



FEDERAL REGISTER

Vol. 81

Wednesday,

No. 149

August 3, 2016

Pages 51075–51296

OFFICE OF THE FEDERAL REGISTER



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–15–0052; NOP–15–12]

RIN 0581–AD43

National Organic Program (NOP); Sunset 2016 Amendments to the National List

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule addresses recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) following their April 2015 meeting. These recommendations pertain to the 2016 sunset review of substances on the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List). Consistent with the recommendations from the NOSB, this final rule removes five nonorganic nonagricultural substances from the National List for use in organic handling: Egg white lysozyme, cyclohexylamine, diethylaminoethanol, octadecylamine, and tetrasodium pyrophosphate when their use exemptions (allowances) expire on September 12, 2016.

DATES: *Effective Date:* This rule is effective on September 12, 2016.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Ph.D., Director, Standards Division, *Telephone:* (202) 720–3252; *Fax:* (202) 260–9151.

SUPPLEMENTARY INFORMATION:

I. Background

The National Organic Program (NOP) is authorized by the Organic Foods Production Act of 1990 (OFPA), as

amended (7 U.S.C. 6501–6522). The USDA Agricultural Marketing Service (AMS) administers the NOP. Final regulations implementing the NOP, also referred to as the USDA organic regulations, were published December 21, 2000 (65 FR 80548), and became effective on October 21, 2002. Through these regulations, the AMS oversees national standards for the production, handling, and labeling of organically produced agricultural products. Since becoming effective, the USDA organic regulations have been frequently amended, mostly for changes to the National List in 7 CFR 205.601–205.606.

This National List identifies the synthetic substances that may be used and the nonsynthetic substances that may not be used in organic production. The National List also identifies synthetic, nonsynthetic nonagricultural, and nonorganic agricultural substances that may be used in organic handling. The OFPA and the USDA organic regulations, as indicated in § 205.105, specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural substance and any nonsynthetic nonagricultural substance used in organic handling appear on the National List.

As stipulated by the OFPA, the NOSB develops recommendations to amend the National List. The NOSB operates in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2 *et seq.*), to assist in the evaluation of substances to be used or not used in organic production and handling, and to advise the Secretary on the USDA organic regulations. The OFPA also requires a sunset review of all substances included on the National List within five years of their addition to or renewal on the list. If a listed substance is not reviewed by the NOSB and renewed by the USDA within the five year period, its allowance or prohibition on the National List is no longer in effect. Under the authority of the OFPA, the Secretary can amend the National List through rulemaking based upon proposed amendments recommended by the NOSB.

The NOSB's recommendations to continue existing exemptions and prohibitions include consideration of public comments and applicable

supporting evidence that express a continued need for the use or prohibition of the substance(s) as required by the OFPA.

Recommendations to either continue or discontinue an authorized exempted synthetic substance (7 U.S.C. 6517(c)(1)) are determined by the NOSB's evaluation of technical information, public comments, and supporting evidence that demonstrate that the substance is: (a) Harmful to human health or the environment; (b) no longer necessary for organic production due to the availability of alternative wholly nonsynthetic substitute products or practices; or (c) inconsistent with organic farming and handling practices.

In accordance with the sunset review process published in the **Federal Register** on September 16, 2013 (78 FR 61154), this final rule would amend the National List to reflect recommendations submitted to the Secretary by the NOSB on April 30, 2015, to amend the National List to remove five substances allowed as ingredients in or on processed products labeled as “organic.” The exemptions of each substance appearing on the National List for use in organic production and handling are evaluated by the NOSB using the evaluation criteria specified on the OFPA (7 U.S.C. 6517–6518).

II. Overview of Amendments

Nonrenewals

After considering public comments and supporting documents, the NOSB determined that one substance allowed on § 205.605(a) and four substances allowed on § 205.605(b) of the National List are no longer necessary or essential for organic handling. The NOSB concluded that practices and other substances are suitable alternatives to egg white lysozyme, cyclohexylamine, diethylaminoethanol, octadecylamine, and tetrasodium pyrophosphate. AMS has reviewed and accepts the five NOSB recommendations for removal. Based upon these NOSB recommendations, this action amends the National List to remove the exemptions for egg white lysozyme, cyclohexylamine, diethylaminoethanol, octadecylamine, and tetrasodium pyrophosphate when their use exemptions expire on September 12, 2016.

Egg white lysozyme

The USDA organic regulations include an exemption on the National List for egg white lysozyme as a nonsynthetic ingredient for use in organic processed products at § 205.605(a) as follows: Egg white lysozyme (CAS # 9001-63-2). In 2004, egg white lysozyme was petitioned for addition to § 205.605 because it was considered to be an essential processing aid/preservative for controlling bacteria that survived the pasteurization process of milk that is used for cheese manufacture. As recommended by the NOSB, egg white lysozyme was added to the National List on September 12, 2006 (71 FR 53299). The NOSB recommended the renewal of egg white lysozyme during their 2011 sunset review and the listing was renewed in a final rule published on August 3, 2011 (76 FR 46595). The NOSB completed the 2016 sunset review for the allowance of egg white lysozyme at their April 2015 meeting.

AMS published two notices of the NOSB public meetings covering the 2016 sunset review, in **Federal Register** on September 8, 2014 (79 FR 53162) and on March 12, 2015 (80 FR 12975) with requests for comments. Their purpose was to notify the public that the allowance for egg white lysozyme would expire on September 12, 2016, if not reviewed by the NOSB and renewed by the Secretary. During their sunset review deliberation, the NOSB considered written comments received prior to and during the public meetings on all substances included in the 2016 sunset review. These written comments can be viewed at <http://www.regulations.gov> by searching for the documents: AMS-NOP-14-0063 (October 2014 NOSB public meeting) and AMS-NOP-15-0002 (April 2015 NOSB public meeting). The NOSB also considered oral comments received during these public meetings which are included in the meeting transcripts available on the AMS Web site at <http://www.ams.usda.gov/nop>. During their sunset review of egg white lysozyme the NOSB considered two technical reports on enzymes that were requested by and developed for the NOSB in 2011 and 2003, which are also available for review on the AMS Web site.

Public comments provided the NOSB with information about the availability of practice-based alternatives to the use of egg white lysozyme. Such comments provided limited information to support the continued need for egg white lysozyme in organic processed products. Based on those public comments, the NOSB determined that the allowance for

egg white lysozyme on the National List in § 205.605(a) is no longer necessary or essential for organic processed products. Subsequently, the NOSB recommended removal of egg white lysozyme from the National List at their April 2015 public meeting.

A proposed rule to remove egg white lysozyme from the National List was published on December 16, 2015 (80 FR 78150). AMS received comments that egg white lysozyme is used in the organic processing of beer, wine and hard cheeses. The prevalence of use in organic processing could not be ascertained from the public comments. Further, the comments did not assert that egg white lysozyme is essential in organic processing. Therefore, consistent with the NOSB recommendation, this final rule amends § 205.605(a) by removing the allowance for egg white lysozyme. This amendment is effective on egg white lysozyme's sunset date, September 12, 2016. After that date, egg white lysozyme will be prohibited in organic processing.

Cyclohexylamine, Diethylaminoethanol and Octadecylamine

The USDA organic regulations include allowances on the National List for cyclohexylamine, diethylaminoethanol and octadecylamine as processing aids for use in organic processing at § 205.605(b) as follows:

Cyclohexylamine (CAS # 108-91-8)—for use only as a boiler water additive for packaging sterilization.

Diethylaminoethanol (CAS # 100-37-8)—for use only as a boiler water additive for packaging sterilization.

Octadecylamine (CAS # 124-30-1)—for use only as a boiler water additive for packaging sterilization.

Cyclohexylamine, diethylaminoethanol and octadecylamine were added to the National List on September 12, 2006 (71 FR 53299). The NOSB recommended the renewal of cyclohexylamine, diethylaminoethanol and octadecylamine during their 2011 sunset review. AMS published a notice renewing the allowances for cyclohexylamine, diethylaminoethanol and octadecylamine the National List on August 3, 2011 (76 FR 46595).

Subsequently, the NOSB considered the allowances for cyclohexylamine, diethylaminoethanol, and octadecylamine during the 2016 sunset review. AMS published two notices in the **Federal Register** announcing the NOSB public meetings and requesting public comments on September 8, 2014 (79 FR 53162) and on March 12, 2015 (80 FR 12975). Their purpose was to notify the public that the allowances for

cyclohexylamine, diethylaminoethanol and octadecylamine would expire on September 12, 2016, if not reviewed by the NOSB and renewed by the Secretary. During their 2016 sunset review deliberation, the NOSB considered written comments received prior to and during the public meetings on all substances included in the 2016 sunset review. These written comments can be viewed at <http://www.regulations.gov> by searching for the document: AMS-NOP-14-0063 (October 2014 NOSB meeting) and AMS-NOP-15-0002 (April 2015 NOSB meeting). The NOSB also considered oral comments received during these public meetings which are included in the meeting transcripts available on the AMS Web site at <http://www.ams.usda.gov/nop>. During their 2016 sunset review, the NOSB considered technical reports on cyclohexylamine, diethylaminoethanol, and octadecylamine that were requested by and developed for the NOSB in 2001; these are available for review on the AMS Web site.

The September 2014 and April 2015 NOSB meeting notices requested information on the continued use of cyclohexylamine, diethylaminoethanol, or octadecylamine as boiler water additives in organic processing. Public comment in response to these requests informed the NOSB that organic processors are phasing out these materials. The comments provided limited information supporting the continued need for the use of cyclohexylamine, diethylaminoethanol, or octadecylamine as boiler water additives. The NOSB cited information from public comments and the potential for adverse human health and environmental impacts in their conclusion that the allowances for cyclohexylamine, diethylaminoethanol, or octadecylamine on § 205.605(b) are no longer necessary or essential in organic processing. Therefore, the NOSB recommended that cyclohexylamine, diethylaminoethanol, and octadecylamine be removed from the National List.

AMS published a proposed rule with a request for comments on December 16, 2015 (80 FR 78150). No public comments were received supporting the continued use of cyclohexylamine, diethylaminoethanol, and octadecylamine in organic processing. Consistent with the NOSB recommendation, this final rule amends § 205.605(b) by removing the allowances for cyclohexylamine, diethylaminoethanol, and octadecylamine. This amendment is effective on cyclohexylamine,

diethylaminoethanol, and octadecylamine's current sunset date, September 12, 2016. After that date, these substances are prohibited in organic processing.

Tetrasodium Pyrophosphate

The USDA organic regulations include an exemption on the National List for tetrasodium pyrophosphate as an ingredient for use in organic processed products at § 205.605(b) as follows: Tetrasodium pyrophosphate (CAS # 7722-88-5)—for use only in meat analog products. In December 2001, tetrasodium pyrophosphate was petitioned for addition onto § 205.605 for use as an ingredient in organic food processing facilities. As recommended by the NOSB, tetrasodium pyrophosphate was added to the National List on September 12, 2006 (71 FR 53299). In the 2011 sunset review, the NOSB recommended renewing the allowance for tetrasodium pyrophosphate. Consistent with the NOSB recommendation, AMS published a notice in the **Federal Register** renewing the tetrasodium pyrophosphate exemption on the National List on August 3, 2011 (76 FR 46595).

For the 2016 sunset review, AMS published two notices in **Federal Register** announcing the NOSB public meetings and requesting comments on September 8, 2014 (79 FR 53162) and on March 12, 2015 (80 FR 12975). The notices informed the public that the tetrasodium pyrophosphate exemption would expire on September 12, 2016, if not reviewed by the NOSB and renewed by the Secretary and to request information on the necessity of tetrasodium pyrophosphate as an ingredient in organic food processing. During their 2016 sunset review deliberation, the NOSB considered written comments received prior to and during the public meetings on all substance exemptions included in the 2016 sunset review. These written comments can be viewed at <http://www.regulations.gov> by searching for the document: AMS-NOP-14-0063 (October 2014 public meeting) and AMS-NOP-15-0002 (April 2015 public meeting). The NOSB also considered oral comments received during these public meetings which are included in the meeting transcripts available on the AMS Web site at <http://www.ams.usda.gov/nop>. In addition, during their 2016 sunset review, the NOSB considered two technical reports on tetrasodium pyrophosphate that were requested by and developed for the NOSB in 2014 and 2002; these are

available for review on the AMS Web site.

Public comment to the NOSB did not support a continued need for tetrasodium pyrophosphate in the production of organic processed products and informed that various alternative substances are available. Based on public comments and information in the 2014 technical report on tetrasodium pyrophosphate, the NOSB determined that there are alternatives to this substance that may be more compatible with organic production. Therefore, the NOSB determined that the allowance for tetrasodium pyrophosphate on § 205.605(b) is no longer necessary or essential for organic processed products and recommended that tetrasodium pyrophosphate be removed from the National List.

A proposed rule with a request for comments was published on December 16, 2015 (80 FR 78150), and no public comments were received supporting the continued use of tetrasodium pyrophosphate in processed organic products. Consistent with the NOSB recommendation, this final rule amends § 205.605(b) by removing the substance exemption for tetrasodium pyrophosphate. This amendment is effective on tetrasodium pyrophosphate's current sunset date, September 12, 2016. After that date, tetrasodium pyrophosphate will be prohibited in organic processing.

III. Related Documents

Two notices of public meetings with request for comments were published in **Federal Register** on September 8, 2014 (79 FR 53162) and on March 12, 2015 (80 FR 12975) to notify the public that substances included in the 2016 sunset review would expire on September 12, 2016, if not reviewed by the NOSB and renewed by the Secretary. The listings for egg white lysozyme, cyclohexylamine, diethylaminoethanol, octadecylamine, and tetrasodium pyrophosphate were added to the National List on September 12, 2006 (71 FR 53299). The proposed rule to remove the allowance for the use of these substances in organic handling was published on December 16, 2015 (80 FR 78150).

IV. Statutory and Regulatory Authority

OFPA, as amended (7 U.S.C. 6501–6522), authorizes the Secretary to make amendments to the National List based on proposed recommendations developed by the NOSB. Sections 6518(k)(2) and 6518(n) of OFPA authorize the NOSB to develop proposed amendments to the National

List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. The National List petition process is implemented under § 205.607 of the USDA organic regulations. The National List Petition Guidelines (NOP 3011) are published in the NOP Handbook which is available on the AMS Web site, <http://www.ams.usda.gov/nop>. This describes the information to be included for all types of petitions submitted to amend the National List.¹ AMS published a revised sunset review process in the **Federal Register** on September 16, 2013 (78 FR 56811).

A. Executive Order 12866

This action has been determined to be not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This proposed rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under OFPA from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in section 6514(b) of OFPA. States are also preempted under sections 6503 through 6507 of OFPA from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of OFPA.

Pursuant to section 6507(b)(2) of OFPA, a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the

¹ These guidelines supersede the "Submission of Petitions of Substances for Inclusion on or Removal From the National List of Substances Allowed and Prohibited in Organic Production and Handling," published January 18, 2007 in the **Federal Register** (72 FR 2167), which is now obsolete.

purposes of OFPA, (b) not be inconsistent with OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to section 6519(f) of OFPA, this proposed rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301–399), nor the authority of the Administrator of EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136–136(y)).

Section 6520 of OFPA provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the requirements set forth in the RFA, AMS performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). AMS has also considered the economic impact of this action on small entities. The impact on entities affected by this proposed rule would not be significant. The effect of this proposed rule would be to prohibit the use of five nonorganic nonagricultural substances that have limited public support and may no longer be used

since nonorganic nonagricultural alternatives to these substances have been developed and implemented by food processors. AMS concludes that the economic impact of removing the nonorganic nonagricultural substance, egg white lysozyme, cyclohexylamine, diethylaminoethanol, octadecylamine, and tetrasodium pyrophosphate would be minimal to small agricultural firms since alternative practices and nonagricultural products may be commercially available. As such, these substances are proposed to be removed from the National List under this rule. Accordingly, AMS certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000 and small agricultural producers are defined as those having annual receipts of less than \$750,000.

According to USDA, National Agricultural Statistics Service (NASS), certified organic acreage exceeded 3.6 million acres in 2014.² According to NOP's Accreditation and International Activities Division, the number of certified U.S. organic crop and livestock operations totaled over 19,470 in 2014. The list of certified operations is available on the NOP Web site at <http://apps.ams.usda.gov/nop/>. AMS believes that most of these entities would be considered small entities under the criteria established by the SBA. U.S. sales of organic food and non-food have grown from \$1 billion in 1990 to \$39.1 billion in 2014, an 11.3 percent growth over 2013 sales.³ In addition, the USDA has 80 accredited certifying agents who provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS Web site, at <http://www.ams.usda.gov/nop>. AMS believes that most of these accredited certifying agents would be considered small entities under the criteria established by the SBA. Certifying agents report 31,020 certified operations worldwide in 2015.⁴

² U.S. Department of Agriculture, National Agricultural Statistics Service. September 2015. 2014 Certified Organic Productions Survey.

³ Organic Trade Association. 2014. Organic Industry Survey. www.ota.com.

⁴ USDA, AMS, National Organic Program, Organic INTEGRITY Database, <https://apps.ams.usda.gov/integrity/>.

D. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this rule. Accordingly, OMB clearance is not required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, Chapter 35.

E. Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

F. Comments Received on Proposed Rule AMS–NOP–15–0052; NOP–15–12

AMS received nine comments from two consumers, one certifying agent, and six manufacturers (of organic products and ingredients used in organic products) on proposed rule AMS–NOP–15–0052. These written comments can be viewed at <http://www.regulations.gov> by searching for the document: AMS–NOP–15–0052.

One comment presented general concerns about organic inspections that are not within the scope of this rule. One comment stated general opposition to all chemicals in organic production and agreed with the proposal to remove five nonorganic, nonagricultural substances from the National List.

Changes Requested But Not Made

The comments of a certifying agent and six manufacturers opposed the proposal to remove the allowance for egg white lysozyme in organic processing. These comments indicated that egg white lysozyme is used in the production of wine, beer and hard cheeses. The comments did not specify the prevalence of egg white lysozyme in organic processing or provide compelling information to explain why this substance is essential in organic processing. Therefore, AMS is implementing the NOSB recommendation to remove this substance from the National List.

No comments addressed the proposed removal of cyclohexylamine, diethylaminoethanol, octadecylamine, and tetrasodium pyrophosphate.

Consistent with the NOSB recommendations, this final rule amends § 205.605 by removing egg white lysozyme, cyclohexylamine, diethylaminoethanol, octadecylamine, and tetrasodium pyrophosphate.

This amendment is effective on the current sunset date, September 12, 2016.

After that date, these substances will be prohibited in organic processing.

List of Subjects in 7 CFR Part 205

Records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205 is amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

- 1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

§ 205.605 [Amended]

- 2. Amend § 205.605 by:
- A. In paragraph (a), remove the substance “Egg white lysozyme (CAS # 9001–63–2)”.
- B. In paragraph (b), remove the substances “Cyclohexylamine (CAS # 108–91–8)—for use only as a boiler water additive for packaging sterilization”; “Diethylaminoethanol (CAS # 100–37–8)—for use only as a boiler water additive for packaging sterilization”; “Octadecylamine (CAS # 124–30–1)—for use only as a boiler water additive for packaging sterilization”; and “Tetrasodium pyrophosphate (CAS # 7722–88–5)—for use only in meat analog products”.

Dated: July 26, 2016.

Elanor Starmer,
Administrator, Agricultural Marketing Service.

[FR Doc. 2016–18108 Filed 8–2–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 13 and 406

[Docket No. FAA–2016–7004 Amdt. Nos. 13–38, 406–10]

RIN 2120–AK90

Revisions to the Civil Penalty Inflation Adjustment Tables; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim final rule; correction.

SUMMARY: The FAA is correcting an interim final rule titled “Revisions to the Civil Penalty Inflation Adjustment Tables” that it published in the **Federal Register** on July 5, 2016. That interim final rule was the catch-up inflation

adjustment to civil penalty amounts that may be imposed for violations of Federal Aviation Administration (FAA) regulations, as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. In that document, there were several errors that need to be corrected before the rule becomes effective. This document addresses those errors.

DATES: This correction is effective on August 5, 2016.

FOR FURTHER INFORMATION CONTACT: Cole R. Milliard, Attorney, Office of the Chief Counsel, Enforcement Division, AGC–300, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3452; email *Cole.Milliard@faa.gov*.

SUPPLEMENTARY INFORMATION: Prior to the July 5 final rule’s publication, the Pipeline and Hazardous Materials Safety Administration (PHMSA), the Department of Transportation (DOT) agency primarily responsible for developing and enforcing hazardous materials regulations, published its catch-up adjustments for civil penalties, including those for violations of 49 U.S.C. 5123(a)(3). The FAA is amending its catch-up adjustment for 49 U.S.C. 5123(a)(3) to harmonize it with PHMSA’s.

Background

On July 5, 2016, the FAA published an interim final rule titled “Revisions to the Civil Penalty Inflation Adjustment Tables” (81 FR 43463). The intent of that rule is to implement the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), Public Law (Pub. L.) 101–410, as amended by the Debt Collection Improvement Act (DCIA) of 1996, Pub. L. 104–134, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), Pub. L. 114–74, codified at 28 U.S.C. 2461 note.

The FCPIAA, DCIA, and the 2015 Act require Federal agencies to adjust minimum and maximum civil penalty amounts for inflation to preserve their deterrent impact. The 2015 Act amended the formula and frequency of inflation adjustments. It required an initial catch-up adjustment in the form of an interim final rule, followed by annual adjustments of penalty amounts. The amount of the adjustment must be made using a strict statutory formula that was discussed in the final rule and is corrected as indicated below.

As mentioned above, the FAA’s interim final rule was published on July 5, 2016, and included an inflation adjustment for civil penalties associated with hazardous materials training

violations under 49 U.S.C. 5123(a)(3). On June 29, 2016, prior to the FAA’s civil penalty inflation adjustment publication, the Pipeline and Hazardous Materials Safety Administration (PHMSA), the DOT agency primarily responsible for developing and enforcing hazardous materials regulations, also published its catch-up adjustments for civil penalties, including those for violations of 49 U.S.C. 5123(a)(3). PHMSA, however, came up with a different adjustment to the minimum penalty for training than the FAA. PHMSA read technical amendments made to section 5123(a)(3) in 2012 to be adjusting the minimum penalty back down from a 2009 PHMSA inflation adjustment. *See* Moving Ahead for Progress in the 21st Century Act (MAP–21), Pub. L. 112–141, 33010, 126 Stat. 405, 837, (2012); 74 FR 68701 (Dec. 29, 2009). It therefore concluded that 2012 was the year the minimum penalty was established or adjusted. FAA concluded that 2005 was the correct year upon which to base adjustments because Congress established the \$450 minimum that year and did not change it in its 2012 amendments. *Compare* Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Pub. L. 109–59, 7120, 119 Stat. 1144, 1905 (2005) *with* MAP–21, 126 Stat. at 837. Because PHMSA is the primary DOT agency in the area of hazardous materials safety, and because its calculation is reasonable, the FAA is correcting its catch-up adjustment to harmonize it with PHMSA’s.

The FAA is also making technical corrections to its interim final rule. First, it is correcting the effective date noted in the table included in 14 CFR 13.301(c), to reflect the correct effective date of August 5, 2016 (not August 1, 2016). Second, the word “established” is replacing the word “set” when used in reference to the “catch-up adjustment” formula provided by the 2015 Act to make the text of the interim final rule consistent with the statutory text of the 2015 Act. Finally, the FAA is correcting the reference to “section 5123” in the hazmat adjustment example for 49 U.S.C. 5123(a)(1), provided in the background section of the interim final rule, to specifically reference section 5123(a)(1).

Correction

In FR Doc. 2016–7004, beginning on page 43463 in the **Federal Register** of July 5, 2016, make the following corrections:

1. On page 43464, in the second column, under the heading “Background”, in the second paragraph,

correct the seventh line by replacing the word “set” with “established”.

2. On page 43464, in the third column, correct the ninth line from the top by replacing the word “set” with “established”.

3. On page 43464, in the third column, correct subparagraph (1) by replacing the word “set” with “established” in both places it is used, replacing the word “reset” with “adjusted” and replacing the words “Section 5123” with “Section 5123(a)(1)”.

4. On page 43464, correct the heading of the second column of the table by replacing the word “set” with “established”.

5. On page 43464, correct the heading of the third column of the table by replacing the word “set” with “established”.

6. On page 43464, correct the second column of the table by replacing “2005” with “2012” in the third line (referencing 49 U.S.C. Statute 5123(a)(3)).

7. On page 43464, correct the fourth column of the table by replacing

“1.19397” with “1.02819” in the third line (referencing 49 U.S.C. Statute 5123(a)(3)).

8. On page 43464, correct the fifth column of the table by replacing “537” with “463” in the third line (referencing 49 U.S.C. Statute 5123(a)(3)).

§ 13.301 [Corrected]

■ 9. On page 43467, correct § 13.301 by revising paragraph (c) to read as follows:

(c) Minimum and maximum civil monetary penalties within the jurisdiction of the FAA are as follows:

TABLE OF MINIMUM AND MAXIMUM CIVIL MONETARY PENALTY AMOUNTS FOR CERTAIN VIOLATIONS OCCURRING ON OR AFTER AUGUST 5, 2016

United States Code citation	Civil monetary penalty description	Minimum penalty amount	New or adjusted minimum penalty amount	Maximum penalty amount when last established or adjusted by Congress	New or adjusted maximum penalty amount
49 U.S.C. 5123(a), subparagraph (1).	Violation of hazardous materials transportation law.	Deleted 7/6/2012 ..	N/A	\$75,000 per violation, adjusted 7/6/2012.	\$77,114.
49 U.S.C. 5123(a), subparagraph (2).	Violation of hazardous materials transportation law resulting in death, serious illness, severe injury, or substantial property destruction.	Deleted 7/6/2012 ..	N/A	\$175,000 per violation, adjusted 7/6/2012.	\$179,933.
49 U.S.C. 5123(a), subparagraph (3).	Violation of hazardous materials transportation law relating to training.	\$450 per violation, adjusted. 7/6/2012	\$463	\$75,000 per violation, adjusted 7/6/2012.	\$77,114.
49 U.S.C. 46301(a)(1).	Violation by a person other than an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B).	N/A	N/A	\$25,000 per violation, established 12/12/2003.	\$32,140.
49 U.S.C. 46301(a)(1).	Violation by an airman serving as an airman under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered by 46301(a)(5)(A) or (B)).	N/A	N/A	\$1,100 per violation, adjusted 12/12/2003.	\$1,414.
49 U.S.C. 46301(a)(1).	Violation by an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered in 49 U.S.C. 46301(a)(5)).	N/A	N/A	\$1,100 per violation, adjusted 12/12/2003.	\$1,414.
49 U.S.C. 46301(a)(3).	Violation of 49 U.S.C. 47107(b) (or any assurance made under such section) or 49 U.S.C. 47133.	N/A	N/A	Increase above otherwise applicable maximum amount not to exceed 3 times the amount of revenues that are used in violation of such section.	No change.
49 U.S.C. 46301(a)(5)(A).	Violation by an individual or small business concern (except an airman serving as an airman) under 49 U.S.C. 46301(a)(5)(A)(i) or (ii).	N/A	N/A	\$10,000 per violation, established 12/12/2003.	\$12,856.
49 U.S.C. 46301(a)(5)(B)(i).	Violation by an individual or small business concern related to the transportation of hazardous materials.	N/A	N/A	\$10,000 per violation, established 12/12/2003.	\$12,856.
49 U.S.C. 46301(a)(5)(B)(ii).	Violation by an individual or small business concern related to the registration or recordation under 49 U.S.C. chapter 441, of an aircraft not used to provide air transportation.	N/A	N/A	\$10,000 per violation, established 12/12/2003.	\$12,856.

TABLE OF MINIMUM AND MAXIMUM CIVIL MONETARY PENALTY AMOUNTS FOR CERTAIN VIOLATIONS OCCURRING ON OR AFTER AUGUST 5, 2016—Continued

United States Code citation	Civil monetary penalty description	Minimum penalty amount	New or adjusted minimum penalty amount	Maximum penalty amount when last established or adjusted by Congress	New or adjusted maximum penalty amount
49 U.S.C. 46301(a)(5)(B)(iii).	Violation by an individual or small business concern of 49 U.S.C. 44718(d), relating to limitation on construction or establishment of landfills.	N/A	N/A	\$10,000 per violation, established 12/12/2003.	\$12,856.
49 U.S.C. 46301(a)(5)(B)(iv).	Violation by an individual or small business concern of 49 U.S.C. 44725, relating to the safe disposal of life-limited aircraft parts.	N/A	N/A	\$10,000 per violation, established 12/12/2003.	\$12,856.
49 U.S.C. 46301(b)	Tampering with a smoke alarm device	N/A	N/A	\$2,000 per violation, established 12/22/1987.	\$4,126.
49 U.S.C. 46302	Knowingly providing false information about alleged violation involving the special aircraft jurisdiction of the United States.	N/A	N/A	\$10,000 per violation, established 10/12/1984.	\$22,587.
49 U.S.C. 46318	Interference with cabin or flight crew ..	N/A	N/A	\$25,000, established 4/5/2000.	\$34,172.
49 U.S.C. 46319	Permanent closure of an airport without providing sufficient notice.	N/A	N/A	\$10,000 per day, established 12/12/2003.	\$12,856.
49 U.S.C. 47531	Violation of 49 U.S.C. 47528–47530, relating to the prohibition of operating certain aircraft not complying with stage 3 noise levels.	N/A	N/A	See 49 U.S.C. 46301(a)(1)(A) and (a)(5), above.	No change.

Issued under authority provided by 28 U.S.C. 2461 and 49 U.S.C. 106(f), 44701(a), and 46301 in Washington, DC, on July 26, 2016.

Lirio Liu,

Director, Office of Rulemaking.

[FR Doc. 2016–18514 Filed 8–2–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2016–5909; Special Conditions No. 25–626–SC]

Special Conditions: The Boeing Company Model 787–9 Series Airplane; Dynamic Test Requirements for Single-Occupant Oblique (Side-Facing) Seats With Inflatable and 3-Point Restraint Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for The Boeing Company (Boeing) Model 787–9 series airplane. This airplane, as modified by Boeing, will have novel or unusual design features when compared to the state of

technology envisioned in the airworthiness standards for transport-category airplanes. These design features are single-occupant oblique (side-facing) seats with inflatable and 3-point restraint systems requiring dynamic testing. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Boeing on August 3, 2016. We must receive your comments by September 19, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–5909 using any of the following methods:

- **Federal eRegulations Portal:** Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- **Mail:** Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

- **Hand Delivery or Courier:** Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey

Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Fax:** Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at <http://DocketsInfo.dot.gov/>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, FAA, Airframe and Cabin Safety branch, ANM–115, Transport

Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone 425-227-2136; facsimile 425-227-1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplane.

In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On January 29, 2016, Boeing applied for a change to type certificate no. T00021SE to install single-occupant oblique (side-facing) seats with inflatable and 3-point restraint systems in the Model 787-9 airplane.

This airplane is a twin-engine transport-category airplane. It has a 420-passenger capacity and a maximum takeoff weight of 553,000 lbs.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR), 21.101, Boeing must show that the Model 787-9 airplane meets the applicable provisions of the regulations listed in type certificate no. T00021SE, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model 787-9 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 787-9 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Model 787-9 airplane will incorporate the following novel or unusual design features:

Single-occupant oblique (side-facing) seats with inflatable and 3-point restraint systems requiring dynamic testing.

Discussion

Amendment 25-15 to part 25, dated October 24, 1967, introduced the subject of side-facing seats and a requirement that each occupant in a side-facing seat must be protected from head injury by a safety belt and a cushioned rest that will support the arms, shoulders, head, and spine.

Subsequently, Amendment 25-20, dated April 23, 1969, clarified the definition of side-facing seats to require that each occupant of a seat that is positioned at more than an 18-degree angle to the vertical plane containing the airplane centerline must be protected from head injury by a safety belt and an energy-absorbing rest that supports the arms, shoulders, head, and spine; or by a safety belt and shoulder harness that prevents the head from contacting injurious objects. The FAA concluded that a maximum 18-degree angle would provide an adequate level of safety based on tests that were performed at the time, and thus adopted that standard.

Amendment 25-64, dated June 16, 1988, revised the emergency-landing conditions that must be considered in the design of the airplane. It revised the static-load conditions in 14 CFR 25.561 and added a new § 25.562, requiring dynamic testing for all seats approved for occupancy during takeoff and landing. The intent was to provide an improved level of safety for occupants on transport-category airplanes. Because most seating on transport-category airplanes is forward-facing, the pass/fail criteria developed in Amendment 25-64 focused primarily on forward-facing seats. Therefore, the testing specified in the rule did not provide a complete measure of occupant injury in seats that are not forward-facing; although § 25.785 does require that occupants of

all seats that are occupied during taxi, takeoff, and landing not suffer serious injury as a result of the inertia forces specified in §§ 25.561 and 25.562.

To address recent research findings and accommodate commercial demand, the FAA developed a methodology to address all fully side-facing seats (*i.e.*, seats oriented in the airplane with the occupant facing 90-degrees to the direction of airplane travel) and has documented those requirements in a set of proposed new special conditions. The FAA issued policy statement PS-ANM-25-03-R1 on November 12, 2012, titled, "Technical Criteria for Approving Side-Facing Seats," which conveys the injury criteria to be used in the special conditions. Some of those criteria are applicable to oblique seats but others are not, because the motion of an occupant in an oblique seat is different from the motion of an occupant in a fully side-facing seat during emergency landing conditions.

For shallower installation angles, the FAA has granted equivalent level of safety (ELOS) findings for oblique seat installations on the premise that an occupant's kinematics in an oblique seat during a forward impact would result in the body aligning with the impact direction. We predicted that the occupant response would be similar to an occupant of a forward-facing seat, and would produce a level of safety equivalent to that of a forward-facing seat. These ELOS findings were subject to many conditions that reflected the injury-evaluation criteria and mitigation strategies available at the time of issuance of the ELOS. However, review of dynamic test results for many of these oblique seat installations raised concerns that the premise was not correct. Potential injury mechanisms exist that are unique to oblique seats and are not mitigated by the ELOS self-alignment approach even if the occupant appears to respond similarly to a forward-facing seat.

The proposed Model 787 airplane oblique business-class seat installations are novel such that the current Model 787 airplane certification basis does not adequately address occupant protection expectations with regard to the occupant's neck and spine for seat configurations that are oriented at an angle greater than 18-degrees from the airplane centerline. The FAA has previously issued special conditions no. 25-580-SC for the 787, which reflected the best available criteria at the time. However, as the FAA continues research into the injury mechanisms associated with obliquely oriented seats and the means to measure those injuries, the criteria evolve. These special conditions

therefore reflect refinements beyond special conditions no. 25–580–SC, and that incorporate the knowledge gained from research. The intent of the special conditions is unchanged. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Boeing proposes to install on Model 787–9 airplanes 3-point restraint systems and airbag devices as a means to protect each occupant from serious injury in the event of an emergency landing, as required by § 25.562(c)(5). Shoulder harnesses have been widely used on attendant seats, flight-deck seats, business jets, and general-aviation airplanes to reduce occupant head injury in the unlikely event of an emergency landing. A passenger-seat 3-point restraint system is defined as a safety belt (pelvic restraint), a single-belt shoulder harness, and the seat structure associated with the harness attachment points. The 3-point restraint system is intended to protect the occupant from serious injury, and the means of protection must take into consideration a range of occupant stature, ranging from a 2-year old child to a 95th percentile male, in addition to the oblique seat orientation. The use of 3-point restraint systems on transport-category airplane passenger seats is rare; however, existing regulations provide an adequate safety standard for these installations. The FAA has issued advisory material on acceptable means of compliance for combined shoulder-harness and safety-belt restraint systems, such as the 3-point restraint system.

Inflatable airbag devices are designed to limit occupant forward excursion in the event of an accident. This will reduce the potential for head injury, thereby reducing the head injury criteria (HIC) requirement. While inflatable airbags are now standard in the automotive industry, the use of an inflatable airbag device is novel for commercial aviation. Special conditions exist for airbags installed on seat belts, known as inflatable lapbelts, which have been installed on Boeing passenger seats. The FAA has also issued special conditions for structure-mounted airbags on the Model 787–9 that are similar to those for inflatable lapbelts, but that account for the differences between the two types of airbag installations.

Applicability

These special conditions are applicable to the following Boeing Model 787–9 airplanes: AAL ZB 446

(Project PS15–0762), AMX ZB 676 (Project PS15–0588), XIA ZB 812 (Project PS16–0060), and JAL ZB 424 (Project PS15–0723).

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability.

The substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. Therefore, because a delay would significantly affect the certification of the airplane, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 787–9 airplanes.

In addition to the requirements of § 25.562:

1. Head-Injury Criteria

Compliance with § 25.562(c)(5) is required, except that, if the anthropomorphic test device (ATD) has no apparent contact with the seat/structure but has contact with an airbag, a HIC unlimited score in excess of 1000 is acceptable, provided the HIC15 score (calculated in accordance with 49 CFR 571.208) for that contact is less than 700.

2. Body-to-Wall/Furnishing Contact

If a seat is installed aft of structure (e.g. interior wall or furnishings) that does not provide a homogenous contact surface for the expected range of occupants and yaw angles, then additional analysis and/or tests may be required to demonstrate that the injury criteria are met for the area which an occupant could contact. For example, if an airbag device is present, different

yaw angles could result in different airbag-device performance, and additional analysis or separate tests may be necessary to evaluate performance.

3. Neck Injury Criteria

The seating system must protect the occupant from experiencing serious neck injury. If an airbag device is present, the assessment of neck injury must be conducted with the airbag device activated, unless there is reason to also consider that the neck-injury potential would be higher for impacts below the airbag-device deployment threshold.

a. The N_{ij} (calculated in accordance with 49 CFR 571.208) must be below 1.0, where $N_{ij} = F_z/F_{zc} + M_y/M_{yc}$, and N_{ij} critical values are:

- i. $F_{zc} = 1530$ lb for tension
- ii. $F_{zc} = 1385$ lb for compression
- iii. $M_{yc} = 229$ lb-ft in flexion
- iv. $M_{yc} = 100$ lb-ft in extension

b. In addition, peak upper-neck F_z must be below 937 lb of tension and 899 lb of compression.

c. Rotation of the head about its vertical axis, relative to the torso, is limited to 105 degrees in either direction from forward-facing.

d. The neck must not impact any surface that would produce concentrated loading on the neck.

4. Spine and Torso Injury Criteria

a. The lumbar spine tension (F_z) cannot exceed 1200 lb.

b. Significant concentrated loading on the occupant's spine, in the area between the pelvis and shoulders during impact, including rebound, is not acceptable. During this type of contact, the interval for any rearward (X direction) acceleration exceeding 20g must be less than 3 milliseconds as measured by the thoracic instrumentation specified in 49 CFR part 572, subpart E, filtered in accordance with SAE International (SAE) J211–1.

c. The occupant must not interact with the armrest or other seat components in any manner significantly different than would be expected for a forward-facing seat installation.

5. Pelvis Criteria

Any part of the load-bearing portion of the bottom of the ATD pelvis must not translate beyond the edges of the seat bottom seat-cushion supporting structure.

6. Femur Criteria

Axial rotation of the upper leg (about the z-axis of the femur per SAE Recommended Practice J211–1) must be limited to 35 degrees from the nominal

seated position. Evaluation during rebound does not need to be considered.

7. ATD and Test Conditions

Longitudinal tests conducted to measure the injury criteria above must be performed with the FAA Hybrid III ATD, as described in SAE 1999-01-1609. The tests must be conducted with an undeformed floor, at the most-critical yaw cases for injury, and with all lateral structural supports (e.g., armrests or walls) installed.

Structure-Mounted Airbag and Inflatable Lapbelt Special Conditions

When present, the structure-mounted airbag device must meet special conditions no. 25-605-SC, "Boeing Model 787-9 Airplane; Structure-Mounted Airbags." When present, the inflatable lapbelt(s) must meet special conditions no. 25-431-SC, "Boeing Model 787 Series Airplanes; Seats with Inflatable Lapbelts."

Note: As indicated in the special conditions above, airbags and inflatable lapbelts must be shown to not affect emergency-egress capabilities in the main aisle, cross-aisle, and passageway.

Issued in Renton, Washington, on July 27, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016-18449 Filed 8-2-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA-2016-4136; Special Conditions No. 25-621-SC]

Special Conditions: The Boeing Company Model 777-300ER Airplanes; Dynamic Test Requirements for Single-Occupant Oblique (Side-Facing) Seats with Inflatable Restraints

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to The Boeing Company (Boeing) for their Model 777-300ER airplane. This airplane has novel or unusual design features associated with single-occupant oblique (side-facing) seats equipped with inflatable restraints. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for occupants of seats

installed at an angle of greater than 18 degrees, but substantially less than 90 degrees, to the vertical plane containing the centerline of the airplane, nor for inflatable restraints or related airbag devices. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Boeing on August 3, 2016. We must receive your comments by September 19, 2016.

ADDRESSES: Send comments identified by docket number FAA-2016-4136 using any of the following methods:

- **Federal eRegulations Portal:** Go to <http://www.regulations.gov/> and follow the online instructions for sending your comments electronically.

- **Mail:** Send comments to Docket Operations, M-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- **Hand Delivery or Courier:** Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Fax:** Fax comments to Docket Operations at 202-493-2251.

Privacy: The FAA will post all comments it receives, without change, to <http://www.regulations.gov/>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov/>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov/> at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Sheldon, Airframe and Cabin Safety, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW.,

Renton, Washington 98057-3356; telephone 425-227-2785; facsimile 425-227-1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplane. In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received.

The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On December 24, 2015, Boeing Commercial Airplanes applied for a design change to type certificate no. T00001SE for single-occupant seats installed at an oblique angle to the vertical plane containing the centerline of the airplane, and equipped with inflatable lapbelts, in the Boeing Model 777-300ER airplane. The Model 777-300ER airplane is a wide body, swept wing, conventional tail, twin-engine, turbofan-powered, transport-category airplane.

Type Certification Basis

The type certification basis for the Model 777-300ER airplane is 14 CFR part 25, effective February 1, 1965, as amended by Amendments 25-1 through 25-98, including special conditions 25-295-SC, 25-187A-SC, and 25-569-SC. In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these proposed special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777-300ER airplane because of a novel or unusual

design feature, special conditions are prescribed under the provisions of § 21.16.

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 777–300ER airplane, as changed, continues to meet the applicable provisions of the regulations listed in type certificate no. T00001SE or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA. These regulations will be incorporated into type certificate no. T00001SE after type certification approval of the 777–300ER.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777–300ER airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 777–300ER airplane will incorporate the following novel or unusual design features:

The seating configuration proposed by Boeing in certification plan no. 17174, revision A, “Installation of B/E Aerospace Super-Diamond Model Business Class Seats on WE736,” consists of Super Diamond model oblique (side-facing), business-class passenger seats installed in a Boeing Model 777–300ER airplane. These seats will also incorporate inflatable restraints.

The applicable airworthiness regulations do not contain adequate or appropriate safety standards for occupants of seats installed in the proposed configuration. To provide a level of safety equivalent to that afforded to occupants of forward- and aft-facing seats, additional airworthiness standards, in the form of special conditions, are necessary. Although special conditions no. 25–187A–SC, 25–295–SC, and 25–569–SC already apply to the 777–300ER, they do not directly address the complex occupant-loading conditions introduced by this oblique (side-facing) seat configuration, nor do they reflect the latest findings of on-going research.

Discussion

Amendment 25–15 to part 25, dated October 24, 1967, introduced the subject of side-facing seats, and a requirement

that each occupant in a side-facing seat must be protected from head injury by a safety belt and a cushioned rest that will support the arms, shoulders, head, and spine.

Subsequently, Amendment 25–20, dated April 23, 1969, clarified the definition of side-facing seats to require that each occupant of a seat that is positioned at more than an 18-degree angle to the vertical plane containing the airplane centerline must be protected from head injury by a safety belt and an energy-absorbing rest that supports the arms, shoulders, head, and spine; or by a safety belt and shoulder harness that prevents the head from contacting injurious objects. The FAA concluded that a maximum 18-degree angle would provide an adequate level of safety based on tests that were performed at the time, and thus adopted that standard.

Amendment 25–64, dated June 16, 1988, revised the emergency-landing conditions that must be considered in the design of the airplane. It revised the static-load conditions in § 25.561 and added a new § 25.562, requiring dynamic testing for all seats approved for occupancy during takeoff and landing. The intent was to provide an improved level of safety for occupants on transport-category airplanes. Because most seating on transport-category airplanes is forward-facing, the pass/fail criteria developed in Amendment 25–64 focused primarily on forward-facing seats. Therefore, the testing specified in the rule did not provide a complete measure of occupant injury in seats that are not forward-facing. However, § 25.785 does require that occupants of all seats occupied during taxi, takeoff, and landing not suffer serious injury as a result of the inertia forces specified in §§ 25.561 and 25.562.

To address recent research findings and accommodate commercial demand, the FAA developed a methodology to address all fully side-facing seats (*i.e.*, seats oriented in the airplane with the occupant facing 90 degrees to the direction of airplane travel) and has documented those requirements in a set of proposed new special conditions. The FAA issued policy statement PS–ANM–25–03–R1 on November 12, 2012, titled, “Technical Criteria for Approving Side-Facing Seats,” which conveys the injury criteria to be used in the special conditions. Some of those criteria are applicable to oblique seats, but others are not because the motion of an occupant in an oblique seat is different from the motion of an occupant in a fully side-facing seat during emergency-landing conditions.

For shallower installation angles, the FAA has granted equivalent level of safety (ELOS) findings for oblique seat installations on the premise that an occupant’s kinematics in an oblique seat during a forward impact would result in the body aligning with the impact direction. We predicted that the occupant response would be similar to an occupant of a forward-facing seat, and would produce a level of safety equivalent to that of a forward-facing seat. These ELOS findings were subject to many conditions that reflected the injury-evaluation criteria and mitigation strategies available at the time of issuance of the ELOS. However, review of dynamic test results for many of these oblique seat installations raised concerns that the premise was not correct. Potential injury mechanisms exist that are unique to oblique seats and are not mitigated by the ELOS self-alignment approach even if the occupant appears to respond similarly to a forward-facing seat.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 777–300ER airplane. These special conditions can be applied to oblique seats installed in accordance with Boeing certification plan no. 17174, revision A, “Installation of B/E Aerospace Super-Diamond Business Class Seats on WE736.”

The FAA will amend these special conditions, or issue new special conditions, should unusual occupant response in the required dynamic tests, or additional research into occupant-injury mechanisms, indicate that these special conditions are inadequate. Any future special conditions would include due public notice for comment.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Boeing Model 777–300ER airplane, as modified by Boeing, is imminent, the FAA finds that good cause exists to make these special conditions effective upon publication in the **Federal Register**.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 777-300ER airplanes modified by Boeing.

Oblique (Side-Facing) Seats Special Conditions

In addition to the requirements of § 25.562:

1. Head Injury Criteria (HIC)

Compliance with § 25.562(c)(5) is required, except that, if the anthropomorphic test device (ATD) has no apparent contact with the seat and related structure but has contact with an airbag, a HIC unlimited score in excess of 1000 is acceptable, provided the HIC15 score (calculated in accordance with 49 CFR 571.208) for that contact is less than 700.

2. Body-to-Wall/Furnishing Contact

If a seat is installed aft of structure (e.g. interior wall or furnishings) that does not provide a homogenous contact surface for the expected range of occupants and yaw angles, then additional analysis and tests may be required to demonstrate that the injury criteria are met for the area which an occupant could contact. For example, if different yaw angles could result in different airbag device performance, then additional analysis or separate tests may be necessary to evaluate performance.

3. Neck Injury Criteria

a. The seating system must protect the occupant from experiencing serious neck injury. The assessment of neck injury must be conducted with the airbag device activated, unless there is reason to also consider that the neck-injury potential would be higher for impacts below the airbag-device deployment threshold.

b. The N_{ij} , calculated in accordance with 49 CFR 571.208, must be below 1.0, where $N_{ij} = F_z/F_{zc} + M_y/M_{yc}$, and N_{ij} critical values are:

- i. $F_{zc} = 1530$ lb for tension
- ii. $F_{zc} = 1385$ lb for compression
- iii. $M_{yc} = 229$ lb-ft in flexion
- iv. $M_{yc} = 100$ lb-ft in extension

c. In addition, peak upper-neck F_z must be below 937 lb in tension and 899 lb in compression.

d. Rotation of the head about its vertical axis relative to the torso is limited to 105 degrees in either direction from forward-facing.

e. The neck must not impact any surface that would produce concentrated loading on the neck.

4. Spine and Torso Injury Criteria

a. The lumbar spine tension (F_z) cannot exceed 1200 lb.

b. Significant concentrated loading on the occupant's spine, in the area between the pelvis and shoulders during impact, including rebound, is not acceptable. During this type of contact, the interval for any rearward (X-axis direction) acceleration exceeding 20g must be less than 3 milliseconds as measured by the thoracic instrumentation specified in 49 CFR part 572, subpart E, filtered in accordance with SAE International (SAE) Recommended Practice J211/1, "Instrumentation for Impact Test—Part 1—Electronic Instrumentation."

c. The occupant must not interact with the armrest or other seat components in any manner significantly different than would be expected for a forward-facing seat installation.

5. Pelvis Criteria

Any part of the load-bearing portion of the bottom of the ATD pelvis must not translate beyond the edges of the seat bottom seat-cushion supporting structure.

6. Femur Criteria

Axial rotation of the upper leg (about the Z-axis of the femur, per SAE Recommended Practice J211/1) must be limited to 35 degrees in the strike direction from the nominal seating position. Evaluation during rebound need not be considered.

7. ATD and Test Conditions

Longitudinal tests conducted to measure the injury criteria above must be performed with the FAA Hybrid III ATD, as described in SAE 1999-01-1609, "A Lumbar Spine Modification to the Hybrid III ATD For Aircraft Seat Tests." The tests must be conducted with an undeformed floor, at the most-critical yaw cases for injury, and with all lateral structural supports (e.g. armrests or walls) installed.

Inflatable Lapbelt Special Conditions

The inflatable lapbelts must meet special conditions no. 25-187A-SC, "Boeing Model 777 Series Airplanes; Seats with Inflatable Lapbelts."

Note: As indicated in special conditions no. 25-187A-SC, inflatable lapbelts must be shown to not affect emergency-egress capabilities in the main aisle, cross-aisle, and passageway.

Issued in Renton, Washington, on July 8, 2016.

Michael Kaszycki,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016-18323 Filed 8-2-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 25**

[Docket No. FAA-2015-7294; Special Conditions No. 25-628-SC]

Special Conditions: Gulfstream Aerospace Corporation Model GVII-G500 Airplanes; Interaction of Systems and Structures Through a Three-Axis Fly-by-Wire System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream Aerospace Corporation (Gulfstream) Model GVII-G500 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is a fly-by-wire flight-control system that governs the pitch, yaw, and roll axes of the airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Gulfstream on August 3, 2016. We must receive your comments by September 19, 2016.

ADDRESSES: Send comments identified by docket number FAA-2015-7294 using any of the following methods:

- **Federal eRegulations Portal:** Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- **Mail:** Send comments to Docket Operations, M-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12-140, West

Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

Privacy: The FAA will post all comments it receives, without change, to <http://www.regulations.gov/>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov/>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov/> at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Walt Sippel, FAA, Airframe and Cabin Safety Branch, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone 425-227-2774; facsimile 425-227-1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On March 29, 2012, Gulfstream applied for a type certificate for their new Model GVII-G500 airplane. This transport-category, twin-engine airplane will be a business jet capable of accommodating up to 19 passengers. The maximum takeoff weight is 91,000 lbs.

Type Certification Basis

Under title 14, Code of Federal Regulations (14 CFR) 21.17, Gulfstream must show that the Model GVII-G500 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25-1 through 25-129.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25) do not contain adequate or appropriate safety standards for the Model GVII-G500 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, Model GVII-G500 airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36. The FAA must issue a finding of regulatory adequacy under section 611 of Public Law 92-574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Model GVII-G500 airplane will incorporate the following novel or unusual design feature:

A fly-by-wire flight-control system that governs the pitch, yaw, and roll axes of the airplane.

Discussion

Active flight-control systems are capable of providing automatic responses to inputs from sources other

than pilots. Active flight-control systems have been expanded in function, effectiveness, and reliability such that fly-by-wire flight controls, without a manual backup system to address system failures, are becoming standard equipment. As a result of these advancements in flight-control technology, the current safety standards contained in 14 CFR part 25 do not provide an adequate basis to address an acceptable level of safety for airplanes so equipped. Instead, certification of these systems has been achieved by issuance of special conditions under the provisions of § 21.16.

For example, stability-augmentation systems (SASs), and to a lesser extent load alleviation systems (LASs), have been used on transport airplanes for many years. Past approvals of these systems were based on individual findings of equivalent level of safety with existing rules and through special conditions. Advisory circular 25.672-1 was issued November 11, 1983, to provide an equivalent means of compliance under the provisions of § 21.21(b)(1) for SAS, LAS, and flutter control systems (FCSs), another type of active flight-control system.

Although autopilots are also considered active flight-control systems, their control authority has historically been limited such that the consequences of system failures could be readily counteracted by the pilot. Now, autopilot functions are integrated into the primary flight controls and given sufficient control authority to maneuver the airplane to its structural design limits. This advanced technology, with its expanded authority, requires a new approach to account for the interaction of control systems and structures.

The usual deterministic approach to defining the loads envelope contained in 14 CFR part 25 does not fully account for system effectiveness and system reliability. These automatic systems may be inoperative, or may operate in a degraded mode with less than full system authority. Therefore, it is necessary to determine the structural factors of safety and operating margins such that the joint probability of structural failures, due to application of loads during system malfunctions, is not greater than that found in airplanes equipped with earlier-technology control systems. To achieve this objective, it is necessary to define the failure conditions with their associated frequency of occurrence to determine the structural factors of safety and operating margins that will ensure an acceptable level of safety.

Earlier automatic control systems usually provided two states; either fully

functioning or totally inoperative. The flightcrew readily detected these conditions. The new active flight-control systems have failure modes that allow the system to function in a degraded mode without full authority. The flightcrew do not readily detect these degraded modes. Therefore, monitoring systems are required on these new systems to provide an annunciation of degraded system capability.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Gulfstream Model GVII-G500 airplane. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model series of airplane. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Gulfstream Model GVII-G500 airplane.

For airplanes equipped with systems that affect structural performance, either directly or as a result of a failure or malfunction, the influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of 14 CFR part 25, subparts C and D.

The following criteria must be used for showing compliance with these special conditions for airplanes equipped with flight-control systems, autopilots, stability-augmentation systems, load-alleviation systems, flutter-control systems, fuel-management systems, and other systems that either directly, or as a result of failure or malfunction, affect structural performance. If these special conditions are used for other systems, it may be necessary to adapt the criteria to the specific system.

1. The criteria defined herein only address the direct structural consequences of the system responses and performance. They cannot be considered in isolation, but should be included in the overall safety evaluation of the airplane. These criteria may, in some instances, duplicate standards already established for this evaluation. These criteria are only applicable to structure the failure of which could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements, when operating in the system degraded or inoperative mode, are not provided in these special conditions.

2. Depending upon the specific characteristics of the airplane, additional studies that go beyond the criteria provided in these special conditions may be required to demonstrate the airplane's capability to meet other realistic conditions, such as alternative gust or maneuver descriptions for an airplane equipped with a load-alleviation system.

3. The following definitions are applicable to these special conditions.

a. *Structural performance:* Capability of the airplane to meet the structural requirements of 14 CFR part 25.

b. *Flight limitations:* Limitations that can be applied to the airplane flight conditions following an in-flight occurrence, and that are included in the airplane flight manual (e.g., speed limitations, avoidance of severe weather conditions, etc.).

c. *Operational limitations:* Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (e.g., fuel, payload and master minimum-equipment list limitations).

d. *Probabilistic terms:* Terms such as probable, improbable, and extremely improbable, as used in these special conditions, are the same as those used in § 25.1309.

e. *Failure condition:* This term is the same as that used in § 25.1309. However, these special conditions apply only to system-failure conditions that affect the structural performance of the airplane (e.g., system-failure conditions that induce loads, change the response of the airplane to inputs such as gusts or pilot actions, or lower flutter margins).

