handling equipment. Locomotive emissions reflect EPA regulations effective in 2008 and adjustments due to economic activity. The District estimated aircraft emissions. Future emissions forecasts are based largely on growth forecasts (demographic and economic information) from SCAG.

A summary of the Plan's 2008 base year inventory and the 2014 projected inventory is provided in Table 1 below. For a more detailed discussion of the inventories, see the 2012 PM_{2.5} Plan, Appendix III.

¹⁹ EMFAC2011 was approved for use in SIPs and conformity on March 6, 2013 (see 78 FR 14533).

TABLE 1—SUMMARY OF EMISSIONS FOR THE SOUTH COAST PM_{2.5} NONATTAINMENT AREA
[Annual average in tons per day]

	2008	2014
Direct PM_{2.5}		
Stationary and Area Sources	48	50
On-Road Mobile Sources	19	12
Off-Road Mobile Sources	13	8
Total	80	70
Nitrogen Oxides		
Stationary and Area Sources	92	77
On-Road Mobile Sources	462	272
Off-Road Mobile Sources	204	157
Total	758	506
Sulfur Dioxide		
Stationary and Area Sources	14	12
On-Road Mobile Sources	2	2
Off-Road Mobile Sources	38	4
Total	54	18
Volatile Organic Compounds		
Stationary and Area Sources	257	234
On-Road Mobile Sources	209	117
Off-Road Mobile Sources	127	100
Total	593	451
Ammonia		
Stationary and Area Sources	88.7	85.6
On-Road Mobile Sources	19.9	16.5
Off-Road Mobile Sources	0.1	0.1
Total	108.9	102.1

Source: South Coast 2012 PM_{2.5} Plan, Chapter 3, Tables 3–2A, 3–4A, Appendix III, Table III–1–5, and 2008 ammonia inventory from Appendix V, Table V–4–2.

3. Evaluation and Proposed Action

The emissions inventories in the 2012 PM_{2.5} Plan were made available to the public for comment and were subject to public hearing at both the District and State levels. See SCAQMD Governing Board Resolution 12–19, p. 3 and CARB Resolution 13–3, p. 4.

The inventories in the South Coast 2012 PM_{2.5} Plan and 2015 Supplement are based on the most current and accurate information available to the State and District at the time the 2012 PM_{2.5} Plan and its inventories were being developed, including the latest EPA-approved version of California's mobile source emissions model, EMFAC2011, and the EPA's most recent AP–42 methodology for paved road dust. The inventories comprehensively address all source categories in the South Coast and were developed consistent with the EPA's inventory guidance. For these reasons, we are

proposing to approve the 2008 base year emissions inventory in the 2012 PM_{2.5} Plan as meeting the requirements of CAA section 172(c)(3). We also propose to find that the baseline inventories in the Plan provide an adequate basis for the reasonably available control measure (RACM), RFP, and impracticability demonstrations in the 2012 PM_{2.5} Plan.

B. Air Quality Modeling

1. Requirements for Air Quality Modeling

CAA section 189(a)(1)(B) requires each State in which a Moderate area is located to submit a plan that includes a demonstration either (i) that the plan will provide for attainment by the applicable attainment date, or (ii) that attainment by that date is impracticable. The 2012 PM_{2.5} Plan, 2015 Supplement, and July 28, 2015 letter include a demonstration that attainment by the

Moderate attainment date is impracticable.

Air quality modeling is used to establish attainment emissions targets, the combination of emissions of PM_{2.5} and PM_{2.5} precursors that the area can accommodate and still attain the standard, and to assess whether the proposed control strategy will result in attainment of the standard. Air quality modeling is performed for a base year and compared to air quality monitoring data collected during that year in order to determine model performance. Once the performance is determined to be acceptable, future year changes to the emissions inventory are simulated with the model to determine the relationship between emissions reductions and changes in ambient air quality. To project future design values, the model response to emission reductions, in the form of Relative Response Factors (RRFs), is applied to monitored design values from the base year.

For demonstrating attainment, the EPA's recommendations for model input preparation, model performance evaluation, use of the model output for the attainment demonstration, and modeling documentation are described in *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, PM_{2.5}, and Regional Haze*, EPA-454/B-07-002, April 2007 ("Modeling Guidance"), as amended by "Update to the 24 Hour PM_{2.5} NAAQS Modeled Attainment Test," Memorandum dated June 28, 2011, from Tyler Fox, Air Quality Modeling Group, Office of Air Quality Planning and Standards, EPA to Regional Air Program Managers, EPA ("Modeling Guidance Update").²⁰ As discussed below, the Modeling Guidance recommends supplemental air quality analyses. These may be used as part of a Weight of Evidence analysis (WEOA), which assesses attainment projections by considering evidence other than the main air quality modeling attainment test.

The EPA has not issued modeling guidance specific to impracticability demonstrations but believes that a state seeking to make such a demonstration generally should provide air quality modeling similar to that required for an attainment demonstration. The main difference is that for an impracticability demonstration, the implementation of the SIP control strategy (including RACM) does not result in attainment of the standard by the Moderate area attainment date.

For an attainment demonstration, a thorough review of all modeling inputs and assumptions (including consistency with EPA guidance) is especially important, since the modeling must ultimately support a conclusion that the plan (including its control strategy) will provide for timely attainment of the applicable NAAQS. In contrast, for an impracticability demonstration, the end point is a reclassification to Serious, which triggers the requirement for a new Serious Area attainment plan with a new air quality modeling analysis, and a new control strategy. See CAA section 189(b)(1). Thus, the Serious Area planning process would provide an opportunity to refine the modeling analysis and/or correct any technical shortcomings in the impracticability demonstration. Therefore, the burden of proof will generally be lower for an

impracticability demonstration compared to an attainment demonstration.

2. Air Quality Modeling in the 2012 PM_{2.5} Plan

The 2012 PM_{2.5} Plan and 2015 Supplement contain a demonstration of attainment by the Moderate area attainment date, which is December 31, 2015. SCAQMD developed a modeling protocol for the 2012 PM_{2.5} Plan, which EPA reviewed during the District's development of the Plan. The Plan discusses air quality modeling in Chapter 5, "Future Air Quality," and in detail in Appendix V, "Modeling and Attainment Demonstrations." The 2012 PM_{2.5} Plan's attainment demonstration was based on photochemical modeling with the Community Multiscale Air Quality (CMAQ) model, using routinely available meteorological and air quality data as input. The 2012 PM_{2.5} Plan and the 2015 Supplement contain an unmonitored area analysis as well as a weight of evidence (WEO) demonstration. The WEO demonstration in the 2015 Supplement accounts to some extent for the effect of the drought on ambient PM_{2.5} levels in the South Coast.

In a letter dated July 28, 2015, the SCAQMD requested that EPA reclassify the South Coast Air Basin as Serious nonattainment for the 2006 24-hour PM_{2.5} NAAQS based on monitoring data indicating that attainment is not practicable by the Moderate area attainment date, which is December 31, 2015.²¹ The SCAQMD also requested that the EPA treat the 2012 PM_{2.5} Plan and 2015 Supplement, together with the air quality data provided in the July 28, 2015 letter, as a demonstration that the area cannot practicably attain by the Moderate area attainment date.

Based on the request from the SCAQMD, the modeled attainment demonstration provided in the Plan, the 2015 Supplement, and the monitoring data provided in the July 28, 2015 letter, we are evaluating the State's submittal as a demonstration that attainment by the Moderate area attainment date is impracticable. We provide a more detailed evaluation of the air quality modeling in the Plan in section II.B. of our TSD.

3. Conclusion on Air Quality Modeling

Given the Plan's extensive discussion of modeling procedures, tests, and performance analyses consistent with EPA's guidance in the Modeling

Protocol, and the good model performance, EPA finds that the modeling is adequate for purposes of supporting the RACM demonstration, the RFP demonstration, and the demonstration of impracticability in the 2012 PM_{2.5} Plan and Supplement.

C. PM_{2.5} Precursors

1. Requirements for the Control of PM_{2.5} Precursors

The composition of PM_{2.5} is complex and highly variable due in part to the large contribution of secondary PM_{2.5} to total fine particle mass in most locations, and to the complexity of secondary particle formation processes. A large number of possible chemical reactions, often non-linear in nature, can convert gaseous SO₂, NO_x, VOC and ammonia to PM_{2.5}, making them precursors to PM_{2.5}.²² Formation of secondary PM_{2.5} may also depend on atmospheric conditions, including solar radiation, temperature, and relative humidity, and the interactions of precursors with preexisting particles and with cloud or fog droplets.²³

The 2007 PM_{2.5} Implementation Rule contained rebuttable presumptions concerning the four PM_{2.5} precursors applicable to attainment plans and control measures related to those plans. See 40 CFR 51.1002(c). Although the rule included presumptions that states should address SO₂ and NO_x emissions in their attainment plans, it also included presumptions that regulation of VOCs and ammonia was not necessary. Specifically, in 40 CFR 51.1002(c), the EPA provided, among other things, that a state was "not required to address VOC [and ammonia] as . . . PM_{2.5} attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the state for control measures," unless the state or the EPA provided an appropriate technical demonstration showing that emissions from sources of these pollutants "significantly contribute" to PM_{2.5} concentrations in the nonattainment area. 40 CFR 51.1002(c)(3), (4); see also 2007 PM_{2.5} Implementation Rule, 72 FR 20586 at 20589-97 (April 25, 2007).

In *NRDC*, however, the D.C. Circuit remanded the EPA's 2007 PM_{2.5} Implementation Rule in its entirety, including the presumptions concerning VOC and ammonia in 40 CFR 51.1002. See *NRDC v. EPA*, 706 F.3d 428 (D.C.

²⁰ The EPA modeling guidance is available on EPA's SCRAM Web site, Web page: http://www.epa.gov/scram001/guidance_sip.htm; direct links: <http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf> and http://www.epa.gov/ttn/scram/guidance/guide/Update_to_the_24-hour_PM25_Modeled_Attainment_Test.pdf.

²¹ See letter dated July 28, 2015, from Barry R. Wallerstein, Executive Officer, SCAQMD, to Elizabeth Adams, Acting Director, Air Division, US Environmental Protection Agency, Region 9.

²² EPA, Air Quality Criteria for Particulate Matter (EPA/600/P-99/002aF, October 2004), Chapter 3.

²³ EPA, Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter (EPA-452/R-12-005, December 2012), p. 2-1.

Cir. 2013). Although the court expressly declined to decide the specific challenge to these presumptions (*see* 706 F.3d at 437, n. 10 (D.C. Cir. 2013)), the court cited CAA section 189(e)²⁴ to support its observation that “[a]mmonia is a precursor to fine particulate matter, making it a precursor to both PM_{2.5} and PM₁₀” and that “[f]or a PM₁₀ nonattainment area governed by subpart 4, a precursor is presumptively regulated.” 706 F.3d at 436, n. 7 (*citing* CAA section 189(e)). Consistent with the *NRDC* decision, EPA now interprets the Act to require that under subpart 4, a state must evaluate all PM_{2.5} precursors for regulation unless the state provides a demonstration adequate to rebut the presumption for a particular precursor in a particular nonattainment area.

The provisions of subpart 4 do not define the term “precursor” for purposes of PM_{2.5}, nor do they explicitly require the control of any specifically identified particulate matter (PM) precursor. The statutory definition of “air pollutant,” however, provides that the term “includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term ‘air pollutant’ is used.” CAA section 302(g). The EPA has identified SO₂, NO_x, VOC, and ammonia as precursors to the formation of PM_{2.5}. Accordingly, the attainment plan requirements of subpart 4 presumptively apply to emissions of all four precursor pollutants and direct PM_{2.5} from all types of stationary, area, and mobile sources, except as otherwise provided in the Act (*e.g.* CAA section 189(e)).

Section 189(e) of the Act requires that the control requirements for major stationary sources of direct PM₁₀ also apply to major stationary sources of PM₁₀ precursors, except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels that exceed the standard in the area. Section 189(e) contains the only express exception to the control requirements under subpart 4 (*e.g.*, requirements for RACM and RACT, BACM and BACT, most stringent measures, and NSR) for sources of direct PM_{2.5} and PM_{2.5} precursor emissions. Although section 189(e) explicitly addresses only major stationary sources,

²⁴ Section 189(e) of the CAA states that “[t]he control requirements applicable under plans in effect under this part for major stationary sources of PM₁₀ shall also apply to major stationary sources of PM₁₀ precursors, except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels which exceed the standard in the area.”

the EPA interprets the Act as authorizing it to also determine, under appropriate circumstances, that regulation of certain PM_{2.5} precursors from other source categories in a given nonattainment area is not necessary. For example, under the EPA’s longstanding interpretation of the control requirements that apply to stationary, area, and mobile sources of PM₁₀ precursors area-wide under CAA section 172(c)(1) and subpart 4 (*see* General Preamble, 57 FR 13498 at 13539–42), a state may demonstrate in a SIP submittal that control of a certain precursor pollutant is not necessary in light of its insignificant contribution to ambient PM_{2.5} levels in the nonattainment area.²⁵

We are evaluating the South Coast PM_{2.5} Plan in accordance with the presumption embodied within subpart 4 that all PM_{2.5} precursors must be addressed in the state’s evaluation of potential control measures, unless the state adequately demonstrates that emissions of a particular precursor do not contribute significantly to ambient PM_{2.5} levels that exceed the PM_{2.5} NAAQs in the nonattainment area.

2. Evaluation of Precursors in 2012 PM_{2.5} Plan and 2015 Supplement

The 2012 PM_{2.5} Plan and 2015 Supplement discuss the five primary pollutants that contribute to the mass of the ambient aerosol (*i.e.*, ammonia, NO_x, SO_x, VOC, and directly emitted PM_{2.5}), and states that various combinations of reductions in these pollutants could all provide a path to clean air.²⁶ The Plan assesses and presents the relative value of each ton of precursor emission reductions, considering the resulting ambient microgram per cubic meter improvements in PM_{2.5} air quality.²⁷ As presented in the weight of evidence discussion, trends of PM_{2.5} and NO_x emissions suggest a direct response between lower emissions of PM_{2.5} and NO_x and improved air quality. The CMAQ simulations in the Plan provide a set of response factors for direct PM_{2.5}, NO_x, SO_x and VOCs, based on improvements to ambient 24-hour PM_{2.5} levels resulting from reductions of each pollutant. The contribution of ammonia

²⁵ Courts have upheld this approach to the requirements of subpart 4 for PM₁₀. *See, e.g., Assoc. of Irrigated Residents v. EPA, et al.*, 423 F.3d 989 (9th Cir. 2005).