Effects of Systems on Structures

1. *General.* The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

2. *System fully operative.* With the system fully operative, the following apply:

a. Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in 14 CFR part 25, subpart C (or defined by special conditions or equivalent level of safety in lieu of those specified in subpart C), taking into account any special behavior of such a system or associated functions, or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds, or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

b. The airplane must meet the strength requirements of 14 CFR part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure that the behavior of the system presents no anomaly compared to the behavior below limit conditions.

However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

c. The airplane must meet the aeroelastic stability requirements of § 25.629.

3. *System in the failure condition.* For any system-failure condition not shown to be extremely improbable, the following apply:

a. At the time of occurrence. Starting from 1g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the

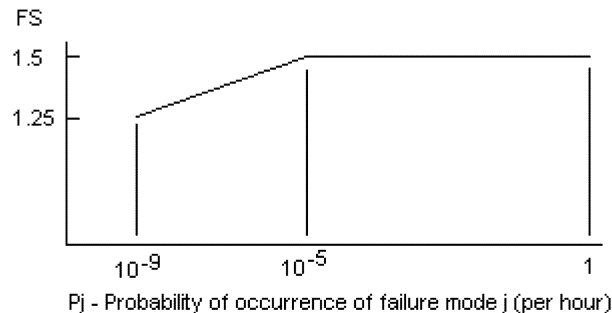
time of failure and immediately after the failure.

i. For static-strength substantiation, these loads, multiplied by an

appropriate factor of safety that is related to the probability of occurrence of the failure, are ultimate loads to be

considered for design. The factor of safety is defined in Figure 1, below.

Figure 1: Factor of safety (FS) at the time of occurrence



ii. For residual-strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in special condition 3.a.(i). For pressurized cabins, these loads must be combined with the normal operating differential pressure.

iii. Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speeds beyond V_C/M_C , freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

iv. Failures of the system that result in forced structural vibrations

(oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

b. For the continuation of the flight. For the airplane in the system-failed state, and considering any appropriate reconfiguration and flight limitations, the following apply:

i. The loads derived from the following conditions (or used in lieu of the following conditions) at speeds up to V_C/M_C (or the speed limitation prescribed for the remainder of the flight) must be determined:

1. The limit symmetrical maneuvering conditions specified in §§ 25.331 and 25.345.

2. the limit gust and turbulence conditions specified in §§ 25.341 and 25.345.

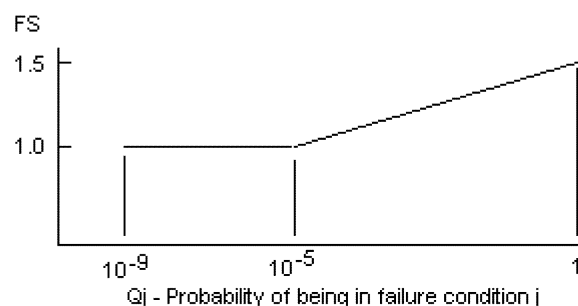
3. the limit rolling conditions specified in § 25.349, and the limit unsymmetrical conditions specified in §§ 25.367, and 25.427(b) and (c).

4. the limit yaw-maneuvering conditions specified in § 25.351.

5. the limit ground-loading conditions specified in §§ 25.473 and 25.491.

ii. For static-strength substantiation, each part of the structure must be able to withstand the loads in special condition 3.b.(i), multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety is defined in Figure 2, below.

Figure 2: Factor of safety (FS) for continuation of flight



Where:

$Q_j = (T_j)(P_j)$

Q_j = Probability of being in failure mode j

T_j = Average time spent in failure mode j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

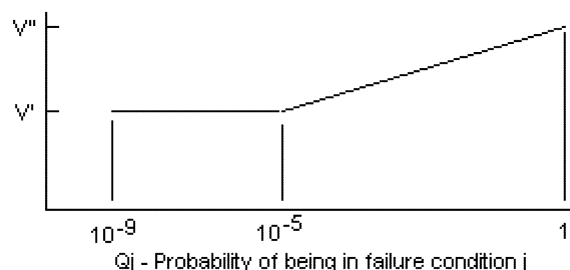
Note: If P_j is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be applied to all limit load conditions specified in 14 CFR part 25, subpart C.

iii. For residual-strength substantiation, the airplane must be able to withstand two-thirds of the ultimate loads defined in paragraph 3.b.(ii) of these special conditions. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

iv. If the loads induced by the failure condition have a significant effect on

fatigue or damage tolerance, then their effects must be taken into account.

v. Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3, below. Flutter clearance speeds V' and V'' may be based on the speed limitation specified for the remainder of the flight using the margins defined by § 25.629(b).

Figure 3: Clearance speed

V' = Clearance speed as defined by § 25.629(b)(2).

V'' = Clearance speed as defined by § 25.629(b)(1).

Where:

$Q_j = (T_j)(P_j)$ where:

Q_j = Probability of being in failure mode j

T_j = Average time spent in failure mode j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V'' .

vi. Freedom from aeroelastic instability must also be shown up to V' in Figure 3, above, for any probable system-failure condition, combined with any damage required or selected for investigation by § 25.571(b).

b. Consideration of certain failure conditions may be required by other sections of 14 CFR part 25 regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9} , criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

4. Failure indications. For system-failure detection and indication, the following apply:

a. The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by 14 CFR part 25, or that significantly reduce the reliability of the remaining system. As far as reasonably practicable, the flightcrew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of detection and indication systems, to achieve the objective of this requirement. These certification-maintenance requirements must be limited to components that are not readily detectable by normal detection-and-indication systems, and

where service history shows that inspections will provide an adequate level of safety.

b. The existence of any failure condition, not extremely improbable, during flight, that could significantly affect the structural capability of the airplane, and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flightcrew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of 14 CFR part 25, subpart C below 1.25, or flutter margins below V'' , must be signaled to the crew during flight.

5. Dispatch with known failure conditions. If the airplane is to be dispatched in a known system-failure condition that affects structural performance, or that affects the reliability of the remaining system to maintain structural performance, then the provisions of these special conditions must be met, including the provisions of special condition 2 for the dispatched condition, and special condition 3 for subsequent failures. Expected operational limitations may be taken into account in establishing P_j as the probability of failure occurrence for determining the safety margin in Figure 1. Flight limitations and expected operational limitations may be taken into account in establishing Q_j as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state, and then subsequently encountering limit load conditions, is extremely improbable. No reduction in these safety margins is allowed if the subsequent system-failure rate is greater than 10^{-3} per hour.

Issued in Renton, Washington, on July 27, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016-18448 Filed 8-2-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA-2016-3872; Special Conditions No. 25-629-SC]

Special Conditions: Embraer S.A. Model EMB-545 and EMB-550 airplanes, Synthetic Vision System and Enhanced Flight Vision System on Head-Up Display

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Embraer S.A. (Embraer) Model EMB-545 and EMB-550 airplanes. These airplanes will have a novel or unusual design feature associated with a vision system that displays video imagery on the head-up display. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Embraer S.A. on August 3, 2016. We must receive your comments by September 19, 2016.

ADDRESSES: Send comments identified by docket number FAA-2016-3872 using any of the following methods:

- *Federal eRegulations Portal:* Go to <http://www.regulations.gov> and follow

the online instructions for sending your comments electronically.

- **Mail:** Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

- **Hand Delivery or Courier:** Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Fax:** Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to <http://www.regulations.gov/>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at <http://DocketsInfo.dot.gov/>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov/> at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dale Dunford, FAA, Airplane and Flightcrew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2239; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplane.

In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On October 9, 2014, Embraer applied for a change to Type Certificate No. TC00062IB for a synthetic vision system (SVS) and enhanced flight vision system (EFVS) on a head-up display (HUD) in Model EMB–545 and EMB–550 airplanes. These airplanes are business jets capable of accommodating up to 9 passengers (EMB–545) or 12 passengers (EMB–550).

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Embraer must show that the Model EMB–545 and EMB–550 airplanes, as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. TC00062IB, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA. The regulations listed in the type certificate are commonly referred to as the “original type certification basis.” In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model EMB–545 and EMB–550 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions

would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, Embraer Model EMB–545 and EMB–550 airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Novel or Unusual Design Features

The Embraer Model EMB–545 and EMB–550 airplanes will incorporate the following novel or unusual design feature: an enhanced-flight vision system and synthetic vision system that display video imagery on a head-up display.

Discussion

Video display on the HUD constitutes new and unusual technology for which the FAA has no certification criteria. Section 25.773 does not permit visual distortions and reflections in the pilot's view out the airplane windshield that could interfere with the pilot's normal duties, and was not written in anticipation of such technology. Special conditions are therefore issued as prescribed under the provisions of § 21.16.

For many years the FAA has approved, on transport-category airplanes, the use of HUD that display flight symbols without a significant visual obstruction of the outside view. When the FAA began to evaluate the display of enhanced vision-system (EVS) imagery on the HUD, significant potential to obscure the outside view became apparent, contrary to the requirements of 14 CFR 25.773. This rule does not permit distortions and reflections in the pilot-compartment view, through the airplane windshield, that interferes with normal duties, and the rule was not written in anticipation of such technology. The video image potentially interferes with the pilot's ability to see the natural scene in the center of the forward field of view. Therefore, the FAA issued special conditions for such HUD/EVS installations to ensure that the level of safety required by § 25.773 would be met even when the image might partially obscure the outside view. While many of the characteristics of EVS and SVS video differ in some ways, they have one thing in common: the potential for interference with the

outside view through the airplane windshield.

Although the pilot may be able to see around and through small, individual, stroke-written symbols on the HUD, the pilot may not be able to see around or through the image that fills the display without some interference of the outside view. Nevertheless, the vision-system video may be capable of meeting the required level of safety when considering the combined view of the image and the outside scene visible to the pilot through the image. It is essential that the pilot can use this combination of image and natural view of the outside scene as safely and effectively as the pilot-compartment view currently available without the vision-system image.

Because § 25.773 does not provide for any alternatives or considerations for such a new and novel system, the FAA establishes safety requirements that assure an equivalent level of safety and effectiveness of the pilot-compartment view as intended by that rule. The purpose of these special conditions is to provide the unique pilot-compartment-view requirements for the EFVS/SVS installation.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Embraer Model EMB-545 and EMB-550 airplanes. Should Embraer apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for

adopting these special conditions upon publication in the **Federal Register**.

The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions apply to all Synthetic Vision System (SVS) and Enhanced Flight Vision System (EFVS) on Head-Up Display (HUD) installations on the Embraer Model EMB-545 and EMB-550 airplanes in lieu of the requirements of § 25.773 at Amendment 25-129:

1. The synthetic vision system (SVS) or enhanced flight vision system (EFVS) imagery on the head-up display (HUD) must not degrade the safety of flight or interfere with the effective use of outside visual references for required pilot tasks during any phase of flight in which it is to be used.

2. To avoid unacceptable interference with the safe and effective use of the pilot-compartment view, the SVS or EFVS device must meet the following requirements:

a. The SVS or EFVS design must minimize unacceptable display characteristics or artifacts (e.g., noise, "burlap" overlay, running water droplets, terrain shadowing against a dark background) that obscure the desired image of the scene, impair the pilot's ability to detect and identify visual references, mask flight hazards, distract the pilot, or otherwise degrade task performance or safety.

b. Control of SVS or EFVS image-display brightness must be sufficiently effective in dynamically changing background (ambient) lighting conditions to avoid pilot distraction, impairment of the display that would distract the pilot, impairing the pilot's ability to detect and identify visual references, masking of flight hazards, or otherwise degrading task performance or safety. If automatic control for image brightness is not provided, it must be shown that a single manual setting is satisfactory for the range of lighting conditions encountered during a time-critical, high-workload phase of flight (e.g., low-visibility instrument approach).

c. A readily accessible control must be provided that permits the pilot to immediately deactivate and reactivate display of the SVS or EFVS image on demand, without removing the pilot's hands from the primary flight controls (yoke or equivalent) or thrust control.

d. The SVS or EFVS image on the HUD must not impair the pilot's use of guidance information, or degrade the presentation and pilot awareness of essential flight information displayed on the HUD, such as alerts, airspeed, attitude, altitude and direction, approach guidance, wind-shear guidance, traffic-alert and collision-avoidance system (TCAS) resolution advisories, or unusual attitude recovery cues.

e. The SVS or EFVS image and the HUD symbols, which are spatially referenced to the pitch scale, outside view, and image, must be scaled and aligned (*i.e.*, conformal) to the external scene. In addition, the SVS or EFVS image and the HUD symbols—when considered singly or in combination—must not be misleading, cause pilot confusion, or increase workload. Airplane attitudes or cross-wind conditions may cause certain symbols (e.g., the zero-pitch line or flight-path vector) to reach field-of-view limits, such that they cannot be positioned conformally with the image and external scene. In such cases, these symbols may be displayed, but with an altered appearance that makes the pilot aware that they are no longer displayed conformally (for example, "ghosting"). The combined use of symbology and runway image may not be used for path monitoring when path symbology is no longer conformal.

f. A HUD system installed to display SVS or EFVS images must, if previously certified, continue to meet all of the requirements of the original approval.

3. The display of the SVS or EFVS image must not degrade the safety and performance of the pilot tasks associated with the use of the pilot-compartment view. Pilot tasks that must not be degraded by the SVS or EFVS image include:

a. Detection, accurate identification, and maneuvering, as necessary, to avoid traffic, terrain, obstacles, and other hazards of flight.

b. Accurate identification and utilization of visual references required for every task relevant to the phase of flight.

4. Appropriate limitations must be stated in the operating limitations section of the airplane flight manual to prohibit the use of the SVS or EFVS for functions that have not been found to be acceptable.

Issued in Renton, Washington, on July 27, 2016.

Victor Wicklund,

*Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.*

[FR Doc. 2016-18447 Filed 8-2-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA-2016-4116; Special
Conditions No. 25-627-SC]

Special Conditions: FedEx Express Corporation, Boeing Model 767-300F; Enhanced Flight Vision System

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final special conditions; request
for comments.

SUMMARY: These special conditions are issued for the Boeing Model 767-300F airplane. This airplane, as modified by the FedEx Express Corporation (FedEx), will have a novel or unusual design feature associated with an advanced, enhanced flight vision system (EFVS). The EFVS consists of a head-up display (HUD) system modified to display forward-looking infrared (FLIR) imagery. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on FedEx on August 3, 2016. We must receive your comments by September 19, 2016.

ADDRESSES: Send comments identified by docket number FAA-2016-4116 using any of the following methods:

- **Federal eRegulations Portal:** Go to <http://www.regulations.gov/> and follow the online instructions for sending your comments electronically.

- **Mail:** Send comments to Docket Operations, M-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- **Hand Delivery or Courier:** Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Fax:** Fax comments to Docket Operations at 202-493-2251.

Privacy: The FAA will post all comments it receives, without change, to <http://www.regulations.gov/>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov/>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov/> at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dale Dunford, FAA, Transport Standards Staff, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone 425-227-2239; fax 425-227-1320; email dale.dunford@faa.gov.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive on or before the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On November 30, 2012, FedEx applied for a supplemental type

certificate for the installation and operation of a HUD and an EFVS in the Boeing Model 767-300F airplane. The original type certificate for the 767-300F airplanes is A1NM. The Boeing Model 767-300F is a transport-category, cargo-carrying airplane that operates with a crew of two.

Type Certification Basis

Under the provisions of 14 CFR 21.101, FedEx must show that the Boeing Model 767-300F airplane, as changed, continues to meet the applicable provisions of the regulations listed in type certificate no. A1NM, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA. The regulations listed in the type certificate are commonly referred to as the "original type certification basis." The regulations are listed in Type Certificate Data Sheet No. A1NM, which covers all variants of Boeing Model 767 airplanes. In addition, the certification basis includes certain special conditions and exemptions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 767-300F airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model 767-300F airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19 in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 767-300F airplane will incorporate the following novel or unusual design feature: An EFVS that projects a video image derived from a FLIR camera through the HUD. The EFVS image is projected in the center of

the “pilot compartment view,” which is governed by § 25.773. The image is displayed with HUD symbology and overlays the forward outside view. Therefore, § 25.773 does not contain appropriate safety standards for the EFVS display.

Discussion

Video display on the HUD constitutes new and unusual technology for which the FAA has no certification criteria. Section 25.773 does not permit visual distortions and reflections in the pilot's view out the airplane windshield that could interfere with the pilot's normal duties, and was not written in anticipation of such technology. Special conditions are therefore issued as prescribed under the provisions of § 21.16.

For many years, the FAA has approved, on transport-category airplanes, the use of HUD that display flight symbols without a significant visual obstruction of the outside view. When the FAA began to evaluate the display of enhanced vision-system (EVS) imagery on the HUD, significant potential to obscure the outside view became apparent, contrary to the requirements of 14 CFR 25.773. This rule does not permit distortions and reflections in the pilot-compartment view, through the airplane windshield, that interfere with normal duties, and the rule was not written in anticipation of such technology. The video image potentially interferes with the pilot's ability to see the natural scene in the center of the forward field of view. Therefore, the FAA issued special conditions for such HUD/EVS installations to ensure that the level of safety required by § 25.773 would be met even when the image might partially obscure the outside view. EVS video has the potential for causing interference with the outside view through the airplane windshield.

Although the pilot may be able to see around and through small, individual, stroke-written symbols on the HUD, the pilot may not be able to see around or through the image that fills the display without some interference of the outside view. Nevertheless, the EVS video may be capable of meeting the required level of safety when considering the combined view of the image and the outside scene visible to the pilot through the image. It is essential that the pilot can use this combination of image and natural view of the outside scene as safely and effectively as the pilot-compartment view currently available without the vision-system image.

Because § 25.773 does not provide for any alternatives or considerations for

such a new and novel system, the FAA establishes safety requirements that assure an equivalent level of safety and effectiveness of the pilot-compartment view as intended by that rule. The purpose of these special conditions is to provide the unique pilot-compartment-view requirements for the EFVS installation.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 767–300F airplane. Should FedEx apply at a later date for a supplemental type certificate to modify any other model included on type certificate no. A1NM to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Boeing 767–300F airplanes. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the

Administrator, the following special conditions are issued as part of the type-certification basis for Boeing Model 767–300F airplanes modified by FedEx.

1. Enhanced flight vision system (EFVS) imagery on the head-up display (HUD) must not degrade the safety of flight or interfere with the effective use of outside visual references for required pilot tasks during any phase of flight in which it is to be used.

2. To avoid unacceptable interference with the safe and effective use of the pilot compartment view, the EFVS device must meet the following requirements:

a. The EFVS design must minimize unacceptable display characteristics or artifacts (*e.g.*, noise, “burlap” overlay, running water droplets) that obscure the desired image of the scene, impair the pilot's ability to detect and identify visual references, mask flight hazards, distract the pilot, or otherwise degrade task performance or safety.

b. Automatic control of EFVS display brightness must be sufficiently effective, in dynamically changing background (ambient) lighting conditions, to prevent full or partial blooming of the display that would distract the pilot, impair the pilot's ability to detect and identify visual references, mask flight hazards, or otherwise degrade task performance or safety. If automatic control for image brightness is not provided, it must be shown that a single manual setting is satisfactory for the range of lighting conditions encountered during a time-critical, high-workload phase of flight (*e.g.*, low visibility instrument approach).

c. A readily accessible control must be provided that permits the pilot to immediately deactivate and reactivate display of the EFVS image on demand without removing the pilot's hands from the primary flight controls (yoke or equivalent) or thrust control.

d. The EFVS image on the HUD must not impair the pilot's use of guidance information, or degrade the presentation and pilot awareness of essential flight information displayed on the HUD, such as alerts, airspeed, attitude, altitude and direction, approach guidance, windshear guidance, traffic alert and collision avoidance system (TCAS) resolution advisories, or unusual attitude recovery cues.

e. The EFVS image and the HUD symbols, which are spatially referenced to the pitch scale, outside view, and image, must be scaled and aligned (*i.e.*, conformal) to the external scene. In addition, the EFVS image and the HUD symbols, when considered singly or in combination, must not be misleading, cause pilot confusion or increase

workload. Airplane attitudes or crosswind conditions may cause certain symbols (e.g., the zero-pitch line or flight path vector) to reach field-of-view limits such that they cannot be positioned conformally with the image and external scene. In such cases, these symbols may be displayed but with an altered appearance, which makes the pilot aware that they are no longer displayed conformally (for example, "ghosting").

f. A HUD system used to display EFVS images must, if previously certified, continue to meet all of the requirements of the original approval.

3. The safety and performance of the pilot tasks associated with the use of the pilot compartment view must not be degraded by the display of the EFVS image. Pilot tasks that must not be degraded by the EFVS image include:

a. Detection, accurate identification, and maneuvering, as necessary, to avoid traffic, terrain, obstacles, and other hazards of flight.

b. Accurate identification and utilization of visual references required for every task relevant to the phase of flight.

4. Use of EFVS for instrument approach operations must be in accordance with the provisions of § 91.175(l) and (m), and § 121.651, where applicable. Appropriate limitations must be stated in the operating limitations section of the airplane flight manual to prohibit the use of the EFVS for functions that have not been found to be acceptable.

Issued in Renton, Washington, on July 27, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016-18445 Filed 8-2-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA-2016-7851; Special Conditions No. 25-625-SC]

Special Conditions: Associated Air Center, Boeing Model 747-8 Airplane; Installation of an Airbag System To Limit the Axial Rotation of the Upper Leg on Single-Place Side-Facing Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Boeing Model 747-8 airplane. This airplane, as modified by Associated Air Center, will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is an airbag system to limit axial rotation of the upper leg, due to leg flail, of occupants in single-place side-facing seats. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Associated Air Center on August 3, 2016. We must receive your comments by September 19, 2016.

ADDRESSES: Send comments identified by docket number FAA-2016-7851 using any of the following methods:

- *Federal eRegulations Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

Privacy: The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov/>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for

accessing the docket or go to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jayson Claar, FAA, Airframe and Cabin Safety Branch, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone 425-227-2194; facsimile 425-227-1320.

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been subject to the public comment process with no comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On February 15, 2014, Associated Air Center applied for a supplemental type certificate for inflatable airbag systems in the Boeing Model 747-8 airplane. This airplane, currently approved under type certificate no. A20WE, is a private, not-for-hire, not-for-common-carriage business jet with a head-of-state interior. This airplane has a maximum passenger seating capacity of 113. Twelve of the passenger-seating positions include single-place side-facing seats, each of which include an airbag system to protect against leg-flail injuries.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Associated Air Center must show that the Model 747-8 airplane, as changed, continues to meet the applicable provisions of the regulations listed in type certificate no. A20WE, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain

adequate or appropriate safety standards for the Model 747-8 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 747-8 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 747-8 airplane, as modified by Associated Air Center, will incorporate the following novel or unusual design features: An airbag system to limit axial rotation of the upper leg, due to leg flail, of occupants in single-place side-facing seats.

Discussion

The Boeing Model 747-8 airplane has an interior configuration that includes single-place side-facing seats. These seats include an airbag system in the shoulder belt, per Special Conditions no. 25-606-SC; and an airbag system to limit the axial rotation of the upper leg (femur).

Side-facing seats are considered a novel design for transport-category airplanes that include title 14, Code of Federal Regulations (14 CFR) part 25, Amendment 25-64, in their certification bases and were not anticipated when those airworthiness standards were issued. Therefore, the existing regulations do not provide adequate or appropriate safety standards for occupants of side-facing seats. The FAA issued Special Conditions no. 25-606-SC to address the certification of single- and multiple-place side facing seats for Boeing 747-8 airplanes. Those special conditions include condition 2(e), which requires the axial rotation of the upper-leg (femur) to be limited to 35 degrees in either direction from the nominal seat position. Associated Air Center has developed an airbag system that will be installed close to the floor

and that is designed to limit the axial rotation of the upper-leg.

Serious leg injuries, such as femur fracture, can occur in aviation side-facing seats, injuries that could threaten the occupant's life directly or eliminate the occupant's ability to evacuate the airplane. Limiting upper-leg axial rotation to a conservative limit of 35 degrees (approximately the 50-percentile range of motion) should also limit the risk of serious leg injury. Research suggests that the angle of rotation can be determined by observing lower-leg flailing in typical high-speed video of the dynamic tests. Alternately, the anthropomorphic test dummy could be instrumented to directly measure upper-leg axial rotation. This requirement complies with the intent of the § 25.562(a) injury criteria in preventing serious leg injury.

To comply with special condition 2(e) on some seat positions, Associated Air Center proposes to install leg-flail airbags. This airbag is not addressed in Special Conditions no. 25-606-SC. Therefore, the FAA must issue new special conditions to address this leg-flail airbag installation. These special conditions are similar to other special conditions previously issued for airbags.

Special Conditions no. 25-606-SC for the airbag system in the shoulder belt are based on previous special conditions for airbag systems on forward-facing seat lap belts with some changes to address the specific issues of side-facing seats.

These special conditions for the leg-flail airbag contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 747-8 airplane as modified by Associated Air Center. Should Associated Air Center apply at a later date for a supplemental type certificate to modify any other model included on type certificate no. A20WE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions previously has been

subjected to the notice and comment period and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 747-8 airplanes modified by Associated Air Center.

In addition to the requirements of §§ 25.562 and 25.785, and Special Conditions no. 25-606-SC, the following special conditions are part of the type certification basis for Boeing 747-8 airplanes with leg-flail airbag systems installed on side-facing seats.

1. For seats with leg-flail airbag systems, these systems must deploy and provide protection under crash conditions where it is necessary to prevent serious injury. The means of protection must take into consideration a range of stature from a 2-year-old child to a 95th-percentile male. At some buttock popliteal length and effective seat-bottom depth, the lower legs will not be able to form a 90-degree angle with the upper leg; at this point, the lower-leg flail would not occur. The leg-flail airbag system must provide a consistent approach to prevention of leg flail throughout that range of occupants whose lower legs can form a 90-degree angle relative to the upper legs when seated upright in the seat. Items that need to be considered include, but are not limited to, the range of occupants' popliteal height, the range of occupants' buttock popliteal length, the design of the seat effective height above the floor, and the effective depth of the seat bottom cushion.

2. The leg-flail airbag system must not be susceptible to inadvertent

deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), and other operating and environmental conditions (vibrations, moisture, etc.) likely to occur in service.

3. Deployment of the leg-flail airbag system must not introduce injury mechanisms to the seated occupant, or result in injuries that could impede rapid egress.

4. Inadvertent deployment of the leg-flail airbag system, during the most critical part of the flight, must either meet the requirement of § 25.1309(b), or not cause a hazard to the airplane or its occupants. This also includes preventing inadvertent airbag deployment from a static discharge.

5. The leg-flail airbag system must not impede rapid egress of occupants from the airplane 10 seconds after airbag deployment.

6. The leg-flail airbag system must be protected from lightning and high-intensity radiated fields (HIRF). The threats to the airplane specified in existing regulations regarding lightning (§ 25.1316) and HIRF (§ 25.1317) are incorporated by reference for the purpose of measuring lightning and HIRF protection.

7. The leg-flail airbag system must function properly after loss of normal airplane electrical power, and after a transverse separation of the fuselage at the most critical location. A separation at the location of the leg-flail airbag system does not have to be considered.

8. The leg-flail airbag system must not release hazardous quantities of gas, sharp injurious metal fragments, or particulate matter into the cabin.

9. The leg-flail airbag system installation must be protected from the effects of fire such that no hazard to occupants will result.

10. A means must be available to verify the integrity of the leg-flail airbag system's activation system prior to each flight, or the leg-flail airbag system's activation system must reliably operate between inspection intervals. The FAA considers that the loss of the leg-flail airbag system's deployment function alone (*i.e.*, independent of the conditional event that requires the leg-flail airbag system's deployment) is a major-failure condition.

11. The airbag inflatable material may not have an average burn rate of greater than 2.5 inches per minute when tested using the horizontal flammability test defined in part 25, appendix F, part I, paragraph (b)(5).

12. The leg-flail airbag system, once deployed, must not adversely affect the emergency-lighting system (*i.e.*, block

floor-proximity lights to the extent that the lights no longer meet their intended function).

Issued in Renton, Washington, on July 26, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016-18398 Filed 8-2-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2016-3983; Directorate Identifier 2015-NM-009-AD; Amendment 39-18582; AD 2016-14-01]

RIN 2120-AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to certain Airbus Model A330-200 Freighter series airplanes; Model A330-200 and A330-300 series airplanes; Model A340-200 and A340-300 series airplanes; Model A340-500 series airplanes; and Model A340-600 series airplanes. Table 1 to paragraph (j) of the regulatory text contains typographical errors regarding certain part numbers (P/Ns). This document corrects those errors. In all other respects, the original document remains the same.

DATES: This final rule is effective August 16, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 16, 2016 (81 FR 44983, July 12, 2016).

ADDRESSES: For Airbus service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email airworthiness.A330-A340@airbus.com; Internet <http://www.airbus.com>.

For Hamilton Sundstrand service information identified in this final rule, contact Hamilton Sundstrand, Technical Publications, Mail Stop 302-9, 4747 Harrison Avenue, P.O. Box 7002, Rockford, IL 61125-7002; telephone 860-654-3575; fax 860-998-4564; email

tech.solutions@hs.utc.com; Internet <http://www.hamiltonsundstrand.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-2016-3983.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; 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 address for the Docket Office (phone: 800-647-5527) is 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 20590.

FOR FURTHER INFORMATION CONTACT:

Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1138; fax 425-227-1149.

SUPPLEMENTARY INFORMATION:

Airworthiness Directive 2016-14-01, Amendment 39-18582 (81 FR 44983, July 12, 2016) ("AD 2016-14-01"), currently requires identification of the manufacturer, part number, and serial number of the ram air turbine (RAT), and re-identification and modification of the RAT if necessary, for certain Airbus Model A330-200 Freighter series airplanes; Model A330-200 and A330-300 series airplanes; Model A340-200 and A340-300 series airplanes; Model A340-500 series airplanes; and Model A340-600 series airplanes.

Need for the Correction

As published, table 1 to paragraph (j) of the regulatory text contains typographical errors in two part numbers. Table 1 to paragraph (j) of the AD incorrectly refers to RAT P/Ns 1720934C and 1720934D. Those part numbers should have been 1702934C and 1702934D.

Related Service Information Under 14 CFR Part 51

Airbus has issued the following service information, which describes procedures for identifying the supplier, part number, and serial number of the

installed RAT actuator; modifying the RAT; and re-identifying the RAT actuator and RAT.

- Service Bulletin A330–29–3126, dated June 12, 2014.
- Service Bulletin A340–29–4097, dated June 12, 2014.
- Service Bulletin A340–29–5025, dated June 16, 2014.

Hamilton Sundstrand has issued Service Bulletins ERPS06M–29–21, Revision 1, dated April 14, 2015; and ERPS33T–29–7, dated June 6, 2014. This service information describes procedures for identifying the affected RAT actuator and RAT part numbers and serial numbers, modifying affected actuators, and re-identifying affected RAT actuators and RATs.

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.

Correction of Publication

This document corrects an error and correctly adds the AD as an amendment to 14 CFR 39.13. Although no other part of the preamble or regulatory information has been corrected, we are publishing the entire rule in the **Federal Register**.

The effective date of this AD remains August 16, 2016.

Since this action only corrects typographical errors, it has no adverse economic impact and imposes no additional burden on any person. Therefore, we have determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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 [Corrected]

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

2016–14–01 Airbus: Amendment 39–18582; Docket No. FAA–2016–3983; Directorate Identifier 2015–NM–009–AD.

(a) Effective Date

This AD becomes effective on August 16, 2016.

(b) Affected ADs

This AD affects the ADs specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD.

(1) AD 2012–21–19, Amendment 39–17235 (77 FR 65812, October 31, 2012) (“AD 2012–21–19”).

(2) AD 2012–21–20, Amendment 39–17236 (77 FR 65799, October 31, 2012) (“AD 2012–21–20”).

(3) AD 2016–04–01, Amendment 39–18395 (81 FR 8134, February 18, 2016) (“AD 2016–04–01”).

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) through (c)(7) of this AD, certificated in any category.

(1) Airbus Model A330–223F and –243F airplanes, all manufacturer serial numbers; except those on which Airbus Modification 204067 has been embodied in production.

(2) Airbus Model A330–201, –202, –203, –223, and –243 airplanes, all manufacturer serial numbers; except those on which Airbus Modification 204067 has been embodied in production.

(3) Airbus Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, all manufacturer serial numbers; except those on which Airbus Modification 204067 has been embodied in production.

(4) Airbus Model A340–211, –212, and –213, airplanes, all manufacturer serial numbers.

(5) Airbus Model A340–311, –312, and –313 airplanes, all manufacturer serial numbers.

(6) Airbus Model A340–541 airplanes, all manufacturer serial numbers.

(7) Airbus Model A340–642 airplanes, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic Power.

(e) Reason

This AD was prompted by a report indicating that, during an operational test of a ram air turbine (RAT), the RAT did not deploy in automatic mode. We are issuing this AD to prevent non-deployment of the RAT, which, if preceded by a total engine flame-out, or during a total loss of normal electrical power generation, could result in reduced control of the airplane.

(f) Compliance

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

(g) Identification and Replacement for Certain Airbus Model A330, and A340–200 and –300 Airplanes

For Airbus Model A330–200 Freighter series airplanes, Model A330–200 and –300 series airplanes, and Model A340–200 and –300 series airplanes: Within 30 months after the effective date of this AD, identify the supplier, part number, and serial number of the installed RAT actuator, in accordance with the Accomplishment Instructions of

Airbus Service Bulletin A330–29–3126, dated June 12, 2014; or Airbus Service Bulletin A340–29–4097, dated June 12, 2014; as applicable.

(1) If the supplier identified is Arkwin Industries, and the identified RAT actuator part number and serial number are listed in Hamilton Sundstrand Service Bulletin ERPS06M–29–21, Revision 1, dated April 14, 2015, and the serial number is included in table 2 of Hamilton Sundstrand Service Bulletin ERPS06M–29–21, Revision 1, dated April 14, 2015, with a description of “correctly shimmed”: Within 30 months after the effective date of this AD, re-identify the actuator and the RAT, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–29–3126, dated June 12, 2014; or Airbus Service Bulletin A340–29–4097, dated June 12, 2014; as applicable.

(2) If the supplier identified is Arkwin Industries, and the identified actuator RAT part number and serial number are listed in Hamilton Sundstrand Service Bulletin ERPS06M–29–21, Revision 1, dated April 14, 2015, and the serial number is included in table 2 of Hamilton Sundstrand Service Bulletin ERPS06M–29–21, Revision 1, dated April 14, 2015, with a description of “incorrectly shimmed”: Within 30 months after the effective date of this AD, remove the actuator from the RAT, install a modified actuator, and re-identify the RAT, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–29–3126, dated June 12, 2014; or Airbus Service Bulletin A340–29–4097, dated June 12, 2014; as applicable.

(3) If the supplier identified is Arkwin Industries, and the identification plate for the RAT actuator is missing, or the part number and serial number are not listed in Hamilton Sundstrand Service Bulletin ERPS06M–29–21, Revision 1, dated April 14, 2015: Within 30 months after the effective date of this AD, remove the actuator from the RAT, install a modified actuator, and re-identify the RAT, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–29–3126, dated June 12, 2014; or Airbus Service Bulletin A340–29–4097, dated June 12, 2014; as applicable.

(h) Identification and Replacement for Certain Airbus Model A340–500 and –600 Airplanes

For Airbus Model A340–500 and –600 airplanes: Within 30 months after the effective date of this AD, identify the part number and serial number of the installed RAT actuator, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–29–5025, dated June 16, 2014.

(1) If the identified RAT actuator part number and serial number are listed in Hamilton Sundstrand Service Bulletin ERPS33T–29–7, dated June 6, 2014, and the serial number is included in table 2 of Hamilton Sundstrand Service Bulletin ERPS33T–29–7, dated June 6, 2014, with a description of “correctly shimmed”: Within 30 months after the effective date of this AD, re-identify the actuator and the RAT, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–29–5025, dated June 16, 2014.

(2) If the identified RAT actuator part number and serial number are listed in Hamilton Sundstrand Service Bulletin ERPS33T-29-7, dated June 6, 2014, and the serial number is included in table 2 of Hamilton Sundstrand Service Bulletin ERPS33T-29-7, dated June 6, 2014, with a description of “incorrectly shimmed”: Within 30 months after the effective date of this AD, remove the actuator from the RAT, install a modified actuator, and re-identify the RAT, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340-29-5025, dated June 16, 2014.

(3) If the identification plate for the RAT actuator is missing, or the part number and serial number are not listed in Hamilton

Sundstrand Service Bulletin ERPS33T-29-7, dated June 6, 2014: Within 30 months after the effective date of this AD, remove the actuator from the RAT, install a modified actuator, and re-identify the RAT, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340-29-5025, dated June 16, 2014.

(i) Terminating Action for Certain Requirements of Other ADs

(1) For Airbus Model A330-200 Freighter, A330-200, and A330-300 series airplanes; and Model A340-200 and -300 series airplanes: Accomplishment of the actions required by paragraph (g)(1), (g)(2), or (g)(3) of this AD constitutes compliance with the requirements of paragraph (g)(1) of AD 2012-21-19, paragraph (g) of AD 2012-21-20, and

paragraphs (g), (h), and (i) of AD 2016-04-01, for that airplane only.

(2) For Airbus Model A340-500 and -600 series airplanes: Accomplishment of the actions required by paragraphs (h)(1), (h)(2), and (h)(3) of this AD constitutes compliance with the requirements of paragraphs (h)(1) and (h)(2) of AD 2012-21-20, and paragraph (j) of 2016-04-01, for that airplane only.

(j) Parts Installation Limitations

As of the effective date of this AD, no person may install any RAT actuator or any RAT having a part number identified in table 1 to paragraph (j) of this AD on any airplane, unless it meets the conditions specified in paragraph (j)(1) or (j)(2) of this AD, as applicable.

TABLE 1 TO PARAGRAPH (j) OF THIS AD—AFFECTED PART NUMBERS

Affected Airbus airplane models	RAT part No.	RAT actuator part No.
Model A330-200 and -300 series airplanes.	1702934C, 1702934D, 766351A, 768084A, 770379A, 770952C, 770952D, 770952E.	5912958, 5915768
Model A330-200 Freighter series airplanes.	1702934C, 1702934D, 766351A, 768084A, 770379A, 770952C, 770952D, 770952E.	5912958, 5915768
Model A340-200 and -300 series airplanes.	1702934C, 1702934D, 766351A, 768084A, 770379A, 770952C, 770952D, 770952E.	5912958, 5915768
Model A340-500 and -600 series airplanes.	772722H, 772722J, 772722L	5912536, 5915769

(1) For Airbus Model A330-200 Freighter series airplanes; Model A330-200, and A330-300 series airplanes; and Model A340-200 and -300 series airplanes: The RAT actuator or RAT has a serial number listed as affected and modified in Hamilton Sundstrand Service Bulletin ERPS06M-29-21, Revision 1, dated April 14, 2015, and the RAT has been re-identified in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330-29-3126, dated June 12, 2014; or Airbus Service Bulletin A340-29-4097, dated June 12, 2014.

(2) For Airbus Model A340-500 and -600 series airplanes: The RAT actuator or the RAT has a serial number listed as affected and modified in Hamilton Sundstrand Service Bulletin ERPS33T-29-7, dated June 6, 2014, and the RAT has been re-identified in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340-29-5025, dated June 16, 2014.

(k) Credit for Previous Actions

(1) This paragraph provides credit for the RAT and RAT actuator identification specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD if that identification was performed before the effective date of this AD using Hamilton Sundstrand Service Bulletin ERPS06M-29-21, dated May 27, 2014, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for the RAT or RAT actuator identification and modification specified in paragraph (j)(1) of this AD, if those actions were performed before the effective date of this AD using Hamilton Sundstrand Service Bulletin ERPS06M-29-21, dated May 27, 2014, which is not incorporated by reference in this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1138; fax 425-227-1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. 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, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC)*: If any Airbus service information contains procedures or tests that are identified as RC,

those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015-0008, dated January 15, 2015, 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-2016-3983.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(4) and (n)(5) of this AD.

(n) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on August 16, 2016 (81 FR 44983, July 12, 2016).

(i) Airbus Service Bulletin A330–29–3126, dated June 12, 2014.

(ii) Airbus Service Bulletin A340–29–4097, dated June 12, 2014.

(iii) Airbus Service Bulletin A340–29–5025, dated June 16, 2014.

(iv) Hamilton Sundstrand Service Bulletin ERPS06M–29–21, Revision 1, dated April 14, 2015.

(v) Hamilton Sundstrand Service Bulletin ERPS33T–29–7, dated June 6, 2014.

(4) For Airbus service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email airworthiness.A330-A340@airbus.com; Internet <http://www.airbus.com>.

(5) For Hamilton Sundstrand service information identified in this AD, contact Hamilton Sundstrand, Technical Publications, Mail Stop 302–9, 4747 Harrison Avenue, P.O. Box 7002, Rockford, IL 61125–7002; telephone 860–654–3575; fax 860–998–4564; email tech.solutions@hs.utc.com; Internet <http://www.hamiltonsundstrand.com>.

(6) 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.

(7) 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 July 25, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–18174 Filed 8–2–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket No. RM01–5–000]

Electronic Tariff Filings

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to the final regulations that became effective November 3, 2008 (with implementation of the requirements beginning April 1, 2010), as published in the subsequent editions of the Code of Federal Regulations, including the 2015 edition.

DATES: *Effective date:* August 3, 2016.

FOR FURTHER INFORMATION CONTACT: Richard Wartchow, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: 202–502–6000.

SUPPLEMENTARY INFORMATION: The Commission amended 18 CFR 154.112(a), addressing the filing of “special rate schedules,” reflecting special operating arrangements previously certificated pursuant to part 157 of the Commission’s regulations (such as for the exchange of natural gas).¹

As published in the 2015 edition of the Code of Federal Regulations, the final regulations (effective November 3, 2008) contained an error. Order No. 714 revised the fourth, fifth and sixth sentences to reflect new filing requirements. However, the published version of 18 CFR 154.112(a) incorrectly retained language from the earlier version that should have been superseded. The Commission did not intend to retain the superseded sentences. This correcting amendment removes the incorrectly-retained language. This correction does not affect 18 CFR 154.112(b) which remains unchanged.

List of Subjects in 18 CFR Part 154

Natural gas, Pipelines, Reporting and record-keeping requirements, Natural gas companies, Rate schedules and tariffs.

Accordingly, 18 CFR part 154 is corrected by making the following correcting amendments:

PART 154—RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 154 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 31 U.S.C. 9701; 42 U.S.C. 7102–7352.

■ 2. Section 154.112 is corrected by revising paragraph (a) to read as follows:

§ 154.112 Exception to form and composition of tariff.

(a) The Commission may permit a special rate schedule to be filed in the form of an agreement in the case of a special operating arrangement, previously certificated pursuant to part 157 of this chapter, such as for the exchange of natural gas. The special rate schedule must contain a title page showing the parties to the agreement,

¹ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, 73 FR 57515 (2008) (Order No. 714).

the date of the agreement, a brief description of services to be rendered, and the designation: “Rate Schedule X-[number].” Special rate schedules may not contain any supplements. Modifications must be made by inserting revised sheets, sections or the entire document as appropriate. Special rate schedules must be included in a separate volume of the tariff. Each such separate volume must contain a table of contents which is incorporated as a sheet or section in the open access transmission tariff.

* * * * *

Dated: July 28, 2016.

Kimberly D. Bose,
Secretary.

[FR Doc. 2016–18360 Filed 8–2–16; 8:45 am]

BILLING CODE 6717–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2016–0023]

RIN 0960–AI03

Extension of Expiration Dates for Four Body System Listings

AGENCY: Social Security Administration.
ACTION: Final rule.

SUMMARY: We are extending the expiration dates of the following body systems in the Listing of Impairments (listings) in our regulations: Musculoskeletal System, Cardiovascular System, Digestive System, and Skin Disorders. We are making no other revisions to these body systems in this final rule. This extension ensures that we will continue to have the criteria we need to evaluate impairments in the affected body systems at step three of the sequential evaluation processes for initial claims and continuing disability reviews.

DATES: This final rule is effective on August 3, 2016.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Williams, Director, Office of Medical Policy, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

We use the listings in appendix 1 to subpart P of part 404 of 20 CFR at the third step of the sequential evaluation

process to evaluate claims filed by adults and children for benefits based on disability under the title II and title XVI programs.¹ 20 CFR 404.1520(d), 416.920(d), 416.924(d). The listings are in two parts: Part A has listings criteria for adults and Part B has listings criteria for children. If you are age 18 or over, we apply the listings criteria in part A

when we assess your impairment or combination of impairments. If you are under age 18, we first use the criteria in part B of the listings when we assess your impairment(s). If the criteria in part B do not apply, we may use the criteria in part A when those criteria give appropriate consideration to the

effects of your impairment(s). 20 CFR 404.1525(b), 416.925(b).

Explanation of Changes

In this final rule, we are extending the dates on which the listings for the following four body systems will no longer be effective as set out in the following chart:

Listing	Current expiration date	Extended expiration date
Musculoskeletal System 1.00 and 101.00	January 27, 2017	January 26, 2018.
Cardiovascular System 4.00 and 104.00	January 27, 2017	January 26, 2018.
Digestive System 5.00 and 105.00	January 27, 2017	January 26, 2018.
Skin Disorders 8.00 and 108.00	January 27, 2017	January 26, 2018.

We continue to revise and update the listings on a regular basis, including those body systems not affected by this final rule.² We intend to update the four listings affected by this final rule as quickly as possible, but may not be able to publish final rules revising these listings by the current expiration dates. Therefore, we are extending the expiration dates listed above.

Regulatory Procedures

Justification for Final Rule

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in promulgating regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final regulation. The APA provides exceptions to the notice-and-comment requirements when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest.

We have determined that good cause exists for dispensing with the notice and public comment procedures. 5 U.S.C. 553(b)(B). This final rule only extends the date on which four body system listings will no longer be effective. It makes no substantive changes to our rules. Our current regulations³ provide that we may extend, revise, or promulgate the body system listings again. Therefore, we have determined that opportunity for prior comment is

unnecessary, and we are issuing this regulation as a final rule.

In addition, for the reasons cited above, we find good cause for dispensing with the 30-day delay in the effective date of this final rule. 5 U.S.C. 553(d)(3). We are not making any substantive changes to the listings in these body systems. Without an extension of the expiration dates for these listings, we will not have the criteria we need to assess medical impairments in these four body systems at step three of the sequential evaluation processes. We therefore find it is in the public interest to make this final rule effective on the publication date.

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the requirements for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB did not review it. We also determined that this final rule meets the plain language requirement of Executive Order 12866.

Regulatory Flexibility Act

We certify that this final rule does not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, we are amending Appendix 1 to subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

disorders (80 FR 21159 (2015)), cancer (malignant neoplastic diseases) (80 FR 28821 (2015)), and respiratory disorders (81 FR 37138 (2016)).

³ See the first sentence of appendix 1 to subpart P of part 404 of 20 CFR.

¹ We also use the listings in the sequential evaluation processes we use to determine whether a beneficiary's disability continues. See 20 CFR 404.1594, 416.994, and 416.994a.

² Since we last extended the expiration dates of the listings affected by this rule in January 2015 (80 FR 1 (2015)), we have published final rules revising the medical criteria for evaluating growth disorders and weight loss in children (80 FR 19522 (2015)), corrected at 80 FR 48248 (2015)), hematological

■ 2. Amend Appendix 1 to subpart P of part 404 by revising items 2, 5, 6, and 9 of the introductory text before Part A to read as follows:

**Appendix 1 to Subpart P of Part 404—
Listing of Impairments**

* * * * *

2. Musculoskeletal System (1.00 and 101.00): January 26, 2018.

* * * * *

5. Cardiovascular System (4.00 and 104.00): January 26, 2018.

6. Digestive System (5.00 and 105.00): January 26, 2018.

* * * * *

9. Skin Disorders (8.00 and 108.00): January 26, 2018.

* * * * *

[FR Doc. 2016-18051 Filed 8-2-16; 8:45 am]

BILLING CODE 4191-02-P

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 56

[EPA-HQ-OAR-2014-0616; FRL-9949-79-OAR]

RIN 2060-AS53

**Amendments to Regional Consistency
Regulations**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating revisions to its Regional Consistency regulations to more clearly address the implications of adverse federal court decisions that result from challenges to locally or regionally applicable actions. Specifically, the EPA is introducing a narrow procedural exception under which an EPA Regional office no longer needs to seek Headquarters concurrence to diverge from national policy in geographic areas covered by such an adverse court decision. The revisions will help to foster overall fairness and predictability regarding the scope and impact of judicial decisions under the Clean Air Act (CAA or Act).

DATES: This final rule is effective on September 2, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2014-0616. 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, *i.e.*, confidential business information 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 electronically in <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For further general information on this rulemaking, contact Mr. Greg Nizich, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency (C504-03), Research Triangle Park, NC 27711, by phone at (919) 541-3078, or by email at Nizich.greg@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated entities. The Administrator determined that this action is subject to the provisions of CAA section 307(d). See CAA section 307(d)(1)(V) (the provisions of CAA section 307(d) apply to “such other actions as the Administrator may determine). These are amendments to existing regulations and could affect your facility if a CAA-related ruling by a federal court affects your operations.

I. General Information

A. Does this action apply to me?

Entities potentially affected directly by this final rulemaking include the EPA and any state/local/tribal governments implementing delegated EPA programs. Entities potentially affected indirectly by this final rule include owners and operators of sources of air emissions that are subject to CAA regulations.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this notice will be posted at: <https://www.epa.gov/nsr/nsr-regulatory-actions>. Upon publication in the **Federal Register**, only the published version may be considered the final official version of the notice, and will govern in the case of any discrepancies between the **Federal Register** published version and any other version.

C. How is this document organized?

The information presented in this document is organized as follows:

I. General Information

A. Does this action apply to me?

B. Where can I get a copy of this document and other related information?

C. How is this document organized?

II. Background for Final Rulemaking

III. Final Revisions to the Regional Consistency Regulations and Response to Significant Comments

A. What are the final revisions to the 40 CFR part 56 Regional Consistency regulations?

B. What is the basis for the EPA’s approach?

IV. Environmental Justice Considerations

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

B. Paperwork Reduction Act (PRA)

C. Regulatory Flexibility Act (RFA)

D. Unfunded Mandates Reform Act (UMRA)

E. Executive Order 13132: Federalism

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

I. National Technology Transfer and Advancement Act

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

K. Congressional Review Act (CRA)

L. Judicial Review

VI. Statutory Authority

II. Background for Final Rulemaking

On August 19, 2015, the EPA proposed revisions to the Regional Consistency regulations. The preamble to the proposal provided a history of the Regional Consistency regulations, as well as a discussion of a recent D.C. Circuit Court decision, *National Environmental Development Association’s Clean Air Project v. EPA*, 752 F.3d 999 (D.C. Cir. 2014), that led to the EPA’s proposed revisions to alter the agency’s internal process to address court decisions having local or regional applicability. See 80 FR 50252–54, August 19, 2015. This discussion addressed the basis for the proposed changes and our rationale for why we believe the revisions are necessary. This final rulemaking notice does not repeat that discussion, but refers interested readers to the preamble of the proposed rule for this background.

The 60-day public comment period for the proposed rule was extended 15 days in response to commenters’ requests and closed on November 3, 2015. In Section III of this document, we briefly summarize the revisions and summarize and respond to significant comments.

III. Final Revisions to the Regional Consistency Regulations and Response to Significant Comments

A. What are the final revisions to the 40 CFR part 56 Regional Consistency regulations?

In this action, we are making three specific revisions to the general consistency policy reflected in the Regional Consistency regulations, 40 CFR part 56, to accommodate the implications of judicial decisions addressing locally or regionally applicable actions. First, we are revising 40 CFR 56.3 to add a provision to acknowledge an exception to the “policy” of uniformity to provide that a decision of a federal court adverse to the EPA that arises from a challenge to locally or regionally applicable actions will not automatically apply uniformly nationwide. This ensures that only decisions of the U.S. Supreme Court and decisions of the United States Court of Appeals for the D.C. Circuit Court that arise from challenges to “nationally applicable regulations . . . or final action” will apply uniformly to the challenged regulations or action nationwide in all instances.¹ Second, we are revising 40 CFR 56.4 to add a provision to clarify that the EPA Headquarters offices’ employees will not need to issue mechanisms or revise existing mechanisms developed under 40 CFR 56.4(a) to address federal court decisions adverse to the EPA arising from challenges to “locally or regionally applicable” actions. Lastly, we are revising 40 CFR 56.5(b) to clarify that EPA Regional offices’ employees will not need to seek Headquarters office concurrence to diverge from national policy or interpretation if such action is required by a federal court decision adverse to the EPA arising from challenges to locally or regionally applicable actions.²

¹ While a decision of the United States Court of Appeals for the D.C. Circuit in cases involving “nationally applicable” action applies nationwide as a general proposition, the EPA notes that in particular cases there may be questions as to the precise contours of the decision that applies nationwide. For example, there may be questions as to the effect of dicta or other subsidiary analysis in the court’s decision, or (typically in non-rulemaking contexts) questions arising out of the limited nature of the agency action under review itself. The EPA believes that specific questions such as these are best addressed on a case-by-case basis, and are not intended to be addressed in this action.

² As discussed in Section III.B of this preamble, we are revising in this final rule the proposed revisions to 40 CFR 56.5(b) in response to public comment.

B. What is the basis for the EPA’s approach?

In the proposed rule, we explain in detail why the revisions are reasonable and consistent with general principles of common law and the CAA. *See* 80 FR 50254. We summarize those discussions in Sections III.B.1 through 6 of this document.

1. The Revisions Are Consistent With General Principles of Common Law

a. Summary of the EPA’s Position

As explained more fully in the proposed rule, federal courts are courts of limited jurisdiction and only have the authority to hear and decide cases granted to them by Congress. A court of appeals generally hears appeals from the district courts located within its circuit, and the circuit is delineated by the states it contains. As a general matter, while an opinion from one circuit court of appeals may be persuasive precedent, it is not binding on other courts of appeals. *See Hart v. Massanari*, 266 F.3d 1155, 1172–73 (9th Cir. 2001).

By revising the regulations in part 56 to fully accommodate intercircuit nonacquiescence, the EPA is acting consistently with the purpose of the federal judicial system by allowing the robust percolation of case law through the circuit courts until such time as U.S. Supreme Court review is appropriate.³ As the U.S. Supreme Court has noted, preventing the government from addressing an issue in more than one forum “would substantially thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue.” *United States v. Mendoza*, 464 U.S. 154, 160 (1984). In light of this important function, the U.S. Supreme Court has sought to preserve government discretion to relitigate an issue across different circuits. *Id.* at 163. Thus, though circuit conflict may undermine national uniformity of federal law to some degree for some period of time, it also advances the quality of decisions interpreting the law over time. *See generally Atchison, Topeka & Santa Fe Ry. Co. v. Pena*, 44 F.3d 437, 446 (7th Cir. 1994) (J. Easterbrook, concurring) (agencies and courts balance whether “it is more important that the applicable rule of law be settled” or “that it be settled right”) (internal quotation and citation omitted).