²⁶ 2012 PM_{2.5} Plan, Appendix V, p. V–5–51 and Appendix V, Attachment 8, Relative Contributions of Precursor Emissions Reductions to Simulated Controlled Future-Year 24-hour PM_{2.5} Concentrations.

²⁷ 2012 PM_{2.5} Plan, Appendix V, Attachment 8, Relative Contributions of Precursor Emissions Reductions to Simulated Controlled Future-Year 24-hour PM_{2.5} Concentrations.

emissions is embedded as a component of the SO_x and NO_x factors since ammonium nitrate and ammonium sulfate are the resultant particulate species formed in the atmosphere.

The 2012 PM_{2.5} Plan and 2015 Supplement describe how reductions in NO_x, SO₂, VOC and ammonia emissions contribute to attainment of the PM_{2.5} standard in the South Coast area and contain the District’s evaluation of available control measures for all four of these PM_{2.5} precursor pollutants, in addition to direct PM_{2.5}, consistent with the regulatory presumptions under subpart 4. The 2015 Supplement also contains a discussion of the nonattainment New Source Review (NNSR) control requirements applicable to major stationary sources under CAA section 189(e) (*see* 2015 Supplement at Attachment E), which we are not addressing in this proposal.²⁸ We discuss the state’s evaluation of potential control measures for direct PM_{2.5}, NO_x, SO₂, VOC and ammonia in section IV.D of this rulemaking, “Reasonably Available Control Measures/Reasonably Available Control Technology.”

D. Reasonably Available Control Measures/Reasonably Available Control Technology

1. Requirements for RACM/RACT

The general subpart 1 attainment plan requirement for RACM and RACT is described in CAA section 172(c)(1), which requires that attainment plan submissions “provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment” of the NAAQS. The attainment planning requirements specific to PM_{2.5} under subpart 4 likewise impose upon states an obligation to develop attainment plans that require RACM on sources of direct PM_{2.5} and those PM_{2.5} precursors determined to be subject to the RACM/

²⁸ In a separate rulemaking to approve revisions to SCAQMD’s nonattainment New Source Review (NNSR) program, the EPA determined that the control requirements applicable under the SCAQMD SIP to major stationary sources of direct PM_{2.5} also apply to major stationary sources of NO_x, SO_x, and VOC, and that major stationary sources of ammonia do not contribute significantly to PM_{2.5} levels which exceed the PM_{2.5} standards in the area. *See* 80 FR 24821, May 1, 2015. This rulemaking addressed the control requirements of CAA section 189(e) only for NNSR purposes and not for attainment planning purposes under subpart 1 and 4 of part D, title I of the Act.

RACT requirement. CAA section 189(a)(1)(C) requires that Moderate area PM_{2.5} SIPs contain provisions to assure that RACM are implemented by no later than 4 years after designation of the area. The EPA reads CAA sections 172(c)(1) and 189(a)(1)(C) together to require that attainment plans for Moderate nonattainment areas must provide for the implementation of RACM and RACT for existing sources of PM_{2.5} and PM_{2.5} precursors in the nonattainment area as expeditiously as practicable but no later than 4 years after designation.²⁹ As part of the RACM/RACT analysis, all available controls should be evaluated, and reasonable controls should be adopted.

The terms RACM and RACT are not specifically defined in the Act, nor do the provisions of subpart 4 specify how states are to meet the RACM and RACT requirements. In longstanding guidance, however, the EPA has interpreted the RACM requirement to include any potential control measure for a point, area, on-road and non-road emission source that is technologically and economically feasible (General Preamble at 13540). The EPA has historically defined RACT as the lowest emission limitation that a particular stationary source is capable of meeting by the application of control technology (*e.g.*, devices, systems, process modifications, or other apparatus or techniques that reduce air pollution) that is reasonably available considering technological and economic feasibility. *See* General Preamble at 13541 and 57 FR 18070, 18073–74 (April 28, 1992).

An evaluation of technological feasibility should include consideration of factors such as a source's process and operating conditions, raw materials, physical plant layout, and non-air quality and energy impacts (*e.g.*, increased water pollution, waste disposal, and energy requirements) (57 FR 18070, 18073).

An evaluation of economic feasibility should include consideration of factors such as cost per ton of pollution reduced (cost-effectiveness), capital costs, and annualized cost (57 FR 18070, 18074). Absent other indications, the EPA presumes that it is reasonable for similar sources to bear similar costs of emissions reductions. Economic feasibility of RACM and RACT is thus largely informed by evidence that other sources in a source category have in fact applied the control technology, process change, or measure in question in similar circumstances. *Id.*

²⁹ This interpretation is consistent with guidance provided in the General Preamble at 13540.

2. RACM/RACT Analysis in the 2012 PM_{2.5} Plan and 2015 Supplement

The 2012 PM_{2.5} Plan and 2015 Supplement's RACM/RACT evaluation for direct PM_{2.5}, NO_x, VOC, ammonia, and SO_x sources is presented in Appendix VI and in Attachment D to the 2015 Supplement. SCAG's RACM analysis for mobile sources is detailed in the 2012 PM_{2.5} Plan, Appendix IV–C (“Regional Transportation Strategies and Control Measures”). CARB's RACM evaluation for mobile sources is included in Appendix VI of the 2012 PM_{2.5} Plan.

The evaluation of potential controls is presented by pollutant and then by rule type/source category. For stationary and area source categories, the comparison to recently-issued EPA CTGs is broken down by the current District rule or rules that apply to that source category. *See* 2012 PM_{2.5} Plan, Appendix VI, and 2015 Supplement, Attachment D.

For the 2012 PM_{2.5} Plan, the District, CARB and SCAG each undertook a process to identify and evaluate potential measures that could contribute to expeditious attainment of the PM_{2.5} standards in the South Coast nonattainment area. We describe these processes below.

The District conducted a multi-step process to identify candidate RACM measures for the South Coast 2012 PM_{2.5} Plan that are technologically and economically feasible. The first step was to conduct a 2012 Air Quality Technology Symposium in September of 2011. Technical experts from a wide variety of areas and the public were invited to provide new and innovative concepts to assist the South Coast area with attaining the PM and ozone NAAQS. The District also conducted ongoing outreach to engage stakeholders in the process. The following concepts were proposed as a result of these efforts:

- Promote zero or near-zero emission technologies and provide incentives for mobile source and goods movement equipment upgrades,
- further reduce VOC emissions from coatings, solvents, and various consumer products focusing on reformulations or alternatives to VOC-based solvents,
- conduct a technology review for NO_x RECLAIM, and further reduce NO_x emissions through the use of low NO_x burners, fuel cells, biogas, and distributed power generation,
- address energy-climate change and co-benefits, the need for electricity storage, or new fossil-fueled peaking plants, to compensate for fluctuation in renewable energy supply, and use

outreach to promote energy efficiency, influence consumer behavior, expand carpools, increase gas taxes, and promote multiagency collaboration.

The second step in the District's RACM process was to look at the EPA's list of suggested control measures for PM_{2.5} nonattainment areas described in the 2007 PM_{2.5} Implementation Rule. The District summarized the results of this analysis in Table VI–3 in Appendix VI of the 2012 PM_{2.5} Plan. This analysis shows that the District either has a pre-existing rule or has developed a control measure for the 2012 PM_{2.5} Plan to address each of EPA's suggested types of measures.

The third step in the District's RACM process involved analyzing the District's rules for compliance with the RACT standard. The results of this analysis are summarized in Table VI–4, Appendix VI (page VI–10) of the 2012 PM_{2.5} Plan. The District further supplemented these analyses in the 2015 Supplement, Attachment D, Tables D–4 to D–8 to address RACM and RACT requirements for direct PM_{2.5} and all PM_{2.5} precursors, and to provide reasoned justifications for control measures that were not adopted. A few examples of RACT-level rules in the South Coast include Rules 1146 and 1146.1, which control NO_x from industrial and institutional boilers, Rule 1113.3, greenwaste composting, which in addition to providing a RACT level of control, also controls fugitives, Rule 1171, Solvent Cleaning, and Rule 1130, Graphic Arts.³⁰

As part of these evaluations, the District compared its SIP rules with current rules, regulations and control measures implemented in other nonattainment areas. Specifically, the District re-evaluated all of its source category-specific rules and compared the requirements in these rules to more than 100 rules from four other air districts in California (San Joaquin Valley, Sacramento Metropolitan, Ventura, and San Francisco Bay Area), the Dallas-Fort Worth and Houston-Galveston areas in Texas, New York, and New Jersey. A summary of this analysis is presented in the 2012 PM_{2.5} Plan, Appendix VI, Table VI–5 and in the 2015 Supplement, Attachment D.

³⁰ The technical support documents for EPA's rulemaking actions on these rules are available at: [http://yosemite.epa.gov/r9/r9sips.nsf/AgencyProvision/5F5287B726E9E6F488257D790004839A/\\$file/1146+and+1146+1+June+2014.pdf?OpenElement](http://yosemite.epa.gov/r9/r9sips.nsf/AgencyProvision/5F5287B726E9E6F488257D790004839A/$file/1146+and+1146+1+June+2014.pdf?OpenElement), <http://yosemite.epa.gov/r9/r9sips.nsf/AgencyProvision/5AD85F69581DEB9388257AC50057D806?OpenDocument>, <http://yosemite.epa.gov/r9/r9sips.nsf/AgencyProvision/F65EA6DB0E3F7F06882579210082BE8C?OpenDocument>, and [http://yosemite.epa.gov/r9/r9sips.nsf/AgencyProvision/865FFD6DBAC8018F88257E82007BA257/\\$file/1130+Jun+2015.pdf?OpenElement](http://yosemite.epa.gov/r9/r9sips.nsf/AgencyProvision/865FFD6DBAC8018F88257E82007BA257/$file/1130+Jun+2015.pdf?OpenElement).

Table VI–5 identifies those rules from other areas that, based on the District’s review, may be more stringent in some respects than South Coast rules. With respect to South Coast Rules 1115, 1130, and 1168, the Plan states the District’s intention to provide further analyses at a later time. See 2012 PM_{2.5} Plan, Appendix VI, p. VI–9. Attachment D to the 2015 Supplement includes an updated RACM/RACT analysis with additional information on RACM for ammonia sources. The 2015 Supplement also states that the District will further evaluate Rule 1115 and Rule 1168, and notes that Rule 1130 was recently amended to address the applicable CTG. See 2015 Supplement, Attachment D, Table D–1 on p. D–5.

According to the District, several of the requirements in South Coast Rule 1115, Motor Vehicle Assembly Line Coating Operations, are not as stringent as the recommendations in the 2008 EPA CTG for a few coating processes emitting >15 lbs/day. The two facilities subject to Rule 1115, however, have very small emissions, a total of about 0.02 tpd of VOC.³¹ See 2015 Supplement, Attachment D, page D–29. In December 2009, we approved Rule 1168, Adhesive and Sealant Applications, as satisfying VOC RACT requirements under CAA section 182(b)(2) (see 74 FR 67821, December 21, 2009). In 2014, the District amended South Coast Rule 1130, Graphic Arts, to reduce fountain solution VOC content to 16–85 g/L with optional control device efficiency of 90–95%, consistent with the EPA’s current CTG recommendations. On July 14, 2015, the EPA approved the revised South Coast Rule 1130 as satisfying VOC RACT requirements under CAA section 182(b)(2). (See 80 FR 40915.)

The RACM analyses and demonstrations conducted by CARB and SCAG for transportation and mobile source control measures are included in Appendix IV–C and its Attachment as well as the Attachment to Appendix VI of the 2012 PM_{2.5} Plan. CARB has unique authority under the CAA to adopt standards for most categories of on- and off-road engines and vehicles, subject in most instances to a waiver or authorization by EPA under CAA section 209. The State of California has been a leader in the development of some of the most stringent control measures nationwide for on-road and off-road mobile sources and the fuels

that power them. As part of its 2007 State Strategy as revised in 2009 and 2011 to support attainment plans in California for PM_{2.5} and 8-hour ozone, CARB undertook an extensive public consultation process to identify potential SIP measures. New measures adopted by CARB focused on cleaning up the in-use fleet, and increasing the stringency of emissions standards for a number of engine categories, fuels, and consumer products. CARB continues to expand its mobile source program to further reduce emission of direct PM_{2.5} and PM_{2.5} precursors. For example, in January 2012, CARB adopted the Advanced Clean Car program.³²

SCAG focused its analysis on transportation control measures (TCMs) in the 2012–2035 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS), and the analysis and results are described in Appendix IV–C of the 2012 PM_{2.5} Plan, “Regional Transportation Strategy and Control Measures.” This evaluation considered transportation-related measures identified in section 108(f) of the CAA and measures adopted in other nonattainment areas of the country. SCAG provided a justification for measures that were determined to be infeasible for implementation in the South Coast nonattainment area. See 2012 PM_{2.5} Plan, Appendix IV–C.

The inventory for ammonia, provided in Appendix V of the 2012 PM_{2.5} Plan, indicates that the largest sources of ammonia include fuel combustion, waste disposal, miscellaneous sources, industrial sources, livestock, composting, domestic pets, and on-road mobile emissions. See Table 2 below (referencing 2012 PM_{2.5} Plan at Appendix V, page V–4–2). The 2012 PM_{2.5} Plan and 2015 Supplement identify five measures that control ammonia emissions sources in the South Coast. The five rules are Rule 223, Emissions Reduction Permits from Large Confined Animal Feeding Operations (adopted June 2, 2006); Rule 1105.1, Reductions of PM–10 and Ammonia Emissions from Fluid Catalytic Cracking Units (adopted November 7, 2003); Rule 1127, Emissions Reductions from Livestock Waste (adopted August 6, 2004); Rule 1133.2, Emission Reductions from Co-Composting Operations (adopted January 10, 2003); and Rule 1133.3, Emission Reductions from Greenwaste Composting Operations (adopted July 8, 2011).

TABLE 2—SOUTH COAST AMMONIA EMISSIONS INVENTORY FOR 2008 [tpd]

Source category	Ammonia emissions
Livestock	18.6
Soil	1.8
Domestic	25.1
Landfill	3.6
Composting	17.8
Fertilizer	1.5
Sewage Treatment	0.2
Wood Combustion	0.1
Industrial	20.2
On-Road Mobile	19.9
Off-road Mobile	0.1
Total	108.9

Source: 2012 PM_{2.5} Plan, Appendix V, Table V–4–2.

- Rule 223, Emissions Reduction Permits from Large Confined Animal Feeding Operations (LCAF), is a work practice rule to control VOC and ammonia emissions from LCAFs. It requires operators and/or owners to implement management practices (e.g., feed according to National Research Council of the National Academy of Sciences guidelines, clean manure from corrals at least four times per year, land incorporate manure within 72-hours of removal, and allow liquid manure to stand in field no more than 24 hours after irrigation) for different components of the CAF operation, such as feeding, milking parlors, housing/bedding, manure management and land application.

The EPA approved Rule 223 into the SIP on July 13, 2015 (see 80 FR 39966).

- Rule 1105.1, Reductions of PM₁₀ and Ammonia Emissions from Fluid Catalytic Cracking Units (FCCU), is designed to limit PM₁₀ and ammonia emissions from fluid catalytic cracking units at oil refineries. The rule sets emission limits for PM₁₀ and ammonia slip that result from the combination of FCCU emissions and ammonia injection used with electrostatic precipitators (ESP) to control FCCU emissions. Once in the atmosphere, ammonia emissions react with other compounds to produce secondary PM. The rule requires oil refineries to implement control technologies to meet the emissions limits including but not limited to dry and wet ESPs, sulfur oxide reducing agents, selective catalytic reduction, selective non-catalytic reduction, and wet gas scrubbers. The EPA approved this rule into the SIP on January 4, 2006 (see 71 FR 241).

- Rule 1127, Emissions Reductions from Livestock Waste, requires dairies (and other types of dairy-cattle

³¹ We note that 0.02 tpd is about 0.0044 percent of the total VOC inventory of 451 tpd for 2014. See section II.A of the TSD. See email correspondence from Joseph Cassmassi, SCAQMD, to Stanley Tong, US EPA Region 9, dated November 25, 2014 in the docket for today’s action.

³² See 78 FR 2112 (January 9, 2013).

operations) to implement specific best management practices for manure management and disposal, and sets requirements for approving a facility as a manure processing operation. Specific requirements for ammonia include cleaning manure from corrals at least four times a year, disposing of manure only at approved manure processing operations, and applying it on agricultural land approved for that purpose. The EPA approved this rule into the SIP on May 23, 2013 (see 78 FR 30768).

- Rule 1133.2, Emission Reductions from Co-Composting Operations, requires all new or existing co-composting operations to compost in an enclosure that meets certain technical requirements (e.g., inward face velocity of air through each opening shall be at least 100 feet per minute unless the opening contains closure seals), cure using an aeration system operating under negative pressure for no less than 90 percent of blower operating cycle, and vent the exhaust to an emission control system with a control efficiency for both VOC and ammonia of at least 80 percent, by weight, or submit a compliance plan for new operations that demonstrates an overall emission reduction for both VOC and ammonia of 80 percent, by weight, based on emission factors specified in the rule. For existing operations, the required emission reduction is 70 percent, by weight, for both ammonia and VOC. Rule 1133.2 also specifies required compliance plan elements. The EPA approved this rule into the SIP on July 21, 2004 (see 69 FR 43518).

- Rule 1133.3, Emission Reductions from Greenwaste Composting Operations, requires all new or existing greenwaste (includes foodwaste) composting facilities to cover, water and turn active phase compost piles according to specific requirements (e.g., cover for seven days, turn only when top of pile is sufficiently wet, based on test method) to minimize VOC and ammonia emissions. If total foodwaste throughput exceeds 5,000 tons per year, any active pile with more than 10 percent foodwaste must be controlled by a device with an overall system control efficiency of 80 percent, by weight, each for VOC and ammonia emissions. The EPA approved this rule into the SIP on November 29, 2012 (see 77 FR 71129).

In addition, for livestock waste, the 2012 PM_{2.5} Plan and 2015 Supplement indicate the District will evaluate control measure BCM-04, Further Ammonia Reductions from Livestock Waste, as a potential ammonia control measure. Phase I of this control measure, scheduled for the 2015–2016

timeframe, involves a technology assessment. The technology assessment will evaluate the technical and economic feasibility of applying sodium bisulfate (SBS) at local dairies in the South Coast. SBS application has been shown to be an effective method for reducing ammonia from fresh manure. (See 2012 PM_{2.5} Plan, Appendix IV, page IV–A–32). The 2015 Supplement states that rule development will follow if controls are determined to be technically feasible and cost-effective. See 2015 Supplement, page F–1 and Table F–1.

We are proposing to reclassify the South Coast from Moderate to Serious nonattainment for the 2006 PM_{2.5} standard. A final reclassification to Serious will trigger the requirement in CAA section 189(b)(1)(B) for the submittal of a SIP providing for the implementation of Best Available Control Measures (BACM),³³ among other things, within 18 months. As part of the District's development of a BACM control strategy for direct PM_{2.5} and those precursors subject to evaluation for potential controls in the South Coast (NO_x, SO₂, VOC, and ammonia), we encourage the District to consider additional measures previously identified by the EPA and the public in comments on the 2012 PM_{2.5} Plan, 2015 Supplement, and other individual rules and plans, as well as other potential innovative measures for reducing emissions. As part of this process, we suggest that the District consult with other state/local agencies and environmental and industry stakeholders.

Condensable Fraction of Direct PM_{2.5} Emissions

EPA's 2007 PM_{2.5} implementation rule states that “[a]fter January 1, 2011, for purposes of establishing emissions limits under 51.1009 and 51.1010, States must establish such limits taking into consideration the condensable fraction of direct PM_{2.5} emissions.” 40 CFR 51.1002(c). The South Coast 2012 PM_{2.5} Plan and 2015 Supplement rely on several SIP-approved rules regulating direct PM emissions as part of the PM_{2.5} control strategy (e.g., Wood Burning Fireplaces (Rule 445, adopted March 7,

³³ The EPA defines BACM as, among other things, the maximum degree of emissions reduction achievable for a source or source category, which is determined on a case-by-case basis considering energy, environmental, and economic impacts. See Addendum at 42010, 42014. BACM must be implemented for all categories of sources in a serious PM_{2.5} nonattainment area unless the State adequately demonstrates that a particular source category does not contribute significantly to nonattainment of the PM_{2.5} standard. See *id.* At 42011, 42012.

2008, most recently revised May 3, 2013), Wood Stoves and Under-Fired Charbroilers (Rule 1138, adopted November 14, 1997), and Particulate Matter (PM) Control Devices (Rule 1155, adopted December 4, 2009)). See 2015 Supplement, Attachment F, Table F–1 and letter dated July 25, 2014 transmitting South Coast Rule 1155 to EPA. As part of our action on any rules that regulate direct PM_{2.5} emissions, we evaluate the emission limits in the rule to ensure that they appropriately address CPM, as required by 40 CFR 51.1002(c). We note that the SIP-approved version of Rule 1138 requires testing according to the District's Protocol, which requires measurement of both condensable and filterable PM in accordance with SCAQMD Test Method 5.1. See Rule 1138 (adopted Nov. 14, 1997, approved July 11, 2011, see 66 FR 36170), paragraph (c)(1) and (g) and SCAQMD Protocol paragraph 3.1.³⁴ We also note that the SIP-approved version of Rule 1155 requires measurement of both condensable and filterable PM in accordance with SCAQMD Test Methods 5.1, 5.2, or 5.3 as applicable. See Rule 1155 (adopted Dec. 4, 2009, approved March 16, 2015, see 80 FR 13495), paragraph (e)(6).³⁵

3. Evaluation and Proposed Action

We find that the process followed in the 2012 PM_{2.5} Plan and 2015 Supplement to identify RACM/RACT is generally consistent with the EPA's recommendations in the General Preamble. The process included compiling a comprehensive list of potential control measures for sources of direct PM_{2.5}, NO_x, VOC, SO₂, and ammonia in the South Coast. This list included measures suggested in public comments on the Plan. See 2012 PM_{2.5} Plan, Appendices VI and IV–C. As part of this process, the District, CARB, and SCAG evaluated potential controls for all relevant source categories for economic and technological feasibility, and provided justifications for the rejection of certain identified measures. *Id.* After completing this evaluation, the District stated its intent to analyze

³⁴ See SCAQMD Protocol, *Determination of Particulate and Volatile Organic Compound Emissions from Restaurant Operations*, November 14, 1997 (available at [http://yosemite.epa.gov/R9/R9Testmethod.nsf/0/3D4DEB4D21AB4AAF882570AD005DFF69/\\$file/SC%20Rest%20emiss.pdf](http://yosemite.epa.gov/R9/R9Testmethod.nsf/0/3D4DEB4D21AB4AAF882570AD005DFF69/$file/SC%20Rest%20emiss.pdf)).

³⁵ See SCAQMD Test Method 5.1, *Determination of Particulate Matter Emissions from Stationary Sources Using a Wet Impingement Train*, March 1989; SCAQMD Test Method 5.2, *Determination of Particulate Matter Emissions from Stationary Sources Using Heated Probe and Filter*, March 1989; and SCAQMD Test Method 5.3, *Determination of Particulate Matter Emissions from Stationary Sources Using an in-Stack Filter*, October 2005.

potential rule improvements with respect to rules 1115, 1130, and 1168. See 2012 PM_{2.5} Plan, Chapter 4 and Appendices VI, IV–A, and IV–C, and 2015 Supplement, Attachment D. Since submittal of the 2012 PM_{2.5} Plan in February 2013, the District has strengthened, adopted and submitted Rule 1130, which EPA approved on July 14, 2015 (see 80 FR 40915). EPA approved Rule 1168 as satisfying VOC RACT on December 21, 2009 (see 74 FR 67821). With respect to Rule 1115, as noted above, the emissions inventory for these sources is very small.

We have reviewed the District's determination in the 2012 PM_{2.5} Plan and 2015 Supplement that its stationary and area source control measures represent RACM/RACT for direct PM_{2.5}, NO_x, VOC, ammonia and SO₂. Our rulemaking actions on District rules generally provide the bases for our conclusions that the emission limits and/or other control requirements in the rules represent a RACT level of control, at minimum, for the relevant source categories.³⁶ We also reviewed the potential additional control measures that the District considered, including those identified by public commenters during the State/District rulemaking processes, and believe that the District adequately justified its conclusions with respect to each of these measures.

Finally, we have reviewed the analysis of current and potentially available controls for both on-road and off-road mobile sources in Appendices IV–C and VI, as well as the Attachment to Appendix VI. As we have noted in previous actions on South Coast plans,³⁷ California is a leader in the development and implementation of stringent control measures for on-road and off-road mobile sources. Its current program addresses the full range of mobile sources in the South Coast through regulatory programs for both new and in-use vehicles and through incentive grant programs. See 2012 PM_{2.5} Plan, Appendix III, Table III–1–3. The District has also adopted measures to reduce emissions from mobile sources including its Surplus Opt-in for NO_x (SOON) rule (Rule 2449) and on-road mobile sources including its employer trip reduction rule (Rule 2202) and has a well-funded incentive grants program focused on mobile sources. See 2012 PM_{2.5} Plan, Chapter 4. Overall, we

³⁶ A full list of the District's rules, including citations to our most recent action on each rule can be found in Appendix A to this TSD.

³⁷ See the proposed approvals of the South Coast 2007 [8-hour] Ozone Plan at 76 FR 57872, 57879 (September 16, 2011) and the 2007 AQMP addressing the 1997 PM_{2.5} NAAQS at 76 FR 41562, 41570 (July 14, 2011).

believe that the State, District, and MPO programs provide for the implementation of RACM for emissions of direct PM_{2.5} and PM_{2.5} precursors from mobile sources in the South Coast.

For the foregoing reasons, we propose to find that the 2012 PM_{2.5} Plan and 2015 Supplement provide for the implementation of all RACM/RACT that can be implemented prior to the applicable Moderate area attainment date as required by CAA sections 189(a)(1)(C) and 172(c)(1), and to approve the RACM/RACT demonstration in the South Coast 2012 PM_{2.5} Plan and 2015 Supplement.³⁸

E. Major Stationary Source Control Requirements Under CAA Section 189(e)

CAA section 189(e) specifically requires that the control requirements applicable to major stationary sources of direct PM_{2.5} also apply to major stationary sources of PM_{2.5} precursors, except where the Administrator determines that such sources do not contribute significantly to PM_{2.5} levels that exceed the standard in the area (see General Preamble at 13539 and 13541 to 42). The control requirements applicable to major stationary sources of direct PM_{2.5} and PM_{2.5} precursors in a Moderate PM_{2.5} nonattainment area include, at minimum, the requirements of a nonattainment new source review (NNSR) permit program meeting the requirements of CAA section 172(c)(5) (see CAA 189(a)(1)(A)).

In a separate rulemaking to approve revisions to SCAQMD's NNSR permit program, the EPA evaluated the District's discussion of control requirements applicable to major stationary sources (Attachment E of the 2015 Supplement) and determined that the District's SIP-approved NNSR program satisfies the requirements of CAA section 189(e) for direct PM_{2.5} and all PM_{2.5} precursors.³⁹ Accordingly, in this action, the EPA is not addressing the NNSR control requirements that

³⁸ The 2012 PM_{2.5} Plan is the latest in a series of air quality plans and control strategies that the District, CARB and SCAG have developed to provide for attainment of the NAAQS in the South Coast. These plans include the 2003 PM₁₀ Plan (approved 70 FR 69081 (November 14, 2005)); the 2003 Extreme [1-hour] Ozone Attainment Plan (approved 74 FR 10176 (March 8, 2009)); the 2007 [8-hour] Ozone Plan (approved 77 FR 12674 (March 1, 2012)); the 2007 State Strategy for the 1997 Ozone and PM_{2.5} standards (approved 76 FR 69928 (November 9, 2011)); the 2007 PM_{2.5} SIP as revised in 2009 and 2011 (approved 66 FR 69928 (November 9, 2011)); and the RACT SIP submitted in 2007 (approved 73 FR 76947 (December 18, 2008)). In each of our rulemakings on these Plans, we approved a RACM and/or RACT demonstration that addressed one or more PM_{2.5} precursors.