³ As discussed in the proposed rule preamble, the revisions apply to decisions of the district courts as well as circuit courts. 80 FR 50258. The jurisdiction of district courts is even more limited than that of circuit courts.

b. Response to Comments

(1) Summary of Comments

Various commenters stated that intercircuit nonacquiescence is inappropriate or bad policy. One commenter stated that the EPA’s preference for pursuing intercircuit nonacquiescence to promote judicial resolution is not the appropriate approach. The commenter said that the current Regional Consistency regulations allow for judicial appeals, but also ensure uniformity pending the resolution of conflicting court opinions. The commenter also noted that it is uncertain whether ultimate resolution of circuit splits will ever occur under the proposed revisions. The commenters cited to the EPA’s reference to the U.S. Supreme Court’s review of *EDF v. Duke*, 549 U.S. 561, 581 (2007) as evidence that the EPA can do what the D.C. Circuit advised in *NEDACAP*, which is to request review of an adverse decision and put regulated entities on notice that the EPA disagreed with the lower court’s decision.

A couple of commenters noted that some courts, as well as law review articles and legal commentary, have taken an unfavorable view of the doctrine of intercircuit nonacquiescence. The commenters state that the EPA failed to account for the criticisms in its proposal notice. They also took the position that the doctrine is particularly ill-suited for the CAA and its myriad of regulations.

Another commenter stated that the EPA’s proposal to follow intercircuit nonacquiescence is an attempt to refuse to adjust policies in the face of clear, adverse judicial decisions. The commenter suggested that if the EPA disagrees with a court over a matter of enormous import, then the issue should either be elevated to the U.S. Supreme Court or addressed in rulemaking reviewable by the D.C. Circuit.

One commenter argued that intercircuit nonacquiescence is not the only path to judicial resolution. Rather, following an adverse decision the EPA could apply a policy change nationwide and allow the various circuits courts to review that new interpretation, while maintaining consistency in the meantime.

(2) EPA Response

The EPA disagrees with the commenters; the approach advocated by these commenters would grant every court unlimited nationwide jurisdiction. Rather than being merely persuasive, a decision in one circuit thus would become binding precedent in other circuits; such a result is inconsistent

with the court system established by Congress and years of case law. Robust review by a variety of courts, to allow for percolation of an issue before it reaches the U.S. Supreme Court, leads to a more thorough analysis of an issue.

In response to those commenters who claim the EPA failed to account for arguments against intercircuit nonacquiescence, the EPA disagrees. The fact that the EPA reaches a different conclusion regarding the benefits of intercircuit nonacquiescence does not mean that the EPA has failed to consider all sides of the argument. Moreover, as explained more fully in Section III.B.2 of this document, the EPA's position recognizes the unique aspects of CAA § 307(b) and its specific placement of review of nationally applicable regulations and policies in the D.C. Circuit.

The EPA has reviewed the case law and law review articles cited by the commenters and notes that some of the commenters appear to confuse the concept of *intracircuit* nonacquiescence, which involves an agency not following a court decision even within the circuit which issued the decision, and *intercircuit* nonacquiescence, which involves an agency following a court decision in the circuit that issued the decision, but not in other circuits. Some of the cases and law review articles cited by commenters in support of their arguments against intercircuit nonacquiescence involved *intracircuit* nonacquiescence. See, e.g., *Johnson v. U.S. R.R. Retirement Board*, 969 F.2d 1082, 1090 (D.C. Cir. 1992), *cert. denied*, 507 U.S. 1029 (1993) (involving the *intracircuit* nonacquiescence of the Retirement Board); *Lopez v. Heckler*, 713 F.2d 1432, 1434 (9th Cir. 1983) (involving *intracircuit* nonacquiescence of the Secretary of Health and Human Resources); *Holden v. Heckler*, 584 F. Supp. 463 (NE. Ohio 1984) (involving the Secretary of Health and Human Resources failure to follow Sixth Circuit precedent); Diller & Morawetz, *Intracircuit Nonacquiescence and the Breakdown of the Rule of Law*, 881 Yale L.J. 801 (1990) (analyzing *intracircuit* nonacquiescence); Coen, *The Constitutional Case Against Intracircuit Nonacquiescence*, 75 Minn. L. Rev. 1339 (1991) (same).⁴ Upon close

reading, many of the materials cited by commenters support the EPA's revisions. For example, the D.C. Circuit stated that:

[o]rdinarily, of course, the arguments against intercircuit nonacquiescence (which occurs when an agency refuses to apply the decision of one circuit to claims that will be reviewed by another circuit) are much less compelling than the arguments against *intracircuit* nonacquiescence. Although the decision of one circuit deserves respect, we have recognized that "it need not be taken by the Board as the law of the land." *Givens v. United States R.R. Retirement Bd.*, 720 F.2d 196, 200 (D.C. Cir. 1983). When the Board's position is rejected in one circuit, after all, it should have a reasonable opportunity to persuade other circuits to reach a contrary conclusion. And there is an additional value to letting important legal issues "percolate" throughout the judicial system, so the Supreme Court can have the benefit of different circuit court opinions on the same subject. See, e.g., *United States v. Mendoza*, 464 U.S. 154, 160, 78 L. Ed. 2d 379, 104 S. Ct. 568 (1984).

Johnson, 969 F.2d at 1093. And two legal scholars cited by commenters recognize that:

[t]he judicial branch is structured to ensure uniformity and stability of legal standards within each regional circuit while permitting disuniformity among the circuits As long as parties can discern which circuit law applies to any given conduct, the parties can shape their action to conform to legal standards. Furthermore, permitting circuits to independently examine issues contributes to resolution of important legal questions on a national basis. Accordingly, each circuit remains completely free to accept or reject the reasoning of other courts of appeals. This mixture of uniformity and diversity strikes a balance that permits legal issues to receive independent examination by a number of courts, while at the same time maintaining a unitary rule of law in any given geographic location.

Diller & Morawetz, *infra*, 881 Yale L.J. at 805 (citations omitted). See also, Coen, *infra*, 775 Minn. L. Rev. at fn. 23 ("The legality of intercircuit nonacquiescence is widely accepted."). Notably, these revisions accommodate intercircuit nonacquiescence while rejecting *intracircuit* nonacquiescence by providing that an EPA Regional office impacted by an adverse court decision should follow that decision, even if that results in an EPA Regional office acting contrary to otherwise applicable national policy.

While some commenters stated that intercircuit nonacquiescence is particularly ill-fitted to the CAA because of its myriad of regulations, the EPA concludes that it is the vast array

of regulations which makes these revisions appropriate. A facility may already have to track compliance with a variety of CAA regulations, and the revisions allow that facility to presume that the national interpretation or policy applicable to those regulations will continue to apply to it, unless a court with jurisdiction over the facility issues a court decision or the EPA undertakes appropriate procedures to change that national interpretation or policy. It arguably would be more burdensome on regulated entities to track not only the national interpretation of all the regulations and policies that apply to their facilities, but also all the court decisions across the country regarding those regulations or policies. These revisions to the Regional Consistency rule are intended to provide, as much as possible, a stable policy environment for facilities.

The approach suggested by one commenter that the EPA could provide uniformity by applying an adverse court decision nationally, without otherwise changing the underlying national policy or interpretation, is not feasible when different circuits issue different interpretations. When circuit splits occur, the EPA would have to apply different interpretations in the conflicting circuits; the only question is which interpretation applies in those circuits that had not ruled on the issue. The final revisions to the Regional Consistency regulations answer this question by establishing the presumption that the EPA will continue to apply the national policy nationwide, except for those geographic areas impacted by the adverse decision. However, the approaches set forth by commenters fail to address the situation when a second court addresses an issue already ruled on by another court, and issues a conflicting decision. The EPA's final revisions account for this possibility by maintaining national policies nationwide, except in those limited geographic areas covered by adverse court decisions. A particular advantage of these revisions is that they can be implemented in a predictable and straightforward manner regardless of the number of lower court decisions or the potential conflicts among those decisions.

To the extent commenters are concerned that circuit splits would never be resolved by the U.S. Supreme Court, this possibility is not caused by, or unique to, the revised Regional Consistency regulations. First, as noted in the proposed rule, the U.S. Supreme Court is more likely to grant review if such a split between two or more circuits occurs. 80 FR 50255. Second,

⁴ Most of the majority or concurring opinions cited by commenters in support of their argument against intercircuit nonacquiescence were written before the U.S. Supreme Court decided *Mendoza* in 1984 and thus did not benefit from the Court's reasoning in that case. See, e.g., in *May Dep't Stores Co. v. Williamson*, 549 F.2d 1147 (8th Cir. 1977) (concurring opinion cited); *Goodman's Furniture Co. v. United States Postal Serv.*, 561 F.2d 462 (3rd Cir. 1977) (concurring opinion cited). At least one of the cases cited does not appear to involve

nonacquiescence whatsoever. *Finnegan v. Matthews*, 641 F.2d 1340 (9th Cir. 1981).

when the EPA successfully maintains its position before a court, the entity challenging that position may seek further review. Finally, the public will still have the option to file a petition with the EPA requesting a change in the nationally applicable regulations or policy in the event that EPA declines to change national policy in response to an adverse ruling in a lower court. Assuming statutory timing and other jurisdictional prerequisites are met, the EPA's final response to that petition may be challenged in the D.C. Circuit, which is, under the CAA, the appropriate venue for obtaining a nationally applicable court decision on the national policy. *See, e.g., Oljato Chapter of Navajo Tribe v. Train*, 515 F.2d 654 (D.C. Cir. 1975).

We disagree with the commenter who stated that the revisions are an attempt by the EPA to ignore adverse decisions.⁵ Quite the contrary, the final revisions clearly establish a mechanism whereby the EPA Regions located in the geographic area(s) covered by an adverse decision may and should begin following that decision in those geographic areas immediately, without having to seek concurrence from Headquarters. The revisions also recognize that the EPA may, as appropriate, change national policy in response to an adverse decision. But until the EPA undertakes the appropriate process to effectuate that change, national policy continues to apply elsewhere nationwide.

2. The Revisions Are Consistent With the CAA Judicial Review Provisions

a. Summary of the EPA's Position

Revisions ensure that the Regional Consistency regulations are in harmony with the CAA's judicial review provisions at section 307(b). The ability of the various courts of appeals to hear appeals of decisions of the EPA is specifically addressed in the statute. In 1977, at the same time it added the directive for the EPA to promulgate what would ultimately become the Regional Consistency regulations, Congress amended the Act to ensure

that the D.C. Circuit Court, and no other circuit courts, would review nationally applicable regulations. By placing review of nationally applicable decisions in the D.C. Circuit Court alone, Congress struck the balance between the countervailing values of improved development of the law on the one hand and national uniformity on the other. At the same time, Congress left the door open to intercourt conflicts by granting jurisdiction over locally or regionally applicable final actions to the regionally-based courts of appeal. These revisions maintain the balance that Congress struck in CAA section 307(b)(1). There is nothing in the language or intent of CAA § 301(a)(2) that trumps the clear statutory directive of CAA § 307(b)(1) establishing which courts have jurisdiction over which final agency actions.

b. Response to Comments

(1) Summary of Comments

A few commenters suggested that if the EPA is concerned about local court decisions impacting national policy, the EPA should have those cases transferred to the D.C. Circuit for decision. The commenters stated that CAA § 307(b)(1) requires final actions "of nationwide scope or effect" be heard by the D.C. Circuit. The commenters contended that this provision, in combination with the existing Regional Consistency regulations, is enough to ensure fairness and uniformity in the application of policies nationwide.

One commenter stated that intercourt nonacquiescence is in conflict with CAA § 307(b)(1), through which Congress tried to prevent the very intercourt conflicts that the proposed revisions will allow. The commenter noted that if locally and regionally applicable actions with nationwide scope and effect are properly heard by the D.C. Circuit, there should be relatively few situations where a circuit court addresses an issue that can create inconsistency in the interpretation or implementation of CAA requirements. Another commenter contended that CAA § 307(b) does not stand for the proposition that the EPA can ignore decisions of non-D.C. Circuit courts simply because they arose in the context of a permitting decision. In fact, they maintain, CAA § 301 stands for the opposite proposition.

(2) EPA Response

The EPA agrees that CAA § 307(b)(1) requires final actions "of nationwide scope or effect" be heard by the D.C. Circuit. This may include regional

rulemaking that the EPA has identified and designated as having national scope and effect. However, when the EPA is applying regulations of nationwide scope to a particular circumstance, another appropriate circuit court should hear that decision of local or regional impact.

We agree with commenters that if the D.C. Circuit were the only court to rule on the reasonableness of the EPA's interpretation of its national regulations, there would be very little need for intercourt nonacquiescence because the only action being reviewed by the court would be the EPA's application of that interpretation to the facts of the case. However, sometimes a court other than the D.C. Circuit (or U.S. Supreme Court) renders an adverse decision that rejects the EPA's interpretation of nationally applicable regulations in a manner that could be argued to have general rather than merely case-specific implications. This can happen, for example, where the court does not merely find that the facts do not support the EPA's application of national policy, but instead finds fault with the national policy itself. The Sixth Circuit decision in *Summit Petroleum Corp. v. U.S. EPA*, 690 F.3d 733 (6th Cir. 2012) is the quintessential example of a final action of local or regional application; in the context of reviewing that local action, the Sixth Circuit rejected the EPA's longstanding interpretation of the applicable national regulations. Revisions to the Regional Consistency regulations will minimize, not exacerbate, the disruption to the smooth implementation of the CAA caused by locally or regionally applicable circuit court decisions by limiting their applicability to those areas covered by the circuit court, and leaving national policy in place in the rest of the country. Parties that agree with the decision of the regional circuit and believe it should be followed nationally are, of course, free to advocate that position to the EPA (and, if necessary, reviewing courts) in specific cases arising in other circuits. Revisions merely make clear that EPA will not *automatically* be bound to follow locally or regionally applicable circuit court decisions in cases arising in other circuits.

It would be contrary to the division of responsibility among the circuit courts that Congress established in CAA § 307(b) for the EPA to eliminate their review by moving any case that could potentially affect national policy to the D.C. Circuit. Such an approach also would disrupt the timeline for review created by the CAA. Challenges to nationally applicable regulations must

⁵ The *Duke* case is more complicated than the commenters acknowledge, and is not a clean example of how the EPA can merely seek U.S. Supreme Court review of an adverse decision. In fact, the EPA did not ask the U.S. Supreme Court to review the Fourth Circuit's decision in *Duke*. Rather, the EPA objected to the petition for *certiorari* submitted by environmental petitioners, on the grounds that the petitioners had not identified either a square circuit court split, or a sufficient reason for U.S. Supreme Court review. *See* Brief of the United States in Opposition (05–548). Only once the U.S. Supreme Court granted review, did the EPA successfully argue to the Court that the Fourth Circuit's decision was in error.

be filed within 60 days of the regulations being published in the **Federal Register**. Treating any challenge to each and every application of those regulations as challenges to the underlying regulations that must be heard by the D.C. Circuit would either render those challenges untimely (to the extent they occur outside the 60-day window) and thus require their dismissal, or render the 60-day window superfluous by allowing challenges to the regulations any time they are applied. *See, e.g., Sierra Club de Puerto Rico, et al. v. EPA*, 815 F.3d 22 (D.C. Cir. 2016) (dismissing a challenge to a 1980 regulation as untimely because the purported after-arising ground involved the mere application of that old regulation). Neither result is consistent with the judicial review provisions established in CAA § 307(d). In fact, given the clear language of § 307(b), it is not clear whether a court would transfer a challenge to a decision of local or regional nature to the D.C. Circuit. *See, e.g., Dalton Trucking, Inc. v. United States EPA*, 808 F.3d 875 (D.C. Cir. 2015) (finding that the D.C. Circuit was not the proper court to hear a challenge to a preemption waiver for California because the waiver decision did not have national applicability, nor did the EPA make or publish a finding that the decision was based on a determination of nationwide scope or effect). Finally, sometimes adverse decisions arise in the context of enforcement cases, which must be heard in particular district courts, and then any appeal must be heard by the circuit court with jurisdiction over that district court. Thus, the EPA simply cannot ensure that all court decisions potentially involving review of national policy are heard in the D.C. Circuit.

Finally, the EPA is not ignoring decisions of other circuits by revising the Regional Consistency regulations. Rather, these revisions help to ensure that we are clearly following the applicable law of the circuit in the geographic areas covered by the decision. But the EPA also is respecting the judicial review provisions of the CAA by limiting decisions reviewing locally or regionally applicable actions to those locations and regions covered by the circuit court.

3. The Revisions Are Consistent With CAA Section 301

a. Summary of the EPA's Position

The revisions also are consistent with CAA § 301. As described in the proposed rule, § 301(a)(2) requires the EPA Administrator to develop regulations to “assure fairness and

uniformity” of agency actions. Notably, there is nothing in the text of CAA § 301(a)(2) or its limited legislative history that suggests Congress intended to either upset the balance Congress struck when establishing judicial review provisions in CAA § 307, or disrupt the general principles of common law that have allowed for the percolation of issues up through the various circuit courts, as discussed previously. Section 301(a)(2) of the Act does not specifically address how the agency should respond to adverse court decisions.

In addition, the text of CAA § 301(a)(2)(A) necessitates a balance between uniformity and fairness; however, promoting either one of these attributes does not always guarantee maximizing the other attribute in all circumstances. These revisions would ensure the EPA has the flexibility to maintain that balance, as appropriate.

b. Response to Comments

(1) Summary of Comments

Several commenters maintained that the EPA's proposed amendments to the Regional Consistency regulations are inconsistent with the clear and unambiguous language of CAA § 301(a)(2). The commenters stated that this provision requires the EPA to promulgate rules establishing “general applicable procedures and policies for Regional officers and employees . . . to follow” that are designed to “assure fairness and uniformity in the criteria, procedures, and policies” applied by the EPA Regional offices. The commenters contended that the EPA's proposed rule codifies an impermissible exception to uniformity in the form of intercircuit nonacquiescence.

A few commenters pointed to the legislative history associated with the passage of CAA § 301(a)(2) and noted that Congress clearly intended there to be national consistency in implementing core CAA programs. One commenter noted that Congress's directive in CAA § 301 was particularly critical in the prevention of significant deterioration (PSD) and new source review (NSR) permitting programs, as well as other national standards (*e.g.*, New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants).

A few commenters also stated that even if CAA § 301 were ambiguous, the EPA's proposed amendments to the Regional Consistency regulations are unreasonable. The commenters noted that the D.C. Circuit vacated the EPA's *Summit* memorandum based on the language in the EPA regulations, which essentially is exactly the same as the

statutory language and mandate requiring fairness and uniformity. Thus, the commenters concluded, the court has already found that the statutory language establishes a national uniformity mandate. One commenter additionally noted that the fact that court decisions are not expressly addressed by CAA § 301(a)(2) does not create ambiguity; the statute requires the EPA to maintain consistency.

Two commenters noted that the D.C. Circuit has recognized the call for uniformity as well in *Kennecott Corp. v. EPA*, 684 F.2d 1007 (D.C. Cir. 1982). One commenter stated that the EPA's reliance on *Air Pollution Control Dist. v. EPA*, 739 F.2d 1071 (6th Cir. 1984) in the proposal is misplaced because the case involved a different issue. The commenter maintained that the case does not support the EPA in ignoring the plain language of CAA § 301(a)(2) to promote “fairness and uniformity.” The commenter noted that the court in *Air Pollution Control Dist.* expressed a “strong preference to achieve an interpretation of the Act which is consistent among the several circuits.” *Id.* at 1094.

One commenter stated that the EPA's proposal is inconsistent with CAA § 301(a)(1), which provides that the Administrator may delegate authority when it is “necessary or expedient.” The commenter stated that if the Administrator delegates her authority to Regional Administrators who make inconsistent decisions, the delegation would not be expedient and therefore would violate CAA § 301(a)(1). The commenter further maintained that the EPA incorrectly stated in the proposal notice that the current Regional Consistency regulations that require regional officials to “seek concurrence” from Headquarters could result in inconsistent policies among Regional offices. Proposal at 50258. According to this commenter, this existing mechanism ensures consistency and does not condone variation between Regional offices.

Two commenters argued that the EPA's proposal to incorporate intercircuit nonacquiescence into the Regional Consistency regulations creates “irrationality” in the rulemaking process. The commenters argue that by allowing her delegates (*e.g.*, Regional Administrators) to act in an inconsistent manner is tantamount to the Administrator acting inconsistently, which is impermissible.

(2) EPA Response

The EPA disagrees with the commenters who state that the revision to the Regional Consistency regulations

is inconsistent with CAA § 301(a)(2). On its face, CAA § 301(a)(2) does not impose a standalone requirement to attain uniformity. While CAA § 301(a)(2)(C) directs the EPA to create mechanisms for identifying and standardizing various criteria, there is nothing to suggest that such standardization requires exact duplication by all EPA Regions in all circumstances, including Regional office responses to court decisions.

As noted earlier, CAA § 301(a)(2) does not specifically discuss whether the fairness and uniformity objectives must be applied to all court decisions. Instead, the provision requires the EPA to establish *procedures* that apply to its Regional office officials and employees, but it does not address whether or how the EPA should address judicial decisions in those procedures. Congress also did not include language that would expressly prohibit the EPA from promulgating regulations that accommodate intercourt nonacquiescence. To the extent that Congress prioritized judicially-created uniformity, this was expressed in CAA § 307(b)(1)—which allows for regional divergence among circuit courts—not in CAA § 301(a)(2)(A).

The EPA disagrees with commenters who claim that the amendments to the Regional Consistency regulations violate CAA § 301(a)(1). This provision provides authority to the Administrator to delegate her powers and duties to any EPA officer or employee as “[s]he may deem necessary or expedient.” This delegation is “expedient” if it is “suitable for achieving a particular end in a given circumstance” or “characterized by concern with what is opportune.” *Expedient*, Merriam-Webster Dictionary (2015). Given the immense quantity and breadth of tasks assigned to the Administrator through the CAA and other statutes the EPA is charged with administering, delegation of the Administrator’s authorities is both necessary and expedient in many circumstances to efficiently protect the environment and public health. Further, in amending the Regional Consistency regulations, the EPA is introducing only a narrow procedural exception to deal with federal court decisions adverse to EPA regarding locally or regionally applicable actions that may affect consistent application of national programs, policy, and guidance. The EPA does not agree that it is “irrational” for the agency to act differently in different regional actions when that difference is necessitated by an adverse local or regional court decision, whether the action is taken by the EPA Regional

Administrators or by the Administrator herself.

As commenters admit, in *NEDACAP*, the D.C. Circuit explicitly did not address whether the CAA allows the EPA to adopt different standards in different circuits. *NEDACAP* at 1011. While the *NEDACAP* decision relied heavily on the general policy statements contained in 40 CFR 56.3 of the existing regulations—which broadly endorse the fair and uniform application of criteria, policy, and procedures by EPA Regional office employees—nothing in those general statements or any other provisions of the regulations mandates that the EPA adopt nationwide the interpretation of the court that first addresses a legal matter. The lack of such a mandate supports the focused revisions in this rulemaking that are a natural extension of the agency’s existing regulations.

As commenters noted, the D.C. Circuit cited to CAA § 301(a)(2) in *Kennecott*, 684 at 1014, fn. 18. However, this statutory provision was not central to the case, so the court’s mention of the provision was *dicta*. The D.C. Circuit described the EPA’s ability to prescribe in advance criteria that states must use in making a specific type of determination. The EPA’s ability to require states to follow certain rules is not in question in this rulemaking. The court also stated that establishing criteria to implement a particular CAA program “on an ad hoc incremental basis” would not amount to “fairness and uniformity” described in CAA § 301(a)(2). The EPA is not attempting to create ad hoc rules on how to implement programs. Rather, in taking this final action, the EPA is creating a clear and uniform presumptive approach and standard agency process to follow in light of adverse local and regional court decisions. This is the opposite of an ad hoc approach.

As the EPA noted in the proposal notice, *Air Pollution Control Dist.* rejected the claim that CAA § 301(a)(2) establishes a substantive standard that requires similar or uniform emission limitations for all sources. 739 F.2d 1071, 1085 (6th Cir. 1984). Although that case addressed a different issue than the content of this rulemaking, specifically whether CAA § 301(a)(2) required the EPA to implement similar or uniform emission limitations for each source within a particular area, the decision does support the overall concept that CAA § 301(a)(2) does not impose a standalone requirement to attain uniformity.

Further, the EPA believes that the quote used by the petitioner in that case from page 1094 of the decision has been

taken out of context. The court made a certain substantive ruling in *Air Pollution Control District* on an issue unrelated to this rulemaking. In making that decision, the court was seeking to keep its decision consistent with those of other circuit courts. A court’s decision to make a holding consistent with other courts’ prior decisions or to create a circuit split is outside the purview of this rulemaking and this agency. It may be a factor that weighs into how a court comes to a decision, but does not speak to how the agency should treat national policy in light of an adverse court decision with regional or local applicability, nor does it speak to the issue of whether it is appropriate for the EPA to create a narrow exception to the procedure established in the Regional Consistency regulations for adverse local and regional court decisions.

There is nothing in the limited legislative history of CAA § 301(a)(2) that counsels against the revision the EPA is making through this final action. The legislative history quoted by the commenter discusses one particular instance of regional inconsistency that, at least in part, motivated Congress to implement the regional consistency language of CAA § 301(a). This situation, which involved the use of different air quality models in different regions for the purpose of implementing the PSD permitting program, is far removed from the case of an adverse court decision of local or regional scope. Further, the legislative history surrounding passage of CAA § 307(b) indicates that Congress intended to advance the objective of even and consistent national application of certain EPA regulations that are national in scope. At the same time, Congress left the door open to intercourt conflicts by granting jurisdiction over locally or regionally applicable “final actions” to the regionally-based courts of appeals. The EPA has found, and commenters have pointed to, nothing in the legislative history to suggest that at the same time, Congress intended for the Regional Consistency provisions to somehow upset this careful balance and require the EPA to apply a locally or regionally applicable decision in all EPA Regions in order to maintain consistency.

The revisions further the overall goal of consistency and clarity by specifically identifying the possibility of potential differing actions across the EPA Regions, especially where multiple courts have already addressed an issue in different ways, and standardizing a response that can be followed by all the EPA Regions, such that the EPA Regions

only have to apply local and regional decisions issued by courts in those geographic areas over which the court has jurisdiction.

No commenter has explained in any detail why the NSR, NSPS or NESHAP programs are uniquely situated such that it would be inappropriate to finalize the narrow exception to the Regional Consistency regulations to deal with locally or regionally applicable federal court decisions. While some programs (such as NSR and NSPS) create national standards and others are administered through EPA-approved state implementation plans (SIPs), all portions of the CAA are federal law and apply nationwide. The explanation for the revisions provided in the proposal and final rule preambles apply equally to all criteria, procedures, and policies, and the commenter has failed to provide a reasoned explanation why certain programs should be considered differently. The EPA also notes that it is at times impossible to maintain complete consistency in the face of adverse court decisions. By revising the regulations, the EPA accommodates the possibility that a split in the circuits could preclude the EPA from complying with both court decisions at once, as illustrated by the following example outlined in the proposal notice. In a case involving a permit issued in New York, the Second Circuit upholds the EPA's longstanding position and, in doing so, confirms that the EPA's interpretation is compelled by the Act under Step One of *Chevron*. As a result, the EPA continues to apply its longstanding interpretation, consistent with the Second Circuit's decision, in a permit issued in Alabama, an Eleventh Circuit state. In an appeal of that permit, however, the Eleventh Circuit holds that not only is the EPA's interpretation not compelled by the CAA, it is prohibited by the CAA. There are now two court decisions with conflicting *Chevron* Step One holdings—how could the EPA apply both of those decisions uniformly across the country? While the U.S. Supreme Court could review the issue, it might not. And even if the U.S. Supreme Court eventually resolved the conflict, there could be a multi-year period during which both decisions would remain applicable case law. *See, e.g.,* discussion of *Duke* in Section 4.b.(2) of this document. This revision acknowledges and addresses those instances in which the EPA may not be able to comply with two, conflicting decisions at the same time.

4. The Revisions Will Foster Overall Fairness and Predictability

a. Summary of the EPA's Position

Specifically accommodating intercircuit nonacquiescence in the Regional Consistency regulations also fosters fairness and predictability in the implementation of the CAA overall. As discussed earlier, the revisions ensure that national policy continues to apply unless there is an affirmative nationwide and deliberate change in the EPA's rules or policies, or an adverse court decision applies only in those states/areas within the jurisdiction of that court, with the exception of the D.C. Circuit court reviewing final agency actions of national applicability. Under the revised Regional Consistency regulations, a source subject to the CAA needs to know and follow only the law in the circuit where it is located, and the law of the D.C. Circuit Court and the U.S. Supreme Court. It would not be required to follow every CAA case in every court across the country to ensure compliance with the Act. While a source remains free to advocate for a change in the agency's national policy based on the results of a regional circuit court decision, unless and until the agency agrees to make such a change, the national policy will continue to apply except in the circuit where the adverse decision was issued.

b. Response to Comments

(1) Summary of Comments

A few commenters stated that the EPA's proposal, if finalized, would harm businesses due to different regulatory requirements applying to different facilities based on their location. For example, industry argues it will face uneven application and enforcement of CAA requirements, and incur increased compliance costs as they try to address regulatory ambiguity and confusion. One commenter stated that the proposed revisions would not ensure "fairness" as required in CAA § 301(a)(2). One commenter argued that the proposed revisions will have a chilling effect on new projects or improvements. One commenter noted that limiting the regulatory amendments to local or regional court decisions does not help because many of these decisions actually have nationwide impact.

One commenter cautioned that finalization of the proposed amendments to the Regional Consistency regulations will lead to increased litigation over venue, since decisions by the D.C. Circuit will apply nationwide, while decisions of district courts and other circuit courts would

not be required to apply nationwide. Multiple commenters further noted that the rule change may also lead to additional litigation in multiple circuits to expand the impact of a single regional or local court decision. The commenters believe this will lead to greater burdens on litigants and strains on judicial resources.

One commenter stated that a lack of national uniformity would create confusion and implementation issues given that the geographic boundaries of the EPA's Regional offices do not match the boundaries of the federal circuit courts and that a single EPA Region may have to apply two different standards based on court decisions and their jurisdictions.

(2) EPA Response

The EPA believes in the overall importance of uniformity and fairness in the application of criteria, procedures, and policies across the various EPA regions in most instances. As the EPA explained when the Regional Consistency regulations were first finalized, the "intended effect" of these regulations was "to assure fair and consistent application of rules, regulations and policy throughout the country by assuring that the action of each individual EPA Regional office is consistent with one another and national policy" (45 FR 85400). These revisions merely identify a specific circumstance under which an EPA Regional office no longer needs to seek Headquarters concurrence to diverge from national policy, and confirms that national policy otherwise continues to apply.

CAA § 301(a)(2) focuses on promoting fairness and uniformity. The EPA believes that predictability is an important element of fairness and also a worthwhile objective to achieve in carrying out its mission. The changes made to the Regional Consistency regulations foster predictability by ensuring that, unless there is an affirmative nationwide and deliberate change in the EPA's rules or policies, lower court decisions would apply only in those areas within the jurisdiction of the lower court, with the exception of the D.C. Circuit Court reviewing final agency actions of national applicability, consistent with CAA § 307(b)(1). The EPA may choose to initiate a change in national policy at any time, including in light of an adverse court decision, but the agency is bound to follow appropriate procedures in order to do so.

If the revisions to the Regional Consistency regulations had already been in place at the time of the *Summit*

decision, a memorandum from EPA Headquarters like the one challenged in the *NEDACAP* decision would not have been necessary because EPA Regions, states, and other potentially affected entities would have had certainty and predictability regarding the application of such a judicial decision—they would have known that this type of permit-specific, local and regional decision would only apply in the areas under the jurisdiction of the Sixth Circuit (unless and until the agency expressly decides to make a change to its national policy after consideration of the decision). Accordingly, it would have been clear to everyone that the EPA Regions would not be bound to apply the findings of the *Summit* decision in states outside the Sixth Circuit, and could continue to apply the longstanding practice that had not been successfully challenged in other federal circuit courts in their regions or decided nationally by the D.C. Circuit or U.S. Supreme Court.

The EPA acknowledges that under the revisions finalized, some facilities may be subject to different regulatory requirements based on their location. Some difference in governing rules is inherent in our federal judiciary system where district and circuit courts are limited to a definitive jurisdiction. The federal judicial system was designed to allow numerous, and sometimes conflicting, decisions until such time as the U.S. Supreme Court rules on an issue. The structure of the federal judicial system also sometimes results in increased litigation, as issues are considered by multiple courts. As noted previously, this rule simply changes the internal procedure followed by the agency in light of an adverse court decision; thus, these revisions, which are consistent with the federal judicial system, will not singlehandedly lead to increased litigation. One commenter noted that following this rulemaking, litigants may wish to challenge the venue of litigation more often to try to ensure cases are heard by the D.C. Circuit so that judicial outcomes apply nationwide. The EPA believes it is appropriate for venue to be challenged if the litigation is not brought in the appropriate court according to CAA § 307(b)(1). Under the CAA specifically, the drafting of CAA § 307(b) indicates that Congress intended to leave the door open to inter-circuit conflicts by granting jurisdiction over locally or regionally applicable “final actions” to the regionally-based courts of appeals.

Further, sometimes court decisions reviewing a regulation or statute are reversed on appeal. In other cases, a court decision may contain a ruling that arguably calls into question a national

rule in the context of a source-specific action, which is inconsistent with CAA § 307(b)(1), as explained in the proposal notice. When either outcome occurs, inter-circuit nonacquiescence allows the EPA to limit the impact of the court’s ruling while it undertakes other actions. For example, as outlined in the proposal notice, in *Duke*, 549 U.S. 561 (2007), the U.S. Supreme Court reversed the Fourth Circuit’s implicit invalidation of the EPA’s regulations in the context of an enforcement action. In that case, the U.S. Supreme Court found that the court of appeals had been too rigid in its insistence that the EPA interpret the term “modification” in its PSD regulations in the same way that the agency interpreted the term under the NSPS program. *Id.* at 572–577. While it is true that the U.S. Supreme Court eventually reversed the lower court, there was a 2-year period during which the Fourth Circuit’s decision remained in place. Under the commenter’s proposed approach, the EPA arguably would have been required to follow that later-reversed Fourth Circuit interpretation of its regulations nationwide during that 2-year period, even though the interpretation “read those PSD regulations in a way that seems to [the Supreme Court] too far a stretch for the language used.” *Id.* at 577.

The EPA disagrees that the amendments made to the Regional Consistency regulations are poor public policy. It is generally acceptable to apply a circuit court or District Court decision only within the jurisdiction of the court. A standard that specifically allows for inter-circuit nonacquiescence for all CAA decisions other than those issued by the D.C. Circuit Court in response to challenges of nationwide actions would provide a uniform standard for the EPA’s application of court decisions that could be anticipated by those who implement the regulations and the regulated community.

The EPA acknowledges that the EPA Regional office boundaries do not align with the boundaries of circuit courts. However, the EPA Regional offices and Headquarters will endeavor to make clear the states, tribes, or local jurisdictions that are impacted by an adverse court decision. The EPA notes that, consistent with past practice, in certain instances the EPA Regions are already applying different policies across their states based on prior court decisions. *See, e.g.*, discussion of follow on to *Sierra Club* decision in Section 5.b.(2) of this document.

5. The Revisions Are a Reasonable Revision to the 40 CFR part 56 Regulations and Maintain the EPA’s Ability To Exercise Discretion

a. Summary of the EPA’s Position

In the proposed rule, we noted that the Regional Consistency regulations already allowed for some variation between the EPA Regional offices. Specifically, the original version of 40 CFR 56.5(b) provided that regional officials should “seek concurrence” from the EPA Headquarters with respect to any interpretations of the Act, rule, regulation, or guidance that “may result in inconsistent application among the Regional offices.” Thus, the Regional Consistency regulations have always contained a mechanism by which an EPA Regional office could diverge from national policy if doing so was required by an adverse court decision (*i.e.*, by seeking Headquarters concurrence). The revisions simplify the process by establishing the presumption that national policy will continue to apply nationwide, but that an EPA Regional office impacted by an adverse court decision could diverge from that national policy without Headquarters concurrence to the extent required by the adverse court decision. In fact, the revisions further the overall goals of the existing Regional Consistency regulations by specifically identifying the possibility of potential differing actions across the EPA regions, especially where multiple courts have already addressed an issue in different ways, and standardizing a response that can be followed by all the regions, such that EPA regions only have to apply local and regional decisions issued by courts in those areas over which the court has jurisdiction.

Nonetheless, as noted previously, the revisions do not hinder the EPA’s ability to respond to an adverse court decision by revising a national policy or interpretation, following appropriate procedures, either on the agency’s own initiative or in response to a request from a regulated entity or other interested party. The EPA recognizes that national policy can be influenced by insights and reasoning from judicial decisions and these revisions are not an indication that the agency will ignore persuasive judicial opinions issued in cases involving “locally or regionally applicable” actions. Such opinions may address issues of nationwide importance and could, in appropriate circumstances, lead the agency to adopt new national policy.

b. Response to Comments

(1) Summary of Comments

Some commenters stated that there would be no predictability under the EPA's proposal. One commenter expressed concern that the EPA Regional offices not covered by an adverse decision could choose to follow the adverse decision versus national policy. Another commenter also noted that the EPA's goal of promoting predictability is irrelevant because CAA § 301(a)(2) requires consistency, not predictability.

A couple of commenters stated that the EPA's proposed revision of the Regional Consistency regulations goes against 35 plus years of implementing the existing regulations. The commenters also argued that it is inconsistent with the position the EPA has taken in various rulemakings and historic practice, citing statements by a former EPA General Counsel.

Numerous commenters stated that the proposed amendments to the Regional Consistency regulations would allow the EPA too much discretion in deciding whether certain court decisions will apply on a national scale. They stated that there would be no guarantee that further judicial review would resolve conflicting decisions, citing to currently conflicting decisions on application of the statute of limitations to construction permitting as an example. Commenters expressed concern that this could lead to the EPA applying arbitrary and unspecified factors to determine when judicial decisions will be applied nationally. Several commenters suggested that the EPA should establish criteria it would use to determine when it will not change its national policy and when it will in the face of an adverse court decision. Commenters recommended that the EPA withdraw the rule, or, if it proceeds, provide clear criteria to identify when intercourt nonacquiescence will be applied.

One commenter recommended that the Regional Consistency regulations only follow intercourt nonacquiescence (1) Until three circuit courts have resolved the legal issue; (2) in circumstances of significant importance and impact on protection of human health and the environment; and (3) when documented in a written memorandum or directive signed by the Assistant Administrator for the Office of Air with concurrence of the General Counsel. Another commenter recommended that the EPA revise the Regional Consistency regulations to state that the agency will revisit a national policy whenever a court

determines that it is arbitrary, capricious or otherwise unlawful. Further, the commenter offered that in such circumstances the EPA should consider whether to issue guidance clarifying what the EPA's policy will be going forward and undertake a rulemaking to effectuate that agency policy.

One commenter suggested that if the EPA does finalize the proposed amendments to the Regional Consistency regulations, the EPA should retain requirements "that (1) EPA Headquarters issue or revise mechanisms to address federal court decisions of local or regional applicability, *see* 40 CFR 56.4, and (2) the EPA Regional offices seek concurrence from the EPA Headquarters to act inconsistently with national EPA policy or interpretation if such action is required by a federal court decision of local or regional applicability. *See* CFR 56.5." The commenter indicated these mechanisms promote certainty, predictability, and fairness for regulated entities. Another commenter suggested that the EPA Regional offices should still be required to seek the Office of General Counsel's concurrence when they believe they are bound by an adverse court decision which requires them to deviate from national policy. A separate commenter expressed concern that the proposed revisions would allow a region to deviate from national policy without Headquarters concurrence that such deviation was required by a court decision.

A couple of commenters argued that the EPA should allow notice and comment on agency determinations that it would depart from these final Regional Consistency regulations and apply certain judicial decisions more broadly on a case-by-case basis. One commenter recommended that "regional consistency determination[s]" be published in the **Federal Register**. Another commenter stated that the EPA should define "fairness" and "uniformity" in the regulations.

(2) EPA Response

The EPA disagrees with the commenters' characterization of this action. The final revisions authorize an EPA region to diverge from national policy only to the extent that the EPA Region must do so in order to act consistently with a decision issued by a federal court that has direct jurisdiction over the EPA Region's action. The EPA regions outside of that court's jurisdiction would still be required to follow national policy or seek Headquarters concurrence to deviate from that policy. This is the same

procedure established under the original Regional Consistency regulations.

The EPA further disagrees with commenters' statement that these final revisions go against the agency's past practice. Following the *Summit* decision, consistent with the Regional Consistency regulations, EPA Regions 4 and 5 could have sought Headquarters concurrence to deviate from national policy in order to follow the directive of the Sixth Circuit. In fact, EPA Region 4 did utilize this provision following the Sixth Circuit decision in *Sierra Club v. EPA*, 781 F.3d 299 (6th Cir. 2015), *cert. denied* 2016 U.S. LEXIS 2221 (March 28, 2016), which held that the EPA was not permitted to approve a redesignation request without first approving reasonably available control measures into the state SIPs. This decision went against the EPA's longstanding interpretation that where an area is attaining the NAAQS, these measures that are designed to bring areas into attainment are "inapplicable" under CAA § 107(d)(3)(E)(ii) for purposes of evaluating a redesignation. Following that decision, officials in EPA Region 4 sought and received concurrence from EPA Headquarters to follow the requirements of the *Sierra Club* decision, which are inconsistent with the EPA's national policy, in states falling within the jurisdiction of the Sixth Circuit. *See* 80 FR 56418 (September 18, 2015).⁶ If the EPA were to adopt the commenters' position, the agency would have to apply the decision of the Sixth Circuit nationwide.

Thus, the Regional Consistency regulations have never required absolute uniformity between the EPA Regional offices. Rather, the Regional Consistency regulations have always acknowledged that certain EPA Regions may in some instances act differently from others, and these final revisions simply identify and authorize differences in a specific limited circumstance—when necessitated by a federal court decision reviewing an action of local or regional applicability. Accordingly, the EPA does not view finalization of this rule as a significant shift in the practical outcomes. Rather, the EPA is changing the internal procedure followed by the agency in light of an adverse court decision.

A couple commenters claimed that the revisions to the Regional Consistency regulations are inconsistent

⁶ Memorandum from Heather Toney, EPA Region 4 Administrator to Anna Marie Wood, Director, EPA/OAQPS/AQPD, *Regional Consistency Concurrence Request—Redesignation Actions in Kentucky and Tennessee*, July 20, 2015. Docket ID No. EPA-R04-OAR-2014-0031.

with statements made by a former EPA General Counsel. These comments of a former EPA General Counsel were made in the context of a discussion of the *intracircuit* nonacquiescence practices of other agencies, which is different from *intercircuit* nonacquiescence as explained in Section III.B.1 of this document. See S. Estreicher & R. Revesz, *Nonacquiescence by Federal Administrative Agencies*, 98 Yale L. J. 679, 717 (February 1989) (surveying approaches of other federal agencies after describing the *intracircuit* nonacquiescence policies of the Social Security Administration and National Labor Relations Board).

The EPA considered the suggestions of several commenters to add regulatory text defining the parameters under which the agency would be required to re-evaluate its national policy following adverse court decisions. In response, we note that the EPA carefully reviews each adverse court decision. The types of factors advocated by the commenters (e.g., the reasoning for the adverse court decision, the number of adverse court decisions) generally are factors considered by the EPA as it develops its response to any given adverse court decision, including any reconsideration of the relevant national policy or interpretation. This case-by-case approach is best because it allows the EPA to consider the individual merits of each decision and the appropriate course of action rather than apply a rigid formula. Nonetheless, it would be counterproductive to codify any specific parameters in regulatory text that must be applied in any and all circumstances.

We also are not requiring that a Regional office obtain Headquarters concurrence regarding whether an adverse court decision requires that Regional office to deviate from otherwise applicable national policy. A key purpose of the revisions is to establish the presumption that national policy remains national policy, and thus the Regional offices are already required to follow national policy to the extent allowed by an adverse court decision applicable to the Regional office's actions. Of course a Regional office is always free to discuss the scope of a court decision with Headquarters, but revisions do not require a Regional office seek concurrence before acting consistent with an adverse court decision applicable to the action being undertaken by the Regional office.

Contrary to the concerns of some commenters, the final revisions will not allow the EPA to act arbitrarily in determining how to respond to an adverse court decision. Nothing in the final revisions alters the requirement

that the EPA act in a reasonable, non-arbitrary manner at all times. Moreover, the final revisions already provide clear criteria regarding when the EPA will apply *intercircuit* nonacquiescence by establishing the presumption that national policy will not change in response to any given adverse decision.⁷ In other words, national policy will remain unchanged until such time as the agency changes it through the appropriate method. That presumption does not provide the EPA unlimited discretion, but does retain the discretion to determine national policy granted the EPA by Congress through the CAA.

The public is always free to petition the EPA to change regulations and national policy if it believes that the agency is inappropriately maintaining national policy in the face of numerous adverse court decisions. If a party believes that the EPA's position is no longer viable, it may petition the agency to change that position, and the party may then seek to challenge the EPA's final response to that petition if the party believes the EPA's final response is unreasonable, so long as the party meets all the usual statutory and jurisprudential requirements for such a challenge. For rules of national applicability, such challenges would be, appropriately, in the D.C. Circuit. See, e.g., *Oljato, infra*. Thus, the existing system already contains sufficient safeguards to ensure that the EPA continues to act in a reasonable manner, and additional regulatory text is not necessary.

Thus, as noted earlier, the EPA is not adding regulatory text establishing specific parameters or criteria that would govern how the agency would act in light of adverse court decisions. Nor is the EPA establishing new procedures that would apply if and when the EPA does reconsider national policy. As always, if the EPA does revisit national policy, it will follow the applicable procedures. For example, if the agency is changing regulatory text, it will undertake the appropriate notice and comment process. If, however, the EPA is merely issuing an interpretive rule without changing the regulations themselves, then consistent with the Administrative Procedure Act and U.S. Supreme Court case law, the EPA is not bound to follow a notice and comment process. 5 U.S.C. 553(b)(3)(A); *Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199 (2015).

⁷ Except, of course, decisions issued by the D.C. Circuit when reviewing rules of national applicability, or the U.S. Supreme Court.

6. The Revisions Are Otherwise Reasonable

The EPA received other miscellaneous comments that do not fall under the previous discussions, which are responded to in Sections 6.a and b.

a. Response to Comments That the EPA Was Under No Obligation To Promulgate Revisions to the Regional Consistency Regulations in Response to NEDACAP

(1) Summary of Comments

Several commenters stated that the EPA should withdraw the proposal and leave the Regional Consistency regulations in place as currently written. A couple of commenters noted that the proposed amendments to the Regional Consistency regulations are not necessary because the EPA is under no obligation to undertake the rulemaking action. Commenters stated that while the EPA purported in the proposal notice to undertake the rulemaking in response to the *NEDACAP* decision, that court did not in any way require the EPA to undertake this rulemaking. In fact, the court applied the regulations when vacating the EPA's *Summit* memorandum.

Several commenters stated that the court's suggestion in *NEDACAP* that the EPA could amend the Regional Consistency regulations is not equivalent to that court's endorsement of such an approach under CAA § 301(a)(2). The commenters note that the D.C. Circuit expressly did not rule on "whether the [Clean Air Act] allows the EPA to adopt different standards in different circuits" in the *NEDACAP* opinion. 752 F.3d at 1011. Further, one commenter detailed that in *NEDACAP*, the D.C. Circuit held that the "fair and uniform" language of the existing Regional Consistency regulations, which is parallel to the language in CAA § 301(a)(2), establishes a national regulatory uniformity requirement.

One commenter noted that the EPA has other ways to respond to the court's decision in *NEDACAP*. In an example, the commenter cited the EPA's response to conflicting decisions regarding the benzene NESHAP and "federal enforceability." The commenters also stated that if the EPA stopped "continuously seeking to expand the reach of its regulations through such guidance" the agency could avoid adverse decisions like that in the Sixth Circuit regarding the Summit permitting decision.

(2) EPA Response

The EPA has not taken the position that it is required by the D.C. Circuit's

opinion in *NEDCAP* to undertake revisions to the Regional Consistency regulations. We agree that the EPA has discretion in deciding whether or not to undertake the revisions being finalized. The EPA also recognizes that the court's suggestion that the EPA could revise the Regional Consistency regulations is not necessarily a judicial endorsement of the specific revisions being finalized, although it is unlikely that the court would make such a suggestion if any changes to the regulations to address intercircuit nonacquiescence would be in conflict with the statute.

Contrary to statements made by commenters, the EPA does not "continuously seek[] to expand the reach of its regulations through [] guidance." Rather, the EPA issues guidance in an effort to better inform the regulated community and the public regarding the requirements of CAA regulations.

For the reasons set forth here and in the proposed rule, these revisions to the Regional Consistency regulations are an effective way to address the implications of adverse court decisions rendered by courts reviewing actions of local or regional applicability. While the EPA does have other options available to it, the EPA has determined that these revisions to the Regional Consistency regulations most effectively address the issue presented by an adverse court decision involving an action or local or regional applicability.⁸ The revisions also accommodate the EPA's proper and longstanding application of the doctrine of intercircuit nonacquiescence in future cases, while eliminating the need to undertake lengthy, narrowly focused rulemakings or seek review of all lower courts' adverse decisions by the U.S. Supreme Court.

⁸ With respect to the comments referencing the EPA's past practice with issuing guidance following conflicting court decisions, the examples cited are inapposite. The comment refers to the EPA's response to court decisions regarding application of the benzene NESHAP, citing *U.S. v. Hoescht Celanese Corp.*, 128 F.3d 216, 224 (4th Cir. 1997). However this case does not discuss this topic; it merely involves one court's opinion on whether a company had fair notice of the EPA's interpretation of a regulation. In addition, the cited guidance regarding "federal enforceability" was not issued to reconcile inconsistent circuit court decisions regarding the same term. First, the guidance was originally issued before any adverse decisions from the D.C. Circuit. Second, the policy laid out in the guidance was extended in response to D.C. Circuit decisions consistently interpreting the term "federal enforceability"; first decision was cited as the basis for the second and third opinions. The only "inconsistency" in the decisions was whether the D.C. Circuit vacated the underlying rule pending remand or not.

b. Response to Miscellaneous Comments

(1) Summary of Miscellaneous Comments

One commenter contended that the EPA failed to acknowledge the difference between an EPA action involving interpretation of a national regulation applied to a particular facility and an EPA action addressing a SIP provision. In the context of SIP provisions, the commenter stated that, "to the extent not prohibited by the CAA, the EPA should (and must) allow inconsistencies in particular SIP provisions as between states."

Another commenter supported the EPA's proposed addition to CAA § 56.5(b) insofar as it will ensure that the EPA Regional offices not subject to a court decision will continue to act consistently with existing national policy. However, the commenter believes that the proposed revision to CAA § 56.5(b) does not clearly accomplish this. The commenter contended that the existing and proposed regulatory text should be harmonized to make clear that, after an adverse court decision issued by a court reviewing a locally or regionally applicable action, continued application of national policy by the EPA Regional offices that are not subject to that court's jurisdiction does not require concurrence from EPA Headquarters, notwithstanding any inconsistency with the actions taken by the EPA Region(s) bound by the court's decision.

(2) EPA Response

The EPA agrees with the commenter that states are accorded great discretion under CAA § 110 in determining how to meet CAA requirements in SIPs. However, states are obligated to develop SIP provisions that meet fundamental CAA requirements. The EPA has the responsibility to review SIP provisions developed by states to ensure that they in fact meet fundamental CAA requirements. The Regional Consistency regulations generally establish certain mechanisms with the goal of "identifying, preventing, and resolving regional inconsistencies" (45 FR 85400). For the EPA Headquarters office employees, the regulations do this by targeting particular aspects of the Act that have the potential to present consistency problems—including any rule or regulation proposed or promulgated which sets forth requirements for the preparation, adoption, and submittal of state implementation plans.

We concur with the comment that the EPA Regional offices not covered by an adverse court decision should continue

to follow existing national policy. We looked at the proposed revisions to 40 CFR 56.5(b), as well as the revised language provided by the commenters. We agree that the revision to 40 CFR 56.5(b) suggested by the commenter more clearly expresses that the exception to seeking Headquarters concurrence applies only to the EPA regions that must diverge from agency policy due to an adverse court decision with jurisdiction over the EPA region's actions. We have thus changed the regulatory text accordingly.

IV. Environmental Justice Considerations

This action finalizes a rule revision that provides procedural direction to the EPA Regions and Headquarters offices in implementing court decisions of a limited scope (*i.e.*, those having local or regional applicability). The EPA did not conduct an environmental analysis for this rule because this rule will not directly affect the air emissions of particular sources. Because this rule will not directly affect the air emissions of particular sources, it does not affect the level of protection provided to human health or the environment. Therefore, this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action 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 any new information collection burden. The final rule will not create any new requirements for regulated entities, but rather provides procedural direction to the EPA Regions and Headquarters offices in implementing national programs potentially affected by adverse court decisions of a limited scope (*i.e.*, those having local or regional applicability).

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. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may

certify that a rule will not have a significant economic impact on a substantial number of small entities if a rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This final rule will not impose any requirements directly on small entities. The EPA and any state/local governments implementing delegated EPA programs are the only entities affected directly by this final rule. Other types of small entities are also not directly subject to the requirements of this rule.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

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. This final rule revises regulations that apply to the EPA, and any delegated state/local governments, only, and would not, therefore, affect the relationship between the national government and the states or the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. This final rule only provides procedural direction to EPA Regions and Headquarters offices in implementing court decisions of a limited scope (*i.e.*, those having local or regional applicability). Thus, Executive Order 13175 does not apply to this action.

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 action is not subject to Executive Order 13045 because it does not directly involve an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This action does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in Section IV of this document titled, “Environmental Justice Considerations.”

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

L. Judicial Review

Under CAA § 307(b)(1), petitions for judicial review of any nationally applicable regulation, or any action the Administrator “finds and publishes” as based on a determination of nationwide scope or effect must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days of the date the promulgation, approval, or action appears in the **Federal Register**. This action is nationally applicable, as it revises the rules governing procedures regarding

regional consistency in 40 CFR part 56. As a result, petitions for review of this final action must be filed in the United States Court of Appeals for the District of Columbia Circuit by October 3, 2016. Filing a petition for reconsideration by the Administrator of this final action 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 must be filed, and shall not postpone the effectiveness of this action.

VI. Statutory Authority

The statutory authority for this action is provided by section 301 of the CAA as amended (42 U.S.C. 7601).

List of Subjects in 40 CFR Part 56

Environmental protection, Air pollution control.

Dated: July 21, 2016.

Gina McCarthy,
Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 56 of the Code of Federal Regulations is amended as follows:

PART 56—REGIONAL CONSISTENCY

- 1. The authority citation for part 56 continues to read as follows:

Authority: Sec. 301(a)(2) of the Clean Air Act as amended (42 U.S.C. 7401).

- 2. Section 56.3 is amended by adding paragraph (d) to read as follows:

§ 56.3 Policy.

* * * * *

(d) Recognize that only the decisions of the U.S. Supreme Court and decisions of the U.S. Court of Appeals for the D.C. Circuit Court that arise from challenges to “nationally applicable regulations . . . or final action,” as discussed in Clean Air Act section 307(b) (42 U.S.C. 7607(b)), shall apply uniformly, and to provide for exceptions to the general policy stated in paragraphs (a) and (b) of this section with regard to decisions of the federal courts that arise from challenges to “locally or regionally applicable” actions, as provided in Clean Air Act section 307(b) (42 U.S.C. 7607(b)).

* * * * *

- 3. Section 56.4 is amended by adding paragraph (c) to read as follows:

§ 56.4 Mechanisms for fairness and uniformity—Responsibilities of Headquarters employees.

* * * * *

(c) The Administrator shall not be required to issue new mechanisms or revise existing mechanisms developed

under paragraphs (a) of this section to address the inconsistent application of any rule, regulation, or policy that may arise in response to the limited jurisdiction of either a federal circuit court decision arising from challenges to “locally or regionally applicable” actions, as provided in Clean Air Act section 307(b) (42 U.S.C. 7607(b)), or a federal district court decision.

* * * * *

■ 4. Section 56.5 is amended by revising paragraph (b) to read as follows:

§ 56.5 Mechanisms for fairness and uniformity—Responsibilities of Regional Office employees.