³⁹ See n. 29, *supra*.

apply to major stationary sources of direct PM_{2.5} and PM_{2.5} precursors in the South Coast area under CAA section 189(e).

F. Adopted Control Strategy

1. Requirements for Control Strategies

CAA section 110(a)(2)(A) provides that each SIP “shall include enforceable emission limitations and other control measures, means or techniques . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirement of the Act.” Section 172(c)(6) of the Act, which applies to nonattainment area SIPs, is virtually identical to section 110(a)(2)(A).⁴⁰ Measures necessary to meet RACM/RACT and the additional control requirements under section 172(c)(6) must be adopted by the State in an enforceable form (General Preamble at 13541) and submitted to the EPA for approval into the SIP under CAA section 110.

Commitments approved by the EPA under CAA section 110(k)(3) are enforceable by the EPA and citizens under CAA sections 113 and 304, respectively. In the past, the EPA has approved enforceable commitments and courts have enforced actions against states that failed to comply with them.⁴¹ Additionally, if a state fails to meet its commitments, the EPA may make a finding of failure to implement the SIP under CAA section 179(a)(4), which starts an 18-month period for the state to correct the non-implementation before mandatory sanctions are imposed.

Once the EPA determines that circumstances warrant use of an enforceable commitment, the EPA considers three factors in determining whether to approve the use of an enforceable commitment to meet a CAA requirement: (a) Does the commitment address a limited portion of the CAA-required program; (b) is the state

⁴⁰ The language in sections 110(a)(2)(A) and 172(c)(6) is quite broad, allowing a SIP to contain any enforceable “means or techniques” that EPA determines are “necessary or appropriate” to meet CAA requirements, such that the area will attain as expeditiously as practicable, but no later than the designated date. Furthermore, the express allowance for “schedules and timetables” demonstrates that Congress understood that all required controls might not be in place when a SIP is approved.

⁴¹ *E.g.*, *American Lung Ass'n of N.J. v. Kean*, 670 F. Supp. 1285 (D.N.J. 1987), *aff'd*, 871 F.2d 319 (3rd Cir. 1989); *NRDC, Inc. v. N.Y. State Dept. of Env. Cons.*, 668 F. Supp. 848 (S.D.N.Y. 1987); *Citizens for a Better Env't v. Deukmejian*, 731 F. Supp. 1448, *recon. granted in par.*, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air v. South Coast Air Quality Mgt. Dist.*, No. CV 97–6916–HLH, (C.D. Cal. Aug. 27, 1999).

capable of fulfilling its commitment; and (c) is the commitment for a reasonable and appropriate period of time.⁴²

2. Control Strategy in the 2012 PM_{2.5} Plan and 2015 Supplement

For purposes of evaluating the 2012 PM_{2.5} Plan and 2015 Supplement, we have divided the measures relied on to satisfy the applicable control requirements into two categories: Baseline measures and control strategy measures.

As the term is used here, baseline measures are federal, State, and District rules and regulations adopted prior to June of 2012 for District rules, and prior to August of 2011 for CARB rules (*i.e.*, prior to the development of 2012 PM_{2.5} Plan) that continue to achieve emissions reductions through the current attainment year of 2015 and beyond.⁴³ The Plan describes many of these measures in Chapter 4 and in Appendices III, IV–B, IV–C and VI. Reductions from these baseline measures are incorporated into the baseline inventory and reductions from the District measures in the plan are individually quantified in Appendix III,

Table III–2–2B. According to the Plan, these measures provide most of the emissions reductions projected to occur between the base year of 2008 and the Moderate area attainment date of 2015. *See* 2012 PM_{2.5} Plan, Chapter 4, and Appendix V, and 2015 Supplement Attachment A; *see also* Appendix A of the TSD.

Control strategy measures are the new rules, rule revisions, commitments, and other measures that provide the additional increment of emissions reductions needed beyond the baseline measures to provide for attainment (when applicable), to demonstrate RFP, to meet the RACM/RACT requirement, or to provide for contingency measures.

The District included several new measures in the 2012 PM_{2.5} Plan and 2015 Supplement to provide for attainment of the 2006 PM_{2.5} NAAQS. First, the District committed to adopt, submit, and implement amendments to two District rules (Rule 444 and Rule 445) to reduce direct PM_{2.5} emissions from open burning and residential wood burning activities. *See* 2012 PM_{2.5} Plan, p. 4–8, Table 4–2 and SCAQMD Governing Board Resolution 12–19 (Dec. 7, 2012), p. 8, as revised by 2015

Supplement, Attachment F, Table F–1 and SCAQMD Governing Board Resolution 15–2 (Feb. 19, 2015). Second, the District committed to achieve 11.7 tpd of direct PM_{2.5} emission reductions by 2015, either from these two amended rules or from substitute measures as necessary to address any shortfall in emission reductions. *Id.* Third, the District committed to carry out technology assessments to address emissions from under-fired charbroilers and livestock waste in 2015–2016 and 2017, respectively. *Id.* Finally, the District committed to adopt revisions to its NO_x RECLAIM program to achieve an additional 2 tpd of NO_x emission reductions in 2015, as a contingency measure, and to adopt backstop measures related to ports and port-related facilities in 2015. *Id.* Following the State’s submittal of the 2012 PM_{2.5} Plan to the EPA in 2013, the District adopted amendments to Rule 444 and Rule 445 and on June 11, 2013, the District submitted these revised rules to the EPA for SIP approval, consistent with its commitments in the Plan. These measures and commitments are listed in Table 3 below.

TABLE 3—SCAQMD 2012 PM_{2.5} PLAN AND 2015 SUPPLEMENT SPECIFIC COMMITMENTS

Rule No.	Measure number and description	Adoption date	Implementation date	Emission reductions
444	Further Reductions from Open Burning ⁴⁴	2013	2013	4.6 tpd PM _{2.5}
445	Further Reductions from Residential Wood Burning ⁴⁵	2013	2013	7.1 tpd PM _{2.5}
1138	Emissions Reductions from Under-fired Charbroilers	2017	N/A	TBD
1127	Further Ammonia Emissions From Livestock Waste	2015–2016 Technology Assessment.	N/A	TBD
2002	Further NO _x Reductions from RECLAIM	2015	N/A	2 tpd NO _x
4001	Backstop Measures for Indirect Sources of Emissions from Ports and Port-related Facilities.	2015	N/A	N/A

Source: 2012 PM_{2.5} Plan, Chapter 4, Table 4–2, as amended by 2015 Supplement, Attachment F, Table F–1.

3. Evaluation and Conclusions

The Plan provides for the majority of the emissions reductions necessary for attainment to be achieved from baseline measures. These reductions come from a combination of District, State and federal stationary and mobile source measures.⁴⁶ Over the past four decades, the District has adopted or revised almost 100 prohibitory rules that limit emissions of NO_x, SO₂, ammonia, VOC, and particulate matter from stationary

sources. *See* Appendix A of this TSD. The vast majority of these rules are currently SIP-approved and as such, their emissions reductions are fully creditable in attainment-related SIPs. The District’s most recent amendments to Rule 444 and Rule 445 further tighten the District’s control strategy for direct PM_{2.5} emissions. California has also adopted standards for many categories of on- and off-road vehicles and engines as well as standards for gasoline and diesel fuels.

The State’s mobile source measures fall into two categories: Measures for which the State has obtained or has applied to obtain a waiver of federal pre-emption under CAA section 209 (“section 209 waiver measures” or “waiver measures”) and those for which the State is not required to obtain a waiver (“non-waiver measures” or “SIP measures”).

Under the CAA, the EPA is charged with establishing national emission limits for mobile sources. States are

⁴² The U.S. Court of Appeals for the Fifth Circuit upheld the EPA’s interpretation of CAA section 110(a)(2)(A) and 172(c)(6) and the Agency’s use and application of the three factor test in approving enforceable commitments in the Houston-Galveston ozone SIP in *BCCA Appeal Group et al. v. EPA et al.*, 355 F.3d 817 (5th Cir. 2003).

⁴³ These measures are typically rules that have compliance dates that occur after the adoption date

of a plan and mobile source measures that achieve reductions as older engines are replaced through attrition (*e.g.*, through fleet turnover).

⁴⁴ Approved on September 26, 2013, see 78 FR 59249.

⁴⁵ *Ibid.*

⁴⁶ These federal measures include EPA’s national emissions standards for heavy duty diesel trucks

(66 FR 5001 (January 18, 2001)), certain new construction and farm equipment (Tier 2 and 3 non-road engines standards, 63 FR 56968 (October 23, 1998) and Tier 4 diesel non-road engine standards, 69 FR 38958 (June 29, 2004)), and locomotives (63 FR 18978 (April 16, 1998) and 73 FR 37045 (June 30, 2008)). States are allowed to rely on reductions from federal measures in attainment and RFP demonstrations and for other SIP purposes.

generally preempted from establishing such limits except for California, which can establish these limits subject to EPA waiver or authorization under CAA section 209 (referred to herein as “waiver measures”). Over the years, the EPA has issued waivers or authorizations for many mobile source regulations adopted by CARB. California attainment and maintenance plans rely on emissions reductions from implementation of the waiver measures through use of emissions models such as EMFAC, and the South Coast 2012 PM_{2.5} Plan is no exception.

Historically, the EPA has allowed California to take credit for such “waiver” measures even though the waiver measures themselves (*i.e.*, CARB’s regulations) have not been adopted and approved as part of the California SIP. However, a recent decision by the Ninth Circuit Court of Appeals held that EPA’s longstanding practice in this regard was at odds with the CAA requirement that state and local emissions limits relied upon to meet the NAAQS be enforceable by the EPA or private citizens through adoption and approval of such limits in the SIP.⁴⁷

In response to the court’s decision, CARB has adopted the necessary waiver measures as revisions to the California SIP and submitted them to EPA for approval.⁴⁸ EPA intends to propose action on these waiver measures in a separate rulemaking. Once approved as part of the SIP, the measures will be enforceable by the EPA or private citizens under the CAA. In today’s action, the EPA is proposing to approve certain elements of the 2012 PM_{2.5} Plan and 2015 Supplement in part based on our expectation that these waiver measures will soon become federally enforceable as a result of our approval of the measures as part of the SIP.

Non-waiver measures include improvements to California’s inspection and maintenance (I/M) program, SmogCheck, and cleaner burning gasoline and diesel regulations as well as the District’s stationary source and mobile source rules. See TSD at Appendix A for a list of District rules and EPA actions on them.

As discussed above, we generally consider three factors in determining whether to approve the use of enforceable commitments to meet a CAA requirement. In this case, however, the 2012 PM_{2.5} Plan and 2015

Supplement do not rely on either the rule amendment commitments or the emission reduction commitments in its impracticability demonstration, RACM demonstration, RFP demonstration, or quantitative milestones, or to meet any other CAA requirement. Therefore, we do not need to apply this three-factor test before proposing to approve the District’s commitments into the SIP. Approval of these commitments will strengthen the SIP and contribute to the SIP’s purpose of “eliminating or reducing the severity and number of violations of the [PM_{2.5} NAAQS] and achieving expeditious attainment of such standards.” See CAA 176(c)(1)(A).

We are proposing to approve the District’s commitments to adopt and implement specific control measures identified in Table 4–2 in the South Coast 2012 AQMP (as amended March 4, 2015 by Table F–1 in Attachment F of the 2015 Supplement) and to achieve specified NO_x emission reductions, to the extent that these commitments have not yet been fulfilled. Specifically, we are proposing to approve the District’s commitments to: (1) Carry out a technology assessment to address emissions from under-fired charbroilers by 2017, (2) conduct a technology assessment for livestock waste by 2016, (3) adopt revisions to its NO_x RECLAIM program or other enforceable control measures to achieve an additional 2 tpd of NO_x emission reductions in 2015, and (4) adopt backstop measures for indirect sources of emissions from ports and port-related facilities. See 2012 PM_{2.5} Plan, p. 4–8, Table 4–2 and SCAQMD Governing Board Resolution 12–19 (Dec. 7, 2012), pp. 7–8, as revised by 2015 Supplement, Attachment F, Table F–1 and SCAQMD Governing Board Resolution 15–2 (Feb. 19, 2015), pp. 2–3.

With respect to the commitments to adopt Rules 444 and 445 and to achieve 11.7 tpd of direct PM_{2.5} emission reductions, the District has satisfied these commitments by submitting the fully adopted rules to EPA on June 11, 2013, together with technical documentation to support its conclusion that these rules will achieve 11.7 tpd of direct PM_{2.5} emission reductions in 2015.⁴⁹ The EPA approved Rule 444 and Rule 445 on September 26, 2013 (see 79 FR 59249).⁵⁰

⁴⁹ See “Rule Evaluation Form,” South Coast Rules 444 and 445, and *South Coast Air Quality Management District, Draft Final Staff Report, Proposed Amended Rule 445—Wood-Burning Devices, Proposed Amended Rule 444—Open Burning, May 2013*, pp. 15–16.

⁵⁰ See letter dated June 11, 2013, from Edie Chang, Deputy Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional

G. Demonstration That Attainment by the Moderate Area Attainment Date is Impracticable

1. Requirements for Attainment/Impracticability of Attainment Demonstrations

CAA section 189(a)(1)(B) requires that each Moderate area attainment plan include a demonstration that the plan provides for attainment by the latest applicable Moderate area deadline or, alternatively, that attainment by the latest applicable attainment date is impracticable. A demonstration that the plan provides for attainment must be based on air quality modeling, and the EPA generally recommends that a demonstration of impracticability also be based on air quality modeling consistent with EPA’s modeling guidance (General Preamble at 13538).⁵¹

CAA section 188(c) states, in relevant part, that the Moderate area attainment date “shall be as expeditiously as practicable but no later than the end of the sixth calendar year after the area’s designation as nonattainment. . . .” For the South Coast area, which was initially designated as nonattainment for the 2006 PM_{2.5} standard effective December 14, 2009, the applicable Moderate area attainment date under section 188(c) is as expeditiously as practicable but no later than December 31, 2015.

In SIP submissions to demonstrate impracticability, the State should document that its required control strategy in the attainment plan represents the application of RACM/RACT to existing sources. The EPA believes it is appropriate to require adoption of all available control measures that are reasonable (*i.e.*, technologically and economically feasible) in areas that do not demonstrate timely attainment, even where those measures cannot be implemented within the 4-year timeframe for implementation of RACM under CAA section 189(a)(1)(C). The impracticability demonstration will then be based on a showing that the area cannot attain by the applicable attainment date, notwithstanding implementation of the required controls.

2. Impracticability Demonstration for the 2012 PM_{2.5} Plan and 2015 Supplement

By letter dated July 28, 2015, the District requested that the EPA reclassify the South Coast Air Basin to

Administrator, EPA Region 9, transmitting South Coast Rules 444 and 445.

⁵¹ For more information on the CAA’s air quality modeling requirements, please see section II.B of the TSD.

⁴⁷ See *Committee for a Better Arvin v. EPA*, 786 F.3d 1169 (9th Cir. 2015).

⁴⁸ See letter dated August 14, 2015, from Richard W. Corey, Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional Administrator, EPA Region 9.

“Serious” for the 2006 PM_{2.5} NAAQS. The letter provided preliminary 2015 air quality monitoring data for the Mira Loma monitoring station supporting a conclusion that attainment of the 2006 PM_{2.5} standard by December 31, 2015 in the South Coast is impracticable.⁵²

Based in part on the information contained in this letter and in the 2012 PM_{2.5} Plan and Supplement, we have conducted an analysis of recent PM_{2.5} monitoring data for the South Coast PM_{2.5} nonattainment area.⁵³ For this analysis, the EPA used certified data for 2013, 2014 and preliminary data available for 2015.⁵⁴ Although the State and District originally intended for the 2012 PM_{2.5} Plan and 2015 Supplement to demonstrate that the area would attain the 2006 PM_{2.5} NAAQS by the Moderate area attainment date of December 31, 2015, more recent monitoring data show that 24-hour PM_{2.5} levels in the South Coast, with a current design value (2012–2014) of 38 µg/m³ at the Mira Loma monitoring site, continue to be above the 35 µg/m³ level of the 2006 PM_{2.5} standard, and the recent trends in the South Coast’s 24-hour PM_{2.5} levels are not consistent with a projection of attainment by the end of 2015.

The EPA calculated the maximum allowed 2015 concentrations for all monitors in the area, and compared them to the estimated 2015 98th percentile. If the estimated 2015 98th percentile was greater than the maximum allowed 2015 98th percentile concentration, the EPA considered attainment at that monitoring site impracticable. For each monitor, the EPA estimated the 2015 98th percentile from the 2015 data available in AQS as of August 2015, based a number of assumptions.⁵⁵ The EPA assumed that

the concentrations measured during the remainder of 2015 would be no higher than those already recorded, so the 98th percentile could be chosen from among the already recorded data. This is a conservative assumption for assessing the impracticability of attainment, since future concentrations and 98th percentiles could be higher than recorded values.

The EPA’s analysis showed that during 2015, two monitoring sites (Rubidoux and Mira Loma-Van Buren) had estimated 98th percentiles greater than the maximum allowed 98th percentile concentration for 2015, which indicates that attainment of the 2006 24-hour PM_{2.5} NAAQS by the end of 2015 is impracticable.

In a separate analysis, EPA assumed that Rubidoux and Mira Loma-Van Buren collected a minimum of 351 daily samples (*i.e.* consistent with an everyday sampling frequency) in 2015, which would allow for selection of the 8th highest recorded value as the 98th percentile for 2015. This assumption resulted in selection of the lowest 98th percentile value possible for 2015, making the analysis more conservative than the previous approach. Even under this assumption, both Rubidoux and Mira Loma-Van Buren had estimated 2015 98th percentiles greater than the maximum allowed 2015 98th percentile.

3. Evaluation and Proposed Action

Our conservative assessment of recent PM_{2.5} air quality data indicates that attainment of the 2006 PM_{2.5} standard in the South Coast by December 31, 2015 is impracticable. We have also evaluated the RACM/RACT demonstration in the 2012 PM_{2.5} Plan and 2015 Supplement and find that it provides for the expeditious implementation of all RACM that may feasibly be implemented at this time, consistent with the requirements of CAA sections 172(c)(1) and 189(a)(1)(C) for the 2006 PM_{2.5} NAAQS in the South Coast. See section II.D of this TSD. Implementation of this RACM/RACT control strategy appears, however, to be insufficient to bring the South Coast area into attainment by December 31, 2015.

Based on this evaluation, we propose to approve the State’s demonstration in the 2012 PM_{2.5} Plan and 2015 Supplement that attainment of the 2006 PM_{2.5} standard by the Moderate area attainment date in the South Coast is impracticable, consistent with the requirements of CAA section 189(a)(1)(B)(ii). Based on this proposal, we propose to reclassify the South Coast

as Serious nonattainment, which would trigger requirements for the State to submit a Serious area plan consistent with the requirements of subparts 1 and 4 of part D, Title I of the Act (see Section III of this TSD).

H. Reasonable Further Progress and Quantitative Milestones

1. Requirements for Reasonable Further Progress and Quantitative Milestones

CAA section 172(c)(2) requires nonattainment area plans to provide for reasonable further progress (RFP). In addition, CAA section 189(c) requires PM_{2.5} nonattainment area SIPs to include quantitative milestones to be achieved every 3 years until the area is redesignated to attainment and which demonstrate reasonable further progress (RFP), as defined in CAA section 171(1). Section 171(1) defines RFP as “such annual incremental reductions in emissions of the relevant air pollutant as are required by [Part D] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date.” Neither subpart 1 nor subpart 4 of part D, title I of the Act requires that a set percentage of emissions reductions be achieved in any given year for purposes of satisfying the RFP requirement.

RFP has historically been met by showing annual incremental emission reductions sufficient generally to maintain at least linear progress toward attainment by the applicable deadline (Addendum at 42015). As discussed in the Addendum, requiring linear progress in reductions of direct PM_{2.5} and any individual precursor in a PM_{2.5} plan may be appropriate in situations where:

- The pollutant is emitted by a large number and range of sources,
- the relationship between any individual source or source category and overall air quality is not well known,
- a chemical transformation is involved (*e.g.*, secondary particulate significantly contributes to PM_{2.5} levels over the standard), and/or
- the emission reductions necessary to attain the PM_{2.5} standard are inventory-wide. *Id.*

The EPA’s guidance in the Addendum at 42015 recommends that requiring linear progress is less appropriate in other situations, such as:

- Where there are a limited number of sources of direct PM_{2.5} or a precursor,
- where the relationships between individual sources and air quality are relatively well defined, and/or
- where the emission control systems utilized (*e.g.*, at major point sources)

⁵² See letter dated July 28, 2015, from Barry R. Wallerstein, Executive Officer, SCAQMD, to Elizabeth Adams, Acting Director, Air Division, US Environmental Protection Agency, Region 9.

⁵³ See Memorandum dated August 21, 2015 from Michael Flagg, U.S. EPA, Region 9 Air Quality Analysis Office, to South Coast Docket EPA–R09–OAR–2015–0204, Subject: Practicability of South Coast 2015 Attainment of the 2006 24-hour PM NAAQS (“Flagg Memo”).

⁵⁴ Some data in the 2nd, 3rd, and 4th quarter of 2014 may have been impacted by a temporary lab closure and other issues at SCAQMD and are under current review. As a precautionary measure, we conducted an additional analysis on the impracticability of attaining by December 31, 2015 that completely excluded these data. The outcome of the analysis further supported the impracticability of attainment by the applicable attainment date. See Attachment to Flagg Memo, under “24-hour practicability” tab.

⁵⁵ EPA also assumed that the sampling rate observed so far would continue throughout the year; this yielded an estimate of the number of total samples expected for 2015, and allowed for selection of the corresponding rank of the daily data

available to use as the 98th percentile in accordance with 40 CFR part 50, appendix N, section 4.5.

will result in swift and dramatic emission reductions. *Id.*

In nonattainment areas characterized by any of these latter conditions, RFP may be better represented as step-wise progress as controls are implemented and achieve significant reductions soon thereafter. For example, if an area's nonattainment problem can be attributed to a few major sources, EPA guidance indicates that "RFP should be met by 'adherence to an ambitious compliance schedule' which is likely to periodically yield significant emission reductions of direct PM_{2.5} or a PM_{2.5} precursor" (Addendum at 42015).

Plans for PM_{2.5} nonattainment areas should include detailed schedules for compliance with emission regulations in the area and provide corresponding annual emission reductions to be realized from each milestone in the schedule (Addendum at 42016). In reviewing an attainment plan under subpart 4, EPA evaluates whether the annual incremental emission reductions to be achieved are reasonable in light of the statutory objective of timely attainment.

Section 189(c) provides that the quantitative milestones submitted by a state for an area also must be consistent with RFP for the area. Thus, the EPA determines an area's compliance with RFP in conjunction with determining its compliance with the quantitative milestone requirement. Because RFP is an annual emission reduction requirement and the quantitative milestones are to be achieved every 3 years, when a state demonstrates an area's compliance with the quantitative milestone requirement, it will demonstrate that RFP has been achieved during each of the relevant 3 years. Quantitative milestones should consist of elements that allow progress to be quantified or measured. Specifically, states should identify and submit quantitative milestones providing for the amount of emission reductions adequate to achieve the NAAQS by the applicable attainment date (Addendum at 42016). Implementation of control measures comprising the RFP plan may provide a means for satisfying the quantitative milestone requirement (see *id.*). The Act requires states to include RFP and quantitative milestones even for areas that cannot practicably attain.

2. RFP Demonstration and Quantitative Milestones in the 2012 PM_{2.5} Plan and 2015 Supplement

South Coast's 2012 PM_{2.5} Plan was originally developed in accordance with the requirements of subpart 1 and the 2007 PM_{2.5} Implementation Rule (see 75 FR 20586, April 25, 2007), which did

not require a submittal of a separate RFP plan where the State submits a plan demonstrating attainment within five years of the date of designation (see 40 CFR 51.1009(b)). Because the 2012 PM_{2.5} Plan as originally adopted (in December 2012) included the State's demonstration of attainment by December 14, 2014, which is five years from the date of designation,⁵⁶ the Plan does not include a separate RFP demonstration.

Following the D.C. Circuit's January 2013 decision remanding the 2007 PM_{2.5} Implementation Rule (see *NRDC v. EPA*, 706 F.3d 428 (D.C. Cir. 2013)) and the EPA's June 2014 promulgation of Moderate area classifications in the deadline and classifications rule (see 79 FR 31566, June 2, 2014), the District developed the 2015 Supplement to address the applicable subpart 4 requirements for the 2006 PM_{2.5} NAAQS. By the time the State and District submitted this Supplement to EPA in early 2015, less than a year remained before the December 31, 2015 Moderate area attainment date applicable to the area under subpart 4, and ambient air quality monitoring data indicated the area was very close to attaining the 2006 PM_{2.5} standard. See 2015 Supplement, p. 4. Accordingly, the 2015 Supplement does not contain a separate RFP or quantitative milestone demonstration.

3. Evaluation and Proposed Action

As a result of the *NRDC* decision remanding the 2007 PM_{2.5} Implementation Rule, the EPA has considered whether the 2012 PM_{2.5} Plan and 2015 Supplement meet the RFP requirement in section 172(c)(2) of the Act and proposes to find that they do.

The 2012 PM_{2.5} Plan demonstrates that all RACM/RACT are being implemented as expeditiously as practicable and identifies projected emission levels for 2014 that reflect full implementation of the State's and District's RACM/RACT control strategy for the area.⁵⁷ The Plan also shows steady reductions in direct PM_{2.5}, NO_x, VOC, SO_x, and ammonia emissions

⁵⁶ Section 172(a)(2)(A) of the CAA states, in relevant part, that the attainment date for a nonattainment area "shall be the date by which attainment can be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment under section [107(d)]." Because the EPA designated South Coast as nonattainment for the 2006 24-hour standard effective December 14, 2009 (74 FR 58688, November 13, 2009), under subpart 1 the area was required to attain this standard no later than December 14, 2014.

⁵⁷ See 2012 PM_{2.5} plan at Chapter 4, pp. 4–4 through 4–13, Table 4–7, and Appendix III, Table III–2–2B ("Emission Reductions (Tons per Day) in the Baseline by District Rules").

during the 2008–2014 period. Figures IIIH–1 and IIIH–2 show the emissions trajectories for direct PM_{2.5} and each PM_{2.5} precursor addressed in the control strategy which indicate generally linear reductions. We propose, therefore, to approve the 2012 PM_{2.5} Plan and 2015 Supplement as satisfying the requirement for RFP in CAA section 172(c)(2) for the 2006 PM_{2.5} standard.

With respect to quantitative milestones, the EPA is proposing to establish December 31, 2014 as the starting point for the first 3-year period under CAA section 189(e) for the 2006 PM_{2.5} standard in the South Coast. This date is the due date for the State's submittal of attainment-related SIPs necessary to satisfy the Moderate area requirements applicable to the South Coast area.⁵⁸ Accordingly, the first quantitative milestone date for the South Coast area would be December 31, 2017 (3 years after December 31, 2014). Because this date falls well after the applicable Moderate area attainment date for the area, which is December 31, 2015, we propose to find that quantitative milestones are not necessary in this particular Moderate area plan. If, however, EPA either finalizes this proposal to reclassify the South Coast area as Serious nonattainment for the 2006 PM_{2.5} standard or determines that the area has failed to attain by the December 31, 2015 attainment date, the State and District will be required to submit a Serious area plan that contains, among other things, quantitative milestones that demonstrate RFP at each milestone date, starting December 31, 2017 and at subsequent 3-year intervals until the area is redesignated to attainment.