* * * * *

(b) A responsible official in a Regional office shall seek concurrence from the appropriate EPA Headquarters office on any interpretation of the Act, or rule, regulation, or program directive when such interpretation may result in application of the act or rule, regulation, or program directive that is inconsistent with Agency policy. However, the responsible official in a Regional office will not be required to seek such concurrence from the appropriate EPA Headquarters office for actions that may result in inconsistent application if such inconsistent application is required in order to act in accordance with a federal court decision:

(1) Issued by a Circuit Court in challenges to “locally or regionally applicable” actions, as provided in Clean Air Act section 307(b) (42 U.S.C. 7607(b)), if that circuit court has direct jurisdiction over the geographic areas that the Regional office official is addressing, or (2) Issued by a district court in a specific case if the party the Regional office official is addressing was also a party in the case that resulted in the decision.

* * * * *

[FR Doc. 2016–17899 Filed 8–2–16; 8:45 a.m.]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2014–0830; FRL–9950–10–OAR]

RIN 2060–AS99

National Emission Standards for Aerospace Manufacturing and Rework Facilities Risk and Technology Review; Clarification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to amend the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Aerospace Manufacturing and Rework Facilities. In this action, we are clarifying the compliance date for the handling and storage of waste.

DATES: This rule is effective on October 3, 2016 without further notice, unless the EPA receives significant and relevant adverse comment by September 2, 2016. If the EPA receives significant and relevant adverse comment, we 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–HQ–OAR–2014–0830, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2014–0830. All documents in this docket are listed on the <http://www.regulations.gov> Web site. 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, 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 Docket Center, EPA WJC West Building, Room Number 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading

Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time, Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this direct final action, contact Ms. Kim Teal, Sector Policies and Programs Division (D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5580; fax number: (919) 541–5450; and email address: teal.kim@epa.gov. For information about the applicability of the NESHAP to a particular entity, contact Mr. John Cox, Office of Enforcement and Compliance Assurance, (202) 564–1395, cox.john@epa.gov.

SUPPLEMENTARY INFORMATION:

Background information. On December 7, 2015 (80 FR 76152), the EPA finalized amendments to the Aerospace Manufacturing and Rework Facilities NESHAP based on our Risk and Technology Review. In this action, we are clarifying the intended compliance date for sources subject to the recently finalized handling and storage of waste requirements.

Organization of this document. The information in this preamble is organized as follows:

- I. General Information
 - A. Why is the EPA using a direct final rule?
 - B. Does this action apply to me?
 - C. What should I consider as I prepare my comments for the EPA?
- II. What are the amendments in this direct final rule?
- III. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Paperwork Reduction Act (PRA)
 - C. Regulatory Flexibility Act (RFA)
 - D. Unfunded Mandates Reform Act (UMRA)
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
 - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
 - I. National Technology Transfer and Advancement Act (NTTAA)
 - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
 - K. Congressional Review Act (CRA)

I. General Information

A. Why is the EPA using a direct final rule?

The EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no significant and relevant adverse comment.

In the final rule published December 7, 2015, we inadvertently failed to identify the compliance date for sources subject to the requirements for handling and storage of waste. Therefore, in this document we are correcting that oversight. In the “Proposed Rules” section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to amend the National Emission Standards for Aerospace Manufacturing and Rework Facilities (40 CFR part 63, subpart GG). If significant and relevant adverse comments are received on the proposal, we will withdraw this direct final rule. However, we will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If the EPA receives significant and relevant adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that some or all of the amendments in this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

B. Does this action apply to me?

Regulated entities. Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS ACTION

Source category	NESHAP	NAICS ¹ Code
Aerospace Manufacturing and Rework Facilities.	Aerospace Manufacturing and Rework Facilities.	336411
		336412
		336413
		336414
		336415
		336419
		481111
		481112
		481211
		481212
		481219

¹North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding

entities likely to be affected by the final action for the source categories listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

C. What should I consider as I prepare my comments for the EPA?

Submitting CBI. Do not submit this information to the EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404-02), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, and Attention Docket ID No. EPA-HQ-OAR-2014-0830.

II. What are the amendments in this direct final rule?

This direct final rule provides a compliance date of December 7, 2018, for sources subject to the requirements for handling and storage of waste in 40 CFR part 63, subpart GG. In the final rule dated December 7, 2015, we regulated specialty coating application operations for the first time. The compliance date for these new requirements was December 7, 2018. We also revised and clarified requirements for handling and storage of waste, and our intent was to specify the same December 7, 2018, compliance date for these revised requirements (80 FR 76172-74). However, we neglected to specify a compliance date for these revised waste handling and storage requirements in the regulatory text. Reading the regulatory text as now written would imply that the compliance date for these revised waste handling and storage requirements would be September 1, 1998. Therefore, we are correcting the rule text at 40 CFR

63.749(a)(3) to make it clear that the December 7, 2018, compliance date also applies to sources subject to the waste storage and handling requirements.

The EPA is accepting comments only on the specific issue raised in this direct final action and the accompanying proposed rule, the compliance date for handling and storage of waste. The EPA is not reopening or accepting comment on any other aspect of the NESHAP for Aerospace Manufacturing and Rework Facilities.

III. 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 any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB Control Number 2060-0314. This action does not impose any new information collection burden because it serves only to provide a compliance date for the handling and storage of waste requirements.

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. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This action will not impose any costs on small entities. No facilities meeting the Small Business Administration's definition of a small business will incur costs. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in the UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

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: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. No tribal facilities are known to be engaged in the aerospace manufacturing or rework surface coating operations that would be affected by this action. Thus, Executive Order 13175 does not apply to this action.

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 action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This 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 (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental

effects on minority populations, low-income populations, and/or indigenous peoples, as specified in

Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action serves only to provide a compliance date for the previously promulgated handling and storage of waste requirements.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 26, 2016.

Gina McCarthy,
Administrator.

For the reasons stated in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart GG—National Emission Standards for Aerospace Manufacturing and Rework Facilities

■ 2. Section 63.749 is amended by revising paragraph (a)(3) to read as follows:

§ 63.749 Compliance dates and determinations.

(a) * * *

(3) Each owner or operator of a specialty coating application operation or handling and storage of waste operation that begins construction or reconstruction after February 17, 2015, shall be in compliance with the requirements of this subpart on December 7, 2015, or upon startup, whichever is later. Each owner or operator of a specialty coating application operation or handling and storage of waste operation that is existing on February 17, 2015, shall be in compliance with the requirements of

this subpart on or before December 7, 2018.

* * * * *

[FR Doc. 2016–18395 Filed 8–2–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 424, and 455

[CMS–6073–N]

Medicare, Medicaid, and Children’s Health Insurance Programs: Announcement of the Provider Enrollment Moratoria Access Waiver Demonstration of Part B Non-Emergency Ground Ambulance Suppliers and Home Health Agencies in Moratoria-Designated Geographic Locations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Implementation of the waiver demonstration.

SUMMARY: This notice announces the Provider Enrollment Moratoria Access Waiver Demonstration of Part B Non-Emergency Ground Ambulance Suppliers and Home Health Agencies in 6 states. The demonstration is being implemented in accordance with section 402 of the Social Security Amendments of 1967 and gives CMS the authority to grant waivers to the statewide enrollment moratoria on a case-by-case basis in response to access to care issues, and to subject providers and suppliers enrolling via such waivers to heightened screening, oversight, and investigations.

DATES: Effective July 29, 2016.

FOR FURTHER INFORMATION CONTACT: Jung Kim, (410) 786–9370. News media representatives must contact CMS’ Public Affairs Office at (202) 690–6145 or email them at press@cms.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Affordable Care Act provided CMS with new tools and resources to combat fraud, waste, and abuse in Medicare, Medicaid, and the Children’s Health Insurance Program (CHIP), including the authority to implement a temporary moratorium on provider enrollment in these programs. CMS uses quantitative and qualitative data to determine whether there is a need for a moratorium, such as reviewing provider and supplier saturation data for the area

under consideration for a moratorium and whether such area has significantly higher than average billing per beneficiary or provider per beneficiary ratios. CMS first used its moratoria authority on July 30, 2013, to prevent enrollment of new home health agencies (HHAs) in the Chicago, Illinois and Miami, Florida areas, as well as Part B ground ambulance suppliers in the Houston, Texas area. CMS exercised this authority again on January 30, 2014, to extend the existing moratoria and expand them to include HHAs in the metropolitan areas of Fort Lauderdale, Florida; Detroit, Michigan; Houston, Texas; and Dallas, Texas, as well as Part B ground ambulance suppliers in Philadelphia, Pennsylvania and nearby New Jersey counties. The moratoria have since been extended at 6-month intervals and to date, remain in place in all of the locations previously noted.

Since implementation of the moratoria, CMS has been able to evaluate the moratoria and has identified several limitations. Because the current moratoria are geographically defined by county, they do not prohibit providers and suppliers from opening new locations or creating a new enrollment outside the moratorium area and moving it into a moratorium area. Moreover, CMS is unable to prevent existing providers and suppliers from outside of a moratoria area from servicing beneficiaries within that area. In fact, CMS has analyzed data showing that some providers and suppliers who are located several hundred miles outside of a moratorium area are billing for services provided to beneficiaries located within that moratorium area. The ability of providers and suppliers to circumvent the moratoria undermines the effectiveness of the moratoria in protecting the integrity of the Medicare, Medicaid, and CHIP programs.

In order to mitigate the vulnerabilities that have been observed in the current moratoria, CMS is expanding the moratoria on Medicare Part B, Medicaid, and CHIP non-emergency ambulance suppliers and Medicare, Medicaid, and CHIP HHA providers to statewide as announced elsewhere in this issue of the **Federal Register**.

II. Demonstration Design and Duration

CMS is implementing the "Provider Enrollment Moratoria Access Waiver Demonstration" (PEWD), as authorized by section 402(a)(1)(J) of the Social Security Amendments of 1967 (42 U.S.C. 1395b-1(a)(1)(J)), concurrently with the announcement of the statewide expansion of temporary moratoria on the enrollment of non-emergency ambulance suppliers and home health

agencies in Medicare, Medicaid, and CHIP in six states elsewhere in this issue of the **Federal Register**. CMS is implementing this statewide expansion in order to address a high incidence of fraud in the moratoria areas without adversely affecting beneficiary access to care. This demonstration will permit a provider or supplier subject to the moratoria to submit a PEWD application that, if approved, will exempt the provider or supplier from the statewide moratorium in designated geographic areas. Additionally, it will implement a process for heightened review and investigations for such providers and suppliers enrolling pursuant to such waivers.

In order to qualify for a waiver of the moratoria restrictions, a provider or supplier must demonstrate that an access to care issue exists, and will be subject to heightened screening measures. If the provider or supplier receives a waiver, restrictions will be implemented on the provider's or supplier's service area to limit the provider or supplier to the area with access to care issues and prevent it from furnishing services in locations that are already oversaturated with that provider or supplier type. This restriction will be based on the saturation of providers or suppliers and the number of beneficiaries in the counties where the provider or supplier proposes to operate. Extensive evaluations of providers and suppliers seeking to enroll through this demonstration will be coupled with proactive reviews of submitted claims beginning within the first 60 days of enrollment, as well as increased investigations with referral to law enforcement as appropriate, for newly enrolled and existing providers.

Under the demonstration, claims submitted for services furnished outside of the provider's or supplier's approved service area will be denied and the provider or supplier may not bill beneficiaries for such services provided. This will limit the financial liability of Medicare, Medicaid, and CHIP beneficiaries and protect them from costs associated with claims submitted by providers and suppliers who are not eligible to provide services in that geographic location.

For the same reasons that we implementing this demonstration in Medicare, CMS will also implement the demonstration in Medicaid and CHIP, as authorized by section 402 of the Social Security Amendments of 1967.

A. Medicare Implementation

The CMS Center for Program Integrity (CPI) will perform all PEWD application

reviews and make the relevant access to care determinations.

CMS is currently engaged in the process to seek OMB approval of a PEWD application form under the Paperwork Reduction Act of 1995. Upon approval of this form, providers and suppliers should complete the form and submit it, with all required documentation, to the designated mailbox: *ProviderEnrollmentMoratoria@cms.hhs.gov*. Upon receipt of the application, required documentation, and payment of the application fee, CPI will review for completeness and, within 30 days, will respond with confirmation of receipt or in the case of an incomplete application, rejection. Application submission will require full disclosure of affiliations as outlined in the March 1, 2016 proposed rule (81 FR 10720) titled "Medicare, Medicaid, and Children's Health Insurance Programs; Program Integrity Enhancements to the Provider Enrollment Process" (hereinafter referred to as the March 1, 2016 proposed rule). Although this is a proposed rule, we are adopting the proposed procedures for disclosing affiliations for purposes of this demonstration. Should we receive more than one application for a particular geographical area, the applications will be prioritized by order of receipt. An application will not be considered received until it is complete, including fingerprints. A more detailed discussion regarding these requirements may be found later in this section of this document. Subsequently, CMS will have 90 days from initial receipt to review each application and communicate a decision to the provider or supplier.

Once a complete application is received, the primary determining factor for PEW approval under this demonstration, and the first step in application review, will be a determination regarding beneficiary access to care. This determination will be primarily based upon an evaluation of provider and supplier saturation, provider or supplier to beneficiary ratios, and claims data; this review will be supplemented with the access to care information that the provider or supplier has provided. As a requirement of the application, the provider or supplier will be required to submit detailed access to care information that demonstrates whether an access to care issue exists in the counties where the provider or supplier is attempting to enroll. In 2016, we publicly released moratoria-related saturation data. This data set, located at <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/>

[2016-Fact-sheets-items/2016-02-22.html](#), includes national and state, and county level, saturation data that identifies states that are currently impacted by moratorium. This data gives both states and the public detailed information relevant for an access to care justification. Additionally, we expect applicants to submit data to support that an access to care issue exists, which should not subject applicants to unnecessary burdens of performing extensive analyses. CMS will evaluate the provider- or supplier-generated information and compare it with statistical analysis data that is generated internally by CMS to determine whether an access to care issue exists in the identified area.

If we determine that a beneficiary access to care issue does not exist in the counties where the provider or supplier proposes to operate, the application will be rejected and the application fee will be refunded. A provider or supplier whose application has been rejected may submit a new application at any time. If any subsequent application demonstrates an access to care issue, then we may move forward with processing the application.

When we determine that beneficiary access to care is limited in the counties where the provider or supplier has proposed to enroll, we will continue to the next step in processing the application. We will utilize the ownership information in the submitted CMS-855, in conjunction with the information on the PEWD application, to perform the following screening measures:

- License verification.
- Background investigations including evaluation of affiliations as outlined in the March 1, 2016 proposed rule.
- Federal debt review.
- Credit history review.
- Fingerprint-based criminal background checks (FCBC) of persons with a 5 percent or greater direct or indirect ownership interest, partners and managing employees.
- Enhanced site visits.
- Ownership interest verification in LexisNexis and state databases.
- Evaluation of past behavior in other public programs.

Providers and suppliers who do not pass these heightened screening requirements will receive a letter stating that their application has been denied and indicating the specific reason(s) for denial. Should it choose to do so, a provider or supplier whose application has been denied may submit an appeal to CMS within 15 days of denial. The

appeal must specifically address the reason(s) for denial and detail the action(s) taken to resolve any deficiency. We will evaluate the appeal and process, or deny, the application as appropriate. If a provider or supplier's application is denied because the provider or supplier has not passed the heightened screening requirements, the application fee will not be refunded. Further, if a provider or supplier is denied for a reason under § 424.530(a), the provider or supplier may not reapply under the Provider Enrollment Waiver (PEW). Additional information about submitting an appeal may be found on the provider enrollment moratoria Web site at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/MedicareProviderSupEnroll/ProviderEnrollmentMoratorium.html>.

If CMS determines that a provider or supplier meets the requirements of the PEWD, it will forward the provider or supplier's CMS 855 application to the Medicare Administrative Contractor (MAC) for further processing. The MAC will process the application and determine whether enrollment is appropriate based on all current enrollment policies and procedures.

In addition to the heightened screening measures previously described, providers or suppliers that enroll via this demonstration will also be subject to a 1-year period of enhanced oversight as authorized by section 1866(j)(3)(A) of the Social Security Act (the Act). As part of this oversight, providers or suppliers that enroll through the demonstration will be limited to furnishing services within a specific geographic area based on beneficiary access to care determinations. Providers and suppliers submitting a PEWD application will specify a requested geographic area. However, this area may be further restricted or expanded based upon CMS's determination regarding the scope of the access to care issue. Claims for services furnished outside of the approved service area will be denied and the provider or supplier may not bill beneficiaries for services outside of the approved service area.

Another aspect of our enhanced oversight during this demonstration will be to closely monitor the billing patterns of providers and suppliers through the Fraud Prevention System (FPS). Any abuse of billing privileges may result in revocation of Medicare enrollment. All applicants who are enrolled through the PEWD will be subject to all Medicare policies and regulations, including the requirement of revalidation of their Medicare enrollment within five years

of initial enrollment, in addition to the heightened oversight that is implemented through the demonstration.

If CMS determines there is a beneficiary access to care issue, we will utilize tools that CMS already has in place to facilitate care. Both the regional offices and 1-800-MEDICARE have experience and valuable tools in resolving beneficiary access to care issues, including Home Health Compare and similar provider and supplier locator resources. As current practice dictates, the beneficiary will also be assisted with widening his search, if appropriate, and can be given additional means to assist in finding care, including utilizing the Senior Health Insurance Program (SHIP), an organization that is very experienced in addressing such issues. In the event that the beneficiary is a Medicare Advantage enrollee, then their plan would be contacted and responsible for providing a resolution to their access to care issue.

B. Increased Investigation and Prosecution

Throughout the course of the demonstration, CMS will work with all of its state, federal and law enforcement partners to identify fraudulent providers and suppliers and will take administrative action to remove such providers and suppliers from the Medicare program. For example, within 60 days of a provider or supplier's enrollment pursuant to the PEW, we will perform proactive monitoring and oversight of such provider or supplier, including proactive examination of claims data and investigation of billing anomalies. Further, we will prioritize PEWD-related investigations and will make referrals to appropriate law enforcement partners, including Department of Justice (DOJ), Office of Inspector General (OIG), and state law enforcement agencies, for prosecution of fraud.

C. Medicaid and CHIP Implementation

In addition to the Medicare program, this demonstration will also apply to Medicaid and CHIP. The states will administer the Medicaid and CHIP PEWD and will independently evaluate access to care. If a state determines that a statewide expansion of temporary moratoria would pose unique access to care concerns as compared with more geographically limited moratoria, then the state may elect to lift the moratoria after notifying the Secretary. However, we anticipate that, in the majority of cases, states will be able to use the flexibilities afforded by PEWD to address access to care concerns.

All PEWD-related processes, including but not limited to heightened screening, enrollment, denials, and appeals will be operationalized by the state Medicaid and CHIP agencies in accordance with Federal and State regulations and guidance. The states will make recommendations to CMS regarding when a provider should be enrolled based on access to care, and must wait for CMS concurrence prior to enrolling a provider under the PEWD. CMS will evaluate all recommendations within 30 days of receipt and will advise the state as to whether or not CMS concurs with the recommendation to move forward in the enrollment process. States will not be required to seek approval from CMS to deny a PEWD application. If a provider or supplier receives an enrollment waiver from Medicare, the provider or supplier will be eligible to enroll in Medicaid or CHIP without further review by the states or further concurrence by CMS. However, if a provider or supplier receives a Medicaid or CHIP waiver, the provider or supplier must separately apply for a waiver with Medicare.

D. Demonstration Conclusion

CMS will utilize the PEWD as an opportunity to observe the statewide moratoria and heightened application review effectiveness until the moratoria are lifted, or for a total of 3 years, whichever comes first. Should the PEWD prove to be a useful tool, we will explore options for continuing and expanding the most successful aspects outside of the context of a demonstration. The enhanced oversight exercised as part of the demonstration will also allow us to identify trends and vulnerabilities in the moratoria states and make program adjustments to address fraud schemes as they transform over time.

At the conclusion of the demonstration, those enrollments that occurred as part of the PEWD will be converted to standard enrollments without geographical billing restrictions.

E. Duration of the Demonstration

The PEWD will begin concurrently with statewide expansion of moratoria of HHAs and ambulance suppliers in 6 states (which will be in place for 6 months with the potential for extensions in 6-month increments) and will commence on July 29, 2016. This demonstration will last until the statewide moratoria are lifted, or for a total of 3 years through (concluding on July 28, 2019), whichever comes first.

IV. Collection of Information Requirements

A. Background

In accordance with the implementing regulations of the Paperwork Reduction Act of 1995 (PRA) we requested emergency review under 5 CFR 1320.13(a)(2)(i) because public harm is reasonably likely to result if the regular clearance procedures were followed. Interested parties may comment on the collection of information requirements during a 2-week comment period beginning on July 29, 2016. Those comments will be reviewed prior to OMB action. Once approved, any information collection will be active for no more than 6 months.

Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day and 30-day notice in the **Federal Register** concerning each proposed collection of information requirements. To comply with the PRA, CMS will publish the 60-day **Federal Register** notice immediately following OMB approval of the emergency information collection requirement (ICR).

To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on the ICRs outlined as follows.

B. Burden Estimate (Hours and Wages)

1. Paperwork Burden Estimate (Hours)

The provider and supplier burden associated with completion of this form is estimated at six hours per form. This will include the following time burden per form:

- 2 hours for completion of fingerprint-based criminal background check (FCBC)
- 2 hours for completion of access to care assessment
- 1.5 hours for completion of form
- 0.5 hours for completion of other miscellaneous administrative activities

There will be variation to this estimate based on proximity to a fingerprinting offices as well as the complexity of the data that the provider

or suppliers elects to submit. To assist with completion of access to care assessment, CMS has HHA and ambulance saturation data available at <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2016-Fact-sheets-items/2016-02-22.html>.

CMS expects an estimate of 800 new applicants¹ requesting waiver for a total of 4,800 burden hours annually. Additionally, the provider will have the additional burden associated with completion of the CMS-855, which is required for enrollment into Medicare. This burden is covered under OMB control number 0938-0685.

2. Paperwork Burden Estimate (cost)

This form will be completed by provider and suppliers seeking a waiver to enroll in a Moratoria area. The cost burden is estimated at \$26.00 (\$13.00 base pay) an hour for completion of access to care analysis and miscellaneous administrative activities, totaling \$65.00 per application, equaling \$52,000 annually. The cost burden is estimated at \$178.70 (\$89.35 base pay) an hour for the owner to obtain fingerprints and waiver form totaling \$625.45 per application, equaling \$500,360 annually. Estimated annual burden for 800 newly enrolling applicants totals \$552,360. To derive average costs, we used data from the Bureau of Labor Statistics' May 2015 National Occupational Employment and Wage Estimates (http://www.bls.gov/oes/current/oes_nat.htm#31-0000 for healthcare support occupations and <http://www.bls.gov/oes/current/oes111011.htm> for chief executives.) Hourly wage rates include the costs of fringe benefits (calculated at 100 percent of salary) and the adjusted hourly wage.

C. Response to Comments

We welcome comments on all burden estimates contained in the collection of information section of this notice. If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, (CMS-10629), Fax: (202) 395-6974; or Email: OIRA_submission@omb.eop.gov.

V. Waiver Authority

Under section 402(b) of Pub. L. 90-248 (42 U.S.C. 1395b-1(b)), certain

¹ 800 applicants is an estimate based upon the number of new enrollments plus the number of denials due to moratoria in all moratoria states.

requirements of the Act and implementing regulations will be waived in order to implement this demonstration. Specifically, CMS will waive the following authorities in Florida, Illinois, Michigan, New Jersey, Pennsylvania, and Texas:

- Waiver of § 424.518(c) and (d) and 455.434(a) which describe the fingerprinting rules for enrollment in Medicare, Medicaid and CHIP.² This waiver involves expanding the existing regulatory authority in two ways: (1) To include ambulance suppliers requesting a PEW waiver within the categories of providers and suppliers to which the FCBC requirements apply; and (2) to include managing employees within the associated individuals subject to an FCBC when the provider or supplier seeks to enroll according to the PEW. Additionally, we intend to modify the authority which currently requires denial or revocation of providers or suppliers who fail to submit fingerprints, to instead specify that a PEWD application will be rejected if the provider or supplier fails to submit the required fingerprints within 30 days.

- Waiver of section 1866(j)(3)(B) of the Act, which requires program instruction or regulatory interpretation in order to implement section 1866(j)(3) of the Act for the provisional period of enhanced oversight for new providers of services and suppliers. We intend to implement the requirements of section 1866(j)(3) of the Act for purposes of this demonstration and in the absence of regulation or other instruction in order to allow for a 1-year period of enhanced oversight of newly enrolling providers and suppliers under this demonstration.

- Waiver of § 424.545, Part 498 Subparts D and E, and § 405.803(b) of the regulations, as well as section 1866(j)(8) of the Act which allow a provider or supplier the right to request a hearing with an administrative law judge and the Department Appeals Board in the case of denial of an enrollment application. Denials of enrollment pursuant to this demonstration will be appealable only to CMS, and any applicant to the PEWD will waive their right to further appeal.

- Waiver of section 1866(j)(7) of the Act and §§ 424.570 and 455.470 of the regulations which specify that the moratoria must be implemented at a provider- or supplier-type level, in order to allow a case-by-case exception process to moratoria.

Dated: July 26, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2016-18381 Filed 7-29-16; 4:15 pm]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 424 and 455

[CMS-6059-N5]

Medicare, Medicaid, and Children's Health Insurance Programs: Announcement of the Implementation and Extension of Temporary Moratoria on Enrollment of Part B Non-Emergency Ground Ambulance Suppliers and Home Health Agencies in Designated Geographic Locations and Lifting of the Temporary Moratoria on Enrollment of Part B Emergency Ground Ambulance Suppliers in All Geographic Locations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Extension, implementation, and lifting of temporary moratoria.

SUMMARY: This document announces the extension of temporary moratoria on the enrollment of new Medicare Part B non-emergency ground ambulance suppliers and Medicare home health agencies (HHAs), subunits, and branch locations in specific locations within designated metropolitan areas in Florida, Illinois, Michigan, Texas, Pennsylvania, and New Jersey to prevent and combat fraud, waste, and abuse. It also announces the implementation of temporary moratoria on the enrollment of new Medicare Part B non-emergency ground ambulance suppliers and Medicare HHAs, subunits, and branch locations in Florida, Illinois, Michigan, Texas, Pennsylvania, and New Jersey on a statewide basis. In addition, it announces the lifting of the moratoria on all Part B emergency ground ambulance suppliers. These moratoria, and the changes described in this document, also apply to the enrollment of HHAs and non-emergency ground ambulance suppliers in Medicaid and the Children's Health Insurance Program.

DATES: Effective July 29, 2016.

FOR FURTHER INFORMATION CONTACT: Jung Kim, (410) 786-9370.

News media representatives must contact CMS' Public Affairs Office at (202) 690-6145 or email them at press@cms.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. CMS' Implementation of Temporary Enrollment Moratoria

Under the Patient Protection and Affordable Care Act (Pub. L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152) (collectively known as the Affordable Care Act), the Congress provided the Secretary with new tools and resources to combat fraud, waste, and abuse in Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). Section 6401(a) of the Affordable Care Act added a new section 1866(j)(7) to the Social Security Act (the Act) to provide the Secretary with authority to impose a temporary moratorium on the enrollment of new Medicare, Medicaid or CHIP providers and suppliers, including categories of providers and suppliers, if the Secretary determines a moratorium is necessary to prevent or combat fraud, waste, or abuse under these programs. Section 6401(b) of the Affordable Care Act added specific moratorium language applicable to Medicaid at section 1902(kk)(4) of the Act, requiring States to comply with any moratorium imposed by the Secretary unless the State determines that the imposition of such moratorium would adversely impact Medicaid beneficiaries' access to care. Section 6401(c) of the Affordable Care Act amended section 2107(e)(1) of the Act to provide that all of the Medicaid provisions in sections 1902(a)(77) and 1902(kk) are also applicable to CHIP.

In the February 2, 2011 **Federal Register** (76 FR 5862), CMS published a final rule with comment period titled, "Medicare, Medicaid, and Children's Health Insurance Programs; Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers," which implemented section 1866(j)(7) of the Act by establishing new regulations at 42 CFR 424.570. Under § 424.570(a)(2)(i) and (iv), CMS, or CMS in consultation with the Department of Health and Human Services' Office of Inspector General (HHS-OIG) or the Department of Justice (DOJ), or both, may impose a temporary moratorium on newly enrolling Medicare providers and suppliers if CMS determines that there is a significant potential for fraud, waste, or abuse with respect to a particular provider or supplier type, or particular geographic locations, or both. At § 424.570(a)(1)(ii), CMS stated that it would announce any temporary moratorium in a **Federal Register**

² According to § 457.990, the enrollment screening requirements applicable to providers enrolling in Medicaid apply equally to those enrolling in CHIP.

document that includes the rationale for the imposition of such moratorium. This document fulfills that requirement.

In accordance with section 1866(j)(7)(B) of the Act, there is no judicial review under sections 1869 and 1878 of the Act, or otherwise, of the decision to impose a temporary enrollment moratorium. A provider or supplier may use the existing appeal procedures at 42 CFR part 498 to administratively appeal a denial of billing privileges based on the imposition of a temporary moratorium; however the scope of any such appeal is limited solely to assessing whether the temporary moratorium applies to the provider or supplier appealing the denial. Under § 424.570(c), CMS denies the enrollment application of a provider or supplier if the provider or supplier is subject to a moratorium. If the provider or supplier was required to pay an application fee, the application fee will be refunded if the application was denied as a result of the imposition of a temporary moratorium (see § 424.514(d)(2)(v)(C)).

Based on this authority and our regulations at § 424.570, we initially imposed moratoria to prevent enrollment of new HHAs, subunits, and branch locations¹ (hereafter referred to as HHAs) in Miami-Dade County, Florida and Cook County, Illinois, as well as surrounding counties, and Medicare Part B ground ambulance suppliers in Harris County, Texas and surrounding counties, in a notice issued on July 31, 2013 (78 FR 46339). We exercised this authority again in a notice published on February 4, 2014 (79 FR 6475) when we extended the existing moratoria for an additional 6 months and expanded them to include enrollment of HHAs in Broward County, Florida; Dallas County, Texas; Harris County, Texas; and Wayne County, Michigan and surrounding counties, and enrollment of ground ambulance suppliers in Philadelphia, Pennsylvania and surrounding counties. Then, we further extended these moratoria in documents issued on August 1, 2014 (79 FR 44702), February 2, 2015 (80 FR 5551), July 28, 2015 (80 FR 44967), and February 2, 2016 (81 FR 5444).

B. Determination of the Need for Moratoria

In imposing these enrollment moratoria, CMS considered both

qualitative and quantitative factors suggesting a high risk of fraud, waste, or abuse. CMS relied on law enforcement's longstanding experience with ongoing and emerging fraud trends and activities through civil, criminal, and administrative investigations and prosecutions. CMS' determination of a high risk of fraud, waste, or abuse in these provider and supplier types within these geographic locations was then confirmed by CMS' data analysis, which relied on factors the agency identified as strong indicators of risk. (For a more detailed explanation of this determination process and of these authorities, see the July 31, 2013 notice (78 FR 46339) or February 4, 2014 moratoria document (79 FR 6475)).

Because fraud schemes are highly migratory and transitory in nature, many of CMS' program integrity authorities and anti-fraud activities are designed to allow the agency to adapt to emerging fraud in different locations. The laws and regulations governing CMS' moratoria authority give us flexibility to use any and all relevant criteria for future moratoria, and CMS may rely on additional or different criteria as the basis for future moratoria.

1. Application to Medicaid and the Children's Health Insurance Program (CHIP)

The February 2, 2011 final rule also implemented section 1902(kk)(4) of the Act, establishing new Medicaid regulations at § 455.470. Under § 455.470(a)(1) through (3), the Secretary may impose a temporary moratorium, in accordance with § 424.570, on the enrollment of new providers or provider types after consulting with any affected State Medicaid agencies. The State Medicaid agency must impose a temporary moratorium on the enrollment of new providers or provider types identified by the Secretary as posing an increased risk to the Medicaid program unless the State determines that the imposition of such moratorium would adversely affect Medicaid beneficiaries' access to medical assistance and so notifies the Secretary. The final rule also implemented section 2107(e)(1)(D) of the Act by providing, at § 457.990 of the regulations, that all of the provisions that apply to Medicaid under sections 1902(a)(77) and 1902(kk) of the Act, as well as the implementing regulations, also apply to CHIP.

Section 1866(j)(7) of the Act authorizes imposition of a temporary enrollment moratorium for Medicare, Medicaid, and/or CHIP, "if the Secretary determines such moratorium is necessary to prevent or combat fraud, waste, or abuse under either such

program." While there may be exceptions, CMS believes that generally, a category of providers or suppliers that poses a risk to the Medicare program also poses a similar risk to Medicaid and CHIP. Many of the new anti-fraud provisions in the Affordable Care Act reflect this concept of "reciprocal risk" in which a provider that poses a risk to one program poses a risk to the other programs. For example, section 6501 of the Affordable Care Act titled, "Termination of Provider Participation under Medicaid if Terminated Under Medicare or Other State Plan," which amends section 1902(a)(39) of the Act, requires State Medicaid agencies to terminate the participation of an individual or entity if such individual or entity is terminated under Medicare or any other State Medicaid plan. Additional provisions in title VI, Subtitles E and F of the Affordable Care Act also support the determination that categories of providers and suppliers pose the same risk to Medicaid as to Medicare. Section 6401(a) of the Affordable Care Act required us to establish levels of screening for categories of providers and suppliers based on the risk of fraud, waste, and abuse determined by the Secretary. Section 6401(b) of the Affordable Care Act required State Medicaid agencies to screen providers and suppliers based on the same levels established for the Medicare program. This reciprocal concept is also reflected in the Medicare moratoria regulations at § 424.570(a)(2)(ii) and (iii), which permit CMS to impose a Medicare moratorium based solely on a State imposing a Medicaid moratorium. Accordingly, CMS has determined that there is a reasonable basis for concluding that a category of providers or suppliers that poses a risk to Medicare also poses a similar risk to Medicaid and CHIP, and that a moratorium in all of these programs is necessary to effectively combat this risk.

2. Consultation With Law Enforcement

In consultation with the HHS Office of Inspector General (OIG) and the Department of Justice (DOJ), CMS previously identified two provider and supplier types in nine geographic locations that warrant a temporary enrollment moratorium. For a more detailed discussion of this consultation process, see the July 31, 2013 notice (78 FR 46339) or February 4, 2014 moratoria document (79 FR 6475).

3. Data Analysis

In addition to consulting with law enforcement, CMS also analyzed its own data to identify specific provider and

¹ As noted in the preamble to the final rule with comment period implementing the moratorium authority (February 2, 2011, CMS-6028-FC (76 FR 5870), home health agency subunits and branch locations are subject to the moratoria to the same extent as any other newly enrolling home health agency.

supplier types within geographic locations with significant potential for fraud, waste or abuse, therefore warranting the imposition of enrollment moratoria.

Four of the six states subject to the temporary enrollment moratoria for HHAs and Part B non-emergency ground ambulance suppliers have counties that contain or are adjacent to HEAT Medicare Fraud Strike Force locations, with the exception of Pennsylvania and New Jersey. All six states are also consistently ranked near the top for the identified metrics among counties with at least 200,000 Medicare beneficiaries in 2012.

4. Beneficiary Access to Care

Beneficiary access to care in Medicare, Medicaid, and CHIP is of critical importance to CMS and its State partners, and CMS carefully evaluated access for the target moratorium locations with every imposition and extension of the moratoria. Prior to imposing these moratoria, CMS reviewed Medicare data for these areas and found no concerns with beneficiary access to HHAs or ground ambulance suppliers. CMS also consulted with the appropriate State Medicaid Agencies and with the appropriate State Departments of Emergency Medical Services to determine if the moratoria would create access to care concerns for Medicaid and CHIP beneficiaries in the targeted locations and surrounding counties. All of CMS' State partners were supportive of CMS' analysis and proposals, and together with CMS, determined that these moratoria would not create access to care issues for Medicaid or CHIP beneficiaries.

5. When a Temporary Moratorium Does Not Apply

Under § 424.570(a)(1)(iii), a temporary moratorium does not apply to changes in practice locations, changes to provider or supplier information such as phone number, address, or changes in ownership (except changes in ownership of HHAs that require initial enrollments under § 424.550). Also, in accordance with § 424.570(a)(1)(iv), the moratorium does not apply to an enrollment application that a CMS contractor has already approved, but has not yet entered into the Provider Enrollment Chain and Ownership System (PECOS) at the time the moratorium is imposed.

6. Lifting a Temporary Moratorium

In accordance with § 424.570(b), a temporary enrollment moratorium imposed by CMS will remain in effect for 6 months. If CMS deems it

necessary, the moratorium may be extended in 6-month increments. CMS will evaluate whether to extend or lift the moratorium before the end of the initial 6-month period and, if applicable, any subsequent moratorium periods. If one or more of the moratoria announced in this document are extended, CMS will publish a document regarding such extensions in the **Federal Register**.

As provided in § 424.570(d), CMS may lift a moratorium at any time if the President declares an area a disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, if circumstances warranting the imposition of a moratorium have abated, if the Secretary has declared a public health emergency, or if, in the judgment of the Secretary, the moratorium is no longer needed.

Once a moratorium is lifted, the provider or supplier types that were unable to enroll because of the moratorium will be designated to CMS' high screening level under §§ 424.518(c)(3)(iii) and 455.450(e)(2) for 6 months from the date the moratorium was lifted.

II. Lifting of Moratorium on New Part B Emergency Ambulance Suppliers in All Geographic Locations

CMS previously imposed moratoria on the enrollment of new Part B ground ambulance suppliers in the Texas counties of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller; the Pennsylvania counties of Bucks, Delaware, Montgomery, and Philadelphia; and the New Jersey counties of Burlington, Camden, and Gloucester. These moratoria became effective upon publication of the notice in the **Federal Register** on July 31, 2013 (78 FR 46339) and the moratoria document on February 4, 2014 (79 FR 6475), and were subsequently extended by documents published in the **Federal Register** on August 1, 2014 (79 FR 44702), February 2, 2015 (80 FR 5551), and July 28, 2015 (80 FR 44967), and February 2, 2016 (81 FR 5444).

Throughout the duration of the temporary moratoria on newly enrolling Part B ground ambulance providers, CMS has evaluated the risk to the Medicare program of separate categories of ambulance suppliers. This evaluation has shown that the primary risk to the program comes from the non-emergency ambulance supplier category. Additionally, we have observed potential access to care related issues for emergency ambulance services in some areas. As a result, CMS is not extending the temporary moratoria on the

enrollment of Part B emergency ground ambulance suppliers in any geographic locations in the states of New Jersey, Pennsylvania, or Texas. However, we will continue to evaluate all ambulance services for indicators of fraud, waste, and abuse and will evaluate the need for future moratoria based on these indicators. The lifting of the moratorium on new Part B emergency ambulance suppliers in all geographic locations also applies to Medicaid and CHIP. New Part B suppliers of emergency ambulance services will be permitted to enroll as of July 29, 2016. Any such suppliers that enroll within 6 months of that date will be included in the "high" risk screening category, as provided in § 424.518(c)(3). New emergency ambulance suppliers that furnish both emergency and non-emergency services will only be able to bill for emergency transportation services.

III. Extension of Home Health and Ambulance Moratoria—Geographic Locations

CMS previously imposed moratoria on the enrollment of new HHAs in the Florida counties of Broward, Miami-Dade, and Monroe; the Illinois counties of Cook, DuPage, Kane, Lake, McHenry, and Will; the Michigan counties of Macomb, Monroe, Oakland, Washtenaw, and Wayne; and the Texas counties of Brazoria, Chambers, Collin, Fort Bend, Galveston, Dallas, Harris, Liberty, Denton, Ellis, Kaufman, Montgomery, Rockwall, Tarrant, and Waller. Further, we previously imposed moratoria on the enrollment of new ground ambulance suppliers in the Texas counties of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller; the Pennsylvania counties of Bucks, Delaware, Montgomery, and Philadelphia; and the New Jersey counties of Burlington, Camden, and Gloucester. These moratoria became effective upon publication of the notice in the **Federal Register** on July 31, 2013 (78 FR 46339) and the moratoria document on February 4, 2014 (79 FR 6475), and were subsequently extended by documents published in the **Federal Register** on August 1, 2014 (79 FR 44702), February 2, 2015 (80 FR 5551), July 28, 2015 (80 FR 44967), and February 2, 2016 (81 FR 5444).

As provided in § 424.570(b), CMS may deem it necessary to extend previously-imposed moratoria in 6-month increments. Under this authority, CMS is extending the temporary moratoria on the Medicare enrollment of HHAs and Part B non-emergency ground ambulance suppliers in the geographic locations discussed herein. Under regulations at § 455.470 and

§ 457.990, these moratoria also apply to the enrollment of HHAs and non-emergency ground ambulance suppliers in Medicaid and CHIP. Under § 424.570(b), CMS is required to publish a document in the **Federal Register** announcing any extension of a moratorium, and this extension of moratoria document fulfills that requirement.

CMS consulted with the HHS–OIG regarding the extension of the moratoria on new HHAs and Part B non-emergency ground ambulance suppliers in all of the moratoria counties, and HHS–OIG agrees that a significant potential for fraud, waste, and abuse continues to exist regarding those provider and supplier types in these geographic areas. The circumstances warranting the imposition of the moratoria have not yet abated, and CMS has determined that the moratoria are still needed as we monitor the indicators and continue with administrative actions to combat fraud and abuse, such as payment suspensions and revocations of provider/supplier numbers. (For more information regarding the monitored indicators, see the February 4, 2014 moratoria document (79 FR 6475)).

Based upon CMS' consultation with the relevant State Medicaid agencies, CMS has concluded that extending these moratoria will not create an access to care issue for Medicaid or CHIP beneficiaries in the affected counties at this time. CMS also reviewed Medicare data for these areas and found there are no current problems with access to HHAs or ground ambulance suppliers. Nevertheless, the agency will continue to monitor these locations to make sure that no access to care issues arise in the future.

Based upon our consultation with law enforcement and consideration of the factors and activities described previously, CMS has determined that the temporary enrollment moratoria should be extended for an additional 6 months.

IV. Implementation of New Home Health and Part B Non-Emergency Ambulance Moratoria—Geographic Locations

1. Geographic locations affected by implementation.

CMS has determined that the factors initially evaluated to implement the temporary moratoria show that a high risk of fraud, waste, and abuse exists beyond the current moratoria areas, which may suggest that a high risk of fraud, waste, or abuse exists due largely to circumvention of the moratoria by

some providers and suppliers. The primary means of circumvention includes enrolling a new practice location outside of a moratorium area and servicing beneficiaries within the moratorium area. Additionally, CMS has continued to see areas of saturation that exceed the national average in the moratoria states. As a result, CMS, in consultation with the OIG, has determined that it is necessary to expand the temporary moratoria on a statewide basis, by implementing temporary moratoria on all newly enrolling HHAs in the remaining counties in Florida, Illinois, Michigan, and Texas, and on all newly enrolling Part B non-emergency ground ambulance suppliers in the remaining counties in Texas, New Jersey, and Pennsylvania, in order to combat fraud, waste, or abuse in those states. CMS has determined that these moratoria will also apply to Medicaid and CHIP in each state, although states continue to have the ability to opt out if they determine that the imposition of such moratorium would adversely impact Medicaid beneficiaries' access to care.

In the document published on February 4, 2014 (79 FR 6475) initially imposing the temporary moratorium on enrollment of HHAs in Broward County, Florida, CMS stated that “it is not necessary to extend the moratorium to the other counties that border Broward because of the state's home health licensing rules that prevent providers enrolling in these counties from serving beneficiaries in Broward.” However, through data analytics, we have determined that these state licensure restrictions are not adequate deterrents to prevent a provider from enrolling in one county and servicing beneficiaries in other counties. In some cases, CMS has observed that providers are servicing beneficiaries located over 300 miles from their practice location.

As a result of this and other data analyses, CMS has determined that it is necessary to expand these moratoria to be statewide. Accordingly, beginning on the effective date of this document, no new HHAs will be enrolled in Medicare, Medicaid, or CHIP with a practice location in Florida, Illinois, Michigan, or Texas unless their enrollment application has already been approved but not yet entered into PECOS for Medicare or the State Provider/Supplier Enrollment System for Medicaid and CHIP as of the effective date of this document. Additionally, no new Part B non-emergency ground ambulance supplier will be enrolled into Medicare, Medicaid, or CHIP with a practice location in Texas, New Jersey, or Pennsylvania unless their enrollment

application has already been approved but not yet entered into PECOS for Medicare or the State Provider/Supplier Enrollment System for Medicaid and CHIP as of the effective date of this document.

2. Beneficiary Access to Care

Beneficiary access to care in Medicare, Medicaid, and CHIP is of critical importance to CMS and its State partners, and CMS carefully evaluated access for the target moratorium locations. CMS recognizes the increased risk of beneficiary access to care issues when implementing statewide moratoria. In order to address this issue, we have performed a detailed access to care analysis for all moratoria states, and identified the counties with lower saturation of home health and Part B ground ambulance providers or suppliers.² These data include an evaluation of provider and supplier saturation, provider or supplier to beneficiary ratios, and claims data in the Medicare program. Beneficiary access to care is a primary concern for CMS, and we will continue to utilize these data to address the lowest saturation areas. As a continual measure, CMS will update and evaluate these data to monitor attrition of home health and Part B ground ambulance providers or suppliers from Medicare and make certain that beneficiaries in counties with lower provider or supplier saturation are not negatively impacted by the moratoria or related enforcement activities. Any beneficiary that experiences access to care issues may report them to 1–800–MEDICARE or their state's Quality Improvement Organization (QIO) for resolution.

CMS does not currently have the regulatory authority to implement an exception process to respond to beneficiary access to care issues; therefore, concurrently with the statewide moratoria implementation, CMS is announcing a demonstration under the authority provided in Section 402(a)(1)(J) of the Social Security Amendments of 1967 (42 U.S.C. 1395b–1(a)(1)(J)) that waives certain authorities and allows for such exceptions. The demonstration will, among other things, allow for access to care-based exceptions to the moratoria in certain limited circumstances. This will allow enrollment of a provider or supplier after a heightened review of that provider has been conducted.

CMS has determined that this exception process will also apply to

² Data related to HHAs and Part B non-emergency ambulance suppliers may be viewed at <https://data.cms.gov/moratoria-data>.

Medicaid and CHIP providers in each state. CMS will work collaboratively with states to implement this demonstration in a way that accommodates the access to care needs of beneficiaries in each state.

Details of the demonstration may be found at elsewhere in this issue of the **Federal Register**.

V. Summary of the Moratoria Locations

CMS is executing its authority under sections 1866(j)(7), 1902(kk)(4), and 2107(e)(1)(D) of the Act to extend and implement temporary enrollment moratoria on HHAs for all counties in Florida, Illinois, Michigan, and Texas, as well as Part B non-emergency ground ambulance suppliers for all counties in New Jersey, Pennsylvania, and Texas.

VI. Clarification of Right to Judicial Review

Section 1866(j)(7)(B) of the Act states that there shall be no judicial review under section 1869, section 1878, or otherwise, of a temporary moratorium imposed on the enrollment of new providers of services and suppliers if the Secretary determines that the moratorium is necessary to prevent or combat fraud, waste, or abuse. Accordingly, our regulations at 42 CFR 498.5(l)(4) state that for appeals of denials based on a temporary moratorium, the scope of review will be limited to whether the temporary moratorium applies to the provider or supplier appealing the denial. The agency's basis for imposing a temporary moratorium is not subject to review. Our regulations do not limit the right to seek judicial review of a final agency decision that the temporary moratorium applies to a particular provider or supplier. In the preamble to the February 2, 2011 (76 FR 5918) final rule with comment period establishing this regulation, we explained that "a provider or supplier may administratively appeal an adverse determination based on the imposition of a temporary moratorium up to and including the Department Appeal Board (DAB) level of review." We are clarifying that providers and suppliers that have received unfavorable decisions in accordance with the limited scope of review described in § 498.5(l)(4) may seek judicial review of those decisions after they exhaust their administrative appeals. However, we reiterate that section 1866(j)(7)(B) of the Act precludes judicial review of the agency's basis for imposing a temporary moratorium.

VII. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VIII. Regulatory Impact Statement

CMS has examined the impact of this document as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major regulatory actions with economically significant effects (\$100 million or more in any 1 year). This document will prevent the enrollment of new home health providers and Part B non-emergency ground ambulance suppliers in Medicare, Medicaid, and CHIP. Though savings may accrue by denying enrollments, the monetary amount cannot be quantified. After the imposition of the initial moratoria on July 31, 2013, 889 HHAs, and 19 ambulance companies in all geographic areas affected by the moratoria had their applications denied. We have found the number of applications that are denied after 60 days declines dramatically, as most providers and suppliers will not submit applications during the moratoria period. Therefore, this document does not reach the economic threshold, and thus is not considered a major action.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most

hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than \$7.5 million to \$38.5 million in any 1 year. Individuals and states are not included in the definition of a small entity. CMS is not preparing an analysis for the RFA because it has determined, and the Secretary certifies, that this document will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if an action may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, CMS defines a small rural hospital as a hospital that is located outside of a metropolitan statistical area (MSA) for Medicare payment purposes and has fewer than 100 beds. CMS is not preparing an analysis for section 1102(b) of the Act because it has determined, and the Secretary certifies, that this document will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any regulatory action whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2015, that threshold is approximately \$146 million. This document will have no consequential effect on state, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed regulatory action (and subsequent final action) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. Because this document does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this document was reviewed by the Office of Management and Budget.

Dated: July 13, 2016.

Andrew M. Slavitt,
Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2016–18383 Filed 7–29–16; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF STATE**48 CFR Parts 609 and 649****[Public Notice: 9599]****RIN 1400–AD90****Department of State Acquisition Regulation****AGENCY:** Department of State.**ACTION:** Final rule.

SUMMARY: This rule adopts as final certain changes proposed to the Department of State Acquisition Regulation (DOSAR) to provide procedural changes relating to the suspension and debarment process.

DATES: This rule is effective September 2, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Colleen Kosar, Policy Division, Office of the Procurement Executive, A/OPE, 2201 C Street NW., Suite 1060, State Annex Number 15, Washington, DC 20520. Telephone: 703–516–1685. Email: KosarCM@state.gov.

SUPPLEMENTARY INFORMATION: The Department of State published a Notice of Proposed Rulemaking (NPRM), Public Notice 9479 at 81 FR 17121, March 28, 2016, with a request for comments. A summary of the proposed changes and the reasons therefor were included in the NPRM. The comment period closed May 27, 2016. The Department did not receive any substantive comments on the rule. One correspondent raised matters that were not relevant to this rulemaking. The Department is now adopting the proposed rule as a final rule without change.

Regulatory Findings*Administrative Procedure Act*

In accordance with the provisions of the Administrative Procedure Act (APA) governing rules promulgated by federal agencies that affect the public (5 U.S.C. 552 and 553), the Department published this rulemaking as a proposed rule and invited public comment. In accordance with the APA, this rulemaking will be effective 30 days after publication.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This determination was based on the fact that the changes proposed in this update have no impact on small businesses. The number of small

businesses considered for suspension or debarment will not grow or shrink as a result of the proposed changes. The Department analyzed the suspension/debarment actions that occurred in FY14 and no small businesses were impacted.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 801 *et seq.*). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and import markets. This determination was based on the fact that the proposed changes are intended to simplify the procedural aspects of the suspension and debarment process. The rule does not place new requirements on contract performance. The rule does not have a significant cost or administrative impact on offerors or contractors.

Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). E.O. 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department of State does not consider this rule to be an “economically significant regulatory action” under Executive Order 12866. The Department has reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Orders and finds that the benefits of updating this rule outweigh any costs, which the Department assesses to be minimal.

Executive Order 13132

This rule 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Executive Order 13175

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

The rule imposes no new or revised information collections under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

List of Subjects in 48 CFR Parts 609 and 649

Administrative practice and procedure, Government procurement.

For the reasons stated in the preamble, the Department of State amends 48 CFR chapter 6 as follows:

■ 1. The authority citation for 48 CFR parts 609 and 649 continues to read as follows:

Authority: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

PART 609—CONTRACTOR QUALIFICATIONS

■ 2. Revise section 609.403–70 to read as follows:

609.403–70 DOSAR definitions.

Fact-finding official means the individual designated by the debarring official to conduct additional proceedings as necessary concerning disputed material facts.

609.405–1 [Amended]

■ 3. In section 609.405–1, remove “609.405–70” and add in its place “649.101–70”.

609.405–70 [Redesignated as 649.101–70 and Transferred]

■ 4. Redesignate section 609.405–70 as 649.101–70 and transfer newly redesignated section 649.101–70 to part 649.

■ 5. In section 609.406–3, revise paragraphs (a), (b)(2) through (7), (c)(2), and (d) to read as follows:

609.406–3 Procedures.

(a) *Investigation and referral.* (1) DOS employees aware of any cause that might serve as the basis for debarment shall refer those cases through the contracting officer to the debarring official. The debarring official shall refer to the Office of the Inspector General all reported cases that involve possible criminal or fraudulent activities for investigation by that office.

(2) Referrals for consideration of debarment shall include, as appropriate and available—

(i) The cause for debarment (see FAR 9.406–2);

(ii) A statement of facts;

(iii) Copies of supporting documentary evidence and a list of all necessary or probable witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact-finding proceeding and the subject matter of their testimony;

(iv) A list of all contractors involved, either as principals or as affiliates, including current or last known home and business addresses and ZIP codes;

(v) A statement of the acquisition history with such contractors;

(vi) A statement concerning any known pertinent active or potential criminal investigation, criminal or civil court proceedings, or administrative claim before Boards of Contract Appeals; and

(vii) A statement from each DOS organizational element affected by the debarment action as to the impact of a debarment on DOS programs.

(3) As deemed appropriate, the debarring official may conduct investigations to supplement the information provided in the referral, or may request investigations by the Office of the Inspector General or other Department office.

(b) * * *

(2) In response to the debarment notice, if the contractor or its representative notifies the debarring official within 30 days after receipt of the notice that it wants to present information and arguments in person to the debarring official, that official, or a designee, shall chair such a meeting. The oral presentation shall be conducted informally and a transcript need not be made. However, the contractor may supplement its oral presentation with written information and arguments for inclusion in the administrative record.

(3) Pursuant to FAR 9.406–3(b)(2), the contractor may request a fact-finding proceeding.

(4) The debarring official shall designate a fact-finding official and shall provide the fact-finding official with a copy of all documentary evidence considered in proposing debarment. Upon receipt of such material, the fact-finding official shall notify the contractor and schedule a hearing date.

(5) In addition to the purposes provided in FAR 9.406–3(b)(2), the hearing is intended to provide the debarring official with findings of fact based on a preponderance of evidence submitted to the fact-finding official and to provide the debarring official with a determination as to whether a cause for debarment exists, based on the facts as found.

(6) The fact-finding proceeding shall be conducted in accordance with procedures determined by the fact-finding official. The rules shall be as informal as is practicable, consistent with FAR 9.406–3(b). The fact-finding official is responsible for making the transcribed record of the hearing, unless the contractor and the fact-finding official agree to waive the requirement for a transcript.

(7) The fact-finding official shall deliver written findings and the transcribed record, if made, to the debarring official. The findings shall resolve any facts in dispute based on a preponderance of the evidence presented and recommend whether a cause for debarment exists.

(c) * * *

(2) When a determination is made to initiate action, the debarring official shall provide to the contractor and any specifically named affiliates written notice in accordance with FAR 9.406–3(c).

* * * * *

(d) *Debarring official's decision.* In addition to complying with FAR 9.406–3(d) and (e), the debarring official shall provide single copies of the decision to each DOS organizational element affected by the decision.

609.407–3 [Amended]

■ 6. In section 609.407–3:

■ a. In paragraph (b)(2), remove the word “panel” and add in its place “official”.