I. Contingency Measures

1. Requirements for Contingency Measures

Under CAA section 172(c)(9), PM_{2.5} plans must include contingency measures to be implemented if an area fails to meet RFP ("RFP contingency measures") and, where the SIP includes a demonstration of attainment (as opposed to a demonstration of impracticability), contingency measures to be implemented if an area fails to attain the PM_{2.5} standards by the applicable attainment date ("attainment

⁵⁸ Subpart 4 requires states to submit attainment plans within 18 months after nonattainment designations (CAA 189(a)(2)). Due to unusual circumstances, however, the EPA has by rule created a later deadline for submittal of attainment plan submission date for the 2006 PM_{2.5} NAAQS in order to provide states a reasonable amount of time to address the requirements of subpart 4 consistent with the *NRDC* decision. See 79 FR 31566 (June 2, 2014).

contingency measures"). Under subpart 4, however, the EPA interprets section 172(c)(9) in light of the specific requirements for particulate matter nonattainment areas. Section 189(b)(1)(A) differentiates between attainment plans that provide for timely attainment and those that demonstrate that attainment is impracticable. Where a SIP includes a demonstration that attainment by the applicable attainment date is impracticable, the state need only submit contingency measures to be implemented if an area fails to meet RFP.⁵⁹

The purpose of contingency measures is to continue progress in reducing emissions while the SIP is being revised to meet the missed RFP milestone or to provide for attainment.

The principal requirements for contingency measures are:

- Contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly upon failure to meet RFP or failure of the area to meet the standard by its attainment date.

- The SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measures will be implemented without further action by the state or by the EPA. In general, we expect all actions needed to effect full implementation of the measures to occur within 60 days after the EPA notifies the state of a failure.

- The contingency measures should consist of control measures for the area that are not relied on to demonstrate attainment or RFP.

- The measures should provide for emissions reductions equivalent to approximately one year of reductions needed for RFP calculated as the overall level of reductions needed to demonstrate attainment divided by the number of years from the base year to the attainment year. (General Preamble at 13543 and Addendum at 42014).

2. Contingency Measures in the 2012 PM_{2.5} Plan and 2015 Supplement

Contingency measures for failure to attain are described in Chapter 6, pages 6–7 to 6–13 of the 2012 PM_{2.5} Plan. The 2012 PM_{2.5} Plan and 2015 Supplement do not include contingency measures for failure to meet RFP.

⁵⁹The EPA does not interpret the requirement for failure-to-attain contingency measures to apply to Moderate PM_{2.5} nonattainment areas that cannot practically attain the NAAQS by the statutory attainment date. Rather, the EPA believes it is appropriate for the state to identify and adopt attainment contingency measures as part of the Serious area attainment plan that it will develop once the EPA reclassifies the area (Addendum at 42015).

3. Evaluation and Proposed Action

Because we are proposing to approve the State's demonstration that attainment by the applicable Moderate area attainment date of December 31, 2015 is impracticable in the South Coast and to reclassify the area to serious, contingency measures for failure to attain are not required as part of this Moderate area plan. Upon reclassification of the South Coast area as a Serious area, California will be required to adopt attainment contingency measures as part of the Serious area attainment plan for the 2006 PM_{2.5} NAAQS.

We propose to find that the RFP contingency measure requirement for any RFP milestone year prior to 2014 is now moot as applied to the South Coast PM_{2.5} nonattainment area. The sole purpose of RFP contingency measures is to provide continued progress if an area fails to meet its RFP goal. Failure to meet any milestone year target prior to 2014 would have required California to implement RFP contingency measures in the South Coast and to revise the 2012 PM_{2.5} Plan to assure that it still provided for attainment by the applicable attainment date of December 31, 2015. In this case, however, the 2012 PM_{2.5} Plan and 2015 Supplement demonstrate that actual emission levels in the years leading up to 2014 were consistent with RFP for direct PM_{2.5} and all four precursor pollutants (NO_x, SO_x, VOC and ammonia) regulated in the 2012 PM_{2.5} Plan. Accordingly, RFP contingency measures no longer have meaning or purpose, and therefore EPA proposes to find that the requirement for them is now moot.

J. Motor Vehicle Emission Budgets

1. Requirements for Motor Vehicle Emissions Budgets

CAA section 176(c) requires Federal actions in nonattainment and maintenance areas to conform to the SIP's goals of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of the standards. Conformity to the SIP's goals means that such actions will not: (1) Cause or contribute to violations of a NAAQS, (2) worsen the severity of an existing violation, or (3) delay timely attainment of any NAAQS or any interim milestone.

Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule, codified at 40 CFR part 93, subpart A. Under this rule, MPOs in nonattainment and maintenance areas coordinate with state

and local air quality and transportation agencies, the EPA, FHWA, and FTA to demonstrate that an area's RTP and transportation improvement program (TIP) conform to the applicable SIP. This demonstration is typically done by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (budgets) contained in all control strategy SIPs. An attainment, maintenance, or RFP SIP should include budgets for the attainment year, each required RFP year, or the last year of the maintenance plan, as appropriate. Budgets are generally established for specific years and specific pollutants or precursors and must reflect all of the motor vehicle control measures contained in the attainment and RFP demonstrations (40 CFR 93.118(e)(4)(v)).

PM_{2.5} plans should identify motor vehicle emission budgets for direct PM_{2.5} and all significant PM_{2.5} precursors for each RFP milestone year and the attainment year, if the plan demonstrates attainment. All direct PM_{2.5} SIP budgets should include direct PM_{2.5} motor vehicle emissions from tailpipe, brake wear, and tire wear. A state must also consider whether reentrained paved and unpaved road dust or highway and transit construction dust are significant contributors and should be included in the direct PM_{2.5} budget. See 40 CFR 93.102(b) and 93.122(f) and the conformity rule preamble at 69 FR 40004, 40031–40036 (July 1, 2004).

2. Motor Vehicle Emissions Budgets in the 2012 PM_{2.5} Plan and 2015 Supplement

The 2015 Supplement revised the attainment demonstration in the 2012 PM_{2.5} Plan to identify December 31, 2015 as the applicable attainment date, and included revised budgets for 2015 for directly emitted PM_{2.5}, NO_x, and VOC. See 2015 Supplement, Attachment C, Table C–1. These budgets reflect average annual daily emissions and are calculated using EMFAC2011, the currently approved mobile source emission model for California, and transportation activity from SCAG's adopted 2012 Regional Transportation Plan (RTP), consistent with the methodology for developing the emissions inventories used in the attainment demonstration. Reductions from incentive measures were removed from the budgets, and off-model reductions for reformulated gasoline (RFG) and SmogCheck (California's inspection and maintenance program) which were not in EMFAC2011 were included in the budgets, consistent with

the emissions inventory used in the attainment demonstration.

The direct PM_{2.5} budgets included tailpipe, brake wear, and tire wear emissions as well as paved and unpaved road dust and road construction dust. No budgets for SO₂ were included in the 2012 PM_{2.5} Plan or 2015 Supplement because on-road emissions of SO₂ are a small part (11 percent) of the total SO₂ inventory. No budgets for ammonia were included in the 2012 PM_{2.5} Plan or 2015 Supplement.

3. Conclusion and Proposed Actions

We are not acting on the motor vehicle emission budgets for direct PM_{2.5}, NO_x, and VOC in the 2012 PM_{2.5} Plan or 2015 Supplement. We previously approved motor vehicle emissions budgets for the 1997 annual and 24-hour PM_{2.5} standards (76 FR 69928, 69951 (November 9, 2011)), and these budgets will continue to apply in the South Coast for transportation conformity purposes for these standards. The same budgets will also continue to apply for the 2006 24-hour PM_{2.5} standard until we finalize our approval of new budgets in the Serious area plan for the 2006 PM_{2.5} NAAQS or find those budgets adequate.⁶⁰

J. General Conformity Budgets

1. Requirements for General Conformity

Conformity is required under CAA section 176(c) to ensure that federal actions are consistent with (“conform to”) the purpose of the SIP. Conformity to the purpose of the SIP means that federal activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS or interim reductions and milestones. Conformity applies to areas that are designated nonattainment and to maintenance areas.

Section 176(c)(4) of the CAA establishes the framework for general conformity. The EPA first promulgated general conformity regulations in November 1993 (40 CFR part 51, subpart W, 40 CFR part 93, subpart B). Subsequently we revised the general conformity regulations on April 5, 2010 (75 FR 17254). Besides ensuring that

federal actions not covered by the transportation conformity rule will not interfere with the SIP, the general conformity regulations encourage consultation between the federal agency and the state or local air pollution control agencies before and during the environmental review process, as well as public notification of and access to federal agency conformity determinations, and allows for air quality review of individual federal actions.

The general conformity regulations provides three phases: (A) Applicability analysis, (B) conformity determination, and (C) review process. The applicability analysis phase under 40 CFR 93.153 is used to find if a Federal action requires a conformity determination for a specific pollutant. If a conformity determination is needed, Federal agencies can use one of several methods to show that the project conforms to the SIP. In an area without a State Implementation Plan (SIP), a federal action may be shown to “conform” by demonstrating there will be no net increase in emission in the nonattainment or maintenance area from the Federal action.

In an area with a SIP, conformity to the applicable SIP can be demonstrated in one of several ways. For actions where the direct and indirect emissions exceeds the rates in 40 CFR 93.153(b), the federal action can include mitigation efforts to bring emissions to levels below the thresholds or can show that the action will conform by meeting any of the following requirements:

- By showing that the net emission increases caused by an action are included in the SIP,
- by documenting that the State agrees to include the emission increases in the SIP,
- through offsetting the action’s emissions in the same or nearby area of equal or greater classification, or
- through an air quality modeling demonstration in some circumstances.

The general conformity regulations at 40 CFR 93.161 allow state and local air quality agencies working with federal agencies with large facilities (*e.g.*, commercial airports, ports and large military bases) that are subject to the general conformity regulations to develop and adopt an emissions budget for those facilities in order to facilitate future conformity determinations. Such a budget, referred to as a facility-wide emission budget, may be used by federal agencies to demonstrate conformity as long as the total facility-wide budget level identified in the SIP is not exceeded.

According to 40 CFR 93.161, the state or local agency responsible for implementing and enforcing the SIP can develop and adopt an emissions budget to be used for demonstrating conformity under 40 CFR 93.158(a)(1). The facility-wide budget must (1) be for a set time period; (2) cover the pollutants or precursors of the pollutants for which the area is designated nonattainment or maintenance; (3) the budgets are specific about what can be emitted on an annual or seasonal basis; (4) the emissions from the facility along with all other emissions in the area will not exceed the total SIP emissions budget for the nonattainment or maintenance area; (5) specific measures are included to ensure compliance with the facility-wide budget, such as periodic reporting requirements or compliance demonstrations when the Federal agency is taking an action that would otherwise require a conformity determination; (6) the budget must be submitted to EPA as a SIP revision; and (7) the SIP revision must be approved by EPA. Having or using a facility-wide emissions budget does not preclude a Federal agency from demonstrating conformity in any other manner allowed by the conformity rule.

2. General Conformity Budget in the 2012 PM_{2.5} Plan and 2015 Supplement

The 2012 PM_{2.5} Plan addresses general conformity beginning on page II–2–52 of Appendix III. The District identified the de minimis thresholds for general conformity in the South Coast as 10 tpy of VOC and NO_x because of its designation and classification as a severe ozone nonattainment area, and 100 tpy of PM_{2.5} because of its designation and classification as a moderate PM_{2.5} nonattainment area. The District examined historical records and noted that projects requiring general conformity determinations had historically not exceeded the PM_{2.5} de minimis levels. The main pollutant of concern during project construction was NO_x, and to a lesser extent, VOC. To streamline the general conformity process for projects and to facilitate general conformity determinations, VOC and NO_x general conformity budgets of 1 tpd of NO_x and 0.2 tpd of VOC were established on an annual basis from 2013 to 2030. These general conformity budgets will be tracked via a tracking system that the District sets up for projects subject to general conformity determinations. The District will count project emissions towards the applicable general conformity budget until the budget has been exhausted. Any unused portions will not carry forward from year to year. Once the

⁶⁰In 2012, the EPA revised the annual PM_{2.5} standard, lowering its level from 15 µg/m³ to 12 µg/m³ (78 FR 3086 (January 15, 2013)). We finalized designations for the 2012 standard in December, 2014 and these designations became effective April 15, 2015. See 80 FR 2206, January 15, 2015. For purposes of the 2012 PM_{2.5} standard, the regional conformity test requirements for all nonattainment and maintenance areas in 40 CFR 93.109 will apply one year after the effective date of EPA’s nonattainment designations in accordance with section 93.102(d) and until the effective date of revocation of such NAAQS.

budget is exhausted, federal projects can still demonstrate conformity using other provisions in the conformity rule.

3. Evaluation and Proposed Action

We propose to approve the general conformity budgets in the 2012 PM_{2.5} Plan for NO_x and VOC for 2013 to 2030 as meeting the requirements of the CAA and the general conformity rule. If we finalize our approval of these budgets, Federal agencies can use these budgets to demonstrate that their projects conform to the SIP through a letter from the state and District confirming that the project emissions are accounted for in the SIP's general conformity budgets. The District will be responsible for tracking emissions from all projects against the budgets. Once the budgets are used, future federal projects will need to demonstrate conformity using a different method. Any federal projects that emit criteria pollutants or pollutant precursors other than those for which general conformity budgets are established will still need to demonstrate conformity for those pollutants or precursors.

V. Proposed Reclassification as Serious Nonattainment and Serious Area SIP Requirements

A. Proposed Reclassification as Serious and Applicable Attainment Date

Section 188 of the Act outlines the process for classification of PM_{2.5} nonattainment areas and establishes the applicable attainment dates. Under the plain meaning of the terms of section 188(b)(1) of the Act, the EPA has general authority to reclassify at any time before the applicable attainment date any area that the EPA determines cannot practically attain the standard by such date. Accordingly, section 188(b)(1) of the Act is a general expression of delegated rulemaking authority. In addition, subparagraphs (A) and (B) of section 188(b)(1) mandate that the EPA reclassify "appropriate" PM₁₀ nonattainment areas at specified time frames (*i.e.*, by December 31, 1991 for the initial PM₁₀ nonattainment areas, and within 18 months after the SIP submittal due date for subsequent nonattainment areas). These subparagraphs do not restrict the EPA's general authority but simply specify that, at a minimum, it must be exercised at certain times.⁶¹

We have reviewed recent PM_{2.5} monitoring data for the South Coast available in the EPA's Air Quality

System (AQS) database. These data show that 24-hour PM_{2.5} levels in the South Coast continue to be above 35 µg/m³, the level of the 2006 PM_{2.5} standard, and the recent trends in the South Coast's 24-hour PM_{2.5} levels are not consistent with a projection of attainment by the end of 2015. (See Memorandum dated August 21, 2015, Michael Flagg, US EPA Region 9, Air Quality Analysis Office).