■ b. In paragraph (d), remove “and to the General Services Administration in accordance with 609.404”.

PART 649—TERMINATION OF CONTRACTS

■ 7. Add section 649.101 to read as follows:

649.101 Authorities and responsibilities.

649.101–70 [Amended]

■ 8. Revise the heading of newly redesignated section 649.101–70 to read as follows:

649.101–70 Termination action decisions after debarment.

* * * * *

Dated: July 22, 2016.

Eric N. Moore,

Acting, Procurement Executive, Department of State.

[FR Doc. 2016–18280 Filed 8–2–16; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216, 300, 600, and 660

[Docket No. 090223227–6560–03]

RIN 0648–AX63

Trade Monitoring Procedures for Fishery Products; International Trade in Seafood; Permit Requirements for Importers and Exporters

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

ACTION: Final rule.

SUMMARY: This final rule sets forth regulations to revise procedures and requirements for filing import, export, and re-export documentation for certain fishery products to meet requirements for the SAFE Port Act of 2006, the Magnuson-Stevens Fishery Conservation and Management Act (MSA), other applicable statutes, and obligations that arise from U.S. participation in regional fishery management organizations (RFMOs) and other arrangements to which the United States is a member or contracting party. Specifically, NMFS sets forth regulations to integrate the collection of trade documentation within the government-wide International Trade Data System (ITDS) and require electronic information collection through the automated portal maintained by the Department of Homeland Security, Customs and Border Protection (CBP). Under this

integration, NMFS will require annually renewable International Fisheries Trade Permits (IFTP) for the import, export, and re-export of certain regulated seafood commodities that are subject to trade monitoring programs of RFMOs and/or subject to trade documentation requirements under domestic law. These trade monitoring programs enable the United States to exclude products that do not meet the criteria for admissibility to U.S. markets, including products resulting from illegal, unregulated, and unreported (IUU) fishing activities. This final rule consolidates existing international trade permits for regulated seafood products under the Antarctic Marine Living Resources (AMLR) and Highly Migratory Species International Trade Permit (HMS ITP) programs and expands the scope of the permit requirement to include regulated seafood products under the Tuna Tracking and Verification Program (TTVP). This final rule also stipulates data and trade documentation for the above programs which must be provided electronically to CBP and addresses recordkeeping requirements for these programs in light of these changes. Trade documentation excludes any programmatic documents that are not required at the time of entry/export (e.g., biweekly dealer reports).

DATES: This final rule is effective September 20, 2016, except for the revision to § 300.184, which is effective August 3, 2016.

FOR FURTHER INFORMATION CONTACT:

Christopher Rogers, Office for International Affairs and Seafood Inspection, NOAA Fisheries (phone 301-427-8350, or email christopher.rogers@noaa.gov).

SUPPLEMENTARY INFORMATION:

Background

The Security and Accountability for Every Port Act of 2006 (SAFE Port Act, Pub. L. 109-347) requires all Federal agencies with a role in import admissibility decisions to collect information electronically through the ITDS. The Department of the Treasury has the U.S. Government lead on ITDS development and Federal agency integration. CBP developed Automated Commercial Environment (ACE) as an internet-based system for the collection information for ITDS. The Office of Management and Budget (OMB), through its e-government initiative, oversees Federal agency participation in ITDS, with a focus on reducing duplicate reporting across agencies and migrating paper-based reporting systems to electronic information collection.

The term ITDS refers to the integrated, government-wide project for the electronic collection, use, and dissemination of the international trade and transportation data Federal agencies need to perform their missions, while the term ACE refers to the “single window” system through which the trade community will submit data related to imports and exports. Detailed information on ITDS is available at: <http://www.itds.gov>.

Numerous Federal agencies are involved in the regulation of international trade and many of these agencies participate in the import, export and transportation-related decision-making process. Agencies also use trade data to monitor and report on trade activity. NMFS is a partner government agency in the ITDS project because of its role in monitoring the trade of certain fishery products. Electronic collection of seafood trade data through a single portal will result in an overall reduction of the public reporting burden and the agency’s data collection costs, will improve the timeliness and accuracy of admissibility decisions, and increase the effectiveness of applicable trade restrictive measures.

On December 29, 2015, NMFS published a notice of proposed rulemaking for this action (80 FR 81251) to codify NMFS procedures for collecting information electronically through the ITDS. NMFS prepared a regulatory impact review of this action, which is available from NMFS (see **FOR FURTHER INFORMATION CONTACT**). This analysis describes the economic impact this action will have on the United States. Responses to public comments received on the proposed rule are set forth below.

Changes From the Proposed Rule

A number of changes from the proposed rule were made to clarify the regulatory text and to take account of other final rules affecting 50 CFR part 300 that became effective after the proposed rule for ITDS integration was published.

Export Requirements

Although the ITDS single window concept is built on the ACE platform as the reporting mechanism for the trade sector and the source for accessing trade data by the partner agencies, there is a distinction between reporting procedures for imports and exports. The system used to electronically transmit export filings is called the Automated Export System (AES). The primary document for instructing the trade sector on the data requirements for export filing is the Automated Export

System Trade Interface Requirements (AESTIR). The primary instructional document for Partner Government Agency (PGA) export requirements is the “Appendix Q” to AESTIR. This document is comparable to the Customs and Trade Automated Interface Requirements (CATAIR) “Appendix PGA” for import transactions. While each PGA has issued a separate Implementation Guide for import requirements as a supplement to CATAIR, all guidance to the trade sector for PGA export requirements is detailed within the AESTIR Appendix Q documents.

The CBP Web page that contains the primary information on export requirements is: <https://www.cbp.gov/trade/aes>. Details on how to submit export data via AES are available at: <https://www.cbp.gov/trade/aes/aestir/introduction-and-guidelines>. PGA record formats are listed at: <https://www.cbp.gov/document/guidance/aestir-draft-appendix-q-pga-record-formats>. The Appendix Q Record Lay Out Key details how each record required should be structured: <https://www.cbp.gov/document/guidance/appendix-q-record-layout-key>. NMFS has included references to the CBP import and export documentation in § 300.323 of the regulatory text.

Electronic System for Atlantic Bluefin Tuna

NMFS amended the regulatory text for the HMS ITP at 50 CFR 300.181 through 300.189 to reflect the implementation of the electronic bluefin tuna catch document program (81 FR 18796, April 1, 2016).

Biweekly Reporting and Import Documentation for Bigeye Tuna

NMFS amended 50 CFR 300.184 to address the exemption for bigeye tuna described in the Response to Comments section below under the heading “Bi-weekly Reporting.”

Issuance of Permits Restricted to Residents

NMFS amended 50 CFR part 300.322(a) to clarify that only resident agents in the United States are eligible to be issued the International Fisheries Trade Permit (IFTP). Entities that are not resident in the United States may obtain the IFTP only via a resident agent application.

Entry Types Subject to Rule

NMFS amended 50 CFR 300.322(a) and 300.323 to clarify the various transactions which pertain to seafood previously imported for purposes other than immediate consumption and for

which the permitting, reporting and recordkeeping requirements apply.

Exception to Low Value Exemptions

NMFS revised 50 CFR 300.323 to clarify that all imports and exports of covered commodities, including shipments otherwise eligible for the de minimis value exemption, must be filed in ACE or AES, as applicable, in order to collect the NMFS-required information. NMFS also revised 50 CFR 300.324(b) to clarify that de minimis value imports (valued at \$800 or less; see 19 U.S.C. 1321(a)(2)(C)) and exports (valued at \$2500 or less; see 15 CFR 30.37(a) and 15 CFR 30.2(a)(iv)(F)) are subject to the prohibition on importing/exporting fish or fish products regulated under 50 CFR 300 subpart Q without a valid IFTP or without submitting complete and accurate information through ACE or AES, as applicable.

Low value shipments are not exempt from statutory and regulatory requirements to collect information to support admissibility determinations and to report to the respective regional fishery management organizations on U.S. trade in fish products within the scope of each program. Under the SAFE Port Act, NMFS is required to collect information electronically and through the single window. Therefore, NMFS requires the use of ACE or AES, as applicable, to submit required information. However, CBP may provide other reporting mechanisms for different entry types and/or de minimis value shipments. If these alternative CBP mechanisms can collect all of the NMFS-required information and transmit that information to NMFS, importers and exporters may use these mechanisms to fulfill NMFS reporting requirements.

Redesignation of 50 CFR part 300 Subpart Q

In publishing the proposed rule for ITDS integration of current trade monitoring programs, NMFS incorrectly numbered the sections of the proposed new subpart R to 50 CFR part 300. A final rule amending regulations implementing the High Seas Fishing Compliance Act (HSFCA) was published on October 16, 2015 (80 FR 62488). That final rule added a new subpart Q to 50 CFR part 300, with sections numbered §§ 300.330 through 300.341. In subsequently proposing a new Subpart R for the ITDS integration regulations, NMFS numbered sections from 300.320 through 300.324.

In order to maintain the correct sequence of section numbers, NMFS is now redesignating existing subpart Q as new subpart R. This final rule then

inserts a new subpart Q for the ITDS regulations with sections numbered in the correct order. Given the placement of HSFCA regulations in the new subpart R, conforming amendments are needed for cross-references to HSFCA requirements which exist in 50 CFR 600.705 and 50 CFR 660.2.

Responses to Public Comments

NMFS received 12 public comments on the proposed rule. Comments were received from the National Customs Brokers and Forwarders Association of America (NCBFAA), Traffic/World Wildlife Fund/Oceana, Bumble Bee Seafoods, Tri Marine Management Company LLC, and two individuals potentially affected by new requirements in this rule.

Data Elements

Comment 1: NCBFAA noted that although the data submission requirements under the proposed rule are not new, this data has not previously been required to be submitted at the time of entry/release. They noted that submitting data at the time of entry/release not only increases processing costs for the importer, but also raises the potential for disruptions as the data moves through the ACE pipeline to CBP and NMFS. NCBFAA questioned the need for NMFS to collect all data elements at the time of entry/release and asked whether NMFS' requirements could be met if the information was provided via the entry summary which may be filed electronically within 10 days after entry/release. NCBFAA noted that moving these data submission requirements to entry summary would provide much needed flexibility for importers and customs brokers to handle complex entries without slowing down trade and would suit NMFS needs because NMFS would not be able to review data until after entry/release.

Response: NMFS believes that submission of data at the time of entry/release is necessary to ensure only admissible products are permitted entry into the U.S. market. Allowing data entry for these three programs after product has been admitted into the United States would make efforts to interdict problematic entries extremely difficult. NMFS also emphasizes that it is only requiring the minimum amount of data necessary to determine whether a product is admissible at the time of entry be provided as a data set at the time of entry. This approach should expedite the release of product associated with the three NMFS trade monitoring programs.

Permits and the Importer of Record

Comment 2: NCBFAA noted it does not object to consolidating the existing trade permits as proposed in the rule; however they noted that in some instances, particularly along land borders, customs brokers serve as the importer of record. NCBFAA stated its view that the IFTP should not be required for an importer of record who is not a beneficial party in interest, such as a customs broker. NCBFAA therefore suggested the rule be modified to clarify that the permit obligation, and associated recordkeeping and reporting requirements, belong to the "beneficial party in interest" which should be defined as a party with a financial interest in the imported goods such as the owner, purchaser, or distributor of the merchandise.

Response: NMFS believes it is important for enforcement purposes that the importer of record, regardless of whether said importer has a direct financial interest in the imported goods, be the responsible party accountable in the event of a shipment entry problem. Thus, the IFTP obligation and associated recordkeeping and reporting requirements in this rule will reside with the importer of record. Related to this, NMFS clarifies that entities not resident in the United States are ineligible to apply for the IFTP. Nonresident importers must have a U.S. resident agent apply for the IFTP and have the customs broker provide the resident agent's permit number in the entry data. NMFS has clarified the regulatory text at 50 CFR 300.322(a) accordingly.

"De Minimis" Levels and Informal Entries

Comment 3: NCBFAA noted that the rule does not address NMFS requirements with regard to Informal Entries (valued at \$2,500) or Section 321 entries (shipments of "de minimis value", increased from \$200 to \$800 by Section 601 of the Trade Facilitation and Trade Enforcement Act, Pub. L. 114-376). NCBFAA noted that with the de minimis threshold raised to \$800, the practice of breaking commercial shipments into lower-value increments will likewise increase, in effect allowing these imports to bypass the more formalized requirements of entry processing. NCBFAA stated its view that NMFS needs to address how it will meet this contingency.

Response: NMFS' requirement with regard to Informal Entries will be the same as those for all other entries, namely all entries associated with the HTS codes corresponding to the three

seafood import monitoring programs will need to supply message sets and documentation into ACE via the Document Imaging System (DIS). Similarly, de minimis shipments corresponding to the relevant HTS codes which are valued at less than \$800 will also need to supply message sets and documentation into ACE via the DIS to ensure that no inadmissible products are granted entry into the U.S. market. NMFS therefore revised 50 CFR 300.323 to clarify that all imports and exports of covered commodities, including shipments otherwise eligible for the de minimis value exemption, must be filed in ACE or AES, as applicable, in order to collect the NMFS-required information. NMFS also revised 50 CFR 300.324(b) to clarify that de minimis value imports are also subject to the prohibition on importing fish or fish products regulated under 50 CFR part 300 subpart Q without a valid IFTP or without submitting complete and accurate information. Likewise, low value exports are subject to AES filing to meet the NMFS requirements for permitting and reporting (see 15 CFR 30.2(a)(iv)(F)). However, NMFS has made provisions for cases where CBP reporting alternatives can capture and transmit the NMFS-required information without a formal entry or export filing in ACE or AES, as applicable.

Technical Language

Comment 4: NCBFAA noted that the proposed regulatory text at §§ 300.322(a) and 300.323 refers to persons who import “for consumption or non-consumption.” NCBFAA noted that the term “import for consumption” has a very specific legal meaning under customs law, whereas, the term “import for non-consumption” has no particular meaning under customs law. NCBFAA therefore suggested that commonly used customs terms be used to clarify the application of the proposed rule.

Response: NMFS agrees that the term “import for non-consumption” should be clarified and has therefore amended the regulatory text at §§ 300.322(a) and 300.323 to specify the various transactions which pertain to seafood previously imported for purposes other than immediate consumption, e.g. withdrawal from a foreign trade zone or bonded warehouse for entry into U.S. commerce.

Elimination of Paper-Based Documentation

Comment 5: Traffic et al. conveyed its understanding that in the initial phases of ITDS implementation, document image scans will be used to transmit the

catch documentation forms. Traffic et al. stated its view that the key goal must be to eventually move away from paper-based documentation, including imaged documents, to truly electronic data. Traffic et al. stated its hope that NMFS, in conjunction with CBP, will put in place systems to receive all information in a truly electronic format, at least before the implementation date of the proposed seafood import monitoring program or at some set time thereafter, noting that the value of this system, in terms of real-time verification and compliance risk assessment, cannot be achieved without that change.

Response: Many of the paper-based catch documentation forms referenced in this comment are created by regional fishery management organizations (RFMOs) or arrangements that are comprised of different member countries including the United States. ITDS therefore cannot be made fully electronic until action in this direction is taken by the relevant RFMOs or arrangements. For example, the TTVP requires certification from tuna captains from all over the world, including many that fish in remote artisanal fisheries where Internet connectivity is not commonplace, even today. Having said that, however, NMFS agrees it is important to move to a fully electronic system as soon as the relevant international catch documentation schemes go electronic. NMFS notes that the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and the International Convention for the Conservation of Atlantic Tunas (ICCAT) have moved in the direction of electronic catch documentation systems which have simplified import/export processes for the trade and NMFS expects this trend in other organizations in the future.

Need for Capacity Development

Comment 6: Traffic et al. noted its view that capacity building to assist some countries with implementing the new rules will be necessary. Traffic et al. noted its hope that NMFS, USAID, the State Department and other agencies will be able to work with countries to help develop electronic reporting systems that can produce the information needed at the point of catch and feed into traceability systems that will follow the product throughout the supply chain.

Response: NMFS agrees and is taking steps to do this. For example, NMFS is working with the Department of State and USAID on a Regional Development Mission Asia project in Southeast Asia to enhance seafood traceability

infrastructure among the developing countries of this region.

Need To Apply Traceability to All Species

Comment 7: Traffic et al. noted its view that similar requirements for electronic submission of catch documentation eventually be applied to all species to effectively combat fraud and the flow of IUU products.

Response: Although not germane to this rule, NMFS agrees (as noted in the Seafood Import Monitoring Program proposed rule published in the **Federal Register** on February 5, 2016) that seafood traceability requirements should eventually be applied to all species in an effort to combat seafood fraud and IUU fishing. As noted in the March 2015 Presidential Task Force report, the National Oceans Committee will issue a report by December 2016 that includes an evaluation of the program as implemented to date as well as recommendations of how and under what timeframe it would be expanded.

TTVP “Reduced Data Set” Reporting

Comment 8: Bumble Bee noted that the proposed rule includes provisions for the submission of a “reduced data set” for domestic canners who import frozen tuna loins with the stated objective of preventing duplicative report for companies that submit monthly reports associated with the TTVP. Bumble Bee further noted that the recently released Seafood Import Monitoring Program proposed rule also references collection of data via a “NMFS message set” but the content, specific format, and timing to begin reporting of both the “reduced data set” and the “NMFS message set” appear to not yet be defined. Bumble Bee urged that the rollout of the “reduced data set” reporting proposed in the ITDS implementation rule not be implemented prior to the rollout of the “NMFS Message Set” reporting requirement in the Seafood Import Monitoring Program proposed rule and that NMFS ensures that content and data serve both purposes. Bumble Bee stated its view that implementing a “reduced data set” reporting requirement under the ITDS implementation rule to meet the needs of the TTVP and then implementing another data requirement shortly thereafter to meet traceability reporting requirements seems wasteful and will create additional burden on the trade.

Response: As noted in the NMFS ITDS implementation guidelines (see <http://www.cbp.gov/sites/default/files/documents/ACE%20NMFS%20PGA%20MS%20Guidelines%20-%20July>

%2022%202015.pdf), for cannery processed products that are imported into the U.S. Customs District from American Samoa and for imports of frozen cooked tuna loins, not in airtight containers, not in oil and with contents over 6.8 kilograms from any country of origin, certain data usually or otherwise required at the time of filing need not be submitted if provided to NMFS under the regulations found at 50 CFR 216.93(d)(2). Under these specific conditions, NMFS will only require a “reduced data set” consisting of an acknowledgement that an electronic image is associated with the shipment and also that the document images of the NOAA Form 370(s) associated with the shipment have been uploaded into the CBP DIS. Given the different timelines for implementation of these two regulations, it will not be possible to implement requirements simultaneously; however, NMFS will make every effort to avoid creating additional burdens on the trade in the course of implementing these programs.

Bi-Weekly Reporting Requirements

Comment 9: Bumble Bee stated its understanding that under the proposed rule, companies who are part of the TTVP would now need to obtain an IFTP. Bumble Bee does not object to this requirement, but noted that in the reporting and recordkeeping requirements in section 300.183 of the proposed rule that biweekly reporting is required for holders of the IFTP. Bumble Bee requested confirmation that the existing bi-weekly reporting requirements associated with the IFTP will remain limited to species currently part of the HMS ITP with the existing reporting exemption for bigeye tuna destined for canneries.

Response: NMFS confirms that the import documentation requirements, as well as the bi-weekly reporting requirements, associated with the HMS ITP will remain limited to species currently part of that program. The reporting exemption for bigeye tuna destined for canneries harvested by either purse seiners or pole and line (bait) vessels will continue. The regulations pertaining to this exemption were inadvertently removed during a previous rulemaking (77 FR 52259, August 29, 2012) and have been restored in the regulatory text at 50 CFR 300.184. NMFS would also like to clarify that under this rule, documentation such as the HMS ITP biweekly dealer reports, which are not required at the time of entry/export, will continue to be provided to the HMS ITP office and are not submitted to CBP via the ACE portal.

Administrative/Financial Burdens Imposed by Rule

Comment 10: Tri Marine voiced its concern about the administrative and financial burden the proposed rule may pose and that this aspect was not adequately addressed in the Regulatory Flexibility Act section of the proposed rule. Tri Marine noted that direct and indirect costs associated with new requirements under the rule are difficult to determine at this time and that the primary beneficiary of the efficiencies gained would be U.S. government agencies and companies that also trade in non-TTVP species/products. Tri Marine encouraged NMFS to reconsider options that best mitigate potential economic impacts to industries that trade exclusively in TTVP species while still achieving desired outcomes. Tri Marine agrees TTVP companies should be required to obtain the IFTP, but without a fee and with minimal filing burden. Tri Marine suggested updated templates for the NOAA 370 form and Captain’s Statements should be designed that readily integrate into ACE. Tri Marine noted information required should always include the market name and scientific names of all species used in the product, not only simplified names such as light meat tuna that can mask the actual inputs used. Tri Marine encouraged NMFS to engage with the FDA to change the standard of identity for canned tuna to require the species name of all inputs be provided on canned tuna labels.

Response: In determining its preferred alternative for this rulemaking, NMFS made best efforts to balance potential economic impacts on the trade with the rulemaking’s desired outcomes. NMFS believes extending the IFTP requirement to TTVP-related companies to be both the most equitable and effective alternative among those presented in the proposed rule. The cost of the IFTP is only \$30 and is calculated solely based upon the administrative cost to NMFS of issuing the permit. Requiring the permit for all three programs also allows NMFS to easily notify permit holders of any changes to the relevant regulations or import monitoring program procedures. NMFS appreciates the suggestion to update templates for the TTVP 370 form and Captain’s Statements for improved integration with ACE and will work with CBP to consider this suggestion further. Although the comment regarding market and scientific names is outside the scope of this rulemaking, this issue has been discussed by NMFS, the FDA, and other agencies in response to Recommendation 10 of the Presidential

Task Force to Combat IUU Fishing and Seafood Fraud. (See www.iuufishing.noaa.gov).

Import Data for Frozen Cooked Tuna Loins and Tuna in Airtight Containers

Comment 11: Tri Marine recognized the proposed rule allows for a reduced data set for imports of 1) frozen cooked tuna loins used in cannery operations and 2) tuna products in airtight containers manufactured in American Samoa. Although Tri Marine agreed with the intent to prevent duplicative reporting and apply this to imports from American Samoa, it opposed reduced data collection from frozen loin importers. Tri Marine noted that tuna cans from American Samoa are typically produced from fish delivered directly to canneries from the fishing vessel allowing direct traceability from the vessel to processing line to finished product. Tuna loins imported into the United States, however, are typically caught in distant waters, transshipped onto carrier vessels, offloaded into foreign ports, trucked to large cold stores, transferred to foreign processing facilities and then shipped by container vessel to the United States where they are stored and undergo final secondary processing, all of which makes traceability more challenging. Tri Marine therefore recommends more rigorous data sets be required for imported tuna loins.

Response: These comments are germane to the chain of custody requirements proposed under the Seafood Import Monitoring Program (81 FR 6210) rather than under this ITDS implementation rule. However, NMFS notes that the reduced data set applies to all U.S. tuna canning facilities in order to reduce duplication of data elements required under 50 CFR 219.93(d)(2). NMFS will take these comments into consideration when formulating its final rule for the Seafood Import Monitoring Program.

Overlap With Proposed Seafood Import Monitoring Program

Comment 12: Tri Marine stated its view that there is significant overlap between the ITDS implementation proposed rule and the proposed rule for the Seafood Import Monitoring Program. Tri Marine’s view is that since it is highly likely that comments on the Seafood Import Monitoring Program will be useful in guiding the development of a final rule for ITDS implementation, it would be prudent to integrate the final rule for these two initiatives, taking into account comments on both proposed rules.

Response: Although NMFS recognizes there is overlap between the two rules, it will not be possible to integrate the two rules primarily because they have different timelines for implementation with NMFS implementation of ITDS required by July 23, 2016, in order to meet the requirements specified for all Federal agencies in Executive Order 13659 (Streamlining the Export/Import Process) whereas implementation of the Seafood Import Monitoring Program is not expected to occur until the fall of 2016 at the earliest.

Classification

This rule is published under the authority of AMLRCA of 1984, 16 U.S.C. 2431 *et seq.*; ATCA of 1975, 16 U.S.C. 971 *et seq.*; TCA of 1950, 16 U.S.C. 951–961; MSA, 16 U.S.C. 1801 *et seq.*; MMPA of 1972, 16 U.S.C. 1361–1407; DPCIA, 16 U.S.C. 1385; HSDFMFA, 16 U.S.C. 1826d–k; and HSDFEA, 16 U.S.C. 1826a–c. Other relevant authorities include the Pelly Amendment to the Fishermen's Protective Act, 22 U.S.C. 1978, and the Lacey Act, 16 U.S.C. 3371.

The NMFS Assistant Administrator has determined that this final rule is consistent with the provisions of these and other applicable laws.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

Administrative Procedure Act

As explained above, this final rule revises text at 50 CFR 300.184 that provides an exemption from documentation requirements for bigeye tuna destined for canneries. Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this specific provision of the final rule, because notice and comment would be unnecessary and contrary to the public interest. This text was inadvertently removed in an August 29, 2012 final rule (77 FR 52259), and NMFS only became aware of that fact as it was reviewing and responding to public comments on this current rulemaking. Providing for public comment at this time is unnecessary and contrary to the public interest, as NMFS and industry have been operating as if the exemption remained in place. Further, NMFS never intended to change the exemption and thus never analyzed its removal. Because this aspect of the rule relieves a restriction by reinserting an exemption to documentation requirements, it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1).

Regulatory Flexibility Act

The Chief Counsel for Regulations certified that this rule is not expected to have a significant economic impact on a substantial number of U.S. small entities (80 FR 81255, December 29, 2015).

Although a new IFTP will be established for the import, export or re-export of regulated products under the AMLR, HMS ITP and TTVP programs, this new permit generally represents a consolidation of information contained in existing permits and should actually result in fewer reporting or recordkeeping requirements. Data sets to be entered electronically to determine product admissibility are already required to be submitted in paper form under the respective trade programs. Thus, NMFS anticipates that U.S. entities will not be significantly affected by this action because it generally does not pose new or additional burdens with regard to the collection and submission of information necessary to determine product admissibility.

With regard to the possible economic effects of this action, per the response to Question 13 of the supporting statement prepared for the Paperwork Reduction Act analysis (available from www.reginfo.gov/public/do/PRAMain), NMFS estimates there will be 751 applicants for the new IFTP with an estimated net increase in annual costs of \$16,255 for obtaining those permits, based on the combined number of permit holders and respondents under NMFS' existing trade monitoring programs. Although NMFS does not have access to data about the business sizes of importers and receivers that would be impacted by this rule, it is likely that the majority may be classified as small entities. However, when overall total new burdens for the three requirements under this rule (IFTP, data set submission, and admissibility document(s) submission) are compared to current burdens, the new consolidated burdens are estimated to result in an overall net burden decrease of 4,225 hours and \$63,650. A no-action alternative, where NMFS would not promulgate the rule, was not considered as all applicable U.S. government agencies are required to implement ITDS under the authority of section 405 of the SAFE Port Act and Executive Order 13659 on Streamlining the Export/Import Process, dated February 19, 2014.

This action will not affect the volume of seafood trade or alter trade flows in the U.S. market. Although the rule will require traders under the TTVP to obtain an IFTP, which they are not

currently required to do, NMFS expects that the consolidated IFTP will have no impact on, or will actually reduce, the overall administrative burden on the public; those parties currently required to obtain two separate permits under the AMLR and HMS ITP programs will be required to obtain only one consolidated permit under this rule.

The consolidated permitting and electronic reporting program established under this rulemaking will not have significant adverse or long-term economic impacts on small U.S. entities. This rule has also been determined not to duplicate, overlap, or conflict with any other Federal rules. Thus, the requirements and prohibitions in the rule will not have a significant economic impact on a substantial number of small entities. Consequently, a regulatory flexibility analysis is not required and none has been prepared.

Paperwork Reduction Act

This rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under control number 0648–0732. When new reporting burdens for the three electronic reporting requirements under this rule (IFTP, data set submission, and admissibility document submission) are compared to current reporting burdens approved for the separate paper-based programs, it is estimated to result in an overall net burden decrease of 4,225 hours and \$63,650.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects

50 CFR Part 216

Administrative practice and procedure, Exports, Fish, Imports, Indians, Labeling, Marine mammals.

50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing regulations, Fishing vessels, Foreign

relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: July 27, 2016.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR parts 216, 300, 600, and 660 are amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et. seq.*, unless otherwise noted.

■ 2. In § 216.24, revise paragraphs (f)(2) introductory text, (f)(2)(i)(A) and (D), (f)(2)(ii)(A) and (D), (f)(2)(iii)(A) through (C), (f)(3) introductory text, and (f)(3)(i) through (iii) to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations by tuna purse seine vessels in the eastern tropical Pacific Ocean.

* * * * *

(f) * * *

(2) *Imports requiring a Fisheries Certificate of Origin and an International Fisheries Trade Permit.* Shipments of tuna, tuna products, and certain other fish products identified in paragraphs (f)(2)(i) through (iii) of this section may not be imported into the United States unless: a scanned copy of a properly completed Fisheries Certificate of Origin (FCO), NOAA Form 370, associated certifications and statements described in § 216.91(a), and required data set are filed electronically with U.S. Customs and Border Protection (CBP) at the time of, or in advance of, importation as required under § 300.323; and the importer of record designated on the entry summary (Customs Form 7501) holds a valid International Fisheries Trade Permit as specified at § 300.322 of this title. “Required data set” has the same meaning as § 300.321 of this title (*see* definition of “Documentation and data sets required”).

(i) * * *

(A) *Frozen:* (products containing Yellowfin).

0303.42.0020 Yellowfin tunas, whole, frozen
0303.42.0040 Yellowfin tunas, head-on, frozen, except whole
0303.42.0060 Yellowfin tunas, other, frozen, except whole, head-on, fillets, livers and roes
0304.87.0000 Tuna fish fillets, frozen, not elsewhere specified or indicated (NESOI)
0304.99.1190 Tuna, frozen, in bulk or in immediate containers weighing with their contents over 6.8 kg each
* * * *

(D) *Other:* (products containing Yellowfin).

0511.91.0090 Fish, shellfish products unfit for human consumption
1604.20.1000 Fish pastes
1604.20.1500 Fish balls, cakes and puddings, in oil
1604.20.2000 Fish balls, cakes and puddings, not in oil, less than 6.8 kg, in airtight containers
1604.20.2500 Fish balls, cakes and puddings, not in oil, not in airtight containers, in immediate containers weighing with their contents not over 6.8 kg each
1604.20.3000 Fish balls, cakes and puddings, NESOI
1604.20.4000 Fish sticks, not cooked, nor in oil
1604.20.5010 Fish sticks, cooked and frozen
1604.20.5090 Fish sticks, NESOI
2309.10.0010 Dog or cat food, in airtight containers
(ii) * * *

(A) *Frozen:* (other than Yellowfin).

0303.41.0000 Albacore or longfinned tunas, frozen, except fillets, livers and roes
0303.43.0000 Skipjack tunas or stripebelled bonito, frozen, except fillets, livers and roes
0303.44.0000 Bigeye tunas, frozen, except fillets, livers and roes
0303.45.0110 Atlantic Bluefin, frozen, except fillets, livers and roes
0303.45.0150 Pacific Bluefin, frozen, except fillets, livers and roes
0303.46.0000 Southern bluefin tunas, frozen, except fillets, livers and roes
0303.49.0200 Tunas, frozen, except fillets, livers and roes, NESOI
0304.87.0000 Tuna fish fillets, frozen, NESOI
0304.99.1190 Tuna, frozen, in bulk or in immediate containers weighing with their contents over 6.8 kg each, NESOI
* * * *

(D) *Other:* (only if the product contains tuna).

0511.91.0090 Fish, shellfish products unfit for human consumption

1604.20.1000 Fish pastes
1604.20.1500 Fish balls, cakes and puddings, in oil
1604.20.2000 Fish balls, cakes and puddings, not in oil, less than 6.8 kg, in airtight containers
1604.20.2500 Fish balls, cakes and puddings, not in oil, not in airtight containers, in immediate containers weighing with their contents not over 6.8 kg each
1604.20.3000 Fish balls, cakes and puddings, NESOI
1604.20.4000 Fish sticks, not cooked, nor in oil
1604.20.5010 Fish sticks, cooked and frozen
1604.20.5090 Fish sticks, NESOI
2309.10.0010 Dog or cat food, in airtight containers

(iii) * * *

(A) *Frozen:*

0303.11.0000 Sockeye (red) salmon (*Oncorhynchus nerka*), frozen, except fillets, livers and roes
0303.12.0012 Chinook (King) salmon (*Oncorhynchus tshawytscha*), frozen, except fillets, livers and roes
0303.12.0022 Chum (dog) salmon (*Oncorhynchus keta*), frozen, except fillets, livers and roes
0303.12.0032 Pink (humpie) salmon (*Oncorhynchus gorbuscha*), frozen, except fillets, livers and roes
0303.12.0052 Coho (silver) salmon (*Oncorhynchus kisutch*), frozen, except fillets, livers and roes
0303.12.0062 Pacific salmon (*Oncorhynchus masou*, *Oncorhynchus rhodurus*), frozen, except fillets, livers and roes, NESOI
0303.13.0000 Atlantic salmon (*Salmo salar*) and Danube salmon (*Hucho hucho*), frozen, except fillets, livers and roes
0303.14.0000 Trout (*Salmo trutta*; *Oncorhynchus mykiss*, *clarki*, *aguabonita*, *gilae*, *apache*, and *chrysogaster*), frozen, except fillets, livers and roes
0303.19.0100 Salmonidae, frozen, except fillets, livers and roes, NESOI
0303.57.0010 Swordfish steaks, frozen, except fillets
0303.57.0090 Swordfish, frozen, except steaks, fillets, livers and roes
0303.81.0010 Dogfish (*Squalus* spp.), frozen, except fillets, livers and roes
0303.81.0090 Sharks, frozen, except dogfish, fillets, livers and roes
0303.89.0079 Fish, other, frozen, except fillets, livers and roes, NESOI
0304.81.5010 Atlantic Salmonidae (*Salmo salar*) fillets, frozen, NESOI
0304.81.5090 Salmonidae fillets, frozen, except Atlantic salmon, NESOI

0304.89.1090 Fish fillets, skinned, frozen blocks weighing over 4.5 kg each, to be minced, ground or cut into pieces of uniform weights and dimensions, NESOI

0304.91.1000 Swordfish, frozen, in bulk or in immediate containers weighing over 6.8 kg each

0304.91.9000 Swordfish, frozen, NESOI

0304.99.9191 Fish fillets, ocean, frozen, NESOI

0307.49.0010 Squid fillets, frozen

0307.49.0022 Squid, *Loligo opalescens*, NESOI

0307.49.0024 Squid, *Loligo pealei*, NESOI

0307.49.0029 Squid, *Loligo*, other, NESOI

0307.49.0050 Squid, other, NESOI

(B) *Canned*:

1604.11.2020 Pink (humpie) salmon, whole or in pieces, but not minced, in oil, in airtight containers

1604.11.2030 Sockeye (red) salmon, whole or in pieces, but not minced, in oil, in airtight containers

1604.11.2090 Salmon NESOI, whole or in pieces, but not minced, in oil, in airtight containers

1604.11.4010 Chum (dog) salmon, not in oil, canned

1604.11.4020 Pink (humpie) salmon, not in oil, canned

1604.11.4030 Sockeye (red) salmon, not in oil, canned

1604.11.4040 Salmon, NESOI, not in oil, canned

1604.11.4050 Salmon, whole or in pieces, but not minced, NESOI

1604.19.2100 Fish, NESOI, not in oil, in airtight containers

1604.19.3100 Fish, NESOI, in oil, in airtight containers

1605.54.6020 Squid, *Loligo*, prepared or preserved

1605.54.6030 Squid, except *Loligo*, prepared or preserved

(C) *Other*:

0305.39.6080 Fish fillets, dried, salted or in brine, but not smoked, NESOI

0305.41.0000 Pacific salmon (*Oncorhynchus* spp.), Atlantic salmon (*Salmo salar*), and Danube salmon (*Hucho hucho*), including fillets, smoked

0305.49.4041 Fish including fillets, smoked, NESOI

0305.59.0000 Fish, dried, whether or not salted but not smoked, NESOI

0305.69.4000 Salmon, salted but not dried or smoked; in brine

0305.69.5001 Fish in immediate containers weighing with their contents 6.8 kg or less each, salted but not dried or smoked; in brine, NESOI

0305.69.6001 Fish, salted but not dried or smoked; in brine, NESOI

0305.71.0000 Shark fins, dried, whether or not salted but not smoked

0305.49.0010 Squid, frozen, fillets

0307.49.0022 Squid, *Loligo opalescens*, frozen (except fillets), dried, salted or in brine

0307.49.0024 Squid, *Loligo pealei*, frozen (except fillets), dried, salted or in brine

0307.49.0029 Squid, *Loligo*, frozen (except fillets), dried, salted or in brine, NESOI

0307.49.0050 Squid, other, frozen (except fillets), dried, salted or in brine, except *Loligo* squid

0307.49.0060 Cuttle fish (*Sepia officinalis*, *Rossia macrosoma*, *Sepioida* spp.), frozen, dried, salted or in brine

(3) *Disposition of Fisheries Certificates of Origin*. The FCO described in paragraph (f)(4) of this section may be obtained from the Administrator, West Coast Region, or downloaded from the Internet at <http://www.nmfs.noaa.gov/pr/dolphinsafe/noaa370.htm>.

(i) A properly completed FCO, and its attached certifications and statements as described in § 216.91(a), must accompany the required CBP entry documents that are filed at the time of, or in advance of, importation.

(ii) FCOs and associated certifications and statements as described in § 216.91(a) must be provided electronically to CBP as indicated in paragraph (f)(2) of this section.

(iii) FCOs that accompany imported shipments of tuna destined for further processing in the United States must be endorsed at each change in ownership and submitted to the Administrator, West Coast Region, by the last endorser when all required endorsements are completed. Such FCOs must be submitted as specified in § 216.93(d)(2).

■ 3. In § 216.93, revise paragraphs (f) and (g)(2) to read as follows:

§ 216.93 Tracking and verification program.

(f) *Tracking imports*. All tuna products, except fresh tuna, that are imported into the United States must be accompanied as described in § 216.24(f)(3) by a properly certified FCO as required by § 216.24(f)(2). For tuna tracking purposes, copies of FCOs and associated certifications and statements must be submitted by the importer of record to U.S. Customs and Border Protection as described in and required by § 216.24(f)(2).

(g) * * *

(2) *Record submission*. At the time of, or in advance of, importation of a shipment of tuna or tuna products, any importer of tuna or tuna products must submit all corresponding FCOs and required certifications and statements for those tuna or tuna products as required by § 216.24(f)(2).

* * * * *

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 4. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*; 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 5501 *et seq.*; 16 U.S.C. 2431 *et seq.*; 31 U.S.C. 9701 *et seq.*

■ 5. In § 300.4:

- a. Revise paragraph (o);
- b. Redesignate paragraphs (p) and (q) as (q) and (r); and
- c. Add a new paragraph (p).

The revision and addition read as follows:

§ 300.4 General prohibitions.

* * * * *

(o) Ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish imported, exported or re-exported in violation of this part.

(p) Import, export, or re-export any fish regulated under this part without a valid International Fisheries Trade Permit as required under § 300.322 or applicable shipment documentation as required under § 300.323.

* * * * *

■ 6. In § 300.107, revise paragraphs (b) introductory text, (b)(1) and (3), (c)(6)(i)(A)(5), and (c)(7)(i)(A)(4) to read as follows:

§ 300.107 Reporting and recordkeeping requirements.

* * * * *

(b) *Dealers*. Dealers of AMLR required under § 300.114 to have an International Fisheries Trade Permit (IFTP) issued under § 300.322 must:

(1) Accurately maintain all reports and records required by their IFTP and this subpart;

* * * * *

(3) Within the time specified in the IFTP requirements, submit a copy of such reports and records to NMFS at an address designated by NMFS.

(c) * * *

(6) * * *

(i) * * *

(A) * * *

(5) The dealer/exporter's name, address, and IFTP number; and

* * * * *

(7) * * *

(i) * * *

(A) * * *

(4) The dealer/exporter's name, address, and IFTP permit number;

* * * * *

■ 7. In § 300.114:

■ a. Revise paragraphs (a)(1), (2), and (4), (b), (d) through (f), (g)(1) and (2), (h), and (j); and

■ b. Remove paragraph (k).

The revisions read as follows:

§ 300.114 Dealer permits and preapproval.

(a) * * *

(1) A dealer importing, or re-exporting AMLR, or a person exporting AMLR, must possess a valid IFTP issued under § 300.322 and file, as specified under § 300.323, the required data sets electronically with CBP at the time of, or in advance of importation or exportation. Required data set has the same meaning as § 300.321 (see definition of "Documentation and data sets required.") See § 300.322 for IFTP application procedures and permit regulations. The IFTP holder may only conduct those specific activities stipulated by the IFTP. Preapproval from NMFS is required for each shipment of frozen *Dissostichus* species.

(2) An AMLR may be imported into the United States if its harvest has been authorized by a U.S.-issued individual permit or its importation has been authorized by an IFTP and, in the case of frozen *Dissostichus* species, preapproval issued under § 300.114(a)(1). AMLRs may not be released for entry into the United States unless accompanied by the harvesting permit, the individual permit, or IFTP and, in the case of frozen *Dissostichus* species, the preapproval certification granted by NMFS to allow import. NMFS will only accept electronic catch documents for toothfish imports.

* * * * *

(4) An IFTP or preapproval issued under this section does not authorize the harvest or transshipment of any AMLR by or to a vessel of the United States.

(b) *Application*. Application forms for preapproval are available from NMFS.

* * *

* * * * *

(d) *Issuance*. NMFS may issue a preapproval if it determines that the activity proposed by the dealer meets the requirements of the Act and that the resources were not or will not be harvested in violation of any CCAMLR conservation measure in force with respect to the United States or in violation of any regulation in this subpart. * * *

(e) *Duration*. A preapproval is valid until the product is imported. Each

export or re-export document created by NMFS in the CDS is valid only for that particular shipment.

(f) *Transfer*. A preapproval issued under this section is not transferable or assignable.

(g) * * *

(1) *Pending applications*. Applicants for preapproval under this section must report in writing to NMFS any change in the information submitted in preapproval applications. * * *

(2) *Issued preapprovals*. Any entity issued a preapproval under this section must report in writing to NMFS any changes in previously submitted information. * * *

(h) *Revision, suspension, or revocation*. A preapproval issued under this section may be revised, suspended, or revoked, based upon a violation of the IFTP, the Act, or this subpart. Failure to report a change in the information contained in a preapproval application voids the application or preapproval. Title 15 CFR part 904 governs sanctions under this subpart.

* * * * *

(j) *SVDCD*. Preapprovals will not be issued for *Dissostichus* spp. offered for sale or other disposition under a Specially Validated DCD.

* * * * *

■ 8. In § 300.117, revise paragraphs (b) and (r) and add paragraph (ii) to read as follows:

§ 300.117 Prohibitions.

* * * * *

(b) Import into, or export or re-export from, the United States any AMLRs without applicable catch documentation as required by § 300.107(c), without an IFTP as required by § 300.114(a)(1), or in violation of the terms and conditions for such import, export or re-export as specified on the IFTP.

* * * * *

(r) Without a valid first receiver permit issued under this subpart, receive AMLRs from a vessel or receive AMLRs from a vessel without a valid harvesting permit issued under this subpart.

* * * * *

(ii) Import into, or export or re-export from, the United States any AMLRs harvest by a vessel of the United States without a valid harvesting permit issued under this subpart.

■ 9. In § 300.181:

■ a. Add in alphabetical order definitions for "Automated Commercial Environment (ACE)" and "Automated Export System (AES)";

■ b. Revise the definition for "CBP";

■ c. Add in alphabetical order definitions for "Document Imaging

System (DIS)" and "International Fisheries Trade Permit (IFTP) or trade permit";

■ d. Revise the definition for "Permit holder";

■ e. Add in alphabetical order a definition for "Required data set"; and

■ f. Remove the definition for "Trade Permit".

The additions and revisions read as follows:

§ 300.181 Definitions.

* * * * *

Automated Commercial Environment (ACE) has the same meaning as that term is defined in § 300.321 of this part.

Automated Export System (AES) has the same meaning as that term is defined in § 300.321 of this part.

* * * * *

CBP means U.S. Customs and Border Protection, Department of Homeland Security.

* * * * *

Document Imaging System (DIS) means the system established by CBP to receive image files of paper documents in ACE or AES and associate the image files with specific trade transactions.

* * * * *

International Fisheries Trade Permit (IFTP) or trade permit means the permit issued by NMFS under § 300.322.

* * * * *

Permit holder, for purposes of this subpart, means, unless otherwise specified, a person who is required to obtain an International Fisheries Trade Permit (IFTP) under § 300.322.

* * * * *

Required data set has the same meaning as § 300.321 (see definition of "Documentation and data sets required").

* * * * *

■ 10. Section 300.182 is revised to read as follows:

§ 300.182 International fisheries trade permit.

An importer, entering for consumption any fish or fish products regulated under this subpart, harvested from any ocean area, into the United States, or an exporter exporting or re-exporting such product, must possess a valid International Fisheries Trade Permit (IFTP) issued under § 300.322.

■ 11. In § 300.183, revise paragraphs (a) introductory text, (a)(3), and (b) through (e) to read as follows:

§ 300.183 Permit holder reporting and recordkeeping requirements.

(a) Biweekly reports. Any person trading fish and fish products regulated under this subpart and required to

obtain a trade permit under § 300.322 must submit to NMFS, on forms supplied by NMFS, a biweekly report of entries for consumption, exports and re-exports of fish and fish products regulated under this subpart, except shark fins.

* * * * *

(3) A biweekly report is not required for export consignments of bluefin tuna when the information required on the biweekly report has been previously supplied on a biweekly report submitted under § 635.5(b)(2)(i)(B) of this title. The person required to obtain a trade permit under § 300.322 must retain, at his/her principal place of business, a copy of the biweekly report which includes the required information and is submitted under § 635.5(b)(2)(i)(B) of this title, for a period of 2 years from the date on which each report was submitted to NMFS.

(b) *Recordkeeping.* Any person trading fish and fish products regulated under this subpart and required to submit biweekly reports under paragraph (a) of this section must retain, at his/her principal place of business, a copy of each biweekly report and all supporting records for a period of 2 years from the date on which each report was submitted to NMFS.

(c) *Other requirements.* Any person trading fish and fish products regulated under this subpart and required to obtain a trade permit under § 300.322 is also subject to the reporting and recordkeeping requirements identified in § 300.185.

(d) *Inspection.* Any person authorized to carry out the enforcement activities under the regulations in this subpart (authorized person) has the authority, without warrant or other process, to inspect, at any reasonable time: fish or fish products regulated under this subpart, biweekly reports, statistical documents, catch documents, re-export certificates, relevant sales receipts, import and export documentation, and any other records or reports made, retained, or submitted pursuant to this subpart. A permit holder must allow NMFS or an authorized person to inspect any fish or fish products regulated under this subpart, and inspect and copy any import export, and re-export documentation and any reports required under this subpart, and the records, in any form, on which the completed reports are based, wherever they exist. Any agent of a person trading and required to obtain a trade permit under § 300.322, or anyone responsible for importing, exporting, re-exporting, storing, packing, or selling fish or fish products regulated under this subpart,

shall be subject to the inspection provisions of this section.

(e) *Applicability of reporting and recordkeeping requirements.* Reporting and recordkeeping requirements in this subpart apply to any person engaging in international trade regardless of whether a trade permit has been issued to that person.

■ 12. Effective August 3, 2016, revise § 300.184 to read as follows:

§ 300.184 Species subject to permitting, documentation, reporting, and recordkeeping requirements.

(a) Except as noted in paragraphs (b) and (c) of this section, the following fish or fish products are subject to the documentation requirements of this subpart, regardless of ocean area of catch, and must be reported under the appropriate heading or subheading numbers from the Harmonized Tariff Schedule of the United States (HTS):

- (1) Bluefin tuna,
- (2) Southern bluefin tuna,
- (3) Frozen bigeye tuna,
- (4) Swordfish, and
- (5) Shark fins.

(b) For bluefin tuna, southern bluefin tuna, frozen bigeye tuna, and swordfish, fish parts other than meat (e.g., heads, eyes, roe, guts, and tails) may be imported without the documentation required under this subpart.

(c) Bigeye tuna caught by purse seiners or pole and line (bait) vessels and destined for canneries within the United States, including all U.S. commonwealths, territories, and possessions, may be imported without the documentation required under this subpart.

■ 13. In § 300.185:

- a. Revise paragraphs (a)(2)(i), (a)(2)(ii)(A), and (a)(2)(iii)(A);
- b. Remove paragraph (a)(2)(vii);
- c. Revise paragraphs (a)(3), (b)(2) and (3), (c)(2)(i) and (ii), and (c)(3).

The revisions read as follows:

§ 300.185 Documentation, reporting and recordkeeping requirements for consignment documents and re-export certificates.

(a) * * *

(2) *Documentation requirements.* (i) Except for shark fins, all fish or fish products regulated under this subpart, imported into the Customs territory of the United States or entered for consumption into a separate customs territory of a U.S. insular possession, must, at the time of presenting entry documentation for clearance by customs authorities (e.g., electronic filing via ACE or other documentation required by the port director) be accompanied by an original, complete, accurate,

approved and properly validated, species-specific consignment document. An image of such document and the required data set must be filed electronically with CBP via ACE.

(ii) *Bluefin tuna.* (A) Imports that were re-exported from another nation must also be accompanied by an original, complete, accurate, approved and properly validated, species-specific re-export certificate.

(1) For Atlantic bluefin tuna, this requirement must be satisfied by the U.S. importer through electronic receipt and completion of a re-export certificate in the ICCAT eBCD system, unless NMFS provides otherwise through actual notice or **Federal Register** notice. In cases where the documentation requirements have been completed in the ICCAT eBCD system, a reduced data set consisting of the eBCD number or re-export certificate number, as applicable, and the importer trade permit number would suffice as an import filing, without need to submit any forms via DIS in ACE.

(2) For bluefin tuna harvested from other than the Atlantic Ocean, or for Atlantic Bluefin tuna entered pursuant to a notified exception under (a)(2)(ii)(A)(1), an image of the original paper re-export certificate and the supporting consignment documents must be submitted to CBP via the ACE DIS.

* * * * *

(iii) * * *

(A) Imports that were previously re-exported and were subdivided or consolidated with another consignment before re-export, must also be accompanied by an original, completed, accurate, valid, approved and properly validated, species-specific re-export certificate. An image of such document, an image of the original import document, and the required data set must be filed electronically with CBP via ACE.

* * * * *

(3) *Reporting requirements.* (i) For fish or fish products regulated under this subpart, except shark fins, that are entered for consumption and whose final destination is within the United States, which includes U.S. insular possessions, a permit holder must submit an image of the original consignment document that accompanied the fish product as completed under paragraph (a)(2) of this section to CBP electronically through the ACE DIS.

(ii) For Atlantic bluefin tuna, this requirement must be satisfied electronically by entering the specified information into the ICCAT eBCD

system as directed in paragraph (a)(2)(vi)(A) of this section, unless NMFS provides otherwise through actual notice or **Federal Register** notice. In cases where the documentation requirements have been completed in the ICCAT eBCD system, a reduced data set consisting of the eBCD number or the re-export certificate number, as applicable, and the importer trade permit number would suffice as an import filing, without need to submit any forms via DIS in ACE.

(b) * * *

(2) *Documentation requirements.* A permit holder must complete an original, approved, numbered, species-specific consignment document issued to that permit holder by NMFS for each export referenced under paragraph (b)(1) of this section, and electronically file an image of such documentation and the required data set with CBP via AES. Such an individually numbered document is not transferable and may be used only once by the permit holder to which it was issued to report on a specific export consignment. A permit holder must provide on the consignment document the correct information and exporter certification. The consignment document must be validated, as specified in § 300.187, by NMFS, or another official authorized by NMFS. A list of such officials may be obtained by contacting NMFS. A permit holder requesting U.S. validation for exports should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export consignment.

(i) For Atlantic bluefin tuna, this requirement must be satisfied by electronic completion of a consignment document in the ICCAT eBCD system, unless NMFS provides otherwise through actual notice or **Federal Register** notice. In cases where the documentation requirements have been completed in the ICCAT eBCD system, a reduced data set consisting of the eBCD number and the exporter trade permit number would suffice as an export filing, without need to submit any forms in AES via DIS.

(ii) For non-Atlantic bluefin tuna, this requirement must be satisfied by completion of a paper consignment document, and electronic filing of an image of such documentation and the required data set with CBP via AES.

(3) *Reporting requirements.* (i) A permit holder must ensure that the original, approved, consignment document as completed under paragraph (b)(2) of this section accompanies the export of such products to their export destination and must electronically file an image of such

documentation and the required data set with CBP via AES.

(ii) For Atlantic bluefin tuna, this requirement must be satisfied electronically by entering the specified information into the eBCD system as directed in paragraph (b)(2)(i) of this section, unless NMFS provides otherwise through actual notice or **Federal Register** notice. In cases where the documentation requirements have been completed in the ICCAT eBCD system, a reduced data set consisting of the eBCD number and the exporter trade permit number would suffice as an export filing without need to submit any forms in AES via DIS.

(c) * * *

(2) *Documentation requirements.* (i) If a permit holder re-exports a consignment of bluefin tuna, or subdivides or consolidates a consignment of fish or fish products regulated under this subpart, other than shark fins, that was previously entered for consumption as described in paragraph (c)(1) of this section, the permit holder must complete an original, approved, individually numbered, species-specific re-export certificate issued to that permit holder by NMFS for each re-export consignment. Such an individually numbered document is not transferable and may be used only once by the permit holder to which it was issued to report on a specific re-export consignment. A permit holder must provide on the re-export certificate the correct information and re-exporter certification. The permit holder must also attach the original consignment documentation that accompanied the import consignment or a copy of that documentation, and must note on the top of both the consignment documents and the re-export certificates the entry number assigned by CBP authorities at the time of filing the entry for the previously imported consignment. An electronic image of these documents and the required data set must be filed electronically with CBP via AES at the time of export.

(A) For Atlantic bluefin tuna, these requirements must be satisfied by electronic completion of a re-export certificate in the ICCAT eBCD system, unless NMFS provides otherwise through actual notice or **Federal Register** notice. In cases where the documentation requirements have been completed in the ICCAT eBCD system, a reduced data set consisting of the eBCD number and the exporter trade permit number would suffice as a re-export filing, without need to submit any forms in AES via DIS.

(B) For non-Atlantic bluefin tuna, these requirements must be satisfied by completion of a paper re-export certificate, and electronic filing of an image of such documentation and the required data set with CBP via AES.

(ii) If a consignment of fish or fish products regulated under this subpart, except bluefin tuna or shark fins, that was previously entered for consumption as described in paragraph (c)(1) of this section is not subdivided into sub-consignments or consolidated with other consignments or parts thereof, for each such re-export consignment, a permit holder must complete the intermediate importer's certification on the original consignment document and note the entry number previously issued by CBP for the consignment at the top of the document. Such re-exports do not need a re-export certificate and the re-export does not require validation. An electronic image of the consignment document with the completed intermediate importer's certification and the required data set must be filed electronically with CBP via AES at the time of re-export.

* * * * *

(3) *Reporting requirements.* (i) For each re-export, a permit holder must submit the original of the completed re-export certificate (if applicable) and the original or a copy of the original consignment document completed as specified under paragraph (c)(2) of this section, to the shipper to accompany the consignment of such products to their re-export destination, and an image of such documentation and the required data set must be filed electronically with CBP via AES.

(ii) For Atlantic bluefin tuna, this requirement must be satisfied electronically by entering the specified information into the ICCAT eBCD system as directed in paragraph (c)(2)(i)(A) of this section, unless NMFS provides otherwise through actual notice or **Federal Register** notice. In cases where the documentation requirements have been completed in the ICCAT eBCD system, a reduced data set consisting of the eBCD number and the exporter trade permit number would suffice as an export filing, without need to submit any forms in AES via DIS.

* * * * *

■ 14. In § 300.189, revise paragraphs (a), (b), (c), (m), and (n) to read as follows:

§ 300.189 Prohibitions.

* * * * *

(a) Falsify information required on an application for a permit submitted under § 300.322.

(b) Import as an entry for consumption, purchase, receive for export, export, or re-export any fish or fish product regulated under this subpart without a valid trade permit issued under § 300.322.

(c) Fail to possess, and make available for inspection, a trade permit at the permit holder's place of business, or alter any such permit as specified in § 300.322.

* * * * *

(m) Fail to electronically file via ACE a validated consignment document and the required data set for imports at time of entry into the Customs territory of the United States of fish or fish products regulated under this subpart except shark fins, regardless of whether the importer, exporter, or re-exporter holds a valid trade permit issued pursuant to § 300.322 or whether the fish products are imported as an entry for consumption.

(n) Import or accept an imported consignment of fish or fish products regulated under this subpart, except shark fins, without an original, complete, accurate, approved and properly validated, species-specific consignment document and re-export certificate (if applicable) with the required information and exporter's certification completed.

Subpart Q—[Redesignated as Subpart R]

■ 15. Redesignate subpart Q, consisting of § 300.330 through 300.341, as subpart R.

■ 16. Add new subpart Q to read as follows:

Subpart Q—International Trade Documentation and Tracking Programs

Sec.

300.320 Purpose and scope.

300.321 Definitions.

300.322 International Fisheries Trade Permit.

300.323 Reporting requirements.

300.324 Prohibitions.

Subpart Q—International Trade Documentation and Tracking Programs

§ 300.320 Purpose and scope.

The regulations in this subpart are issued under the authority of the Atlantic Tunas Convention Act of 1975 (ATCA), the Magnuson-Stevens Fishery Conservation and Management Act, the Tuna Conventions Act of 1950, and the Antarctic Marine Living Resources Convention Act of 1984. These regulations implement the applicable recommendations of the International Commission for the Conservation of

Atlantic Tunas (ICCAT) for the conservation and management of tuna and tuna-like species in the Atlantic Ocean, the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of highly migratory fish resources in the eastern Pacific Ocean, and the Commission for the Conservation of Antarctic Marine Living Resources so far as they affect vessels and persons subject to the jurisdiction of the United States. These regulations are also issued under the Marine Mammal Protection Act of 1972, the Dolphin Protection Consumer Information Act and the Security and Accountability for Every Port Act of 2006. The requirements in this subpart may be incorporated by reference in other regulations under this title.

§ 300.321 Definitions.

ACE Implementation Guide for NMFS means the data set and document imaging requirements set forth in the Appendices to the Customs and Trade Automated Interface Requirements issued by Customs and Border Protection.

AMLR trade program means the program for monitoring trade in Antarctic marine living resources including, inter alia, *Dissostichus* species as set forth in subpart G of this part.

Automated Commercial Environment (ACE) means, for purposes of this subpart, the central point through which import shipment data required by multiple agencies is filed electronically to Customs and Border Protection (CBP).

Automated Export System (AES) means, for purposes of this subpart, the central point through which export shipment data required by multiple agencies is filed electronically to Customs and Border Protection (CBP).

Catch and Statistical Document/Documentation means a document or documentation accompanying regulated seafood imports, exports and re-exports that is submitted by importers and exporters to document compliance with TTVP, AMLR, and HMS ITP trade documentation programs as described in § 216.24(f) of this title, and subparts G and M of this part.

CBP means U.S. Customs and Border Protection, Department of Homeland Security.

Documentation and data sets required under this subpart refers to documentation and data that must be submitted by an importer or exporter at the time of, or in advance of, the import, export or re-export of fish or fish products as required under this subpart, the AMLR trade program, the HMS ITP, or the TTVP. The required data sets and

document images to be submitted for specific programs and transactions are posted by CBP as indicated in § 300.323.

Fish or fish products regulated under this subpart means species and products containing species regulated under this subpart, the AMLR trade program, the HMS ITP, or the TTVP.

HMS ITP means the Highly Migratory Species International Trade Program which includes trade monitoring and/or reporting and consignment documentation for trade of bluefin tuna, southern bluefin tuna, frozen bigeye tuna, swordfish, and shark fins as described in subpart M of this part.

Import has the same meaning as 16 U.S.C. 1802(22). Import includes, but is not limited to, customs entry for consumption, withdrawal from customs bonded warehouse for consumption, or entry for consumption from a foreign trade zone.

International Fisheries Trade Permit (or IFTP) means the permit issued by NMFS under § 300.222.

TTVP means the Tuna Tracking and Verification Program, which regulates trade in certain fishery products as set forth in § 216.24(f)(2) of this title.

§ 300.322 International Fisheries Trade Permit.

(a) *General.* Any person, including a resident agent for a nonresident corporation (see 19 CFR 141.18), who imports as defined in § 300.321, exports, or re-exports fish or fish products regulated under this sub-part from any ocean area, must possess a valid International Fisheries Trade Permit (IFTP) issued under this section. Fish or fish products regulated under this subpart may not be imported into, or exported or re-exported from, the United States unless the IFTP holder files electronically the documentation and the data sets required under this subpart with U.S. Customs and Border Protection (CBP) via ACE at the time of, or in advance of, importation, exportation or re-exportation. If authorized under other regulations under this title or other applicable laws and regulations, a representative or agent of the IFTP holder may make the electronic filings. Only persons resident in the United States are eligible to apply for the IFTP.

(b) *Application.* A person must apply for an IFTP electronically via a Web site designated by NMFS. The application must be submitted electronically with the required permit fee payment, at least 30 days before the date upon which the applicant wishes the permit to be made effective.

(c) *Issuance.* Except as provided in subpart D of 15 CFR part 904, NMFS

will issue an IFTP within 30 days of receipt of a completed application. NMFS will notify the applicant of any deficiency in the application, including failure to provide information, documentation or reports required under this subpart. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(d) *Duration.* An IFTP issued under this section is valid for a period of one year from the permit effective date.

(e) *Alteration.* Any IFTP that is substantially altered, erased, or mutilated is invalid.

(f) *Replacement.* NMFS may issue replacement permits. An application for a replacement permit is not considered a new application. An appropriate fee, consistent with paragraph (j) of this section, may be charged for issuance of a replacement permit.

(g) *Transfer.* An IFTP issued under this section is not transferable or assignable; it is valid only for the permit holder to whom it is issued.

(h) *Inspection.* The permit holder must keep the IFTP issued under this section at his/her principal place of business. The IFTP must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by NMFS for such purpose.

(i) *Sanctions.* The Assistant Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Fees.* NMFS will charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook, available from NMFS, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must be submitted via a Web site designated by NMFS at the time of application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(k) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the permit holder must report the change to NMFS via a Web site designated by NMFS. If a change in permit information is not reported

within 30 days, the permit is void as of the 30th day after such change.

(l) *Renewal.* Persons must apply annually for an IFTP issued under this section. A renewal application must be submitted via a Web site designated by NMFS, at least 15 days before the permit expiration date to avoid a lapse in permitted status. NMFS will renew a permit provided that: The application for the requested permit renewal is complete; all documentation and reports required under this subpart and the Magnuson-Stevens Act, Atlantic Tuna Conventions Act, the Tuna Conventions Act, the Marine Mammal Protection Act, the Dolphin Consumer Protection Information Act, and the Antarctic Marine Living Resources Act have been submitted, including those required under §§ 216.24, 216.93, 300.114, 300.183, 300.185, 300.186, 300.187 and 635.5 of this title; and the applicant is not subject to a permit sanction or denial under paragraph (i) of this section.

§ 300.323 Reporting requirements.

Any person, including a resident agent for a nonresident entity (see 19 CFR 141.18), who imports as defined in § 300.321, exports, or re-exports fish or fish products regulated under this subpart from any ocean area, must file all reports and documentation required under the AMLR trade program, HMS ITP, and TTVP as specified under this title and under other regulations that incorporate by reference the requirements of this subpart. For imports, specific instructions for electronic filing are found in Customs and Trade Automated Interface Requirements (CAIR) Appendix PGA (<https://www.cbp.gov/document/guidance/appendix-pga>). For exports, specific instructions for electronic filing are found in Automated Export System Trade Interface Requirements (AESTIR) Appendix Q (<https://www.cbp.gov/document/guidance/aestir-draft-appendix-q-pga-record-formats>). For fish and fish products regulated under this subpart, an ACE entry filing or AES export filing, as applicable, is required regardless of value, except in cases where CBP provides alternate means of collecting NMFS-required data and/or document images.

§ 300.324 Prohibitions.

In addition to the prohibitions specified in §§ 300.4, 300.117, 300.189, 600.725 and 635.71 of this title, it is unlawful for any person subject to the jurisdiction of the United States to:

(a) Violate any provision of this subpart, or the conditions of any IFTP issued under this subpart,

(b) Import, export or re-export fish or fish products regulated under this subpart, including imports or exports otherwise eligible for the de minimis value exemption from filing requirements under CBP procedures, without a valid IFTP as required under § 300.322 or without submitting complete and accurate information as required under § 300.323.

PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

■ 17. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 18. In § 600.705, revise the first sentence of paragraph (g) to read as follows:

§ 600.705 Relation to other laws.

* * * * *

(g) *High seas fishing activities.* Regulations governing permits and requirements for fishing activities on the high seas are set forth in 50 CFR part 300, subparts A and R. * * *

PART 660—FISHERIES OFF WEST COAST STATES

■ 19. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

■ 20. In § 660.2, revise paragraph (c) to read as follows:

§ 660.2 Relation to other laws.

* * * * *

(c) Fishing activities on the high seas are governed by regulations of the High Seas Fishing Compliance Act set forth in 50 CFR part 300, subparts A and R.

[FR Doc. 2016-18401 Filed 8-2-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120815345-3525-02]

RIN 0648-XE754

Snapper-Grouper Fishery of the South Atlantic; 2016 Commercial Accountability Measure and Closure for the South Atlantic Lesser Amberjack, Almaco Jack, and Banded Rudderfish Complex

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) for the commercial sector for the lesser amberjack, almaco jack, and banded rudderfish complex (other jacks complex) in the South Atlantic for the 2016 fishing year through this temporary rule. NMFS projects that commercial landings of the other jacks complex will reach their combined commercial annual catch limit (ACL) by August 9, 2016. Therefore, NMFS closes the commercial sector for this complex on August 9, 2016, through the remainder of the fishing year in the exclusive economic zone (EEZ) of the South Atlantic. This closure is necessary to protect the lesser amberjack, almaco jack, and banded rudderfish resources.

DATES: This rule is effective 12:01 a.m., local time, August 9, 2016, until 12:01 a.m., local time, January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727-824-5305, email: mary.vara@noaa.gov.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes lesser amberjack, almaco jack, and banded rudderfish, and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The combined commercial ACL for the other jacks complex is 189,422 lb (85,920 kg), round weight. Under 50 CFR 622.193(l)(1)(i), NMFS is required

to close the commercial sector for the other jacks complex when the commercial ACL has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial sector for this complex is projected to reach its ACL by August 9, 2016. Therefore, this temporary rule implements an AM to close the commercial sector for the other jacks complex in the South Atlantic, effective 12:01 a.m., local time August 9, 2016.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having lesser amberjack, almaco jack, or banded rudderfish on board must have landed and bartered, traded, or sold such species prior to 12:01 a.m., local time, August 9, 2016. During the closure, the bag limit specified in 50 CFR 622.187(b)(8) and the possession limits specified in 50 CFR 622.187(c) apply to all harvest or possession of lesser amberjack, almaco jack, or banded rudderfish in or from the South Atlantic EEZ. These bag and possession limits apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, regardless of whether such species were harvested in state or Federal waters. During the closure, the sale or purchase of lesser amberjack, almaco jack, or banded rudderfish taken from the EEZ is prohibited.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of the fish in the other jacks complex, a component of the South Atlantic snapper-grouper fishery, and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(l)(1)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and public comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to close the commercial sector for the other jacks complex constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the AM itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect the other jacks complex since the capacity of the fishing fleet allows for rapid harvest of the commercial ACL. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: July 28, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016-18249 Filed 8-2-16; 8:45 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 81, No. 149

Wednesday, August 3, 2016

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 ENERGY

10 CFR Part 951

[Docket Number DOE-HQ-2014-0021]

RIN 1990-AA39

Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation

AGENCY: Office of General Counsel, U.S. Department of Energy.

ACTION: Notice of public workshop.

SUMMARY: This document provides information on a public workshop to discuss the U.S. Department of Energy's (DOE) notice and request for comment on a proposed collection of information. DOE developed the proposed collection of information in connection with the notice of proposed rulemaking on the Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation (NOPR) in which it proposed regulations to establish a retrospective risk pooling program covering nuclear suppliers that may be required under certain circumstances to pay for any contribution by the United States government to the international supplementary fund created by the Convention for Supplementary Compensation for Nuclear Damage.

DATES: DOE will hold a public workshop on Friday, September 16, 2016 from 9 a.m. to 12 noon, in Washington, DC. DOE will accept comments, data, and information received no later than October 3, 2016, which is the close of the comment period on the Notice. DOE will accept for consideration questions or suggestions on topics for comment in advance of the public workshop, by Wednesday, September 7, 2016.

ADDRESSES: The public workshop will be held at the U.S. Department of Energy, Forrestal Building, Room 1E-245, 1000 Independence Avenue SW., Washington, DC 20585-0121. For details regarding attendance at the

public workshop see the Public Participation section of this notice.

Any comments submitted on the proposed information collection must identify docket number DOE-HQ-2014-0021 and/or regulatory information number (RIN) 1990-AA39. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.
2. *Email:* Section934Rulemaking@Hq.Doe.gov.
3. *Mail:* Ms. Sophia Angelini, U.S. Department of Energy, Office of General Counsel, Mailstop GC-72, Section 934 Rulemaking, 1000 Independence Avenue SW., Washington DC 20585. Please submit one signed original and three copies of all comments submitted by mail.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov>, or the Web site specifically established for this proceeding: <http://www.energy.gov/gc/convention-supplementary-compensation-rulemaking>. To obtain a copy of the proposed information collection instrument and instructions go to the Web site specifically established for this proceeding: <http://www.energy.gov/gc/convention-supplementary-compensation-rulemaking>.

FOR FURTHER INFORMATION CONTACT: Sophia Angelini, Attorney-Adviser, Office of General Counsel for Civilian Nuclear Programs, GC-72, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; Telephone (202) 586-0319.

SUPPLEMENTARY INFORMATION:

Background

Elsewhere in this issue of the **Federal Register**, DOE published a request for comments on a proposed information collection that requires approval from the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995. DOE developed the information collection in connection with a NOPR in which it proposed regulations to establish a retrospective risk pooling program covering nuclear suppliers that may be required under certain circumstances to pay for a

contribution by the United States government to the international supplementary fund created by the Convention on Supplementary Compensation for Nuclear Damage. (79 FR 75076, Dec. 17, 2014) DOE issued these proposed regulations pursuant to section 934 of the Energy Independence and Security Act of 2007.

DOE held an information session on the proposed regulation on January 7, 2015, followed by a day-long public workshop on February 20, 2015 (80 FR 4227). On March 9, 2015, DOE granted an extension of the public comment period on the NOPR to April 17, 2015 (80 FR 12352). The extension notice highlighted areas of particular attention for public comment, and indicated DOE's intent to conduct additional data and information gathering in response to and in consideration of comments provided in the public review and comment process. In sum, commenters on the NOPR suggested that DOE's proposed formula to calculate the retrospective premium payment was unnecessarily complex, reporting requirements for nuclear suppliers were unduly burdensome, and additional data and information on nuclear suppliers and exports were needed to support the rulemaking and enable the public to provide DOE with meaningful comments.

DOE is now proposing this information collection to gather such additional data and information from the nuclear industry in support of further development of its rulemaking. Since receiving public comments on the NOPR, and as suggested in those comments, DOE has conducted additional information and data gathering involving other relevant federal agencies. While DOE continues to review and consider this additional information and data, the proposed information collection is necessary to provide information not reported to or available from other federal agencies to inform and advance the rulemaking process. In addition, the information and data requested in the proposed information collection reflect in part comments submitted by the public on recommended risk allocation formulas and related information and data needs. One commenter, the Nuclear Energy Institute, provided a specific and detailed recommendation on an industry model for a retrospective risk

pooling program, with alternative methods of risk allocation. The proposed information collection is designed in part to obtain the information that could support a regulation based on that model. For example, the information collection is focused on the export of nuclear goods and services to industry sectors, rather than on specific types of nuclear goods and services exported. DOE also seeks in the proposed information collection to obtain information and data needed to assess and affirm the number and type of nuclear suppliers exporting nuclear goods and services and the value of those goods and services, to refine the scope and applicability of the retrospective risk pooling program within the nuclear supplier community.

The proposed information collection is a one-time effort to facilitate development of the regulation; it is separate from and not intended to be the same as the information that would be collected in connection with any reporting requirements that would take effect after promulgation of a final regulation.

Upon approval of the information collection, and following review and analysis of the information and data obtained from nuclear suppliers in response, DOE will determine whether it is appropriate to issue a supplemental proposed regulation. As this process advances, DOE also intends to engage the public in additional opportunities for review and comment on the rulemaking, including on any supplemental proposal that is issued.

To facilitate discussion at the public workshop, DOE encourages participants to provide views and comments on the proposed information collection form which may be viewed at <http://www.energy.gov/gc/convention-supplementary-compensation-rulemaking> as well as on the following topics: (1) Does the information collection form seek appropriate and sufficient information and data from nuclear suppliers to support further development of DOE's proposed regulation, in particular with respect to the risk-informed formula; (2) is the information collection request too broad or too narrow, and if so, in what way; (3) has DOE overestimated or underestimated the number of respondents to the information collection form and if so, by how much; (4) has DOE overestimated or underestimated the burden hours of each respondent to the collection form and if so, by how much; (5) has DOE overestimated or underestimated the cost per respondent to collect the information requested in the form and if

so, by how much; (6) what additional information, if any, should DOE include in the information collection form to support further development of its proposed regulation; and (7) are there other actions, in addition to the issuance of the proposed information collection form, that DOE should consider or pursue to obtain the information and data to support further development of its proposed regulation. DOE requests commenters provide any underlying data or other information in support of their views and comments in a manner sufficient to allow DOE to also review, assess and verify such data and information as appropriate.

Public Participation

A. Attendance at Public Workshop

If you plan to attend the public workshop, please notify Alencia Jenkins at (202) 586-0426 or by email: alencia.jenkins@hq.doe.gov. Please note that foreign nationals visiting DOE Headquarters are subject to advance screening procedures which require advance notice prior to attendance at the public workshop. If a foreign national wishes to participate in the public workshop, please inform DOE of this fact as soon as possible by contacting Alencia Jenkins at (202) 586-0426 or by email to alencia.jenkins@hq.doe.gov so that the necessary procedures may be implemented.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Drivers' licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required. DHS has determined that regular drivers' licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma and Washington. Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced ID-Card issued by the states of Minnesota, New York, or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Drivers' License); or a military ID or other Federal government issued Photo-ID card.

DOE requires visitors with laptop computers to be checked upon entry into the building. Any person wishing to bring these devices into the Forrestal Building will be required to obtain a

property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the Visitors' Desk to have these devices checked before proceeding through security.

B. Conduct of Public Workshop

The Department will designate a DOE official to preside at the public workshop and may also use a professional facilitator to aid discussion. A court reporter will be present to record the proceeding and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public workshop. Interested parties may submit comments on the proposed information collection at any point until the end of the comment period.

The workshop will be conducted in an informal, conference style. DOE will allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting the proposed information collection.

Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time allows, other participants to comment briefly on any general statements. At the end of all prepared statements, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions concerning other matters relevant to this information collection. The official conducting the public workshop will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public workshop.

In addition, DOE will accept for consideration questions or suggestions on topics for comment in advance of the public workshop, by September 7, 2016. If you wish to submit questions or suggestions on topics for comment, please submit them via one of the means provided in the **ADDRESSES** section of this notice. DOE may use the questions or topic suggestions to structure the discussion and enhance participation. A transcript of the public workshop will be included in the docket, which can be viewed as described in the *Docket* section of this notice.

C. Procedure for Submitting Prepared General Statements and Suggested Topics

Persons who plan to present a prepared general statement may request that copies of the statement be made available at the public workshop. Such persons may submit requests, along with an advance electronic copy of their statement in PDF to the appropriate address shown in the **ADDRESSES** section of this notice. The request and advance copy of statements must be received by September 7, 2016 and may be emailed, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

Persons who plan to submit questions and topic suggestions for the public workshop must do so by September 7, 2016, via email or by mail, to the appropriate address shown in the **ADDRESSES** section of this notice. DOE prefers to receive the requests via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

D. Submission of Comments

DOE will continue to accept comments, data, and information concerning this proposed information collection before and after the public workshop, but no later than October 3, 2016. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section of this notice.

Issued in Washington, DC, on July 29, 2016.

Samuel T. Walsh,

*Deputy General Counsel for Energy Policy,
Office of General Counsel.*

[FR Doc. 2016-18368 Filed 8-2-16; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2016-8182; Directorate Identifier 2016-NM-069-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all

Airbus Model A318-111 and -112 airplanes; Model A319-111, -112, -113, -114, and -115 airplanes; Model A320-211, -212, and -214 airplanes; and Model A321-111, -112, -211, -212, and -213 airplanes. This proposed AD was prompted by reports of cracks on the 3 o'clock and 9 o'clock pivot fittings of a CFM56 engine's thrust reverser (T/R). This proposed AD would require repetitive inspections for cracking and corrosion of the 3 o'clock and 9 o'clock pivot fittings of a CFM56 engine's T/R, and corrective actions if necessary. We are proposing this AD to detect and correct such cracking and corrosion, which could lead to T/R malfunction and, in a case of rejected takeoff at V1 on a wet runway, a consequent runway excursion, possibly resulting in damage to the airplane and injury to occupants.

DATES: We must receive comments on this proposed AD by September 19, 2016.

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

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

For Airbus service information identified in this NPRM, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; Internet <http://www.airbus.com>.

For Goodrich Aerostructures service information identified in this NPRM, contact Goodrich Aerostructures, 850 Lagoon Drive, Chula Vista, CA 91910-2098; telephone 619-691-2719; email jan.lewis@goodrich.com; Internet <http://www.goodrich.com/TechPubs>.

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.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-

8182; 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 proposed 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. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Sanjay Ralhan, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1405; fax 425-227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2016-8182; Directorate Identifier 2016-NM-069-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union has issued EASA Airworthiness Directive 2016-0076, dated April 18, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for all Airbus Model A318-111 and -112 airplanes; Model A319-111, -112, -113, -114, and -115 airplanes; Model A320-211, -212, and -214 airplanes; and Model A321-111, -112, v211, -212, and -213 airplanes. The MCAI states:

Several operators reported finding cracks, during an unscheduled inspection, on the 3 o'clock and 9 o'clock pivot fittings of a CFM56 engine's thrust reverser (T/R). Investigation results revealed that these cracks were caused by a combination of stress and fatigue effects. Further analysis determined that only aeroplanes fitted with

CFM56–5A or CFM56–5B series engines could be affected by this issue.

This condition, if not detected and corrected, could lead to T/R malfunction and, in a case of rejected take off at V1 on a wet runway, a consequent runway excursion, possibly resulting in damage to the aeroplane and injury to occupants.

For the reasons described above, EASA issued AD 2016–0068, requiring repetitive inspections [for cracks and corrosion] of the T/R pivot fittings at the 3 o'clock and 9 o'clock positions and, depending on findings, accomplishment of applicable corrective action(s).

Since that [EASA] AD was issued, it was determined that the list of part numbers (P/N) of affected T/R pivot fitting, as identified in that [EASA] AD, was incomplete.

For the reason stated above, this [EASA] AD retains the requirements of EASA AD 2016–0068, which is superseded, but expands the list of affected fitting P/Ns.

Corrective actions include repair of cracking and corrosion.

You may examine the MCAI in the AD docket on the Internet at <http://>

www.regulations.gov by searching for and locating Docket No. FAA–2016–8182.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–70–1003, Revision 01, dated December 18, 2015. This service information describes procedures for doing inspections for cracking and corrosion of the 3 o'clock and 9 o'clock pivot fittings of a CFM56 engine's T/R.

Goodrich Aerostructures has issued Service Bulletin RA32078–137, Rev. 3, dated March 14, 2016. This service information describes procedures for doing inspections for cracking and corrosion of the 3 o'clock and 9 o'clock pivot fittings of a CFM56 engine's T/R, and repair of corrosion.

This service information is reasonably available because the interested parties have access to it through their normal

course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of this Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 400 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	4 work-hours × \$85 per hour = \$340 per inspection cycle.	\$0	\$340 per inspection cycle.	\$136,000 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This

proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2016–8182; Directorate Identifier 2016–NM–069–AD.

(a) Comments Due Date

We must receive comments by September 19, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes, certificated in any category, identified in paragraphs (c)(1) through (c)(4) of this AD, all manufacturer serial numbers.

- (1) Airbus Model A318–111 and –112 airplanes.
- (2) Airbus Model A319–111, –112, –113, –114, and –115 airplanes.
- (3) Airbus Model A320–211, –212, and –214 airplanes.
- (4) Airbus Model A321–111, –112, –211, –212, and –213 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 78, Engine exhaust.

(e) Reason

This AD was prompted by reports of cracks on the 3 o'clock and 9 o'clock pivot fittings of a CFM56 engine's thrust reverser (T/R). We are issuing this AD to detect and correct such cracking and corrosion, which could lead to T/R malfunction and, in a case of rejected takeoff at V1 on a wet runway, a consequent runway excursion, possibly resulting in damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Inspections and Corrective Actions

At the applicable compliance time specified in paragraph (h) of this AD: Do a high frequency eddy current (HFEC) inspection for cracking and corrosion of each T/R pivot fitting specified in paragraphs (g)(1) and (g)(2) of this AD, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-70-1003, Revision 01, dated December 18, 2015; and Goodrich Aerostructures Service Bulletin RA32078-137, Rev. 3, dated March 14, 2016; as applicable; except as required by paragraph (i) of this AD. Do all applicable corrective actions before further flight. Repeat the inspection of the T/R pivot fittings thereafter at intervals not to exceed 60 months or 12,000 flight cycles, whichever occurs first.

(1) The 3 o'clock position T/R pivot fittings having part numbers (P/N) that are provided in paragraphs (g)(1)(i) through (g)(1)(iv) of this AD.

- (i) P/N 321-200-850-6.
- (ii) P/N 321-200-851-6.
- (iii) P/N 321-200-852-6.
- (iv) P/N 321-200-853-6.

(2) The 9 o'clock position T/R pivot fittings having P/Ns that are provided in paragraphs (g)(2)(i) through (g)(2)(iv) of this AD.

- (i) P/N 321-200-800-6.
- (ii) P/N 321-200-801-6.
- (iii) P/N 321-200-802-6.
- (iv) P/N 321-200-803-6.

(h) Compliance Times

At the later of the times specified in paragraphs (h)(1) and (h)(2) of this AD, do the initial inspection specified in paragraph (g) of this AD. If maintenance records cannot conclusively determine the T/R flight cycles accumulated since first installation, or the time since new, do the initial inspection required by paragraph (g) of this AD at the compliance time specified in paragraph (h)(2) of this AD.

(1) Before exceeding 10 years or 24,000 total flight cycles accumulated by the T/R, whichever occurs first since first installation on an airplane.

(2) Within 36 months or 7,200 flight cycles, whichever occurs first after the effective date of this AD.

(i) Exceptions to Service Information Specification

(1) If any crack is found during any inspection required by this AD: Before further flight, repair using a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(2) If any corrosion is found during any inspection required by this AD and Goodrich Aerostructures Service Bulletin RA32078-137, Rev. 3, dated March 14, 2016, specifies obtaining a damage disposition from Goodrich Aerostructures: Before further flight, repair using a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(j) Parts Installation Limitation

As of the effective date of this AD, no person may install on any airplane a T/R pivot fitting having a part number specified in paragraph (g)(1) or (g)(2) of this AD, unless it is determined, prior to installation, that the T/R pivot fitting has accumulated less than 10 years and fewer than 24,000 total flight cycles since its first installation on an airplane, or less than 60 months and fewer than 12,000 flight cycles after having passed an inspection in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-70-1003, Revision 01, dated December 18, 2015; and Goodrich Aerostructures Service Bulletin RA32078-137, Rev. 3, dated March 14, 2016.

(k) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320-70-1003, dated May 7, 2014.

(2) This paragraph provides credit for actions specified in paragraph (j) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (k)(2)(i), or (k)(2)(ii), or (k)(2)(iii) of this AD.

(i) Airbus Service Bulletin A320-70-1003, dated May 7, 2014; and Goodrich Aerostructures Service Bulletin RA32078-137, dated April 29, 2014.

(ii) Airbus Service Bulletin A320-70-1003, dated May 7, 2014; and Goodrich Aerostructures Service Bulletin RA32078-137, Rev. 1, dated January 26, 2015.

(iii) Airbus Service Bulletin A320-70-1003, dated May 7, 2014; and Goodrich Aerostructures Service Bulletin RA32078-137, Rev. 2, dated December 2, 2015.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as

appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1405; fax 425-227-1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. 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, International Branch, ANM-116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

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

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016-0076, dated April 18, 2016, 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-2016-8182.

(2) For Airbus service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; Internet <http://www.airbus.com>.

(3) For Goodrich Aerostructures service information identified in this AD, contact Goodrich Aerostructures, 850 Lagoon Drive, Chula Vista, CA 91910-2098; telephone 619-691-2719; email jan.lewis@goodrich.com; Internet <http://www.goodrich.com/TechPubs>.

(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.

Issued in Renton, Washington, on July 25, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016-18262 Filed 8-2-16; 8:45 am]

BILLING CODE 4910-13-P

POSTAL REGULATORY COMMISSION

39 CFR Part 3001

[Docket No. RM2016–6]

Procedures Related to Motions

AGENCY: Postal Regulatory Commission.**ACTION:** Notice of proposed rulemaking; reopening of comment period.**SUMMARY:** The Commission is noticing the reopening of the comment period on a proposed rulemaking. This document informs the public of the docket's reinstatement, invites public comment, and takes other administrative steps.**DATES:** The comment period for the proposed rulemaking published on February 1, 2016 (81 FR 5085) is reopened. *Comments are due on or before September 2, 2016.***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:** On February 23, 2016, the Commission granted the Postal Service's motion to suspend proceedings in the above-captioned docket.¹ The Commission held the rulemaking in abeyance pending its resolution of the Postal Service's motion for reconsideration of Order No. 3047. Order No. 3096 at 1. On July 20, 2016, the Commission issued an order resolving the Postal Service's motion for reconsideration.² Accordingly, the Commission reinstates the rulemaking in the above-captioned docket and sets a new comment deadline.Interested persons are invited to provide written comments in response to the Notice of Proposed Rulemaking.³ Comments are due no later than 30 days after the date of publication of this document in the **Federal Register**. All comments and suggestions received will be available for review on theCommission's Web site, <http://www.prc.gov>.As indicated in Order No. 3048, the Commission will accommodate motions concerning mail preparation changes under the Commission's general motion rules until more specific rules can be implemented under the present rulemaking. *See* Order No. 3048 at 2–3. This rulemaking proposes a procedure to allow the Postal Service to implement mail preparation changes with limited disruption by setting “a reasonable but definite timeframe by which interested parties may challenge a mail preparation change.”⁴ Therefore, the Commission reinstates Docket No. RM2016–6, and intends to complete the rulemaking process without further delay.**IT IS ORDERED:**

1. The rulemaking in Docket No. RM2016–6 is reinstated.
2. Interested persons may submit comments no later than 30 days from the date of the publication of this notice in the **Federal Register**.
3. The Secretary shall arrange for publication of this document in the **Federal Register**.

By the Commission.

Stacy L. Ruble,
Secretary.

[FR Doc. 2016–18170 Filed 8–2–16; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2014–0830; FRL–9950–11–OAR]

RIN 2060–AS99

National Emission Standards for Aerospace Manufacturing and Rework Facilities Risk and Technology Review; Clarification

AGENCY: Environmental Protection Agency (EPA).**ACTION:** Proposed rule.**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to amend the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Aerospace Manufacturing and Rework Facilities. In the “Rules and Regulations” section of this **Federal Register**, we are clarifying the compliance date for the handling and storage of waste as a direct final rule without a prior proposed rule. If we

receive no significant and relevant adverse comment, we will not take further action on this proposed rule.

DATES: Written comments must be received by September 2, 2016.**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2014–0830, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.**Docket.** The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2014–0830. 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.*, 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. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Avenue 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 Docket Center is (202) 566–1742.**FOR FURTHER INFORMATION CONTACT:** For questions about this proposed action, contact Ms. Kim Teal, Sector Policies and Programs Division (D243–04), Office of Air Quality Planning and Standards, U.S. Environmental¹ Order Holding Rulemaking in Abeyance, February 23, 2016 (Order No. 3096).² Docket No. R2013–10R, Order No. 3441, Order Resolving Motion for Reconsideration of Commission Order No. 3047, July 20, 2016.³ *See* Notice of Proposed Rulemaking on Motions Concerning Mail Preparation Changes, January 22, 2016 (Order No. 3048); 81 FR 5085 (February 1, 2016) (Procedures Related to Motions).⁴ Order No. 3048 at 4; Procedures Related to Motions at 5086.

Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5580; fax number: (919) 541–5450; and email address: teal.kim@epa.gov. For information about the applicability of the NESHAP to a particular entity, contact Mr. John Cox, Office of Enforcement and Compliance Assurance, (202) 564–1395, cox.john@epa.gov.

SUPPLEMENTARY INFORMATION:

Organization of this document. The information in this preamble is organized as follows:

I. General Information

- A. Why is the EPA issuing this proposed rule?
- B. Does this action apply to me?
- C. What are the amendments in this proposed rule?

II. Statutory and Executive Order Reviews

I. General Information

A. Why is the EPA issuing this proposed rule?

This document proposes to take action on the NESHAP for Aerospace Manufacturing and Rework Facilities. We have published a direct final rule to clarify the compliance date for the handling and storage of waste in the “Rules and Regulations” section of this **Federal Register** because we view this as a noncontroversial action and anticipate no significant and relevant adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no significant and relevant adverse comment, we will not

take further action on this proposed rule. If we receive significant and relevant adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

B. Does this action apply to me?

Regulated entities. Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS ACTION

Source category	NESHAP	NAICS ¹ Code
Aerospace	Aerospace	336411
Manufacturing and Rework Facilities	Manufacturing and Rework Facilities	336412
		336413
		336414
		336415
		336419
		481111
		481112
		481211
		481212
		481219

¹ North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source categories listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

C. What are the amendments in this proposed rule?

This proposed rule provides a compliance date of December 7, 2018, for sources subject to the requirements for handling and storage of waste in 40 CFR part 63, subpart GG.

The EPA is accepting comments only on the specific issue raised in this proposed action and the accompanying direct final rule, the compliance date for handling and storage of waste. The EPA is not reopening or accepting comment on any other aspect of the NESHAP for Aerospace Manufacturing and Rework Facilities.

II. Statutory and Executive Order Reviews

For a complete discussion of the rationale, regulatory text, and all of the administrative requirements applicable to this action, see the direct final rule in the “Rules and Regulations” section of this **Federal Register**.

Dated: July 26, 2016.

Gina McCarthy,
Administrator.

[FR Doc. 2016–18396 Filed 8–2–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services****42 CFR Part 413, 414 and 494**

[CMS-1651-P]

RIN 0938-AS83

Medicare Program; End-Stage Renal Disease Prospective Payment System, Coverage and Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury, End-Stage Renal Disease Quality Incentive Program, Durable Medical Equipment, Prosthetics, Orthotics and Supplies Competitive Bidding Program Bid Surety Bonds, State Licensure and Appeals Process for Breach of Contract Actions, Durable Medical Equipment, Prosthetics, Orthotics and Supplies Competitive Bidding Program and Fee Schedule Adjustments, Access to Care Issues for Durable Medical Equipment; and the Comprehensive End-Stage Renal Disease Care Model

Correction

In proposed rule document 2016-15188 beginning on page 42802 in the issue of Thursday, June 30, 2016, make the following corrections:

1. On page 42851, in the third column, in the ninth line from the bottom, “2035” should read “2015”.
2. On page 42852, in the table, in the first column, in the seventeenth row, “E0303” should read “E0301”.
3. On the same page, in the same table, in the same column, in the final row on this page, “E0330” should read “E0130”.
4. On page 42853, in the table, in the first column, in the first row on this page, “E0335” should read “E0135”.
5. On the same page, in the same table, in the same column, in the second row on this page, “E0341” should read “E0141”.
6. On the same page, in the same table, in the same column, in the second row on this page, “E0343” should read “E0143”.

[FR Doc. C1-2016-15188 Filed 8-2-16; 8:45 am]

BILLING CODE 1505-01-D

SURFACE TRANSPORTATION BOARD**49 CFR Parts 1109**

[Docket No. EP 734]

Dispute Resolution Procedures Under the Fixing America's Surface Transportation Act of 2015

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) proposes regulations to implement passenger rail-related dispute resolution provisions of the Fixing America's Surface Transportation Act of 2015.

DATES: Comments on this proposal are due by August 31, 2016; reply comments are due by September 30, 2016.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 734, 395 E Street SW., Washington, DC 20423-0001.

Copies of written comments received by the Board will be posted to the Board's Web site at <http://www.stb.dot.gov> and will be available for viewing and self-copying in the Board's Public Docket Room, Suite 131, 395 E Street SW., Washington, DC. Copies of the comments will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245-0235 or 395 E Street SW., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Scott M. Zimmerman, (202) 245-0386. Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION: Title XI of the Fixing America's Surface Transportation Act of 2015 (FAST Act),¹ entitled “Passenger Rail Reform and Investment Act of 2015,” adds to the Board's existing passenger rail adjudicatory responsibilities related to the National Railroad Passenger Corporation (Amtrak). Among other things, Title XI includes new provisions involving cost recovery by Amtrak for Amtrak's operation of “state-supported

routes” and for the costs allocated to states (including state entities) using the Northeast Corridor rail facilities for their commuter rail operations. As relevant here, Title XI gives the Board jurisdiction to resolve cost allocation and access disputes between Amtrak, the states, and potential non-Amtrak operators of intercity passenger rail service.² In this notice, the Board is proposing a set of procedural rules for the mediation of passenger rail matters arising under Title XI of the FAST Act. Because the Board does not presently have in place a general set of procedural rules to govern the presentation and conduct of proceedings before the Board involving passenger rail matters entrusted to the Board under 49 U.S.C. 24101-24910,³ which would include contested matters arising under Title XI of the FAST Act, parties seeking to bring contested matters before the Board should be guided by the Board's existing Rules of Practice, as applicable.

FAST Act Provisions

The State-Supported Route Committee. Section 11204 of the FAST Act adds a new section to the United States Code: 49 U.S.C. 24712, “State supported routes operated by Amtrak.” State-supported routes are intercity rail passenger routes for which operating and capital costs are established and allocated among the states and Amtrak under Section 209 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA).⁴ Under these agreements, Amtrak currently receives funding from states and state-related entities to operate routes under 750 miles in length. New section 24712 establishes a State-Supported Route Committee comprising Amtrak, the U.S. Department of Transportation/Federal Railroad Administration, and states that subsidize state-supported routes, to implement the cost-allocation methodology previously developed under section 209 of PRIIA through negotiation between Amtrak and the affected states and approved by the Board. *See Amtrak's Pet. for Determination of PRIIA Sec. 209 Cost Methodology*, FD 35571 (STB served Mar. 15, 2012). The Committee may also

² Currently, Amtrak is the only operator of regularly scheduled, common carrier intercity passenger rail service in the United States. Certain statutory provisions contemplate the possibility, in the future, of other such intercity passenger rail operators. *See, e.g.*, 49 U.S.C. 24711 & 49 U.S.C. 24308(f).

³ *See* 49 CFR 1100.1 (limiting the scope of the Rules of Practice to matters under title 49, subtitle IV of the United States Code, 49 U.S.C. 10101 *et seq.*).

⁴ Public Law 110-432, Section 209; 49 U.S.C. 24101 note.

¹ Fixing America's Surface Transportation Act of 2015, Pub. L. 114-94 (signed Dec. 4, 2015).

amend that cost-allocation methodology. Section 24712(c)(1) gives the Board jurisdiction to “conduct dispute resolution” pertaining to (1) the Committee’s rules and procedures, (2) the invoices to be produced by Amtrak or reports to be produced by Amtrak or the states as described in section 24712(b), and (3) the implementation of or compliance with the cost allocation methodology. Section 24712(c)(2) requires the Board to establish procedures for resolving such disputes, which procedures “may include provision of professional mediation services.”

The Northeast Corridor Commission. Section 11305 of the FAST Act, which amends 49 U.S.C. 24905, involves the powers and obligations of the Northeast Corridor Commission (NEC Commission), created by Congress in 2008 as part of PRIIA.⁵ The NEC Commission, composed of voting representatives from Amtrak, the U.S. Department of Transportation, and the states comprising the Northeast Corridor (including the District of Columbia), is responsible for developing and implementing a standardized policy for determining and allocating costs, revenues, and compensation between Amtrak and the providers of commuter rail passenger transportation on the Northeast Corridor. 49 U.S.C. 24905(c).

The FAST Act amends 49 U.S.C. 24905 with respect to the Board’s role in resolving disputes between Amtrak and the states in determining compensation for use of the Northeast Corridor by applying the policy approved by the NEC Commission. Under section 24903(c), formerly section 24904(c), Congress gave Amtrak the authority to allow freight and commuter rail passenger operations over Amtrak’s Northeast Corridor and laid out the standard for the Board to determine compensation if the parties did not reach agreement. The FAST Act creates a new subsection, section 24905(c)(4), that permits the NEC Commission, Amtrak, or public authorities providing commuter rail passenger transportation on the Northeast Corridor to request that the Board conduct dispute resolution if a dispute arises over implementation of, or compliance with, the NEC Commission’s cost allocation policy. The new subsection requires the Board to establish procedures for resolving such disputes and provides that those

procedures “may include the provision of professional mediation services.”⁶

The Proposed Rules

The proposed rules would add to the Board’s current mediation rules at 49 CFR part 1109 a new § 1109.5 that includes provisions specific to the State-Sponsored Route Committee and the Northeast Corridor Committee, to implement the FAST Act’s directive that procedures for resolving certain disputes arising from those committees “may include provision of professional mediation services.” In the proposed regulations, parties to a dispute under sections 24712 and 24905 would be permitted to request, by letter submitted to the Board’s Office of Public Assistance, Governmental Affairs, and Compliance, the Board’s informal assistance in securing outside professional mediation services in order to resolve certain disputes as set forth in the FAST Act, without the necessity of a formal complaint being filed with Board.⁷

⁶ Section 11307 of the FAST Act, “Competition,” adds a new section to the United States Code, 49 U.S.C. 24711, establishing a pilot program for winning bidders to operate no more than three long-distance routes currently operated by Amtrak. Section 24711 gives the Board jurisdiction over disputes between Amtrak and the pilot operator over the price and other terms and conditions of access to Amtrak facilities and services that the pilot operator claims are required to support the transferred routes, and over whether Amtrak’s other services would be unreasonably impaired by providing such access. If the Board determines that access is necessary and would not unreasonably impair Amtrak’s other services, then the Board is required to determine reasonable compensation to be paid to Amtrak and other terms of use and must order Amtrak to provide access based on those terms and conditions. 49 U.S.C. 24711(g). Section 11307, however, does not include a provision like those discussed above requiring the Board to establish procedures for resolving such disputes and providing that those procedures “may include the provision of professional mediation services.”

⁷ The proposed mediation procedures originated in the events leading up to the FAST Act’s creation of the State-Sponsored Route Committee. Following the enactment of PRIIA in 2008, and pursuant to PRIIA section 209, Amtrak developed a single, nationwide standardized methodology for establishing and allocating operating and capital costs among the states and Amtrak for all State-subsidized intercity passenger rail services. Lacking the unanimous concurrence of the concerned states, the methodology underwent mandatory review by the Board, which found it to be in compliance with the PRIIA requirements. *Amtrak’s Pet. for Determination of PRIIA Sec. 209 Cost Methodology*, FD 35571 (STB served Mar. 15, 2012). Thereafter, several issues emerged between Amtrak and the states that they were unable to resolve in the course of their good-faith efforts to implement section 209 and the cost allocation methodology. Therefore, in 2014 the Board engaged the Federal Mediation and Conciliation Service (FMCS) to organize and facilitate focused discussions involving Amtrak and the affected states in an effort to resolve outstanding issues informally. In June 2015, the parties, with the assistance of the Board-sponsored FMCS facilitation team, reached agreement on the creation of a committee structure including Amtrak, the Federal

The Board invites public comment on any aspect of the procedural rules proposed here.

Paperwork Reduction Act. Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3549, and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), the Board seeks comments regarding: (1) Whether the revisions to the collections of information proposed here are necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board’s burden assessment; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burdens of the collections of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. The proposed revisions described in this notice are being submitted to OMB for review as required under the PRA, 5 U.S.C. 3507(d) and OMB regulations at 5 CFR 1320.11. Comments received by the Board regarding the information collection will also be forwarded to OMB for its review when the final rule is published.

Regulatory Flexibility Act Certification. The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation’s impact; and (3) make the analysis available for public comment. 5 U.S.C. 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, section 603(a), or certify that the proposed rule would not have a “significant impact on a substantial number of small entities.” Section 605(b). The impact must be a direct impact on small entities “whose conduct is circumscribed or mandated” by the proposed rule. *White Eagle Coop. v. Conner*, 553 F.3d 467, 480 (7th Cir. 2009).

The proposed regulations would specify procedures related to dispute resolution of certain passenger rail transportation matters by the Board and

Railroad Administration, and the affected states, to negotiate and resolve ongoing cost allocation issues. That committee was the predecessor of, and model for, the State-Sponsored Route Committee established in the FAST Act and codified at 49 U.S.C. 24712.

⁵ The NEC Commission was originally established as the Northeast Corridor Infrastructure and Operations Advisory Commission. See 49 U.S.C. 24905.

do not mandate or circumscribe the conduct of small entities. If a party wishing to utilize the proposed procedures files a complaint, petition, application, or request for dispute resolution, that entity will not encounter any additional burden. Rather, the procedures are being updated and clarified by the proposed regulations. Therefore, the Board certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities as defined by the RFA. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

List of Subjects in 49 CFR Part 1109

Administrative practice and procedure, Maritime carriers, Motor carriers, Railroads.

It is ordered:

1. Comments on this proposal are due by August 31, 2016; reply comments are due by September 30, 2016.

2. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

3. Notice of this decision will be published in the **Federal Register**.

4. This decision is effective on its service date.

Decided: July 28, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Kenyatta Clay,
Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1109 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1109—USE OF MEDIATION IN BOARD PROCEEDINGS

■ 1. Revise the authority citation for part 1109 to read as follows:

Authority: 5 U.S.C. 571 *et seq.* and 49 U.S.C. 1321(a), 24712(c), and 24905(c).

■ 2. Add § 1109.5 to read as follows:

§ 1109.5 Resolution of certain disputes involving the State Sponsored Route Committee and the Northeast Corridor Commission.

(a) In addition to the mediation procedures under this part that are available following the filing of a complaint in a proceeding before the Board, Amtrak or a State member of the State Supported Route Committee established under 49 U.S.C. 24712 may request that the Board informally assist in securing outside professional mediation services in order to resolve disputes arising from:

(1) Implementation of, or compliance with, the cost allocation methodology for State-Supported Routes developed under section 209 of the Passenger Rail Investment and Improvement Act of 2008 or amended under 49 U.S.C. 24712(a)(6);

(2) Invoices or reports provided under 49 U.S.C. 24712(b); or

(3) Rules and procedures implemented by the State Supported Route Committee under 49 U.S.C. 24712(a)(4). Such a request for informal assistance in securing outside professional mediation services may be submitted to the Board even in the absence of a complaint proceeding before the Board.

(b) In addition to the mediation procedures under this part that are available following the filing of a complaint in a proceeding before the Board, the Northeast Corridor Commission established under 49 U.S.C. 24905, Amtrak, or public authorities providing commuter rail passenger transportation on the Northeast Corridor may request that the Board informally assist in securing outside professional mediation services in order to resolve disputes involving implementation of, or compliance with, the policy developed under 49 U.S.C. 24905(c)(1). Such a request for informal assistance in securing outside professional mediation services may be submitted to the Board even in the absence of a complaint proceeding before the Board.

(c) A request for informal Board assistance in securing outside professional mediation services under paragraph (a) or (b) of this section shall be submitted by letter duly authorized to be submitted to the Board by the requesting party. The request letter shall be addressed to the Director of the Board's Office of Public Assistance, Governmental Affairs, and Compliance, and shall include a concise description of the issues for which outside professional mediation services are sought. The Office of Public Assistance, Governmental Affairs, and Compliance shall contact the requesting party in response to such request within 14 days of receipt of the request.

[FR Doc. 2016-18102 Filed 8-2-16; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

49 CFR Parts 1144 and 1145

[Docket No. EP 711; Docket No. EP 711 (Sub-No. 1)]

Petition for Rulemaking To Adopt Revised Competitive Switching Rules; Reciprocal Switching

AGENCY: Surface Transportation Board (the Board or STB).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this decision, the Board grants in part a petition for rulemaking filed by the National Industrial Transportation League seeking revised reciprocal switching regulations. The Board proposes new regulations governing reciprocal switching in Docket No. EP 711 (Sub-No. 1), which would allow a party to seek a reciprocal switching prescription that is either practicable and in the public interest or necessary to provide competitive rail service.

DATES: Comments are due by September 26, 2016. Replies are due by October 25, 2016. Requests for ex parte meetings with Board Members are due by October 10, 2016 and meetings will be conducted between October 25, 2016 and November 14, 2016. Meeting summaries are to be submitted within two business days of the ex parte meeting.

ADDRESSES: Comments and replies may be submitted either via the Board's e-filing format or in paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's Web site at "www.stb.dot.gov" at the "E-FILING" link. Any person submitting a filing in paper format should send an original and 10 paper copies of the filing to: Surface Transportation Board, Attn: Docket No. EP 711 (Sub-No. 1), 395 E Street SW., Washington, DC 20423-0001. Copies of written comments and replies will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT:

Allison Davis at (202) 245-0378. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Competitive access generally refers to the ability of a shipper or a competitor railroad to use the facilities or services of an incumbent railroad to extend the reach of the services provided by the competitor railroad. The Interstate Commerce Act makes three competitive

access remedies available to shippers and carriers: The prescription of through routes, terminal trackage rights, and, as relevant here, reciprocal switching. Under reciprocal switching, or as it is sometimes called, “competitive switching,” an incumbent carrier transports a shipper’s traffic to an interchange point, where it switches the cars over to the competing carrier. The competing carrier pays the incumbent carrier a switching fee for bringing or taking the cars from the shipper’s facility to the interchange point, or vice versa, which is incorporated into the competing carrier’s total rate to the shipper. Reciprocal switching thus enables a competing carrier to offer its own single-line rate to compete with the incumbent carrier’s single-line rate, even if the competing carrier’s lines do not physically reach a shipper’s facility.

On July 7, 2011, the National Industrial Transportation League (NITL) filed a petition to institute a rulemaking proceeding to modify the Board’s standards for reciprocal switching. The Board took public comment and held a hearing on the issues raised in the petition. After consideration of the petition and the comments and testimony received, the Board is granting NITL’s petition in part and instituting a rulemaking proceeding in Docket No. EP 711 (Sub-No. 1) to modify the Board’s standards for reciprocal switching. Because we are proposing rules in a separate sub-docket, we will also close the docket in Docket No. EP 711.

Statutory and Regulatory History

Reciprocal switching can occur as part of a voluntary arrangement between carriers, or it may be ordered by the Board. The statutory provision governing the Board’s authority to order reciprocal switching arrangements was first enacted by Congress in the Staggers Rail Act of 1980, Public Law 96–448, 94 Stat. 1895 (Staggers Act). Under the Staggers Act, the agency may require rail carriers to enter into reciprocal switching agreements, *where it finds such agreements to be practicable and in the public interest, or where such agreements are necessary to provide competitive rail service*. The rail carriers entering into such an agreement shall establish the conditions and compensation applicable to such agreement, but, if the rail carriers cannot agree upon such conditions and compensation within a reasonable period of time, the Board may establish such conditions and compensation. 49 U.S.C. 11102(c)(1) (emphasis added)

(previously codified at 49 U.S.C. 11103(c) (1980)).

In 1985, the Board’s predecessor agency, the Interstate Commerce Commission (ICC), adopted regulations pertaining to competitive access, including reciprocal switching.¹ *Intramodal Rail Competition*, 1 I.C.C.2d 822 (1985), *aff’d sub nom Balt. Gas & Elec. v. United States*, 817 F.2d 108 (D.C. Cir. 1987). Those regulations were adopted upon the filing of petitions from NITL and the Association of American Railroads (AAR) asking the agency to adopt rules that they had negotiated. A subsequent joint petition was filed by the AAR and the Chemical Manufacturers Association (CMA) that clarified the negotiated NITL–AAR agreement. The ICC adopted this agreed-upon proposal, with some modifications. *Id.* The regulations provided that reciprocal switching would only be prescribed if the agency determines that it is necessary to remedy or prevent an act that is contrary to the competition policies of 49 U.S.C. 10101 or is otherwise anticompetitive,” and “otherwise satisfies the criteria of . . . 11102(c). 49 CFR 1144.2(a)(1);² *see also Intramodal Rail Competition*, 1 I.C.C.2d at 830, 841.

The following year, in 1986, the ICC decided its first reciprocal switching case under the new regulations. In *Midtec Paper Corp. v. Chicago & North Western Transportation Co. (Midtec Paper Corp.)*, 3 I.C.C.2d 171 (1986), the ICC denied a shipper’s petition for competitive access either via terminal trackage rights or reciprocal switching. In so doing, the ICC elaborated on the rules it adopted in *Intramodal Rail Competition* and their relation to the statute:

[W]e think it correct to view the Staggers [Act] changes as directed to situations where some competitive failure occurs. There is a vast difference between using the Commission’s regulatory power to correct abuses that result from insufficient intramodal competition and using that power to initiate an open-ended restructuring of service to and within terminal areas solely to introduce additional carrier service.

Id. at 174. Thus, although “[u]nder [11102(c)], awarding reciprocal

¹ These regulations did not include a prescription for terminal trackage rights. The ICC stated that “there is no present need to adopt rules for prescription of terminal trackage rights. Such rights have rarely been sought in recent years, and we do not anticipate a surge of such cases.” *Intramodal Rail Competition*, 1 I.C.C.2d at 835.

² Formerly codified at 49 CFR 1144.5(a)(1). The regulations at 1144.2(a) also provide a list of relevant factors that the agency shall take into account in making this determination in subsection (a)(1), along with a “standing” requirement in subsection (a)(2).

switching is discretionary,” the ICC explained that the key issue under its then-new regulations was whether the incumbent railroad “has engaged or is likely to engage in conduct that is contrary to the rail transportation policy or is otherwise anticompetitive.” *Id.* at 181. In assessing anticompetitive conduct, the essential questions for the ICC were whether the railroad had used its market power to extract unreasonable terms or had shown a disregard for the shipper’s needs by furnishing inadequate service. *Id.* The shipper in *Midtec Paper Corp.* made general allegations about the carrier’s rates and specific allegations about its service as evidence of anticompetitive conduct, but the ICC found no evidence that the rates to the complaining shipper were higher than other shippers and found the evidence of service inadequacies unconvincing. *Id.* at 182–85. Accordingly, the ICC rejected the request for reciprocal switching.