In accordance with section 188(b)(1) of the Act, the EPA is proposing to reclassify the South Coast area from Moderate to Serious nonattainment for the 2006 24-hour PM_{2.5} standard of 35 µg/m³, based on the EPA's determination that the South Coast area cannot practically attain this standard by the applicable attainment date of December 31, 2015.

Under section 188(c)(2) of the Act, the attainment date for a Serious area "shall be as expeditiously as practicable but no later than the end of the tenth calendar year beginning after the area's designation as nonattainment. . . ." The South Coast area was designated nonattainment for the 2006 PM_{2.5} standard effective December 14, 2009.⁶² Therefore, upon final reclassification of the South Coast area as a Serious nonattainment area, the latest permissible attainment date under section 188(c)(2) of the Act, for purposes of the 2006 PM_{2.5} standard in this area, will be December 31, 2019.

Under section 188(e) of the Act, a state may apply to EPA for a single extension of the Serious area attainment date by up to 5 years, which the EPA may grant if the State satisfies certain conditions. Before the EPA may extend the attainment date for a Serious area under section 188(e), the State must: (1) Apply for an extension of the attainment date beyond the statutory attainment date; (2) demonstrate that attainment by the statutory attainment date is impracticable; (3) have complied with all requirements and commitments pertaining to the area in the implementation plan; (4) demonstrate to the satisfaction of the Administrator that the plan for the area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the area; and (5) submit a demonstration of attainment by the most expeditious alternative date practicable.⁶³

⁶² See 74 FR 58688 (November 13, 2009).

⁶³ For a discussion of EPA's interpretation of the requirements of section 188(e), see "State Implementation Plans for Serious PM₁₀ Nonattainment Areas, and Attainment Date Waivers for PM₁₀ Nonattainment Areas Generally; Addendum to the General Preamble for the

B. Clean Air Act Requirements for Serious PM_{2.5} Nonattainment Area Plans

Upon reclassification as a Serious nonattainment area for the 2006 PM_{2.5} NAAQS, California will be required to submit additional SIP revisions to satisfy the statutory requirements that apply to Serious PM_{2.5} nonattainment areas, including the requirements of subpart 4 of part D, title I of the Act.

The Serious area SIP elements that California will be required to submit are as follows:

1. Provisions to assure that the best available control measures (BACM), including best available control technology (BACT) for stationary sources, for the control of direct PM_{2.5} and PM_{2.5} precursors shall be implemented no later than 4 years after the area is reclassified (CAA section 189(b)(1)(B));
2. a demonstration (including air quality modeling) that the plan provides for attainment as expeditiously as practicable but no later than December 31, 2019, or where the State is seeking an extension of the attainment date under section 188(e), a demonstration that attainment by December 31, 2019 is impracticable and that the plan provides for attainment by the most expeditious alternative date practicable and no later than December 31, 2024 (CAA sections 188(c)(2) and 189(b)(1)(A));
3. plan provisions that require reasonable further progress (RFP) (CAA 172(c)(2));
4. quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP toward attainment by the applicable date (CAA section 189(c));
5. provisions to assure that control requirements applicable to major stationary sources of PM_{2.5} also apply to major stationary sources of PM_{2.5} precursors, except where the state demonstrates to the EPA's satisfaction that such sources do not contribute significantly to PM_{2.5} levels that exceed the standard in the area (CAA section 189(e));
6. a comprehensive, accurate, current inventory of actual emissions from all

Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998 (August 16, 1994) (hereafter "Addendum") at 42002; 65 FR 19964 (April 13, 2000) (proposed action on PM₁₀ Plan for Maricopa County, Arizona); 66 FR 50252 (October 2, 2001) (proposed action on PM₁₀ Plan for Maricopa County, Arizona); 67 FR 48718 (July 25, 2002) (final action on PM₁₀ Plan for Maricopa County, Arizona); and *Vigil v. EPA*, 366 F.3d 1025, amended at 381 F.3d 826 (9th Cir. 2004) (remanding EPA action on PM₁₀ Plan for Maricopa County, Arizona but generally upholding EPA's interpretation of CAA section 188(e)).

⁶¹ For a general discussion of EPA's interpretation of the reclassification provisions in section 188(b)(1) of the Act, see the General Preamble, 57 FR 13498 at 13537-38 (April 16, 1992).

sources of PM_{2.5} and PM_{2.5} precursors in the area (CAA section 172(c)(3));

7. contingency measures to be implemented if the area fails to meet RFP or to attain by the applicable attainment date (CAA section 172(c)(9)); and

8. A revision to the nonattainment new source review (NSR) program to lower the applicable “major stationary source”⁶⁴ thresholds from 100 tons per year (tpy) to 70 tpy (CAA section 189(b)(3)).

Final reclassification of the South Coast area as Serious nonattainment for the 2006 PM_{2.5} standard may also lower the *de minimis* threshold under the CAA’s General Conformity requirements (40 CFR part 93, subpart B) from 100 tpy to 70 tpy for PM_{2.5} and PM_{2.5} precursors. See 80 FR 15339 at 15441.

In March of 2015, the EPA issued a proposed rulemaking to provide guidance to states on the attainment planning requirements in subparts 1 and 4 of part D, title I of the Act that apply to areas designated nonattainment for PM_{2.5}.⁶⁵ In the interim, before the PM_{2.5} implementation rule is finalized, the EPA encourages the State to review the proposed rulemaking as well as the General Preamble and Addendum for guidance on how to implement these statutory requirements in the South Coast PM_{2.5} nonattainment area.⁶⁶

C. Statutory Deadline for Submittal of the Serious Area Plan

For an area reclassified as a Serious nonattainment area before the applicable attainment date under CAA section 188(b)(1), section 189(b)(2) requires the State to submit the required BACM provisions “no later than 18 months after reclassification of the area as a Serious Area” and to submit the required attainment demonstration “no later than 4 years after reclassification of the area to Serious.” Section 189(b)(2) establishes outer bounds on the SIP submission deadlines and does not preclude the EPA’s establishment of earlier deadlines as necessary or appropriate to assure consistency among the required submissions and to implement the statutory requirements.

If a final reclassification of the South Coast PM_{2.5} nonattainment area to

⁶⁴ For any Serious area, the terms “major source” and “major stationary source” include any stationary source that emits or has the potential to emit at least 70 tons per year of PM₁₀ (CAA sections 189(b)(3)).

⁶⁵ See 80 FR 15339, “Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements,” March 23, 2015.

⁶⁶ See generally the General Preamble, 57 FR 13498 (April 16, 1992) and Addendum, 59 FR 41998 (August 16, 1994).

Serious becomes effective by early 2016, the Act provides the State with up to 18 months after this date (*i.e.*, until mid-2017) to submit the required BACM provisions. Because an up-to-date emissions inventory serves as the foundation for a state’s BACM and BACT determinations, the EPA also proposes to require the State to submit the emissions inventory required under CAA section 172(c)(3) within 18 months after the effective date of final reclassification. Similarly, because an effective evaluation of BACM and BACT measures requires evaluation of the precursor pollutants that must be controlled to provide for expeditious attainment in the area, if the State chooses to submit an optional precursor insignificance demonstration to support a determination to exclude a PM_{2.5} precursor from the required control measure evaluations for the area, the EPA proposes to require the State to submit any such demonstration by this same date. An 18-month timeframe for submission of these plan elements is consistent with both the timeframe for submission of BACM provisions under CAA section 189(b)(2) and the timeframe for submission of subpart 1 plan elements under section 172(b) of the Act.⁶⁷

The EPA proposes to require the State to submit the attainment demonstration required under section 189(b)(1)(A) and the remaining attainment-related plan elements no later than three years after the effective date of final reclassification or by December 31, 2018, whichever is earlier. The attainment-related plan elements that we propose to require within the same 3-year timeframe as the attainment demonstration are: (1) The RFP demonstration required under section 172(c)(2); (2) the quantitative milestones required under section 189(c); (3) any additional control measures necessary to meet the requirements of section 172(c)(6); and (4) the contingency measures required under section 172(c)(9). Although section 189(b)(2) generally provides for up to 4 years after a discretionary reclassification for the State to submit the required attainment demonstration, it is appropriate in this case for the EPA to establish an earlier SIP submission deadline to assure timely implementation of the statutory requirements.

⁶⁷ Section 172(b) requires the EPA to establish, concurrent with nonattainment area designations, a schedule extending no later than 3 years from the date of the nonattainment designation for states to submit plans or plan revisions meeting the applicable requirements of sections 110(a)(2) and 172(c) of the CAA.

The EPA designated the South Coast area as nonattainment for the 2006 PM_{2.5} standard effective December 14, 2009.⁶⁸ On January 4, 2013, the D.C. Circuit Court of Appeals issued its decision in *NRDC* remanding EPA’s 2007 PM_{2.5} Implementation Rule and directing the EPA to repromulgate it in accordance with the requirements of subpart 4.⁶⁹ In response to the *NRDC* decision, the EPA undertook a rulemaking to classify all PM_{2.5} nonattainment areas as Moderate nonattainment and begin implementing the PM_{2.5} NAAQS under subpart 4. Effective July 2, 2014, the EPA classified all areas previously designated nonattainment for the 1997 and/or 2006 PM_{2.5} NAAQS as Moderate nonattainment under subpart 4 and established a December 31, 2014 deadline for states to submit Moderate area SIP elements required for these areas.⁷⁰ These unusual circumstances have significantly shortened the timeframes ordinarily allowed under the Act for the EPA and the states to address the statutory SIP requirements following reclassification of an area from Moderate to Serious nonattainment under subpart 4.⁷¹

Our proposal to require the State to submit the attainment demonstration and other attainment-related plan elements no later than three years after reclassification or by December 31, 2018, whichever is earlier, is supported by the overall structure and purpose of the attainment planning requirements in part D, title I of the Act. Section 188(b)(1) provides the EPA with discretionary authority to reclassify an area as Serious nonattainment at any time before the applicable attainment date, based on a determination that the

⁶⁸ 74 FR 58688 (November 13, 2009).

⁶⁹ *NRDC v. EPA*, 706 F.3d 428 (D.C. Cir. 2013).

⁷⁰ 79 FR 31566 (June 2, 2014). The EPA notes that some states had already made SIP submissions intended to meet applicable nonattainment plan requirements as interpreted in the remanded 2007 PM_{2.5} Implementation Rule. Accordingly, the new SIP submission deadline provided the opportunity for states to revise or supplement their prior submissions, as necessary or appropriate to meet subpart 4 requirements.

⁷¹ For areas designated nonattainment after November 15, 1990, section 188(b)(1)(B) of the Act requires that the EPA “reclassify appropriate areas within 18 months after the required date for the State’s submission of a SIP for the Moderate Area.” Read together with section 189(a)(2)(B), which requires states to submit Moderate Area plans within 18 months after nonattainment designations, section 188(b)(1)(B) generally contemplates that EPA would reclassify appropriate areas as Serious nonattainment no later than 36 months (3 years) after initial nonattainment designations. Under these circumstances, the required Serious area attainment demonstration would normally be submitted no later than 7 years after initial designation (4 years after reclassification), which is 3 years before the latest permissible attainment date under CAA section 188(c)(2).

area cannot practicably attain the NAAQS by the Moderate area attainment date. Under normal circumstances, where the EPA reclassifies an area within 3 years after its designation as nonattainment, as contemplated in CAA section 188(b)(1)(B),⁷² the required BACM provisions would be due no later than 18 months after reclassification (*i.e.*, no later than 4.5 years after designation) and the required attainment demonstration would be due no later than 4 years after reclassification (*i.e.*, no later than 7 years after designation).⁷³ In these circumstances, the Serious area attainment demonstration would be due at least 3 years before the outermost Serious area attainment date for the area,⁷⁴ thus providing the EPA with sufficient time to evaluate the submitted plan well in advance of the statutory attainment date. However, in situations such as this, where the EPA reclassifies an area pursuant to its discretionary reclassification authority *later* than 3 years after the area's designation as nonattainment, it is appropriate for the EPA to consider the outermost Serious area attainment date applicable to the area in setting a deadline for the State to submit the required elements of the Serious area attainment plan.

Upon reclassification as Serious, the South Coast PM_{2.5} nonattainment area will be subject to a Serious area attainment date no later than December 31, 2019.⁷⁵ Sections 189(b)(1)(A) and 189(c) of the Act require the State to submit a demonstration that the plan provides for attainment of the PM_{2.5} standard by this date, including quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress toward attainment by this date. If the EPA reclassifies the South Coast area effective in early 2016 and allows the State 4 years following reclassification (*i.e.*, potentially until early 2020) to submit the attainment demonstration and related plan elements, these Serious

area plan provisions would not be due until after the latest permissible statutory attainment date for the area (December 31, 2019) has come and gone. Thus, under such circumstances, allowing the maximum 4-year timeframe for submission of the required attainment demonstration and related plan elements would frustrate the statutory design and severely constrain the EPA's ability to ensure that the State is implementing the applicable statutory requirements in a timely manner.

Therefore, it is appropriate for the EPA to require California to submit the required attainment demonstration and other attainment-related plan elements no later than 3 years after final reclassification or by December 31, 2018, whichever is earlier, so that the EPA has adequate time to review and act on the State's submission prior to the latest permissible attainment date for the area under section 188(c)(2), which is December 31, 2019. This timeframe for the required Serious area plan submissions is appropriate to assure consistency among the required submissions and to implement the statutory requirements in a timely manner.

Finally, the EPA proposes to require that the State submit revised nonattainment NSR program requirements no later than 18 months after final reclassification. The Act does not specify a deadline for the State's submission of SIP revisions to meet nonattainment NSR program requirements to lower the "major stationary source" threshold from 100 tons per year (tpy) to 70 tpy (CAA section 189(b)(3)) and to address the control requirements for major stationary sources of PM_{2.5} precursors (CAA section 189(e))⁷⁶ following reclassification of a Moderate PM_{2.5} nonattainment area as Serious nonattainment under subpart 4. Pursuant to the EPA's gap-filling authority in CAA section 301(a) and to effectuate the statutory control requirements in section 189 of the Act, the EPA proposes to require the State to submit these nonattainment NSR SIP revisions, as well as any necessary analysis of and additional control requirements for major stationary sources of PM_{2.5} precursors, no later than 18 months after the effective date of final reclassification of the South

Coast area as Serious nonattainment for the 2006 PM_{2.5} standard. This due date will ensure that necessary control requirements for major sources are established well in advance of the required attainment demonstration. An 18-month timeframe for submission of the NNSR SIP revisions also aligns with the statutory deadline for submission of BACM and BACT provisions and the broader analysis of PM_{2.5} precursors for potential controls on existing sources in the area.

VI. Reclassification of Reservation Areas of Indian Country

Seven Indian tribes are located within the boundaries of the South Coast PM_{2.5} nonattainment area. These tribes are listed in Table 4 below.

TABLE 4—INDIAN TRIBES LOCATED IN SOUTH COAST PM_{2.5} NONATTAINMENT AREA

Cahuilla Band of Indians
Morongo Band of Cahuilla Mission Indians
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation
Ramona Band of Cahuilla
San Manuel Band of Serrano Mission Indians of the San Manuel Reservation
Santa Rosa Band of Cahuilla Indians
Soboba Band of Luiseno Indians

We have considered the relevance of our proposal to reclassify the South Coast area as Serious nonattainment for the 2006 PM_{2.5} standard to each tribe located within the South Coast area. We believe that the same facts and circumstances that support the proposal for the non-Indian country lands also support the proposal for reservation areas of Indian country⁷⁷ and any other area of Indian country where the EPA or a tribe has demonstrated that the tribe has jurisdiction located within the South Coast nonattainment area. The EPA is therefore proposing to exercise our authority under CAA section 188(b)(1) to reclassify areas of Indian country geographically located in the South Coast nonattainment area. Section 188(b)(1) broadly authorizes the EPA to reclassify a nonattainment area—including any Indian country located within such an area—that EPA

⁷² *Id.*

⁷³ CAA section 189(b)(2). By contrast, for an area that is reclassified as Serious by operation of law after the applicable attainment date, which may be as late as the end of the 6th year after the area's designation as nonattainment (CAA section 188(b)(1)), the state must submit both the BACM provisions and the Serious area attainment demonstration no later than 18 months after reclassification. *Id.*

⁷⁴ Under CAA section 188(c)(2), the latest permissible attainment date for a Serious PM_{2.5} nonattainment area is no later than the end of the tenth calendar year beginning after the area's designation as nonattainment.

⁷⁵ *Id.*

⁷⁶ Section 189(e) requires that the control requirements applicable to major stationary sources of PM_{2.5} also apply to major stationary sources of PM_{2.5} precursors, except where the state demonstrates to the EPA's satisfaction that such sources do not contribute significantly to PM_{2.5} levels that exceed the standard in the area.

⁷⁷ "Indian country" as defined at 18 U.S.C. 1151 refers to: "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

determines cannot practicably attain the relevant standard by the applicable attainment date.

Directly-emitted PM_{2.5} and its precursor pollutants (NO_x, SO₂, VOC, and ammonia) are emitted throughout a nonattainment area and can be transported throughout that nonattainment area. Therefore, boundaries for nonattainment areas are drawn to encompass both areas with direct sources of the pollution problem as well as nearby areas in the same airshed. Initial classifications of nonattainment areas are coterminous with, that is, they match exactly, their boundaries. The EPA believes this approach best ensures public health protection from the adverse effects of PM_{2.5} pollution. Therefore, it is generally counterproductive from an air quality and planning perspective to have a disparate classification for a land area located within the boundaries of a nonattainment area, such as the reservation areas of Indian country contained within the South Coast PM_{2.5} nonattainment area. Moreover, violations of the 2006 PM_{2.5} standard, which are measured and modeled throughout the nonattainment area, as well as shared meteorological conditions, would dictate the same conclusion. Furthermore, emissions increases in portions of a PM_{2.5} nonattainment area that are left classified as Moderate could counteract the effects of efforts to attain the standard within the overall area because less stringent requirements would apply in those Moderate portions relative to those that would apply in the portions of the area reclassified to Serious.

Uniformity of classification throughout a nonattainment area is thus a guiding principle and premise when an area is being reclassified. Equally, if the EPA believes it is likely that a given nonattainment area will not attain the PM_{2.5} standard by the applicable attainment date, then it may be an additional reason why it is appropriate to maintain a uniform classification within the area and thus to reclassify the reservation areas of Indian country and any other area where the EPA or a tribe has demonstrated that a tribe has jurisdiction together with the balance of the nonattainment area. In this particular case, we are proposing to determine, based on the State's demonstration and current ambient air quality trends, that the South Coast nonattainment area cannot practicably attain the 2006 PM_{2.5} standard by its applicable Moderate area attainment date of December 31, 2015.

In light of the considerations outlined above that support retention of a

uniformly-classified PM_{2.5} nonattainment area, and our finding that it is impracticable for the area to attain by the applicable attainment date, we propose to reclassify the areas of Indian country within the South Coast nonattainment area as Serious nonattainment for the 2006 PM_{2.5} standard.

The effect of reclassification would be to lower the applicable "major source" threshold for purposes of the nonattainment new source review program and the Title V operating permit program from its current level of 100 tpy to 70 tpy (CAA sections 189(b)(3) and 501(2)(B)), thus subjecting more new or modified stationary sources to these requirements. The reclassification may also lower the *de minimis* threshold under the CAA's General Conformity requirements (40 CFR part 93, subpart B) from 100 tpy to 70 tpy. Under the General Conformity requirements, Federal agencies bear the responsibility of determining conformity of actions in nonattainment and maintenance areas that require Federal permits, approvals, or funding. Such permits, approvals or funding by Federal agencies for projects in these areas of Indian country may be more difficult to obtain because of the lower *de minimis* thresholds.

Given the potential implications of the reclassification, the EPA has contacted tribal officials to invite government-to-government consultation on this rulemaking effort.⁷⁸ The EPA specifically solicits additional comment on this proposed rule from tribal officials. We note that although eligible tribes may seek EPA approval of relevant tribal programs under the CAA, none of the affected tribes will be required to submit an implementation plan to address this reclassification.

VII. Summary of Proposed Actions and Request for Public Comment

Under CAA section 110(k)(3), the EPA is proposing to approve the following elements of the 2012 PM_{2.5} Plan and 2015 Supplement submitted by California to address the CAA's Moderate area planning requirements for the 2006 PM_{2.5} NAAQS in the South Coast nonattainment area:

1. The 2008 base year emissions inventories as meeting the requirements of CAA section 172(c)(3);
2. the reasonably available control measures/reasonably available control technology demonstration as meeting

the requirements of CAA sections 172(c)(1) and 189(a)(1)(C);

3. the reasonable further progress demonstration as meeting the requirements of CAA section 172(c)(2);

4. the demonstration that attainment by the Moderate area attainment date of December 31, 2015 is impracticable as meeting the requirements of CAA section 189(a)(1)(B)(ii); and

5. SCAQMD's commitments to adopt and implement specific rules and measures in accordance with the schedule provided in Chapter 4 of the 2012 PM_{2.5} Plan, as revised by Table F-1 of Attachment F of the 2015 Supplement, to achieve the emissions reductions shown therein, and to submit these rules and measures to ARB for transmittal to EPA as a revision to the SIP, as stated on pp. 7-8 of SCAQMD Governing Board Resolution 12-19.

In addition, the EPA is proposing to approve the general conformity budgets for NO_x and VOC for years 2013-2030 listed in Appendix III, p. III-2-53 of the 2012 PM_{2.5} Plan as meeting the requirements of the CAA and the general conformity rule.

Finally, pursuant to CAA section 188(b)(1), the EPA is proposing to reclassify the South Coast PM_{2.5} nonattainment area, including the reservation areas of Indian country and any other area where the EPA or a tribe has demonstrated that a tribe has jurisdiction within the South Coast area, as Serious nonattainment for the 2006 PM_{2.5} standard based on the agency's determination that the South Coast area cannot practicably attain the standard by the Moderate area attainment date of December 31, 2015. Upon final reclassification as a Serious area, California will be required to submit, within 18 months after the effective date of the reclassification, provisions to assure that BACM shall be implemented no later than 4 years after the date of reclassification and to submit, within 3 years after the effective date of reclassification or by December 31, 2018, which is sooner, a Serious area plan that satisfies the requirements of part D of title I of the Act. This plan must include a demonstration that the South Coast area will attain the 2006 PM_{2.5} standard as expeditiously as practicable but no later than December 31, 2019, or by the most expeditious alternative date practicable and no later than December 31, 2024, in accordance with the requirements of CAA sections 189(b) and 188(e).

In addition, because the EPA is proposing to similarly reclassify reservation areas of Indian country and any other area of Indian country where EPA or a tribe has demonstrated that the

⁷⁸ We sent letters to seven tribal officials regarding government-to-government consultation on September 4, 2015 and September 30, 2015.

tribe has jurisdiction within the South Coast PM_{2.5} nonattainment area as Serious nonattainment for the 2006 PM_{2.5} standard, consistent with our proposed reclassification of the surrounding non-Indian country lands, the EPA has invited consultation with interested tribes concerning this issue. We note that although eligible tribes may seek the EPA's approval of relevant tribal programs under the CAA, none of the affected tribes will be required to submit an implementation plan to address this reclassification.

We will accept comments from the public on these proposals for the next 30 days. The deadline and instructions for submission of comments are provided in the **DATES** and **ADDRESSES** sections at the beginning of this preamble.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This proposed action would approve State law as meeting Federal requirements and would not impose additional requirements beyond those imposed by State law. Additionally, the proposed rule would reclassify the South Coast nonattainment area as Serious nonattainment for the 2006 PM_{2.5} NAAQS, and would not itself regulate small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, and does not significantly or uniquely affect small governments. This proposed action would approve State law as meeting

Federal requirements and would not impose additional requirements beyond those imposed by State law.

Additionally, the proposed action would reclassify the South Coast nonattainment area as Serious nonattainment for the 2006 PM_{2.5} NAAQS, and would not itself impose any federal intergovernmental mandate. The proposed action would not require any tribes to submit implementation plans.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have Tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes."

Seven Indian tribes are located within the boundaries of the South Coast nonattainment area for the 2006 PM_{2.5} NAAQS: The Cahuilla Band of Indians, the Morongo Band of Cahuilla Mission Indians, the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, the Ramona Band of Cahuilla, the San Manuel Band of Serrano Mission Indians of the San Manuel Reservation, the Santa Rosa Band of Cahuilla Indians, and the Soboba Band of Luiseno Indians.

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

The EPA has concluded that this proposed rule might have tribal

implications for the purposes of Executive Order 13175, but would not impose substantial direct costs upon the tribes, nor would it preempt Tribal law. We note that only one of the tribes located in the South Coast nonattainment area (the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation) has requested eligibility to administer programs under the CAA. The proposed rule would affect the EPA's implementation of the new source review program because of the lower "major source" threshold triggered by reclassification (70 tons per year for direct PM_{2.5} and precursors to PM_{2.5}). The proposed rule may also affect new or modified stationary sources proposed in these areas that require Federal permits, approvals, or funding. Such projects are subject to the requirements of EPA's General Conformity rule, and Federal permits, approvals, or funding for the projects may be more difficult to obtain because of the lower *de minimis* thresholds triggered by reclassification.

Given the potential implications, the EPA contacted tribal officials during the process of developing this proposed rule to provide an opportunity to have meaningful and timely input into its development. On September 4, 2015, we sent letters to leaders of the seven tribes with areas of Indian country in the South Coast nonattainment area inviting government-to-government consultation on the rulemaking effort. We requested that the tribal leaders, or their designated consultation representatives, provide input or request government-to-government consultation by October 4, 2015. We intend to continue communicating with all seven tribes located within the boundaries of the South Coast nonattainment area for the 2006 PM_{2.5} NAAQS as we move forward in developing a final rule. The EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This proposed action is not subject to Executive Order 13045 because it would approve a state action implementing a federal standard, and reclassify the South Coast nonattainment area as Serious

nonattainment for the 2006 PM_{2.5} NAAQS, triggering Serious area planning requirements under the CAA. This proposed action does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA has determined that this action will not have potential disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed action would only approve a state action implementing a federal standard, and reclassify the South Coast nonattainment area as Serious nonattainment for the 2006 PM_{2.5} NAAQS, triggering additional Serious

area planning requirements under the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 30, 2015.

Jared Blumenfeld,

Regional Administrator, EPA Region 9.

[FR Doc. 2015-26315 Filed 10-19-15; 8:45 am]

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FEDERAL REGISTER

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Tuesday,

No. 202

October 20, 2015

Part III

The President

Notice of October 19, 2015—Continuation of the National Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia

Presidential Documents

Title 3—

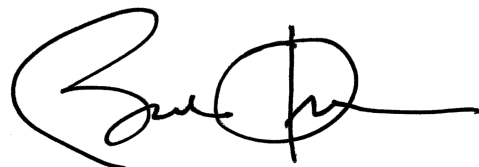
Notice of October 19, 2015

The President**Continuation of the National Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia**

On October 21, 1995, by Executive Order 12978, the President declared a national emergency with respect to significant narcotics traffickers centered in Colombia pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of significant narcotics traffickers centered in Colombia and the extreme level of violence, corruption, and harm such actions cause in the United States and abroad.

The actions of significant narcotics traffickers centered in Colombia continue to threaten the national security, foreign policy, and economy of the United States and to cause an extreme level of violence, corruption, and harm in the United States and abroad. For this reason, the national emergency declared in Executive Order 12978 of October 21, 1995, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond October 21, 2015. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to significant narcotics traffickers centered in Colombia declared in Executive Order 12978.

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



THE WHITE HOUSE,
October 19, 2015.

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