On appeal of *Midtec Paper Corp.*, the United States Court of Appeals for the District of Columbia Circuit upheld the application of the reciprocal switching regulations, including the anticompetitive conduct requirement, as a permissible exercise of the agency’s discretion, stating:

[The *Intramodal*] rules narrow the agency’s discretion under section 1110[2] by describing, for example, the circumstances in which it would not grant discretionary relief—where there is no reasonable fear of anticompetitive behavior. We could not say in *Baltimore Gas*, and cannot say now, that the Commission’s narrowing of its own discretion is manifestly inconsistent with the terms or the purposes of section 1110[2], or with the broader purposes of the Staggers Act.

Midtec Paper Corp. v. United States, 857 F.2d 1487, 1500 (D.C. Cir. 1988) (statutory sections updated to reflect current numbering); *see also Balt. Gas & Elec.*, 817 F.2d at 115 (stating that ICC’s competitive access rules are “a reasonable accommodation of the conflicting policies set out in its governing statute.”).

Since adoption of the agency’s competitive access regulations in 1985, the regulations have not changed substantively. Few requests for reciprocal switching have been filed with the agency since then, and in none of those cases has the Board granted a request for reciprocal switching. *See, e.g., Midtec Paper Corp.*, 3 I.C.C.2d at 171; *Vista Chem. Co. v. Atchison, Topeka & Santa Fe Ry.*, 5 I.C.C.2d 331 (1989).

NITL's Petition and Comments Received

In June 2011, the Board held a public hearing in *Competition in the Railroad Industry*, Docket No. EP 705, to explore the current state of competition in the railroad industry and possible policy alternatives to facilitate more competition, and asked parties to comment on issues pertaining to the Board's authority to impose reciprocal switching under 49 U.S.C. 11102(c), among other items. Soon after the hearing, NITL filed a petition for rulemaking in *Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, Docket No. EP 711. NITL's petition, which it describes as "flow[ing] from the inquiry that the Board initiated in Ex Parte No. 705," urges regulatory change and argues that the Board's reciprocal switching regulations have not promoted Congress's goal in enacting 11102(c), which was to encourage greater competition through reciprocal switching. (NITL Pet. 2, 17.)³ NITL therefore proposes new regulations under which reciprocal switching by a Class I rail carrier would be mandatory if certain conditions were present. (*Id.* at 2–6.)

Specifically, NITL proposes regulations under which Board-ordered competitive switching by a Class I rail carrier would be mandatory if four criteria were met: (1) The shipper (or group of shippers) is served by a single Class I rail carrier; (2) there is no effective intermodal or intramodal competition for the movements for which competitive switching is sought; (3) there is or can be "a working interchange" between a Class I carrier and another carrier within a "reasonable distance" of the shipper's facility; and (4) switching is safe and feasible and would not unduly hamper the carrier's ability to serve existing shippers. (*Id.* at 7.)

NITL's proposal includes several conclusive presumptions. With respect to the criterion that no effective competition exists, NITL proposes two presumptions. Specifically, a shipper would be conclusively presumed to lack effective intermodal or intramodal competition where either: (a) The rate for the movement for which switching is sought has a revenue-to-variable cost ratio of 240% or more ($R/VC_{\geq 240}$), or (b) where the incumbent carrier serving the

shipper's facilities for which switching is sought has handled 75% or more of the transported volumes of the movements at issue for the 12-month period prior to the petition requesting that the Board order switching. (*Id.* at 8.)

With respect to the criterion that there is a working interchange within a reasonable distance, NITL also proposes two presumptions. Specifically, the presence of a working interchange within a reasonable distance of the shipper's facility would be presumed if either: (a) The shipper's facility is within the boundaries of a "terminal" of the Class I rail carrier, at which cars are "regularly switched," or (b) the shipper's facility is within 30 miles of an interchange between the Class I rail carrier and another rail carrier, at which cars are "regularly switched." (*Id.* at 8.)

Following receipt of NITL's petition, the Board received a number of replies to the petition. The Board initially deferred consideration of NITL's petition pending a review of the comments received in Docket No. EP 705, in a decision served on November 4, 2011. In a decision served on July 25, 2012, the Board, without instituting a rulemaking proceeding, sought comments and further study of a number of issues with the NITL proposal, and subsequently received comments and replies. The Board also received oral testimony in a hearing held on March 25 and 26, 2014. For a list of the numerous parties that have participated in this proceeding at various stages, see the Appendix.⁴ Most shippers who commented support NITL's general proposal that the Board should revise its reciprocal switching regulations in order to make the remedy more widely available. Supporters of the NITL proposal contend that it would introduce more competition into the rail transportation marketplace. (*E.g.*, ACC Comments 3–5; NITL Comments 6.) Pointing to the Canadian experience with "interswitching,"⁵ supporters argue that the proposal is practicable. (*E.g.*, Diversified CPC Comments 8–10; Highroad Comments 17–20; NITL Comments 59–63.) They also argue that the proposal could improve rail service generally, would not harm shippers ineligible for a switching order, and would not undermine rail network efficiency. (AECC Reply 7–11; Diversified CPC Comments 6; Highroad

Comments 9–10; NITL Comments 56–63; NITL Reply 27–34.)

Some commenters generally support modifying the Board's competitive access regulations in a manner similar to NITL's proposal, but disagree over the precise changes the Board should adopt. For example, although some parties support using $R/VC_{\geq 240}$ to determine effective competition (*see, e.g.*, GLE Comments 8–10), others instead support the use of $R/VC_{\geq 180}$ or a carrier's Revenue Shortfall Allocation Methodology benchmark (*see* Agricultural Parties Comments 17–18, 23; Diversified CPC Comments 12; Highroad Comments 16–17; Roanoke Cement Comments 11–12; USDA Comments 6). Similarly, although some parties appear to agree on having a limitation based on distance, they disagree on what a reasonable distance would be and the number of miles that should be used for a presumption. (*See* Agricultural Parties Comments 24; Highroad Comments 16; Roanoke Cement Comments 8.) In addition, some commenters state that they are not in favor of any rule that would require shippers to prove market dominance or prove that rates exceed a regulatory benchmark in order to obtain competitive access. (Diversified CPC Comments 9; Highroad Comments 16, 22; Roanoke Cement Comments 11.)

Moreover, some shipper groups that generally support NITL's proposal acknowledge that their members would have few opportunities to qualify for reciprocal switching under the proposal. (ARC Comments 13; Agricultural Parties Reply 4–5.) Additionally, many shippers or shipper groups question whether the NITL proposal would in fact increase competition or have an appreciable impact on rates. Olin contends that NITL's proposal is flawed because it is "premised on the false assumption that the railroads are actually interested in competing for business." (Olin Comments 6.) The Chlorine Institute argues that NITL's proposal would not ensure that any rate offered by a second carrier would be reasonable or competitive. (Chlorine Institute Comments 1–2.) Agricultural Parties, though not opposing NITL's proposal, state that the Board "should not *conclusively presume* that access to an alternative Class I railroad via mandatory switching will result in effective competition," or that any competition that occurs would ensure reasonable rates and service.

(Agricultural Parties Comments 15 (emphasis in original).) According to Joint Coal Shippers, "any assumption that the availability of mandatory switching constitutes *de facto*

³ Unless otherwise noted, all record cites are to submissions made in *Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, Docket No. EP 711. Additionally, all references to comments and replies in Docket No. EP 711 refer to those received in response to the Board's July 25, 2012 decision.

⁴ To the extent this decision refers to parties by abbreviations, those abbreviations are listed in the Appendix.

⁵ "Interswitching" refers to government-mandated reciprocal switching for shippers within a certain distance of a competing carrier's interchange.

competition would constitute a significant and unjustifiable harm to captive shippers.” (Joint Coal Shippers Comments 11.) Similarly, ARC maintains that shifting freight from one railroad to a potential competitor does not guarantee any reduction in rates. (ARC Comments 8.)

Rail carriers and rail interests oppose NITL’s proposal for a variety of reasons. They contend that the proposal is unnecessary because shippers are concerned more about rates than access to additional rail carriers, as revealed in the testimony given in Docket No. EP 705. (CSXT Comments 21–23; KCS Comments 3–7.) Moreover, rail carriers argue that the proposal is unwise because it would favor a small group of shippers to the detriment of others. (AAR Comments 5–6, Joint V.S. Eakin & Meitzen 3–5; CEI Reply 3; NSR Reply 28–30.) Additionally, they contend that the proposal would have serious, adverse effects on rail service, carrier revenues, network efficiency, and incentives to invest in the rail network. (See, e.g., CEI Reply 3; CSXT Comments 24–48; KCS Comments 14–16; NSR Comments 79–80.) In response to some shippers’ claim that the Canadian interswitching model demonstrates the practicability of the NITL proposal, railroads argue that differences between the Canadian and U.S. rail networks make the Canadian regulatory regime an unreliable guide as to what would happen under NITL’s proposal. (AAR Reply 31–32; CSXT Reply 42–47; KCS Reply 30–33; CEI Reply 7; UTU–NY Reply 3.)

Rail carriers and carrier interests also argue that the NITL proposal is legally flawed. They contend that it is unlawful because Congress “ratified” the *Midtec Paper Corp.* standard of anticompetitive behavior when Congress re-enacted the reciprocal switching language in 11102 without change in the ICC Termination Act of 1995 (ICCTA), Pub. L. 104–88, 109 Stat. 803. (CSXT Comments 11–21; NSR Comments 23–28.)

Rail interests also question the practicality of NITL’s proposal, argue that there are too many unknowns regarding its parameters for it to be easily implemented, and contend that these unknowns will lead to increased litigation before the Board. These unknowns, according to the carriers, include matters such as access pricing, agreement terms, yard and line capacity, service levels, routing issues, labor protection, environmental impacts, general switching standards and procedures, whether the 75% presumption for lack of effective competition applies regardless of price level or availability of other modes of

transportation, how the 30-mile limit would be calculated (specifically, whether it would be route miles or radial miles), and whether qualifying for mandatory switching lasts in perpetuity. (See, e.g., CSXT Comments 2, 54–57; KCS Comments 17–19.) Additionally, they argue that NITL did not define several terms, including “terminal,” “regular switching,” “safe and feasible operations,” what it would mean to “unduly hamper” the ability of a carrier to serve shippers, and the meaning of the phrase “shipper (or group of shippers) served by a single Class I carrier.” (CSXT Comments 49; KCS Comments 19; NSR Comments 64.) NSR also argues that NITL’s presumptions are not conclusive because, under NITL’s proposal, if one of the presumptions does not apply, the shipper can still litigate the issue before the Board. (NSR Comments 40.)

Commenters also disagreed on the impact the proposal would have on the railroad industry. Based on analyses of waybill data, supporters of NITL’s proposal argue that the proposal would affect a relatively modest amount of traffic and carrier revenue. (DOT Comments 2–3; NITL Comments 43; NITL Reply 23; USDA Comments 10–11.) NITL estimates that 4% of carloads on the networks of the four larger Class I rail carriers (BNSF, CSXT, NSR, and UP) under “full competition”⁶ would be subject to potential reciprocal switching under its proposal. (See NITL Comments 43.) The railroads generally argue that NITL’s proposal is too vague to derive proper estimates. (AAR Comments 10–13; BNSF Comments 1; NSR Comments 5.) Given the data available, AAR surmises that NITL’s proposal could affect approximately half of the stations currently served by only one Class I carrier. (AAR Comments 13.) DOT estimates, based on the four Class I railroads it examined, that NITL’s proposal would affect 2.1% of revenue and 1.3% of carloads. (DOT Comments 2–3.)

⁶ NITL describes “full competition” as a scenario where the incumbent and competing carriers compete vigorously to win the traffic after a reciprocal switch arrangement is put in place, resulting in a rate that is “equal to the average ‘competitive’ rate, for that carrier, commodity and mileage block.” This full competition rate is contrasted with the broader “reduced competition” rate, in which a railroad might lower a shipper’s rate in response to the possibility of being required to provide reciprocal switching under the NITL’s proposal, but not down to the maximum competitive rate. (NITL Hearing Presentation, Slide 15 (filed Mar. 25, 2014).)

The Need To Revisit the Board’s 11102(c) Interpretation and Reciprocal Switching Regulations

Many commenters in both this proceeding and in Docket No. EP 705 expressed the view that the agency’s decision to narrow its discretion under 11102(c)—by requiring anticompetitive conduct—has proven, over time, to set an unrealistically high bar for shippers to obtain reciprocal switching, as demonstrated by the fact that shippers have not filed petitions for reciprocal switching in many years, despite expressing concerns about competition.⁷ The sheer dearth of cases brought under 11102(c) in the three decades since *Intramodal Rail Competition*, despite continued shipper concerns about competitive options and quality of service, suggests that part 1144 and *Midtec Paper Corp.* have effectively operated as a bar to relief rather than as a standard under which relief could be granted.

In other contexts where the Board has observed that important available remedies have become dormant, the agency has examined the underlying regulations and pursued modifications, where appropriate. See, e.g., *Simplified Standards for Rail Rate Cases*, EP 646 (Sub-No. 1) (STB served Sep. 5, 2007) (revising the Board’s regulations for smaller rate disputes). For this reason alone, it is appropriate to revisit the agency’s regulations and precedent with regard to reciprocal switching.

But there have also been many changes that have occurred in the rail industry since *Intramodal Rail Competition* and *Midtec Paper Corp.* In the 1980s, the rail industry was reeling from decades of inefficiency and serial bankruptcies. The significant changes since then include, but are not limited to, the improved economic health of the railroad industry and increased consolidation in the Class I railroad sector. In its report on the recently enacted Surface Transportation Board Reauthorization Act of 2015, Pub. L. 114–110, 129 Stat. 2228, the Senate Committee on Commerce, Science, and Transportation noted that “[t]he U.S. freight railroad industry has undergone a remarkable transformation since the enactment of the Staggers Rail Act of 1980,” and elaborated that “the industry has evolved and the railroads’ financial viability has drastically improved.” S. Rep. No. 114–52, at 1–2 (2015).

⁷ See, e.g., Agricultural Parties Comments 4; USDA Comments 2. See also CURE Comments 11–12, Apr. 12, 2011, *Competition in the R.R. Indus.*, EP 705; E.I. du Pont de Nemours & Co. Comments 12, Apr. 12, 2011, *Competition in the R.R. Indus.*, EP 705; USDA Comments 5, Apr. 12, 2011, *Competition in the R.R. Indus.*, EP 705.

Particularly relevant to reciprocal switching, the consolidation of Class I carriers and the creation of short lines that may have strong ties to a particular Class I likely reduces the chance of naturally occurring reciprocal switching as carriers seek to optimize their own large networks. While this is not in itself problematic, it could lead to reduced competitive options for some shippers and thus should be considered. Likewise, to avoid obsolescence of the Board's regulatory policies, we must consider the better overall economic health of the rail industry as well as increased productivity and technological advances.⁸

For these reasons, the Board concludes that the agency's regulations and precedent, in which the public interest and competition statutory bases for reciprocal switching were consolidated into a single competitive abuse standard, makes less sense in today's regulatory and economic environment. Therefore, to the extent that the ICC adopted a single anticompetitive act standard in awarding reciprocal switching under 11102(c) in *Intramodal Rail Competition* and *Midtec Paper Corp.*, the Board proposes to reverse that policy. However, before turning to the issue of what revised reciprocal switching regulations should entail, we will first address the scope of the Board's authority to revise its interpretation of 11102(c) and adopt new reciprocal switching regulations.

The Board's Authority To Revise Its Interpretation of 11102(c) and Adopt New Reciprocal Switching Regulations

As discussed above, the Board has broad discretion under 11102(c) to require carriers to enter into reciprocal switching arrangements when they are practicable and in the public interest or necessary to provide competitive rail service. The agency's primary duty in exercising its statutory reciprocal switching discretion is to ensure it does so in a manner that is not "manifestly contrary" to the statute. *Midtec Paper Corp. v. United States*, 857 F.2d at 1500.

Even though it adopted one set of regulations in 1985, the agency retains broad authority to revise its statutory interpretation and the resulting regulations. It is an axiom of administrative law that an agency's adoption of a particular statutory

interpretation at one point in time does not preclude later different interpretations. See, e.g., *Hinson v. NTSB*, 57 F.3d 1144, 1149–50 (D.C. Cir. 1995). If it changes course, an agency must provide "a reasoned analysis indicating that prior policies and standards are being deliberately changed and not casually ignored," *Grace Petroleum Corp. v. FERC*, 815 F.2d 589, 591 (10th Cir. 1987) (citing *Greater Bos. Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970), and its new interpretation must be permissible under the governing statute, see *Chevron U.S.A., Inc. v. Nat. Res. Def. Council*, 467 U.S. 837, 865 (1984).

In proposing new reciprocal switching rules, the Board has provided a reasoned explanation for departing from past precedent and has explained why the rules are a permissible exercise of its jurisdiction under 11102. The agency is free to do so because nothing in the plain language of 11102 [then 11103] required the agency in 1985 to adopt the anticompetitive act framework proposed by AAR and NITL. Neither of the two statutory bases for reciprocal switching—practicable and in the public interest, or necessary to provide competitive rail service—mandates a finding that a rail carrier has engaged in anticompetitive conduct. Although the ICC chose to order reciprocal switching only when there had been a "competitive failure," the agency appeared to recognize that the anticompetitive act standard was merely one approach of several it could take. *Midtec Paper Corp.*, 3 I.C.C.2d at 174. The fact that the ICC chose (based largely on stakeholder negotiations)⁹ the anticompetitive conduct approach over other approaches did not eliminate those other interpretations from later adoption. As the court in *Baltimore Gas & Electric* made clear, given the broad statutory language and conflicting rail transportation policies, the agency has a wide range of options for competitive access regulation. 817 F.2d at 115 (observing that the complainant's open access statutory interpretation, rejected by the ICC, "might well reflect sound economics, and might—we do not

decide—be a reasonable interpretation of the statute. Certainly, however, it is not the *only* reasonable interpretation, because as we have noted, the statutory directives under which the ICC operates do not all point in the same direction."'). In response to NITL's petition, CSXT and NSR argue that the Board lacks the authority to change its reciprocal switching rules because Congress "ratified" the *Midtec Paper Corp.* standard when it reenacted the reciprocal switching language in ICCTA. (CSXT Comments 11–21; NSR Comments 23–28.) Legislative ratification (also known as legislative reenactment) is a doctrine that examines whether Congress' decision to leave undisturbed a statutory provision that an agency has interpreted in a particular manner can be read as tacit approval of the interpretation, thereby giving the agency's interpretation "the force and effect of law." *Isaacs v. Bowen*, 865 F.2d 468, 473 (2d Cir. 1989). Recognizing that Congressional reenactment of the same statutory language does not ordinarily "freeze all pre-existing agency interpretations of language, forever after immunizing them from change," *Bernardo v. Johnson*, 814 F.3d 481, 498 (1st Cir. 2016), courts apply the doctrine cautiously. The doctrine applies "[w]hen a Congress that re-enacts a statute voices its approval of an administrative or other interpretation" *United States v. Bd. of Comm'rs*, 435 U.S. 110, 134 (1978).

The arguments offered by NSR and CSXT do not persuade us that the Board lacks authority to alter its interpretation of 11102. NSR suggests that ratification requires only that Congress was aware of an issue and reenacted the statutory provision without change, but NSR ignores the searching analysis ordinarily performed by courts to determine whether there was some affirmative expression of approval by Congress. (See NSR Comments 23–28.) Courts seek to "ascertain whether Congress has spoken clearly enough to constitute acceptance and approval of an administrative interpretation. Mere reenactment is insufficient." *Isaacs*, 865 F.2d at 468 (stating that Congress must have "expressed approval" of an agency interpretation by taking "an affirmative step to ratify it"); *Ass'n of Am. R.R.s v. ICC*, 564 F.2d 486, 493 (D.C. Cir. 1977) (explaining that the doctrine requires awareness by Congress plus some affirmative indication to preclude subsequent reinterpretation).¹⁰ Indeed,

⁸ Moreover, the increase in access provided by this regulation also addresses the mandate from the President of the United States to federal agencies to consider "pro-competitive rulemaking and regulations" and "eliminating regulations that create barriers to or limit competition." Exec. Order No. 13,725, 81 FR 23,417 (Apr. 15, 2016).

⁹ Having encouraged rail carriers and shippers to work together on implementation issues arising from the Staggers Act, one important basis for the ICC's competitive access regulations was to give as much effect as possible to proposed rules that had been negotiated by AAR, NITL, and CMA. *Intramodal Rail Competition*, 1 I.C.C.2d at 822–23 ("In adopting the regulations set forth below, we have attempted to preserve to the maximum extent possible the product of negotiation and compromise among the major carrier and shipper interests.") Those negotiated rules included the concept that competitive access would only be available upon a finding that it was necessary to remedy or prevent an anticompetitive act. See 50 FR 13,051 (1985).

¹⁰ Even in those cases where the courts have not expressly stated that applicability of ratification requires a review of Congressional intent, many

the consensus upon which ratification is based must be “so broad and unquestioned” as to permit an assumption that Congress knew of and endorsed that interpretation. *Jama v. Immigration & Customs Enft.*, 543 U.S. 335, 349 (2005). Application of the doctrine is particularly difficult when the legislative term is ambiguous or subject to an agency’s discretion. See *Bernardo*, 814 F.3d at 488.

Here, while Congress in ICCTA reenacted the reciprocal switching provision without change, CSXT and NSR do not cite any legislative history in which Congress even mentioned the agency’s interpretation of former 11103 (now 11102), much less voiced approval for it. The absence of any such affirmation or discussion by Congress, combined with judicial recognition that reciprocal switching is a matter of agency discretion, renders the ratification doctrine inapplicable here.

Nor have NSR and CSXT persuaded us that the doctrine of ratification can be used to wholly eliminate the agency’s broad policy discretion, particularly where that broad discretion and the potential for varying, reasonable interpretations of 11102 have been judicially recognized prior to legislative reenactment. In reviewing the competitive access rules adopted in *Intramodal Rail Competition*, the D.C. Circuit Court of Appeals recognized that the agency’s exercise of its reciprocal switching discretion was a “reasonable accommodation of the conflicting policies set out in its governing statute.” *Balt. Gas & Elec.*, 817 F.2d at 115 (noting that there were “fifteen different and not entirely consistent goals” in the rail transportation policy of 10101 and rejecting the argument that there was only one reasonable interpretation). Likewise, the *Midtec Paper Corp.* court found that the agency had “narrowed its own discretion in a manner that was not manifestly inconsistent with [11102] or the broader purposes of the Staggers Act.” If the ICC was able to narrow its discretion, by implication, it must also be able to broaden its discretion, so long as the agency does not exceed the limitations set forth in the statute. *Midtec Paper Corp. v. United States*, 857 F.2d at 1500 (“[T]he Commission is under no mandatory duty to prescribe reciprocal switching where it believes

that doing so would be unwise as a matter of policy. . . . In order to support its exercise of discretion, the agency must provide a reasoned analysis that is not manifestly contrary to the purposes of the legislation it administers.”).¹¹ Given that the ICC in *Intramodal Rail Competition* and *Midtec Paper Corp.* did not say that its anticompetitive conduct standard was required by the statute, and given the absence of any suggestion that Congress intended to limit the agency’s discretion with regard to reciprocal switching, the Board cannot conclude that the doctrine of ratification (even if it were applicable) would compel this result. (See NITL Reply 45 (“To the extent there was any ‘ratification,’ it was to ratify the very discretion that Congress gave the Board in the statute’s original iteration.”); ACC Reply 5 (“Congress’s failure to change 11102(c) in ICCTA indicates, at most, nothing more than Congress’s view that the 1985 competitive access rules were within the realm of permissible uses of ICC competitive switching discretion.”)).

New Reciprocal Switching Regulations

Having determined that the ICC’s interpretation of 11102, including its anticompetitive conduct requirement, may no longer be appropriate and that the agency has the authority to revise its reciprocal switching regulations, the Board must appropriately balance the competing policy considerations in proposing new regulations. To do so, we will first examine the concerns that we have with some aspects of the proposed regulations put forth by NITL in Docket No. EP 711. We will then discuss the Board’s proposed regulations in Docket No. EP 711 (Sub-No. 1), including how they differ from both NITL’s approach and the agency’s current regulations.

Docket No. EP 711

The Board has reviewed NITL’s petition and the numerous comments and testimony in this docket. We conclude that NITL’s proposal, while a valuable starting point for new reciprocal switching regulations, does not, on its own, strike the appropriate policy balance. The Board is chiefly concerned that NITL’s approach, with its substantial reliance on conclusive presumptions, would lead to problems

regarding fairness among different categories of shippers. The Board prefers a reciprocal switching standard that makes the remedy more equally available to all shippers, rather than a limited subset of shippers, and that would allow the Board to examine reciprocal switching on a case-by-case basis.

NITL’s use of multiple presumptions raises questions of fairness in terms of who would be able to take advantage of the NITL proposal and who would not. Whatever presumptions are adopted—whether those proposed by NITL or others—lines would be drawn that would favor some shippers (for example, those within a 30-mile radius of an interchange) over other shippers (for example, those outside the 30-mile radius). Under NITL’s proposal, some shippers who want reciprocal switching might not be eligible for improved access to reciprocal shipping because they do not meet the criteria.¹² Conversely, not all shippers who qualify under the presumptions would necessarily want or need reciprocal switching. Put more simply, basing the availability of reciprocal switching primarily on conclusive presumptions based on bright-line cut-offs would make this remedy both overinclusive and underinclusive.

The record here suggests that shippers of certain commodities, particularly chemical shippers, would be the major beneficiaries of the conclusive presumptions proposed by NITL, as these shippers move traffic with higher R/VC ratios and thus would be more likely to meet the $R/VC_{\geq 240}$ presumptions. (See, e.g., ACC Comments 4–5 (stating that more than half of all chemical traffic has R/VC ratios above 240% and that “[c]hemical shipments have the largest potential savings of any commodity group” under the proposal).) A significant number of chemical shippers are also located within 30 miles of multiple railroads. In contrast, shippers of other commodities, particularly agricultural shippers, would tend not to qualify under the conclusive presumptions proposed by NITL, as agricultural shippers tend to be located in more remote locations that are generally only served by one railroad, and thus are less likely to be within 30 miles of an interchange. (See *Agricultural Parties Reply 3* (“[L]ess than 6% (and probably substantially less) of [agricultural commodities] . . . would be shipped to and from facilities

courts have nonetheless performed such a review. See, e.g., *Lindahl v. OPM*, 470 U.S. 768, 782 n.15 (1985) (explaining that the court need not rely on “bare force of this assumption” regarding reenactment because legislative history indicated that Congress intended interpretation to continue); *FDIC v. Phila. Gear Corp.*, 476 U.S. 426 (1986) (stating that the legislative history indicated that Congress intended to include the FDIC’s prior interpretation).

¹¹ In *Midtec Paper Corp.*, the agency likewise recognized its own discretion: “Under [former] 11103(c), awarding reciprocal switching is discretionary. Nevertheless, under the rules adopted in *Intramodal*, we will award that relief if significant use will be made of it, and when switching is necessary to remedy or prevent an act that is either contrary to the competition policies of 49 U.S.C. 10101a or otherwise anticompetitive.” 3 I.C.C.2d at 176.

¹² We recognize that, under NITL’s proposal, a shipper could still seek to obtain reciprocal switching by proving the criteria without use of the conclusive presumptions. (NITL Pet. 35–36; NITL Reply 35–36.)

that met the conclusive presumptions under the Proposal.”); USDA Comments 5 (noting difficulties that many agricultural shippers in the West would have meeting the presumptions); *see also* ARC Comments 13 (same).)

Our concerns about the issue of fairness are reinforced by comments regarding the potential impacts of NITL’s proposal on shippers that would *not* be eligible under the proposal’s presumptions. NITL maintains that the impacts on ineligible shippers would be “nil,” arguing that railroads would be unlikely to raise rates on such shippers because the carriers are presumably already maximizing revenues on this ineligible traffic. (NITL Comments 56–57.)¹³ In addition to AAR (AAR Comments 17), however, Agricultural Parties also suggest that there might be rate impacts on ineligible shippers, stating that “the fact that so few NGFA Commodity shippers could qualify for competitive switching could expose the NGFA Commodity shippers as a class to rate increases imposed to offset the reductions obtained by other rail shippers . . . as a result of the establishment of competitive switching for their facilities.” (Agricultural Parties Comments 23.) Further, some commenters argue that even if rail carriers do not raise the rates of those shippers that are not eligible, there could be other negative impacts on service and investment. (AAR Comments 17; KCS Reply 26 (stating that ineligible shippers would suffer service problems and be competitively disadvantaged compared to their competitors who are eligible); UP Comments 66 (“[T]he most significant impacts of NITL’s proposal on shippers that cannot use forced switching would likely be the impacts on their rail service and on competition in markets for the goods they ship or receive.”).)

After reviewing these comments, we are concerned that reciprocal switching based on the proposed conclusive presumptions could have adverse effects on categories of shippers not eligible under NITL’s proposal. If NITL’s proposal places downward pressure on the rates of those shippers who are eligible, then there may be an incentive for railroads that cannot make up any shortfall to raise the rates of ineligible shippers or degrade service in an effort to cut costs. While these incentives might exist to some degree with any increase in reciprocal switching (a remedy expressly authorized by Congress), we are concerned about the effects on categories of shippers who

have less access to relief under a presumption-based approach.

For these reasons, the Board prefers a reciprocal switching standard that makes the remedy more equally available to all shippers, rather than a limited subset of shippers. Imposing reciprocal switching on a case-by-case basis would also allow the Board a greater degree of precision when mandating reciprocal switching than is afforded under the approach advanced by NITL. We believe such an approach would allow the Board to better balance the needs of the individual shipper versus the needs of the railroads and other shippers. Therefore, although the Board’s proposal is guided in many instances by NITL’s proposal, we are deviating from NITL’s proposal in several respects. We are granting NITL’s petition to institute a rulemaking in part, closing the proceeding in Docket No. EP 711, and instituting a rulemaking proceeding in Docket No. EP 711 (Sub-No. 1). The Board’s proposal is outlined below.

Docket No. EP 711 (Sub-No. 1)

In developing new reciprocal switching regulations, we begin by looking back to Congress’ directive, as set forth in the statute (11102(c)). As noted, we must also weigh and balance the various rail transportation policy (RTP) factors enumerated in 49 U.S.C. 10101. *See, e.g., Intramodal Rail Competition*, 1 I.C.C.2d at 823.

It has long been the position of the agency and the courts that 11102 (and other Staggers Act routing provisions) were not designed to provide shippers with full, open access routing. *See, e.g., Midtec Paper Corp. v. United States*, 857 F.2d at 1507 (there is no indication that Congress intended the agency to prescribe reciprocal switching whenever it would enhance competition); *Review of Rail Access & Competition Issues*, EP 575, slip op. at 6 (STB served Apr. 17, 1998) (noting that statute requires a showing of need for access remedies and does not permit such remedies merely “on demand”).¹⁴ However, 11102 was clearly intended to empower the agency to encourage the availability of reciprocal switching when appropriate. H.R. Rep. No. 96–1035 at 67 (1980); *see also Midtec Paper Corp.*

¹⁴ *See also Balt. Gas & Elec.*, 817 F.2d at 115 (“We see not the slightest indication that Congress intended to mandate a radical restructuring of the railroad regulatory scheme [by making a bottleneck monopoly impossible through mandated open access] so as to parallel telecommunications regulation”); *Cent. Power & Light Co. v. S. Pac. Transp. Co.*, NOR 41242, *et al.*, slip op. at 5 (STB served Dec. 31, 1996) (“Congress chose not to provide for the open routing that shippers seek here.”).

v. United States, 857 F.2d at 1500–01 (acknowledging Congress’ desire for the agency to “encourage” reciprocal switching). As explained above, 11102(c) sets out two prongs by which the Board can order reciprocal switching: where reciprocal switching is practicable and in the public interest, or where reciprocal switching is necessary to provide competitive rail service. The ICC, through its decisions in *Intramodal Rail Competition* and *Midtec Paper Corp.*, essentially consolidated those two prongs into a single standard, which requires shippers to demonstrate anticompetitive conduct by the railroad. For reasons discussed above, we conclude that the ICC’s consolidation of these two prongs is overly restrictive in today’s environment.¹⁵

In determining whether to adopt competitive new access rules, the Board must also weigh and balance the various rail transportation policy (RTP) factors enumerated in 49 U.S.C. 10101. *See, e.g., Intramodal Rail Competition*, 1 I.C.C.2d at 823.¹⁶ Here, there are several RTP factors relevant to our analysis, including relying on and encouraging effective competition (10101(1), (4), (5), (6)), promoting a safe and efficient rail transportation system by allowing carriers to earn adequate revenues (10101(3)), promoting public health and safety (10101(8)), avoiding undue concentrations of market power (10101(12)), and providing fair and expeditious handling of issues (10101(2), (15)).

We believe that one way to reinterpret 11102(c) and undo the restriction on access to reciprocal switching is to adhere more closely to the statutory language than the ICC did, thereby broadening the framework under which reciprocal switching could be justified. By explicitly recognizing Congress’ decision to provide two distinct pathways to obtain reciprocal switching—practicable and in the public interest or necessary to provide competitive rail service—we would enhance the ability of shippers and carriers to make a case for (or against)

¹⁵ NITL’s proposal also combined the two criteria. (NITL Pet. 67.)

¹⁶ It is well established that the Board’s statutory directives are often conflicting or contradictory. *See Mkt. Dominance Determinations—Prod. & Geographic Competition*, 5 S.T.B. 492, 497 (STB served Apr. 3, 2001) (acknowledging that the RTP “contains 15 separate and sometimes conflicting policy goals that together establish the framework for regulatory oversight of the rail industry. No special significance attaches to the order in which these various policy goals are set out in the statute.”); *see also Ass’n of Am. R.R.s v. STB*, 306 F.3d 1108, 1111 (D.C. Cir. 2002); *Balt. Gas & Elec.*, 817 F.2d at 115. Nevertheless, we have and will continue to strive to balance the competing statutory directives appropriately.

¹³ UP also argues that widespread rate increases would be unlikely. (UP Comments 66.)

reciprocal switching in a particular instance. Accordingly, we propose a two-pronged approach, pursuant to which the Board would have the ability to order reciprocal switching either when it is practicable and in the public interest or when it is necessary to provide competitive rail service. The two-pronged approach would be consistent with the RTP in weighing issues such as competition and market power, rail service needs (for complaining and non-complaining shippers), the impact on the involved carriers, and whether specific facilities are appropriate for particular switching operations.

The proposed regulations would revise the Board's reciprocal switching rules to promote further use and availability of reciprocal switching, but—consistent with the agency's and the courts' long-established precedent—they would not provide shippers unfettered open access to carriers and routes. Indeed, one of the Board's concerns is the potential for operational challenges in gateways and terminals that are vital to the fluidity of the rail network. Most major gateways and terminals (including St. Louis, Memphis, Houston, Minneapolis-St. Paul, Los Angeles, and Kansas City, to name a few) are served by at least two Class I carriers. In Chicago, the most important hub in the rail network, there are six Class I carriers, as is also the case in New Orleans. As has been demonstrated by real-world instances, operational issues in the gateways and terminals can easily spread to other parts of the rail network. The service crises of the late 1990s¹⁷ and the winter of 2013–2014¹⁸ are stark reminders that local congestion can turn quickly into regional and national backlogs, affecting shippers of all commodities. The Board's proposal provides for a case-by-case review, in which the Board can evaluate a switching arrangement based on the specific circumstances at hand. In this way, the Board can exercise a greater degree of precision when mandating reciprocal switching, thus mitigating the chance of operational challenges in a given area.

Under the proposal, the availability of reciprocal switching would not be presumed based on one-size-fits-all criteria, but instead would be based on factual determinations derived from the evidence provided by the parties. Pursuant to the RTP, we believe this approach would be fairer than both the current regulations as well as the NITL proposal in EP 711. Specifically, as discussed below, a particularized analysis is warranted.

In this notice of proposed rulemaking, we propose to remove references to reciprocal switching from 49 CFR part 1144 (which also governs the prescriptions of through routes) and to create a new Part 1145 to govern reciprocal switching under either of the two statutory prongs provided in 11102(c). The proposed regulations can be found in below.

Practicable and in the Public Interest Prong

The first prong under which a party could obtain a reciprocal switching prescription is by showing that the proposed switching would be practicable and in the public interest. The ICC has previously explained that there is no mechanical test for determining what is practicable and in the public interest, and the totality of the circumstances should be considered. *See Midtec Paper Corp. v. Chicago & NW. Transp. Co.*, 1 I.C.C.2d 362, 363–64 (1985). “In determining what is ‘in the public interest,’ the Commission considers not only the interests of particular shippers at or near the terminal in question, but also the interests of the carriers and the general public.” *Del. & Hudson Ry. v. Consol. Rail Corp.*, 367 I.C.C. 718, 720 (1983) (citing *Jamestown Chamber of Commerce v. Jamestown, Westfield & Nw. R.R.*, 195 I.C.C. 289 (1933)).

The Board proposes three criteria that shippers must satisfy to demonstrate that reciprocal switching is practicable and in the public interest: (1) That the facilities of the shipper(s) and/or receiver(s) for whom such switching is sought are served by Class I rail carrier(s); (2) that there is or can be a working interchange between the Class I carrier servicing the party seeking switching and another Class I rail carrier within a reasonable distance of the facilities of the party seeking switching; and (3) that the potential benefits from the proposed switching arrangement outweigh the potential detriments. In making this third determination, in addition to questions about operational feasibility and safety, the Board may consider any relevant factor including, but not limited to: The efficiency of the

route, access to new markets, the impact on capital investment, the impact on service quality, the impact on employees, the amount of traffic that would use the switching arrangement, the impact on the rail transportation network, and the RTP factors. Notwithstanding these three showings, however, the Board will not find a switching arrangement to be practicable and in the public interest if either rail carrier shows that the proposed switching is not feasible or is unsafe, or that the presence of such switching will unduly hamper the ability of that carrier to serve its shippers.

The non-exhaustive list of factors included within the proposed regulation provides a sufficient basis for parties to argue that a switching prescription would or would not be practicable and in the public interest. The Board will not attempt to formalize the precise showings that parties would make in a given case to address the third factor or the rail carrier arguments against switching, which are all intended to be flexible. However, parties should present these factors to the Board with specificity relating to the factual circumstances of each case. Individual reciprocal switching proceedings are not an appropriate forum to litigate, for example, the general merits of reciprocal switching as a statutory remedy, the general health of the rail industry, or revenue adequacy. Accordingly, we expect that parties' presentations would be focused on the particular proposed switching arrangement and would not attempt to litigate broad regulatory policies. In designing case-specific presentations on these issues, we believe that the Board's current petition for exemption process is instructive. 49 U.S.C. 10502. Under the petition for exemption process, the Board considers whether the application of a particular statutory provision is necessary to carry out the RTP with regard to a particular action. *See, e.g., Cal. High-Speed Rail Auth.—Construction Exemption—in Fresno, King, Tulare, & Kern Cties, Cal.*, FD 35724 (Sub-No. 1) slip op. at 12–14 (STB served Aug. 12, 2014). This analysis does not entail going factor by factor through the RTP, but instead addresses only those RTP factors that are relevant to the specific exemption proceeding. Nor does it involve large-scale litigation over industry-wide policy determinations. *See id.*

Necessary To Provide Competitive Rail Service Prong

The second prong under which a party could obtain a reciprocal switching prescription is by showing

¹⁷ The service crisis of the late 1990s, for example, began in the Houston area and quickly spread throughout the western United States. *See Joint Pet. for Service Order*, 2 S.T.B. 725, 729–30 & n.4 (1997); *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, 3 S.T.B. 1030, 1036 (1998).

¹⁸ The Board recognized the “longstanding importance of Chicago as a hub in national rail operations and the impact that recent extreme congestion in Chicago has had on rail service in the Upper Midwest and nationwide.” *U.S. Rail Serv. Issues—Performance Data Reporting*, EP 724 (Sub-No. 4), slip op. at 6 (STB served Dec. 30, 2014).

that the proposed switching is necessary to provide competitive rail service. Again, the Board proposes three criteria that shippers must satisfy: (1) That the facilities of the shipper(s) and/or receiver(s) for whom such switching is sought are served by a single Class I rail carrier; (2) intermodal and intramodal competition is not effective with respect to the movements of the shipper(s) and/or receivers(s) for whom switching is sought; and (3) there is or can be a working interchange between the Class I carrier servicing the party seeking switching and another Class I rail carrier within a reasonable distance of the facilities of the party seeking switching. Again, notwithstanding these three showings, the Board will not find a switching arrangement to be practicable and in the public interest if either rail carrier shows that the proposed switching is not feasible or is unsafe, or that the presence of such switching will unduly hamper the ability of that carrier to serve its shippers.

Feasibility, Safety, and Service

Under both prongs, either of the railroads that would potentially be subject to a reciprocal switching order may attempt to show as an affirmative defense that the proposed switching is not feasible or is unsafe, or that the presence of such switching will unduly hamper the ability of that carrier to serve its shippers. If a railroad carries its burden in making this showing, the Board will not order reciprocal switching. In addressing these issues, parties might present evidence regarding: Traffic density; the line's capacity; yard capacity; right-of-way widths; grade separations; drainage; hazardous materials; network effects; and characteristics of the surrounding area (e.g., urban, rural, industrial). These forms of evidence are examples only, and parties may also present other evidence that is relevant to feasibility, safety, and service quality.

Removal of Anticompetitive Conduct Requirement

Unlike the agency's current regulations, neither prong of these proposed regulations requires a showing of anticompetitive conduct. But removal of this requirement does not create "open access" or "on demand" routing.¹⁹ Under the Board's proposal, reciprocal switching would not be "open" to any party "on demand," and any request under this section would be

subject to a detailed review. In particular, shippers would be required (as is the case today) to initiate a proceeding with the Board and bear the burden of showing that reciprocal switching is needed. There would be no presumption of need.²⁰

Additional Aspects of Proposed Rules

Several of the factors in each of these prongs stem from NITL's proposal. For example, both prongs of the Board's proposal require a showing that there is or can be a working interchange within a reasonable distance, as did NITL. And both provide that a switching arrangement would not be established if either rail carrier shows that the proposed switching is not feasible or is unsafe, or that such switching would unduly hamper the ability of the carrier to serve its shippers. There are several additional aspects of the rules that differ from NITL's proposal, which we describe in greater detail below. However, the most notable is the absence of conclusive presumptions; as previously described, the Board would make an individualized determination on the facts of each case under the proposed rules.

We will now address specific aspects of the proposed rules, including, where relevant, how the proposal deviates from NITL's proposal.

Class I Carriers

Under both prongs of the proposed regulations, prescriptions of reciprocal switching would be limited to instances in which both the incumbent railroad and the competing railroad are Class I carriers. NITL's proposal specifically limited the proposed remedy to situations where the incumbent railroad was a Class I carrier by requiring that the party seeking switching be "served by rail only by a single, Class I rail carrier (or a controlled affiliate)." (NITL Pet. 67.) Under NITL's proposal, reciprocal switching would be ordered between this Class I rail carrier and "another carrier." NITL states that its proposal thus does not distinguish between Class I and Class II or III carriers vis-à-vis the competing carrier. (NITL Pet. 53.)

The only commenter to address this question in detail, ASLRRRA, states that, "if the Board decides to adopt the NITL petition, it should expressly limit the

application to situations in which no Class II or Class III railroad participates at any point in the movement of the traffic whether or not the small railroad appears on the waybill." (See ASLRRRA Reply 1–4; Testimony of Richard F. Timmons 4–6, Mar. 26, 2014.) The record contains little information on the potential effects on the industry that would result from making Class II and/or Class III rail carriers subject to reciprocal switching prescriptions.

Although the ICC rejected a request to exempt smaller carriers from its reciprocal switching regulations in *Intramodal Rail Competition*, 1 I.C.C.2d at 835–36, the Board is proposing in this decision to limit the availability of reciprocal switching prescriptions to those situations that only involve Class I rail carriers due to the lack of specific information on this matter and the concerns raised by ASLRRRA. However, we request comments on this issue in order to consider whether the Board should, now or in the future, extend the rules to include smaller carriers.

Working Interchanges Within a Reasonable Distance

Under both prongs of the proposed regulations, the party seeking switching must show that "there is or can be a working interchange between the Class I carrier servicing the party seeking switching and another Class I rail carrier within a reasonable distance of the facilities of the party seeking switching." This showing, while based on NITL's proposal, does not include any conclusive presumption as to what is or is not a reasonable distance or what is or is not a working interchange. (See NITL Pet. 67.) NITL had proposed that the Board conclusively presume that there is a working interchange within a reasonable distance if either: (1) A shipper's facility is within the boundaries of a "terminal" of a Class I carrier in which cars are "regularly switched," or (2) there is an interchange at which cars are regularly switched within 30 miles of the shipper's facilities. As commenters pointed out, NITL did not define "terminal," or "regularly switched." (See, e.g., NSR Comments 49–50.) While the fact that cars are regularly switched at a point on the rail system would certainly be evidence of a working interchange, these determinations should be made on a case-by-case basis. The Board, nonetheless, invites comments on defining the term "reasonable distance" in an effort to provide guidelines to parties that may seek switching under the proposed regulations.

The proposal also deviates from NITL's insofar as it would define the

¹⁹ See, e.g., *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, 3 S.T.B. 1030, 1032 (1998) (stating that the Board's governing statute does not provide for open access).

²⁰ Section 11102(c) does not set out a time period for how long a reciprocal switching prescription would last. Accordingly, the Board proposes that a prescription would last for as long as the criteria for each prong are met, unless otherwise ordered by the Board in a particular circumstance, with parties free to petition the Board for reopening if there are substantially changed circumstances.

term “is or can be” a working interchange. NITL stated in its petition that this requirement would not be “limited to existing interchanges, but the petitioner could prove on the basis of facts and circumstances that a working interchange could reasonably be constructed.” (NITL Pet. 53.) Few comments were received specifically on this point. The Board is concerned that the breadth of NITL’s proposed language could be read to imply that railroads be required to construct brand-new interchange facilities to satisfy a switching prescription. Thus, we are proposing that the Board would determine that there “is” a working interchange if one already exists and is currently engaged in switching operations. The Board would determine that there “can be” a working interchange only if the infrastructure currently exists to support switching, without the need for construction, regardless of whether switching operations are taking place or have taken place using that infrastructure. We recognize that there was a lack of comment on this point and that we may be proposing a narrower definition than the one proposed by NITL. We therefore also specifically seek comment on this matter.

Effective Intermodal and Intramodal Competition

Under the competition prong of the proposed regulations, a petitioner for switching must show that intermodal and intramodal competition is not effective with respect to the movements for which switching is sought. This aligns with one of the elements of NITL’s proposal, which would have made reciprocal switching available “only for movements that are without effective inter- or intra-modal competition.” (NITL Pet. 7.) However, for the reasons discussed above, the conclusive presumptions proposed by NITL have not been adopted. Applying this factor without conclusive presumptions, according to NITL, would involve “an individualized inquiry in light of the applicant’s relevant facts and circumstances.” (NITL Reply 35–36.)

The Board already has a framework for conducting such an individualized inquiry—specifically, in determining the reasonableness of rates, the Board performs a market dominance analysis. See 49 U.S.C. 10707 (requiring “an absence of effective competition from other rail carriers or modes of transportation,” which the statute describes as “market dominance”). The Board’s market dominance test has a quantitative component and a

qualitative component. Under the quantitative component, if the rail carrier proves that the rate at issue results in a R/VC ratio less than 180%, the Board will find that the rate is subject to effective competition. See 10707(d)(1)(A). If this quantitative R/VC ratio threshold is met, the Board moves to the second component, a qualitative analysis. *Wis. Power & Light Co. v. Union Pac. R.R.*, 5 S.T.B. 955, 961 (2001), *aff’d sub nom. Union Pac. R.R. v. STB*, 62 F. App’x 354 (D.C. Cir. 2003). In this analysis, the Board determines whether there are any feasible transportation alternatives that are sufficient to constrain the railroad’s rates to competitive levels, considering both intramodal and intermodal competition. *E.I. du Pont de Nemours & Co. v. CSX Transp., Inc.*, NOR 42099, slip op. at 2 (STB served June 30, 2008). Even where feasible transportation alternatives are shown to exist, those alternatives may not provide “effective competition.” See *Mkt. Dominance Determinations & Consideration of Prod. Competition*, 365 I.C.C. 118, 129 (1981) (“Effective competition for a firm providing a good or service means that there must be pressures on that firm to perform up to standards and at reasonable prices, or lose desirable business.”), *aff’d sub nom. W. Coal Traffic League v. United States*, 719 F.2d 772 (5th Cir. 1983) (en banc).

The Board proposes to apply the market dominance test to determine whether a movement is without effective intermodal or intramodal competition.²¹ The ICC, in *Midtec Paper Corp.*, held that market dominance is not a jurisdictional prerequisite to obtaining relief in an access proceeding under 11102. 3 I.C.C.2d at 180. That remains the case; unlike rate reasonableness cases, where the statute creates such a prerequisite to obtaining rate relief, 49 U.S.C. 10707(c), there is no such statutory requirement for reciprocal switching. However, there is nothing in 11102 that prohibits the use of the market dominance test here as part of the analysis, rather than a jurisdictional prerequisite. The Board has developed this methodology through numerous rate reasonableness decisions, and although it was developed in the context of rate cases, it answers the same question that the Board would address under the competition prong of the proposed reciprocal switching analysis: Whether

effective competition exists for an individual movement or movements. It is therefore appropriate to apply this approach, which is familiar to litigants before the Board, under the competition prong of the reciprocal switching analysis as well. Use of a mature analytical framework to gauge whether a shipper lacks effective competition is desirable. Accordingly, the proposed rules would apply the Board’s existing market dominance test to determine the intramodal/intermodal competition element under the competition prong.

Effect on Market Dominance Determinations in Rate Reasonableness Cases

NITL and several other commenters express concern regarding the potential effects of a reciprocal switching order on market dominance determinations in rate reasonableness cases. (See, e.g., NITL Comments 14–16; USDA Comments 7.) For example, Joint Coal Shippers argue that the availability of a reciprocal switching remedy should not change the Board’s methodology for assessing market dominance and that losing the ability to pursue maximum rate relief would seriously harm shippers. (Joint Coal Shippers Comments 7–14; Joint Coal Shippers Reply 2–9.) These commenters emphasize that 49 U.S.C. 10707, which establishes the market dominance threshold for rate reasonableness cases, requires *effective* competition, and they argue that a transportation alternative provided by a reciprocal switching order would not necessarily be an effective constraint on the incumbent railroad’s pricing power. (E.g., Joint Coal Shippers Comments 8–9, 13–14.)

At least one railroad commenter appears to view the situation similarly—that is, in market dominance analyses, the Board would assess a reciprocal switching order in the same way as other transportation alternatives to determine whether or not it provides effective competition. (See CSXT Reply 49–50 (urging the Board against “a blanket ruling that these newly available competitive remedies are *not* an effective competitive option for rate reasonableness purposes”) (emphasis added).) AAR, however, asserts that because shippers claim NITL’s proposal would introduce competition and reduce rates, should they be successful in getting a switching order from the Board, they should not be “allowed to bring rate cases that are permitted only in the absence of competition.” (AAR Reply 28.) Similarly, BNSF contends that “mandated reciprocal switching . . . would create an effective competitive alternative that would

²¹ We note that NITL, while arguing against applying a market dominance framework, advocated for a presumption of the absence of effective competition in cases where the R/VC ratio for the traffic at issue was 240% and above. (See NITL Reply 59–60.)

preclude a finding of market dominance under the statute.” (BNSF Reply 8.)

There is no need to issue a blanket rule that the existence of a reciprocal switching order would (or would not) preclude a finding of market dominance in rate cases. Instead, a reciprocal switching prescription should be treated in the same way as any other transportation alternative that would be assessed in our market dominance inquiry. AAR and BNSF provide no support for their claims that reciprocal switching would automatically be a source of *effective* competition. The Board has held that even where feasible transportation alternatives are shown to exist, those alternatives may not provide effective competition. *E.g., M&G Polymers USA, LLC v. CSX Transp., Inc.*, NOR 42123, slip op. at 2 (STB served Sept. 27, 2012) (citing *Mkt. Dominance Determinations & Consideration of Prod. Competition*, 365 I.C.C. 118, 129 (1981)). In evaluating market dominance in rate reasonableness cases, we propose to continue to analyze whether or not a transportation alternative provides effective competition, including an alternative provided under a reciprocal switching order.

Access Pricing

Pursuant to 49 U.S.C. 11102(c)(1), “[t]he rail carriers entering into [reciprocal switching ordered by the Board] shall establish the conditions and compensation applicable to such [switching], but, if the rail carriers cannot agree upon such conditions and compensation within a reasonable period of time, the Board may establish such conditions and compensation.” Thus, the determination of access fees is left, by statute, to the carriers in the first instance.

To the extent that the Board would become involved in establishing switching fees (*i.e.*, when the rail carriers do not agree), several parties note in their comments that NITL’s petition does not address the issue of access pricing methodology. (*See, e.g., Agricultural Parties* 18; KCS Comments 20; NSR Comments 36; AAR Reply 17; UP Reply 6.) Several commenters offer proposals for access pricing, which are summarized below.

Although NITL did not address access pricing in its petition for rulemaking, in its opening comments in response to the Board’s order requesting additional information, it uses a simplified version of the Canadian interswitching model, arguing that the Canadian access pricing model is “rigorously determined by the Canadian Transportation Agency, on the basis of railway costs and other

information supplied by the Canadian carriers and . . . is designed to cover both variable costs and a share of the carriers’ fixed costs.” (NITL Comments 31–32.)²² Using the simplified version of this model, which eliminates the use of varying prices based on distance zones, NITL assumes access fees of \$300 per car for movements involving 1–59 cars and \$89 per car for movements involving 60 or more cars, based on Canada’s latest figures at the time. (*Id.* at 34.) Similarly, USDA recommends that the Board use the average of Canadian interswitching rates for access prices, estimating \$279 per car for 1–59 car movements and \$84 per car for movements 60 cars or greater. (USDA Comments 20.)

Highroad, Diversified CPC, and Roanoke Cement favor adoption of the Canadian interswitching model without modification. (Highroad Comments 22; Diversified CPC Comments 8–10; Roanoke Cement Comments 9–10.) They contend that the Canadian model is straightforward and easy to implement. Although Agricultural Parties do not believe that the Board should adopt the Canadian model, they express the view that it merits further study by the Board. (Agricultural Parties Comments 19.)

Agricultural Parties also note that there are numerous U.S. terminal switching rates that might serve as a benchmark for access pricing here, but state that they are not in a position to perform the study necessary to make such an evaluation. (Agricultural Parties Comments 19–20.)

Some commenters suggest that trackage rights fees are a form of access pricing and that the Board should look to how those fees are set. GLE states that it supports the use of mutually agreed trackage rights fees or haulage rights fees for access pricing. (GLE Comments 3.) Citing the ICC’s decision in *Arkansas & Missouri Railroad v. Missouri Pacific Railroad*, 6 I.C.C.2d 619 (1990), Agricultural Parties, however, state that they examined the agency’s methodology used in trackage rights cases, referred to as “SSW Compensation,” but believe that this type of approach to compensation is not appropriate where the instigating party is a shipper as opposed to a railroad. (Agricultural Parties Comments 18.)

While not offering a specific methodology, some parties comment on the principles that the Board should consider if it is required to set an access price. UP, for example, argues that the

access price must cover the serving railroad’s actual cost of providing the switching service as well as the serving railroad’s lost contribution from the long-haul. (UP Comments 61–62.) KCS argues that any proposed access standard must allow an incumbent carrier to assess switching charges that allow that carrier to move toward revenue adequacy. As such, KCS argues that a prescribed switching rate below an incumbent carrier’s RSAM would be inconsistent with the RTP. (KCS Comments 38.)

Given the importance of the issue and the relative lack of detail in the record regarding access pricing methodologies, the Board will propose two alternative approaches to access pricing for public comment.

Under Alternative 1, we propose to determine access pricing based on a specified set of factors, in the event that the Board is called upon to establish compensation. Based on precedent, such factors could include the geography where the proposed switch would occur, the distance between the shipper/receiver and the proposed interchange, the cost of the service, the capacity of the interchange facility and other case-specific factors. *See Switching Charges & Absorption Thereof at Shreveport, La.*, 339 I.C.C. 65 (1971) (discussing revenues, cost of service, amount of switching, other terminals in adjacent territory, and other factors); *CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc.*, FD 33388 et al. (STB served Dec. 18, 1998) (discussing appropriate switching fees in New York Terminal Area based on specific cost relative to actual operations). We also seek comment on whether the list of factors should include any portion of the incumbent rail carrier’s loss contribution or opportunity costs, per UP’s suggestion.

Under Alternative 2, we seek comment on the adoption of a variant of the agency’s SSW Compensation methodology to establish switching fees, in the event that the Board is called upon to establish compensation. Although SSW Compensation is used primarily in trackage rights cases where one rail carrier is actually operating over another rail carrier’s lines, many of the principles that inform the methodology would apply in the reciprocal switching fee context as well. Thus, what we call Rental Income in SSW Compensation would have an analogy in a directed switch in the form of Imputed Rental Income. A switching fee set by the Board could seek to compensate the incumbent for the expenses incurred to provide the service, plus a fair and

²² Under the Canadian interswitching access pricing model, the switching fee is based on distance zones, with the price increasing the greater the distance from the shipper’s facility to the point of interchange.

reasonable return on capital employed. Given that the regulatory goals in trackage rights compensation and reciprocal switching compensation are similar, we seek comment on whether and how SSW Compensation could be adapted to devise fair access fees in reciprocal switching cases.

Parties may also comment on other potential access fee methodologies.

Separation of Through Routes

The Board's current regulations in Part 1144 address not only reciprocal switching under 49 U.S.C. 11102(c), but also through routes under 49 U.S.C. 10705. As explained, the Board proposes to implement the changes proposed here by separating through routes and reciprocal switching in the Board's regulations. In other words, the previously-shared regulations at Part 1144 would be modified to eliminate references to reciprocal switching, and then adopt new Part 1145 to address reciprocal switching. The Board also recognizes that, from a theoretical perspective, some of the issues addressed in this proceeding could arguably apply to through routes as well. Today's decision, however, is a proposed incremental change to the Board's competitive access regulations based on NITL's petition and the record built in response, all of which pertain to reciprocal switching specifically. Thus, aside from removing references to reciprocal switching from Part 1144, the current standards for through routes would be maintained.

Changes From Part 1144

Although the standard governing reciprocal switching in new Part 1145 differs from that governing through routes in Part 1144, we have attempted to model Part 1145 on Part 1144, as they both pertain to competitive access remedies that have previously been closely aligned. Thus, for example, the Board proposes to include in Part 1145 the same provision on negotiation that exists in Part 1144. To the extent that we depart from some of the language in Part 1144, we address those departures below.

Section 1144.2(a)(2) of the Board's regulations currently states that a through route or reciprocal switching order requires a finding that either "[t]he complaining shipper has used or would use the through route, through rate, or reciprocal switching to meet a significant portion of its current or future railroad transportation needs between the origin and destination," or "[t]he complaining carrier has used or would use the affected through route, through rate, or reciprocal switching for

a significant amount of traffic." This requirement, referred to by the ICC as the "standing" requirement, was adopted because the statute at the time provided that the ICC could not suspend a proposed cancellation of a through route and/or a joint rate pursuant to former 10705 and 10707 unless it appeared that failure to suspend would cause substantial injury to the protestant. *Intramodal Rail Competition*, 1 I.C.C.2d at 825–26, 830. However, because the statutory provisions regarding cancellation of through routes and/or joint rates are no longer in force, it is not necessary to include the standing requirement in the Board's proposed reciprocal switching regulations. The Board would continue to consider this factor in evaluating whether a reciprocal switching arrangement would be practicable and in the public interest, as that could be a relevant factor under that prong. We would not, however, include it as part of the determination of whether a reciprocal switching arrangement is necessary to provide competitive rail service. The purpose of ordering reciprocal switching under this prong is to encourage competition between two carriers. As such, a shipper would have the choice between using the incumbent carrier or the competing carrier depending on which one provided the better rates or service. Thus, in order for the reciprocal switching order to serve its intended purpose, the shipper should be free to choose between the two carriers. Requiring the shipper to use the competing carrier pursuant to a reciprocal switching order for a significant amount of traffic would limit the shipper's flexibility, which would be contrary to the goal of such an order.

The Board's current regulations in Part 1144 also state that "[t]he Board will not consider product competition," and, "[i]f a railroad wishes to rely in any way on geographic competition, it will have the burden of proving the existence of effective geographic competition by clear and convincing evidence." 49 CFR 1144.2(b)(1). The ICC adopted this language in 1985 in *Intramodal Rail Competition*, stating that the treatment of geographic competition "is consistent with the way this issue will be handled in the market dominance context," and that the provision eliminating consideration of product competition "reflects a negotiated agreement between the major railroad and shipper interests." 1 I.C.C.2d at 828–29 & n.6. In 1998, however, the Board excluded evidence of product and geographic competition from the market dominance inquiry

because such evidence was not required by 49 U.S.C. 10707(a) and because of the substantial burden its inclusion imposed on the parties and the Board. *Mkt. Dominance Determinations—Prod. & Geographic Competition*, 3 S.T.B. 937 (1998); see also *Ass'n of Am. R.R.s v. STB*, 306 F.3d 1108 (D.C. Cir. 2002) (denying petition for review of the Board's decision following earlier remand); *Pet. of Ass'n of Am. R.R.s to Inst. a Rulemaking Proceeding to Reintroduce Indirect Competition as a Factor Considered in Mkt. Dominance Determinations for Coal Transported to Utility Generation Facilities*, EP 717 (STB served Mar. 19, 2013) (denying request to consider reintroducing indirect competition as a factor in market dominance analyses).

As discussed above, the second factor under the proposed competition prong—the absence of effective intermodal or intramodal competition—incorporates the market dominance inquiry of 49 U.S.C. 10707 (requiring "an absence of effective competition from other rail carriers or modes of transportation"). Moreover, when the ICC adopted the current language of 1144.2(b)(1), it explained the treatment of geographic competition as being consistent with the agency's approach in evaluating market dominance. Accordingly, it is appropriate for the Board to address this question consistently in both the reciprocal switching and rate reasonableness contexts. Therefore, in proposed Part 1145, the Board instead proposes language providing that it will not consider product or geographic competition.

Finally, 1144.3(c) of the Board's regulations currently states that "[a]ny Board determinations or findings under this part with respect to compliance or non-compliance with the standards of 1144.2 shall not be given any res judicata or collateral estoppel effect in any litigation involving the same facts or controversy arising under the antitrust laws of the United States." In adopting this provision, the ICC explained: "The parties to the agreement [NITL, AAR, and CMA, now known as ACC] have requested adoption of this rule. We only note that it is unenforceable by us." *Intramodal Rail Competition*, 1 I.C.C.2d at 832. As indicated above, the Board's proposal is not based on this prior agreement among stakeholders. Therefore, this language is not included in the reciprocal switching regulations.

Procedural Schedule and Ex Parte Waiver

As the Board explained in *United States Rail Service Issues—Performance Data Reporting*, EP 724 (Sub-No. 4), slip op. at 1–2 (STB served Nov. 9, 2015), the agency has long interpreted its ex parte prohibition as encompassing informal rulemakings. However, the Board may waive its own regulations in appropriate proceedings and take steps to ensure that a fair process is established, including notice, disclosure, and an opportunity for parties to comment on information discussed during informal meetings. *Id.* at 2.

In this proceeding, we find good reason for a limited waiver of the Board's ex parte prohibitions. As we noted in our July 25, 2012 decision in Docket No. EP 711 in response to NITL's petition, a vigorous debate regarding the appropriate methodology for competitive access has been ongoing since at least the 1980s. There are many different (and often conflicting views) regarding the potential benefits of increased reciprocal switching to shippers and the potential impact to carriers. As was made clear in the record following NITL's petition, those potential benefits and impacts are complicated and often inter-related. Given that there has been no significant change in agency policy regarding reciprocal switching in more than 30 years, the Board believes it would be beneficial to hear directly from stakeholders on these issues and ask follow-up questions.²³ These stakeholder discussions will supplement the written record and allow the Board to better understand these complex issues.

To ensure that the public has a complete record of the evidence and arguments that the Board will consider in its decision-making, ex parte communications in informal rulemaking proceedings require special procedures to maintain both fairness and accessibility. *U.S. Rail Service Issues*, slip op. at 3. We will establish the following measures to ensure that all parties have an opportunity to meet with Board Members should they choose to do so, have the ability to review the substance of all such discussions, and have the opportunity to comment on information presented at these discussions. Meetings with Board Members will take place between October 25, 2016, either at the Board's offices or by telephone conference

(pursuant to each party's request). Any party seeking to meet with a Board Member should contact the Member's office no later than October 10, 2016 to schedule a meeting.²⁴ If a party wishes to meet with multiple Board Members, separate meetings with each Board Member must be scheduled.

The Board will disclose the substance of each meeting by posting, in Docket No. EP 711 (Sub-No. 1), a summary of the arguments, information, and data presented to the Board Member at each meeting (including the names/titles of attendees of the meeting) and a copy of any handout given or presented to the Board Member. Parties participating in ex parte meetings will be responsible for preparing the summaries, and we encourage parties to use the Board's staff-prepared summaries in *Rail Service Issues* as examples.²⁵ Summaries, plus any handouts, should be submitted, via email, to the Board Member office with whom the party met within two business days of the meeting.²⁶ The Board expects that meeting summaries will be posted in the docket within 14 days of the meeting.²⁷

The Board will provide notice when all meeting summaries have been posted in the record, and set a comment period for replies to the meeting summaries in that decision.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the

analysis available for public comment. 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, 603(a), or certify that the proposed rule would not have a “significant impact on a substantial number of small entities,” 605(b). Because the goal of the RFA is to reduce the cost to small entities of complying with federal regulations, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates those entities. In other words, the impact must be a direct impact on small entities “whose conduct is circumscribed or mandated” by the proposed rule. *White Eagle Coop. v. Conner*, 553 F.3d 467, 480 (7th Cir. 2009).

The regulations proposed here are limited to Class I railroads and, thus, would not impact a substantial number of small entities.²⁸ Accordingly, pursuant to 5 U.S.C. 605(b), the Board certifies that the regulations proposed herein would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

List of Subjects

49 CFR Part 1144

Intramodal rail competition.

49 CFR Part 1145

Reciprocal switching.

It is ordered:

1. The Board proposes to amend its rules as set forth in this decision. Notice of the proposed rules will be published in the **Federal Register**.

2. The procedural schedule for Docket No. EP 711 (Sub-No. 1) is established as follows: comments regarding the proposed rules are due by September 26, 2016; replies are due by October 25, 2016; requests for meetings with Board Members are due by October 10, 2016;

²⁴ Chairman Elliott's office can be reached at (202) 245–0220. Vice Chairman Miller's office can be reached at (202) 245–0210. Commissioner Begeman's office can be reached at (202) 245–0200. For each meeting request, parties should indicate multiple available requested days/times and meeting attendees.

²⁵ If multiple parties are present at a single ex parte meeting, only one meeting summary should be submitted.

²⁶ Summaries and handouts regarding meetings with Chairman Elliott should be sent to Janie Sheng at janie.sheng@stb.dot.gov. Summaries and handouts regarding meetings with Vice Chairman Miller should be sent to Brian O'Boyle at brian.oboyle@stb.dot.gov. Summaries and handouts regarding meetings with Commissioner Begeman should be sent to James Boles at james.boles@stb.dot.gov.

²⁷ Parties are directed to limit their communications at these meetings (including any handouts) to non-confidential information only. To the extent parties wish to provide confidential information, they should do so in their written comments, pursuant to a protective order.

²³ Ex parte meetings under this decision will only be permitted with Board Members, their individual office staffs, and certain other staff.

²⁸ Effective June 30, 2016, for the purpose of RFA analysis, the Board defines a “small business” as a rail carrier classified as a Class III rail carrier under 49 CFR 1201.1–1. See *Small Entity Size Standards Under the Regulatory Flexibility Act*, EP 719 (STB served June 30, 2016) (Commissioner Begeman dissenting). Class III carriers have annual operating revenues of \$20 million or less in 1991 dollars, or \$38,060,383 or less when adjusted for inflation using 2014 data. Class II rail carriers have annual operating revenues of up to \$250 million in 1991 dollars or up to \$475,754,802 when adjusted for inflation using 2014 data. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds on its Web site. 49 CFR 1201.1–1.

meetings with Board Members will occur between October 25, 2016 and November 14, 2016 meeting summaries are to be submitted within two business days of the ex parte meeting; the period for comments on meeting summaries will be set by separate decision.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

4. The Board terminates the proceeding in Docket No. EP 711.

5. This decision is effective on the day of service.

Decided: July 25, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman. Vice Chairman Miller commented with a separate expression and Commissioner Begeman dissented with a separate expression.

Brendetta S. Jones,

Clearance Clerk.

VICE CHAIRMAN MILLER,
commenting:

The Board's regulatory mission is set out in the Rail Transportation Policy (RTP) at 49 U.S.C. 10101. Two important but competing goals in the RTP are to promote an efficient, competitive, safe and cost-effective rail network by enabling railroads to earn adequate revenues that foster reinvestment in their networks, attract outside capital, and provide reliable service, while at the same time working to ensure that effective competitions exists between railroads and that rates are reasonable where there is a lack of effective competition. As in all major rulemakings the Board undertakes, my goal here has been to develop a proposal for reciprocal switching that properly satisfies both of these goals.

In finding the appropriate balance, I believe that we have taken a prudent approach by creating a standard that is closely tied to the statutory language of 49 U.S.C. 11102(c), rather than trying to create our own standard out of the statutory language. By doing so, I believe we have been able to develop a proposal that would satisfy the competing goals, as well as effectuate Congress' express grant of authority to permit reciprocal switching in certain circumstances. And although I have no doubt both our railroad and shipper stakeholders will find things to dislike about today's proposal, I believe that it would address the most significant concern raised by each side.

For shippers, the Board would remove the anticompetitive standard that was created in Intramodal Rail Competition and Midtec Paper Corp., which has

proven to be a nearly impossible bar. Regardless of whatever evidence shippers have presented in the handful of cases the agency has decided—whether it be high rates or poor service—the agency has consistently found it to be lacking. As such, it appears that the only way that a shipper could meet this standard would be to provide evidence that the railroad was intentionally behaving in an anticompetitive manner. But demonstrating such a clear intent is difficult. By eliminating the anticompetitive conduct showing, shippers will now be free to seek reciprocal switching without having to produce a smoking gun. It is undeniable that Congress gave the Board the power to order reciprocal switching, yet our existing anticompetitive standard has essentially nullified this power. The railroads' arguments that the Board should keep the existing standard essentially amount to a request that we ignore the Congressional authorization for the Board to allow shippers (or other railroads) to be able to obtain reciprocal switching in certain instances.

But even if the anticompetitive conduct standard had not proven to be unworkable, I believe that the need for such a high bar on shippers to obtain reciprocal switching no longer exists. While the anticompetitive standard may have made sense in 1985, just after deregulation and in an era where the railroad industry was still trying to restore itself to financial health, the landscape today is much different. As we have noted in the decision, railroads are in a much better financial condition than they were three decades ago. I believe that 49 U.S.C. 11102(c) was written in a way that gives the Board flexibility to alter the standard for obtaining reciprocal switching if, based on our judgment, the balance between the two important goals described above has changed. Based on what I have observed of the railroad industry in my time at the Board, I believe that we have reached that point.

However, just because the railroads are financially stronger today does not mean that the Board should upend the existing regulatory scheme with broad, sweeping changes. While a change to the reciprocal switching standard is needed, I believe that the NITL approach swings too far in the other direction. I believe that for shippers to obtain this remedy, a shipper should still have to demonstrate that reciprocal switching is needed based on one of the reasons articulated by Congress, rather than for it to simply be presumed to be needed. Without assessing requests for reciprocal switching on a case-by-case

basis (at least for now), the potential for unintended consequences is too great. For that reason, I ultimately determined that I could not support the NITL proposal.

By rejecting the NITL proposal, today's decision addresses what I consider the most significant concern raised by the railroads: that a new reciprocal switching standard will result in its widespread application, to the significant detriment of the industry's financial health and operations. By keeping in place the requirement that shippers demonstrate that it is needed on a case-by-case basis, I believe that we have addressed that concern. Removing the anticompetitive conduct requirement will likely mean that some shippers will actually now be able to obtain a reciprocal switching prescription, but I believe the criteria proposed here would enable the Board to apply it only when appropriate.

In considering how to revise the reciprocal switching standard, I have been acutely aware of the fact that the railroads are currently facing changing economic conditions. With the decline of coal traffic, which is unlikely to return to previous volumes, and declining or sluggish volume growth for other commodities, there is no doubt that the railroads today find themselves in a difficult environment. I am mindful of the concerns that additional regulation could impact their ability to weather this storm. But I do not believe that the proposal we have announced today, if adopted, would impose significant burdens on the railroad industry. Indeed, it is my hope that the Board will rarely be called upon to impose the reciprocal switching remedy, but instead, that whatever final rules we adopt will merely provide a bit more incentive for carriers to ensure that their customers' needs are being met in those instances where that is not the case. So long as a carrier meets the needs of its customers, there should be little reason for a customer to seek such a remedy. Moreover, it is my belief that today's proposal would not undo the accomplishments that have been achieved through deregulation under the Staggers Act.

That being said, I recognize that today's proposal is unlikely to be perfect. In fact, there are aspects of the proposal that still concern me. However, if the Board were to continue to delay this proceeding in order to try to develop a perfect proposal, this proceeding would never end. It is my belief that any issues with the proposal can be addressed after the Board has had an opportunity to hear from the parties. I am particularly pleased that

we have decided to waive our ex parte communication prohibition in this proceeding (though, as I have noted in the past, I still advocate the outright elimination of this prohibition, rather than waiving it on case-by-case basis). I believe that these meetings will allow the Board Members to better understand the impacts this proposal would have and ways in which it can be improved.

As a final point, I would again note my frustration that it has taken the Board five years to reach this stage. Much of this delay feels like it could have been avoided by not asking the parties to submit additional evidence in July 2012. It seems that today's decision could have been made without this additional evidence, which was not heavily relied on in reaching today's decision. As I have noted on other occasions, I find that the amount of time that it takes the Board to complete proceedings to be troubling. In addition to the inexcusably long time that our stakeholders were kept waiting, they were left in the dark as to the progress. If parties are going to have to wait unnecessarily long periods of time for outcomes, the Board could at least be more transparent on the progress of their cases. No doubt having heard such complaints from our stakeholders, Congress required the agency to begin issuing quarterly reports on its unfinished regulatory proceedings as part of the Surface Transportation Board Reauthorization Act of 2015. The benefits of this reporting are already being seen, as it has been forced the Board to set deadlines in its many long-delayed rulemakings, and the Board has even completed some that have been pending for years. It is my belief that the Board needs to develop a similar (if not the same) reporting system for its other significant proceedings. This would provide parties with greater transparency on the progress of their cases, force the Board to develop deadlines, and ensure that the agency is adhering to them.

Commissioner Begeman, dissenting in part:

I want to begin by commending the National Industrial Transportation League (NITL) for the considerable and thoughtful effort it went to—more than five years ago—in prompting the Board to revisit the agency's competitive switching rules. I have valued the views and knowledge of the NITL leadership and members since first meeting them when I was a young Senate staffer. Then, as now, NITL can be counted on to provide insight and to explain how businesses across the country are

impacted by even the most arcane laws and regulations.

When stakeholders demonstrate that the agency's regulations or processes present too high a bar to allow their use, we have an obligation to examine whether we can improve those regulations or processes, while keeping the promotion of safe and efficient rail service at the top of our agenda. Although I have a number of questions and concerns about NITL's competitive switching proposal, many of which I shared during the April 2014 hearing, there is no dispute that since the current rules were adopted in 1985, very few reciprocal switching requests have been filed and none have been granted. As such, it is hard to believe that the existing regulations adequately implement Congress' intent that the Board order reciprocal switching when necessary.

While I may not be an advocate of the status quo, I do not casually embrace regulatory changes. Any altering of the Board's existing switching rules must be balanced, fair, and supported by analyses that indicate the changes will not have unintended consequences for our stakeholders or the public. I do not believe today's proposal meets those standards. This decision also ignores fundamental questions that the Board should have asked and answered before issuing today's proposal, and after five years, there has been ample time to do so. For example:

- The reciprocal switching proposal rejects the use of conclusive presumptions, which were argued by NITL as necessary to mitigate the complexity and costs of litigating competitive switching. What does today's proposal offer to mitigate the complexity and costs? Should the Board use rebuttable presumptions to create a more predictable process for shippers and carriers?

- The Department of Transportation estimated that NITL's proposal would affect 2.1 percent of revenue and 1.3 percent of carloads, figures that are considered significant inside the agency. What impact to revenue and carloads would be permitted under today's proposal? Once that level is reached, will the Board no longer consider new switching applications?

- The proposal seems to suggest that if the Board acts on a case-by-case basis, there is no need to assess the potential impact it could have on the rail system overall. But how can the Board provide fair and consistent switching judgments on a case-by-case basis without creating complexity and cost impacts on the one hand, and not introducing more

unpredictability to the rail network on the other?

- How long will it take to process the cases envisioned under today's proposal? What is the procedural timeline? Do we have any projections for how long such a case will take to process inside the agency? Currently, the Board is struggling to determine how to meet new Congressional mandates for timeliness. How will this type of new access case (*i.e.*, presumably time sensitive yet not subject to any specific Congressional timing mandate) fit into the Board's crowded priority list?

- Given the majority's stated position that it "will not attempt to formalize the precise showings" that parties would have to make in a given case because of its desire to be "flexible," what would a party seeking a reciprocal switch really have to demonstrate to the Board? What would the carrier have to demonstrate to convince the Board the requested switch should not be granted?

- What is the "reasonable distance" that is surprisingly left undefined in the proposal? While the language that dismisses the NITL's conclusive presumptions implies that the Board's proposal could involve switches of more than 30 miles, my briefings suggest it may be only a very short distance (*i.e.*, the distances that have historically been involved with reciprocal switching). How could historical norms of switching be relied on while the decision cites massive industry changes that would make those historical norms uninformative at best?

- How does today's decision mitigate impacts on network efficiency and service, particularly at major gateways and terminals? The Board has required weekly performance data reports on the Chicago hub since October 2014 because of its importance to national rail operations and the impact that congestion in that gateway can have on rail service nationwide. Should Chicago and other major gateways be excluded from new reciprocal switching requirements?

- Is permanence for a switching arrangement under the proposed new rule, which may not require robust evidence, fair to either the carrier or the other shippers impacted by that switching arrangement?

Today's decision incorporates a concern I expressed after seeing an earlier version of the proposal, which is that short line carriers be exempted from the requirements. The decision also waives the Board's rigid ex parte rules to allow the members to hear from stakeholders, as the Vice Chairman and I insisted. However, I cannot support

the rest of it. We have no idea how the proposed rule would or even could be utilized. We don't know its potential impact on the shippers that would be granted a reciprocal switch or its potential impact on shippers that wouldn't benefit from a reciprocal switch. We also don't know the proposal's potential impact on the rail carriers. Nor do we know its potential impact on the fluidity of the rail network. All of these impacts matter. After all, rail volumes have been down all of 2016, and are currently down nearly six percent from just a year ago. I firmly believe that what we do here, ultimately, could cause greater harm than good. Or, it may result in nothing more than an empty promise to prospective applicants.

It is incumbent on the Board Members and staff to listen to all interested stakeholders on these issues if there is to be any hope for adopting meaningful, lawful regulations designed to better implement the agency's statutory reciprocal switching authority. And I certainly recognize that stakeholders are at a disadvantage because today's proposal, in my view, is full of gaps by design. The goal appears to be that we can slip these and other unanswered questions by now and figure them out later. I implore our stakeholders to fully engage this agency and not allow such an outcome.

I support only those aspects of the decision that waive the Board's ex parte prohibitions and exclude Class II and Class III carriers from reciprocal switching prescriptions. Otherwise, I dissent.

The Board received written and/or oral comment from the following parties in Docket No. EP 711:

- AkzoNobel, Inc.
- Alliance for Rail Competition, Montana Wheat & Barley Committee, Colorado Wheat Administrative Committee, Idaho Barley Commission, Idaho Wheat Commission, Montana Farmers Union, Nebraska Wheat Board, Oklahoma Wheat Commission, South Dakota Wheat Commission, Texas Wheat Producers Board, Washington Grain Commission, National Association of Wheat Growers (collectively, ARC)
- Alliance of Automobile Manufacturers
- American Chemistry Council (ACC)
- American Short Line and Regional Railroad Association (ASLRRA)
- Arkansas Electric Cooperative Corporation (AECC)
- Association of American Railroads (AAR)
- Bayer MaterialScience LLC
- BNSF Railway Company (BNSF)
- Cargill Inc.
- CEMEX, Inc.
- The Chlorine Institute, Inc.
- Competitive Enterprise Institute (CEI)
- Consumers United for Rail Equity (CURE)
- CSX Transportation, Inc. (CSXT)
- Diversified CPC International, Inc. (Diversified CPC)
- Dow Chemical Company
- Entergy Arkansas, Inc., Kansas City Power & Light Company, Seminole Electric Cooperative, Inc., and Wisconsin Electric Power Company d/b/a WE Energies (collectively, Joint Coal Shippers)
- The Fertilizer Institute
- Florida East Coast Railway, LLC
- Glacial Lakes Energy, LLC (GLE)
- Glass Producers Transportation Council
- Heartland Consumers Power District
- Highroad Consulting, Ltd. (Highroad)
- Indorama Ventures EO & Glycols, Inc., StarPet, Inc., AlphaPet, Inc., and Auriga Polymers Inc.
- International Warehouse Logistics Association
- Interstate Asphalt Corp.
- Kansas City Southern Railway Company (KCS)
- National Grain and Feed Association (NGFA)
- NGFA, Agricultural Retailers Association, National Barley Growers Association, USA Rice Federation, National Oilseed Processors Association, National Chicken Council, National Association of Wheat Growers, National Council of Farmer Cooperatives, National Corn Growers Association (collectively, Agricultural Parties)
- NITL
- Norfolk Southern Railway Company (NSR)
- Olin Corporation (Olin)
- Paper and Forest Products Industry Transportation Committee
- Portland Cement Association
- PPG Industries, Inc.
- PPL Corporation
- Roanoke Cement Company (Roanoke Cement)
- Steel Manufacturers Association
- Union Pacific Railroad Company (UP)
- United Transportation Union-New York State Legislative Board (UTU-NY)
- U.S. Department of Agriculture (USDA)
- U.S. Department of Transportation (DOT)

Additionally, the following Members of Congress submitted comments, either individually or as joint comments:

- Senator Tammy Baldwin

- Representative Corrine Brown
- Representative Jeff Denham
- Representative William Enyart
- Senator Al Franken
- Representative Nick Rahall
- Representative Bill Shuster
- Senator David Vitter

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend title 49, chapter X, of the Code of Federal Regulations by revising part 1144 and adding part 1145 to read as follows:

PART 1144—INTRAMODAL RAIL COMPETITION

- 1. Revise the authority citation for part 1144 to read as follows:

Authority: 49 U.S.C. 1321, 10703, and 10705.

- 2. Revise § 1144.1(a) to read as follows:

§ 1144.1 Negotiation.

(a) *Timing.* At least 5 days prior to seeking the prescription of a through route or joint rate, the party intending to initiate such action must first seek to engage in negotiations to resolve its dispute with the prospective defendants.

* * * * *

- 3. Amend § 1144.2 by revising paragraphs (a) introductory text, (a)(1) introductory text, (a)(1)(iii) and (iv), (a)(2), and (b)(3) to read as follows:

§ 1144.2 Prescription.

(a) *General.* A through route or a through rate shall be prescribed under 49 U.S.C. 10705 if the Board determines:

(1) That the prescription is necessary to remedy or prevent an act that is contrary to the competition policies of 49 U.S.C. 10101 or is otherwise anticompetitive, and otherwise satisfies the criteria of 49 U.S.C. 10705. In making its determination, the Board shall take into account all relevant factors, including:

* * * * *

(iii) The rates charged or sought to be charged by the railroad or railroads from which prescription is sought.

(iv) The revenues, following the prescription, of the involved railroads for the traffic in question via the affected route; the costs of the involved railroads for that traffic via that route; the ratios of those revenues to those costs; and all circumstances relevant to any difference in those ratios; provided that the mere loss of revenue to an affected carrier shall not be a basis for finding that a prescription is necessary to remedy or prevent an act contrary to the competitive standards of this section; and

(2) That either:

(i) The complaining shipper has used or would use the through route or through rate to meet a significant portion of its current or future railroad transportation needs between the origin and destination; or

(ii) The complaining carrier has used or would use the affected through route or through rate for a significant amount of traffic.

(b) * * *.

(3) When prescription of a through route or a through rate is necessary to remedy or prevent an act contrary to the competitive standards of this section, the overall revenue inadequacy of the defendant railroad(s) will not be a basis for denying the prescription.

* * * * *

■ 4. Add part 1145 to read as follows:

PART 1145—RECIPROCAL SWITCHING

Sec.

1145.1 Negotiation

1145.2 Establishment of Reciprocal Switching Arrangement

1145.3 General

Authority: 49 U.S.C. 1321 and 11102.

§ 1145.1 Negotiation.

(a) *Timing.* At least 5 days prior to seeking the establishment of a switching arrangement, the party intending to initiate such action must first seek to engage in negotiations to resolve its dispute with the prospective defendant(s).

(b) *Participation.* Participation or failure to participate in negotiations does not waive a party's right to file a timely request for the establishment of a switching arrangement.

(c) *Arbitration.* The parties may use arbitration as part of the negotiation process, or in lieu of litigation before the Board.

§ 1145.2 Establishment of reciprocal switching arrangement.

(a) *General.* A reciprocal switching arrangement shall be established under 49 U.S.C. 11102(c) if the Board determines that such arrangement is either practicable and in the public interest, or necessary to provide competitive rail service, except as provided in paragraph(a)(2)(iv) of this section.

(1) The Board will find a switching arrangement to be practicable and in the public interest when:

(i) The party seeking such switching shows that the facilities of the shipper(s) and/or receiver(s) for whom such switching is sought are served by Class I rail carrier(s);

(ii) The party seeking such switching shows that there is or can be a working interchange between the Class I carrier servicing the party seeking switching and another Class I rail carrier within a reasonable distance of the facilities of the party seeking switching; and

(iii) The party seeking such switching shows that the potential benefits from the proposed switching arrangement outweigh the potential detriments. In making this determination, the Board may consider any relevant factor, including but not limited to:

(A) Whether the proposed switching arrangement furthers the rail transportation policy of 49 U.S.C. 10101;

(B) The efficiency of the route under the proposed switching arrangement;

(C) Whether the proposed switching arrangement allows access to new markets;

(D) The impact of the proposed switching arrangement, if any, on capital investment;

(E) The impact of the proposed switching arrangement on service quality;

(F) The impact of the proposed switching arrangement, if any, on employees;

(G) The amount of traffic the party seeking switching would use pursuant to the proposed switching arrangement; and

(H) The impact of the proposed switching arrangement, if any, on the rail transportation network.

(iv) Notwithstanding the provisions of (a)(1)(i)–(iii) of this section, the Board shall not find a switching arrangement to be practicable and in the public interest under this section if either rail carrier between which such switching is sought to be established shows that the proposed switching is not feasible or is unsafe, or that the presence of such switching will unduly hamper the ability of that carrier to serve its shippers.

(2) The Board will find a switching arrangement to be necessary to provide competitive rail service when:

(i) The party seeking such switching shows that the facilities of the shipper(s) and/or receiver(s) for whom such switching is sought are served by a single Class I rail carrier;

(ii) The party seeking such switching shows that intermodal and intramodal competition is not effective with respect to the movements of the shipper(s) and/or receivers(s) for whom switching is sought; and

(iii) The party seeking such switching shows that there is or can be a working interchange between the Class I carrier servicing the party seeking switching

and another Class I rail carrier within a reasonable distance of the facilities of the party seeking switching.

(iv) Notwithstanding the provisions of (a)(2)(i)–(iii) of this section, a switching arrangement will not be established under this section if either rail carrier between which such switching is sought to be established shows that the proposed switching is not feasible or is unsafe, or that the presence of such switching will unduly hamper the ability of that carrier to serve its shippers.

(b) *Other considerations.*

(1) In considering requests for reciprocal switching under (a)(2) of this section, the Board will not consider product or geographic competition.

(2) In considering requests for reciprocal switching under (a)(2) of this section, the overall revenue inadequacy of the defendant railroad will not be a basis for denying the establishment of a switching arrangement.

(3) Any proceeding under the terms of this section will be conducted and concluded by the Board on an expedited basis.

§ 1145.3 General

(a) *Effective date.* These rules will govern the Board's adjudication of individual cases pending on or after [EFFECTIVE DATE OF FINAL RULE].

(b) *Discovery.* Discovery under these rules is governed by the Board's general rules of discovery at 49 CFR part 1114.

[FR Doc. 2016–17980 Filed 8–2–16; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 160129062–6643–01]

RIN 0648–BF49

Atlantic Highly Migratory Species; Commercial Retention Limit for Blacknose Sharks and Non-Blacknose Small Coastal Sharks in the Atlantic Region

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing modifications to the commercial retention limits for blacknose sharks and non-blacknose small coastal sharks

(SCS) in the Atlantic region. The action would reduce discards of non-blacknose SCS while increasing the utilization of available Atlantic non-blacknose SCS quota and rebuilding and ending overfishing of Atlantic blacknose sharks. The Agency is proposing a measure that would establish a commercial retention limit of eight blacknose sharks for all Atlantic shark limited access permit holders in the Atlantic region south of 34°00' N. latitude. In addition, NMFS is proposing to make two small, unrelated administrative changes to existing regulatory text to remove cross-references to an unrelated section and a section that does not exist. These two changes are administrative in nature, and no impacts to the environment or current fishing operations are expected. The proposed action could affect fishermen in the south Atlantic management area who hold commercial shark limited access permits.

DATES: Written comments must be received by September 20, 2016. NMFS will hold an operator-assisted public hearing via conference call and webinar for the draft Environmental Assessment (EA) and this proposed rule on August 16, 2016, from 2 p.m. to 4 p.m. NMFS will also hold one public hearing for this proposed rule on August 24, 2016. For specific locations, dates and times, see the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2016–0095, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0095, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Margo Schulze-Haugen, Chief, Atlantic HMS Management Division at 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter

“N/A” in the required fields if you wish to remain anonymous).

NMFS will hold one public hearing in Cocoa Beach, FL and one conference call on this proposed rule. For specific locations, dates and times, see the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of the supporting documents, including the draft EA, Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the 2006 Consolidated Atlantic HMS FMP are available from the HMS Web site at <http://www.nmfs.noaa.gov/sfa/hms/> or by contacting Guý DuBeck at 301–427–8503.

FOR FURTHER INFORMATION CONTACT: Guý DuBeck, Larry Redd, Cliff Hutt, or Karyl Brewster-Geisz by phone at 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic sharks are directly managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the authority to issue regulations has been delegated from the Secretary to the Assistant Administrator (AA) for Fisheries, NOAA. NMFS published in the **Federal Register** (71 FR 59058) final regulations, effective November 1, 2006 implementing the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), which details management measures for Atlantic HMS fisheries. The implementing regulations for the 2006 Consolidated HMS FMP and its amendments are at 50 CFR part 635. This proposed rule considers modifying the commercial retention limits for blacknose sharks and non-blacknose SCS in the Atlantic region south of 34°00' N. latitude.

Background

A brief summary of the background of this proposed action is provided below. Additional information regarding Atlantic HMS management can be found in the Draft EA for this proposed action, the 2006 Consolidated HMS FMP and its amendments, the annual HMS Stock Assessment and Fishery Evaluation (SAFE) Reports, and online at <http://www.nmfs.noaa.gov/sfa/hms/>.

NMFS manages four SCS species: Blacknose, Atlantic sharpnose, finetooth, and bonnethead. All of these species except blacknose sharks are managed in a management group called the “non-blacknose SCS.” Blacknose sharks were assessed separately and declared overfished with overfishing occurring and thus are managed separately, subject to a rebuilding plan. Nevertheless, gillnet fishermen in the South Atlantic area typically fish for

and land all four of the SCS species. Thus, any management measure changes to either the blacknose shark or non-blacknose SCS management groups could impact all of these fishermen. Thus, while NMFS analyzed the stock impacts separately, NMFS discussed the economic impacts cumulatively at times and refer to the “overall SCS fishery,” which means the fishery for all four species in the South Atlantic management area.

This proposed rule considers modifying the commercial retention limits for blacknose sharks and non-blacknose SCS in the Atlantic region. This rulemaking only focuses on the Atlantic region since NMFS prohibited the retention and landings of blacknose sharks in the Gulf of Mexico in 2015. The action will reduce discards of non-blacknose SCS while increasing the utilization of available Atlantic non-blacknose SCS quota and rebuilding and ending overfishing of Atlantic blacknose sharks.

Since the completion of the 2007 blacknose shark stock assessment, NMFS has conducted numerous rulemakings regarding all SCS, including blacknose sharks, in order to rebuild blacknose sharks and end overfishing, consistent with the 2006 Consolidated HMS FMP. The 2007 stock assessment of blacknose sharks assessed blacknose sharks as one stock, and determined that the stock was overfished and overfishing was occurring.

On June 1, 2010 (75 FR 30484), NMFS published a final rule for Amendment 3 to the 2006 Consolidated HMS FMP that, among other things, established blacknose shark and non-blacknose SCS quotas. In the proposed rule, because of the blacknose stock status, NMFS proposed prohibiting the use of gillnet gear in waters south of North Carolina. However, based on comments received during that rulemaking that fishermen could catch non-blacknose SCS while avoiding blacknose sharks when using gillnet gear, the final rule continued to allow landings of SCS sharks with gillnet gear, but linked the quotas for the non-blacknose SCS and blacknose shark fisheries to create an incentive to avoid the incidental catch of blacknose sharks. After that rulemaking, in monthly landings updates and other documents, NMFS encouraged fishermen to avoid blacknose sharks in order to extend the non-blacknose SCS season. For the first two years under this quota linkage, fishermen successfully avoided landing blacknose sharks. This avoidance meant that both the non-blacknose SCS fishery remained open most of the year and the

blacknose shark quota was not exceeded.

In 2011, a new stock assessment for blacknose sharks was completed. This assessment concluded that there are two stocks of blacknose sharks—one in the Atlantic and one in the Gulf of Mexico and assessed them separately. The assessment for the Atlantic blacknose shark stock was accepted by the peer reviewers, and NMFS determined that the Atlantic blacknose shark stock is overfished and overfishing is occurring (76 FR 62331, October 7, 2011). The assessment for the Gulf of Mexico stock was not accepted by the peer reviewers. As such, NMFS declared the stock status to be unknown. On July 3, 2013 (78 FR 40318), NMFS published a final rule for Amendment 5a to the 2006 Consolidated HMS FMP which, among other things, divided the blacknose quota into separate regional quotas (Atlantic and Gulf of Mexico) consistent with the assessment determination that there are two separate stocks. NMFS continued to link the regional blacknose and non-blacknose SCS quotas and therefore divided the non-blacknose SCS quota into separate regional quotas as well, to parallel the division of the blacknose shark stocks. While NMFS established quotas for the two regions, those quotas were not further broken down into commercial retention limits because the quota linkages between the blacknose shark fishery and the non-blacknose SCS fishery alone were expected to create adequate incentive to avoid blacknose sharks.

More recently, NMFS has seen signs that fishermen using gillnet gear in the Atlantic region are no longer avoiding blacknose sharks. In 2012, the overall blacknose shark quota for the Atlantic and Gulf of Mexico regions was exceeded, and the blacknose shark quota in the Atlantic region was exceeded again in 2015. Additionally, the blacknose and non-blacknose SCS fisheries have been closing earlier each year (September 30, 2013 (blacknose sharks and non-blacknose SCS in the Atlantic and Gulf of Mexico regions); July 28, 2014 (blacknose sharks and non-blacknose SCS in the Atlantic region); June 7, 2015 (blacknose sharks and non-blacknose SCS in the Atlantic region)). A review of the landings data indicate the early closures are a result of some fishermen who have been landing large numbers of blacknose sharks relative to other fishermen. These early closures mean that the non-blacknose SCS quota remains underutilized (less than 40 percent was harvested in 2013 and less than 60 percent harvested in both 2014 and 2015). These closures also mean that

non-blacknose SCS are discarded even if quota is available because all SCS species must be discarded once the fisheries are closed.

To reduce the discards of non-blacknose SCS while not increasing landings of blacknose sharks, on August 18, 2015 (80 FR 50074), NMFS published a final rule for Amendment 6 to the 2006 Consolidated HMS FMP. This final rule, among other things, prohibited the retention and landings of blacknose sharks in the Gulf of Mexico region. In the Atlantic region, NMFS established a management boundary along 34° N. latitude for the non-blacknose SCS fishery, removed the quota linkage between non-blacknose SCS and blacknose shark quotas north of the boundary, and prohibited the retention and landings of blacknose sharks north of that boundary since blacknose sharks are rarely caught there. South of the new management boundary, NMFS maintained the non-blacknose SCS and blacknose shark quota linkage and reduced the blacknose shark quota to account for the potential dead discards north of the boundary. Thus, in August 2015, after implementation of Amendment 6, the non-blacknose SCS fishery re-opened north of 34° N. latitude (August 18, 2015, 80 FR 50074) upon publication of the final rule. From August through December, fishermen were able to land an additional 40.5 mt dw, or 15 percent of the non-blacknose SCS quota, after the fishery reopened. However, the non-blacknose SCS fishery remained closed south of 34° N. latitude and fishermen in that area were still required to discard all non-blacknose SCS caught after June 7, 2015.

NMFS recently took action again to close the commercial blacknose shark and non-blacknose SCS fisheries in the Atlantic region south of 34° N. latitude because the commercial landings of Atlantic blacknose sharks for the 2016 fishing season were projected to exceed 80 percent of the available commercial quota (81 FR 33604; May 29, 2016). This indicates that some fishermen south of 34° N. latitude are continuing to land large numbers of blacknose sharks relative to other fishermen even though this results in earlier closures and the potential loss of access to the available non-blacknose SCS quota because of the linkage.

Additionally, since publishing Amendment 6, NMFS has received comments from fishermen and the South Atlantic Fishery Management Council stating that fishermen in the Spanish mackerel gillnet fishery with HMS permits are having to discard otherwise marketable non-blacknose

SCS south of the 34° N. latitude management boundary due to the quota linkage, even though non-blacknose SCS quota remains available. Thus, in preparing this proposed rule NMFS considered alternatives to prevent the overharvest and discard of blacknose sharks, maximize the utilization of available non-blacknose SCS quota, extend the season for non-blacknose SCS fisheries, and improve economic opportunities. Specifically, NMFS considered establishing commercial retention limits within the existing quotas for either the blacknose sharks or non-blacknose SCS in the Atlantic region south of 34° N. latitude.

NMFS prepared a draft EA, RIR, and an IRFA, which present and analyze the anticipated environmental, social, and economic impacts of each alternative considered for this proposed rule. The complete list of alternatives and related analyses is provided in the draft EA/RIR/IRFA, and is not repeated here in its entirety. A copy of the draft EA/RIR/IRFA prepared for this proposed rulemaking is available from NMFS (see **ADDRESSES**).

NMFS considered three alternatives for this proposed action. All three alternatives would apply only in the SCS fishery south of 34°00' N. latitude in the Atlantic region. Alternative 1, the No Action alternative, would maintain the status quo and the current regulations and practices in the blacknose and non-blacknose SCS fishery. Alternative 2 would establish a commercial retention limit for non-blacknose SCS that would be in effect once the blacknose shark quota is reached for directed shark limited access permit holders. Alternative 3 would establish a commercial retention limit for blacknose sharks for all Atlantic HMS limited access permit holders that would be in effect while the blacknose shark quota is available; once the blacknose shark quota is reached, retention of blacknose would be prohibited. Under both Alternatives 2 and 3, NMFS considered a range of three sub-alternatives.

Under Alternative 1, the No Action alternative, NMFS would not implement any new commercial retention limits for blacknose sharks or non-blacknose SCS in the Atlantic region for Atlantic shark directed limited access permit holders (shark incidental limited access permit holders are already limited to a retention limit of 16 combined SCS and pelagic sharks per trip). Instead, the blacknose and non-blacknose SCS quotas would continue to be linked by region and, south of 34°00' N. latitude, access to both quotas would be closed when the blacknose shark quota (17.2

mt dw; 37,921 lb dw) is reached. Logbook data from 2010 through 2015 indicates that on average fishermen take 207 trips per year to land the blacknose shark quota and land approximately 212 lb dw of blacknose sharks per trip. However, the average landings per trip are increasing, and correspondingly, the number of trips needed to land the quota is decreasing. In 2015, the average blacknose shark landings were 402 lb dw per trip, and logbook data indicate that fishermen took approximately 94 trips to harvest the baseline blacknose shark quota. Given that the fishing season has been closing earlier each year for the last several years, NMFS expects the trend of decreasing number of trips and increasing weight per trip to continue if no further action is taken. Under this alternative, available non-blacknose SCS quota would continue to go unharvested, likely in increasingly large amounts. Because this alternative would maintain the status quo, this alternative would have minor adverse ecological impacts on blacknose sharks as the overharvests may continue to occur and blacknose sharks may continue to be subject to overfishing. However, this alternative would likely have positive ecological benefits for non-blacknose SCS because the early closure of the fishery leaves the non-blacknose SCS quota underutilized. Overall, maintaining the status quo for both the blacknose shark and non-blacknose SCS management groups would have neutral to positive ecological impacts.

With regard to socioeconomic impacts, Alternative 1 would likely continue to result in underutilization of the non-blacknose SCS quota as a result of the early closure of both blacknose and non-blacknose SCS management groups. Between 2014 and 2015, the Atlantic non-blacknose SCS quota has been underutilized by an average of 314,625 lb dw (54 percent of the quota). This represents foregone revenues of \$298,583 assuming an average value of \$0.74/lb dw for meat and \$4.18/lb dw for fins. NMFS expects that Alternative 1, the No Action alternative, would have minor adverse socioeconomic impacts on the non-blacknose SCS fisheries as it would continue to allow for underutilization of the Atlantic non-blacknose SCS quota.

Under Alternative 2, NMFS would implement a commercial retention limit for non-blacknose SCS and remove the quota linkage to blacknose sharks south of 34°00' N. latitude. In Amendment 3 to the 2006 Consolidated HMS FMP (75 FR 30484; June 1, 2010), NMFS linked the blacknose shark and non-blacknose SCS quotas to address the blacknose

shark stock determination and implement measures to rebuild and end overfishing of blacknose sharks. Without the quota linkage, fishermen would be able to continue to harvest non-blacknose SCS after the blacknose shark quota was fully harvested but would need to discard blacknose sharks once that fishery closed. While many fishermen are able to avoid blacknose sharks when fishing for non-blacknose SCS, in order to allow for any non-blacknose SCS landings after a blacknose shark closure, NMFS estimated how many blacknose sharks could potentially be discarded dead by vessels harvesting non-blacknose SCS once the blacknose shark quota (17.2 mt dw; 37,921 lb dw) has been harvested and the fishery is closed. This additional mortality would be counted against the total allowable catch of blacknose sharks upfront, and the overall commercial retention limit for blacknose shark quota would be reduced accordingly.

Under Alternative 2a, NMFS would implement a commercial retention limit of 50 non-blacknose SCS per trip once the blacknose shark quota is reached and remove the quota linkage to blacknose sharks for shark directed limited access permit holders fishing south of 34°00' N. latitude. Under this alternative, NMFS would also reduce the baseline blacknose shark quota to 15.0 mt dw (33,069 lb dw) due to the estimated number of blacknose sharks that would be discarded dead while harvesting non-blacknose SCS (985 sharks). NMFS expects that this alternative would have minor adverse ecological impacts on blacknose sharks in the Atlantic region as this alternative would likely not change the current fishing practices and the commercial quota for blacknose sharks would still likely be landed quickly, potentially resulting in overharvests due to data reporting lags. Additionally, this alternative would have neutral ecological impacts on non-blacknose SCS in the region as fishermen could land 50 non-blacknose SCS per trip until reaching the quota, thus utilizing the non-blacknose SCS quota, without exceeding it. Overall, the commercial retention limit for non-blacknose SCS would have minor adverse ecological impacts for the SCS fishery, which means the fishery for all four SCS species in the South Atlantic management area. The reduction in blacknose shark quota could cause the closure of blacknose shark fishery even earlier in the year but this closure would no longer close the non-blacknose SCS fishery. This reduction

in the blacknose shark quota would result in estimated lost revenues of \$5,193 compared to the current baseline quota under Alternative 1, assuming an average value of \$0.87 lb dw for meat and \$4.00 lb dw for fins of blacknose sharks. However, this alternative would generate an estimated 286 additional trips landing non-blacknose SCS at 50 non-blacknose SCS per trip, generating \$34,470 in revenue from for non-blacknose SCS. As such, this alternative should have minor beneficial economic impacts on the overall SCS fishery.

NMFS also analyzed two other alternatives that would implement commercial retention limits when the blacknose shark quota is reached and remove the quota linkage to blacknose sharks for shark directed limited access permit holders. Alternative 2b would establish a commercial retention limit of 150 non-blacknose SCS, and Alternative 2c would establish a commercial retention limit of 250 for non-blacknose SCS. Under Alternative 2b, the baseline blacknose shark quota would be adjusted to 10.5 mt dw (23,148 lb dw) due to the estimated number of dead discard blacknose sharks (2,956 sharks) which likely would occur in the non-blacknose SCS fishery. Similar to Alternative 2a, NMFS expects that this alternative would have minor adverse ecological impacts on the blacknose sharks in the Atlantic region as some directed permit holders could continue to land large numbers of blacknose sharks relative to other fishermen until the blacknose shark quota is landed, which could increase the amount of blacknose shark dead discards after the blacknose fishing season is closed because the quota linkage would be removed. Similar to Alternative 2a, this alternative would have neutral ecological impacts on the non-blacknose sharks in the region as fishermen could land 150 non-blacknose SCS per trip until reaching the quota, thus utilizing the non-blacknose SCS quota without exceeding it. However, this alternative would have minor adverse ecological impacts for the overall SCS fishery because dead discards would continue after the blacknose shark quota is reached. The reduction in blacknose shark quota would result in estimated lost revenues of \$15,808, assuming an average value of \$0.87 lb dw for meat and \$4.00 lb dw for fins of blacknose sharks. This alternative would generate an estimated 286 additional trips landing non-blacknose SCS at 150 non-blacknose SCS per trip, resulting in a revenue gain of \$65,139 for non-blacknose SCS. As such, this alternative

should have minor beneficial economic impacts on the overall SCS fishery.

Under Alternative 2c, the baseline blacknose shark quota would be reduced to 6.1 mt dw (13,448 lb dw) due to the estimated number of dead discard blacknose sharks (4,927 sharks) which likely would occur in the non-blacknose SCS fishery under this scenario. NMFS expects that this alternative would have minor adverse ecological impacts on the blacknose sharks in the Atlantic region as some directed permit holders would continue to land large numbers of blacknose sharks relative to other fishermen until the blacknose shark quota is landed, increasing the amount of blacknose dead discards after the blacknose fishing season is closed due to the elimination of the quota linkage. This alternative would have neutral ecological impacts on the non-blacknose sharks in the region as fishermen could land 250 non-blacknose SCS per trip until reaching the quota, thus utilizing the non-blacknose SCS quota without exceeding it. Similar to Alternative 2a, the commercial retention limit for non-blacknose SCS would have minor adverse ecological impacts for the overall SCS fishery because dead discards would continue after the blacknose shark quota is reached. This alternative would result in estimated lost revenues of \$26,217 assuming an average value of \$0.87 lb dw for meat and \$4.00 lb dw for fins of blacknose sharks. This alternative would generate an estimated 286 additional trips landing non-blacknose SCS at 250 non-blacknose SCS per trip, resulting in a revenue gain of \$80,339 for non-blacknose SCS. As such, this alternative should have moderate beneficial economic impacts on the overall SCS fishery.

Under Alternative 3, NMFS would establish a commercial retention limit for blacknose sharks per trip for all Atlantic HMS limited access permit holders in the Atlantic region south of 34°00' N. latitude when the blacknose shark quota is available; when the blacknose shark quota is reached, retention of blacknose sharks would be prohibited. To determine the number of trips that would harvest the blacknose shark quota, NMFS divided the current baseline shark quota (17.2 mt dw or 37,921 lb dw) by the product of the retention limit of the sub-alternative and 5 lb dw (which is the average weight of each blacknose shark, based on observer data). For example, under Alternative 3c, the preferred alternative, NMFS would establish a commercial retention limit of eight blacknose sharks per trip for Atlantic HMS directed and incidental limited access permit

holders. This retention limit would allow an average of 40 lb dw blacknose sharks per trip (8 sharks * 5 lb dw) and would result in an estimated 948 trips to land the baseline blacknose shark quota (37,919 lb dw/40 lb dw). This retention limit is much lower when compared to the blacknose sharks landed per trip and number of trips that harvested the quota in previous years. In 2014 and 2015, between 243 and 402 lb dw of blacknose sharks were harvested per trip, and the quota was fully harvested in approximately 156 and 94 trips, respectively. Since most fishermen prefer not to discard any fish, NMFS believes this alternative has the potential to influence fishermen to revert to the fishing practices observed in 2010 and 2011 when blacknose sharks were actively avoided when fishing for non-blacknose SCS. NMFS expects that this alternative would have moderate beneficial ecological impacts on the blacknose sharks in the Atlantic region since the lower blacknose shark landings per trip would reduce the rate of landings such that the quota is not exceeded and might result in underharvests. Thus, this alternative could aid in the rebuilding of blacknose sharks and help prevent quota exceedances. This alternative would also have neutral ecological impacts for non-blacknose SCS as NMFS expects that that quota would be fully utilized without being exceeded. Overall, the commercial retention limit for blacknose sharks would have moderate beneficial ecological impacts for the overall SCS fishery. Additionally, this alternative would also have minor beneficial socioeconomic impacts as the fishermen could still land blacknose sharks and the fishery would remain open for a longer period of time, increasing SCS revenues by as much as \$98,664 a year on average if the non-blacknose SCS quota is fully utilized. Any financial losses due to underutilization of the blacknose shark quota would be minimal by comparison.

NMFS also analyzed two other blacknose shark retention limit alternatives that are not preferred at this time. Alternative 3a would establish a retention limit of 50 blacknose sharks per trip for directed limited access permit holders (shark incidental limited access permit holders would continue to be limited to a total of 16 pelagic and SCS sharks per trip). This retention limit would allow an average of 250 lb dw blacknose sharks per trip and would result in an estimated 152 trips to land the blacknose shark quota. The retention limit of 50 blacknose sharks could potentially cause the SCS fisheries to

close as early as June or July if every trip landing blacknose sharks lands the full retention limit, although this is highly unlikely. Under Alternative 3b, NMFS would establish a commercial retention limit of 16 blacknose sharks per trip for directed limited access permit holders. This retention limit would allow an average of 80 lb dw blacknose sharks per trip and would result in an estimated 474 trips to land the full blacknose shark quota. NMFS expects that both of these alternatives would have minor to moderate beneficial ecological impacts on Atlantic blacknose sharks as all Atlantic shark limited access permit holders would be expected to revert to how they had been fishing in 2010 and 2011 and actively avoiding blacknose sharks when fishing for non-blacknose SCS. For non-blacknose SCS, these alternatives would have neutral impacts as the stock would be fished under the level established, resulting in a fishery that would be underutilized. Overall, establishing the commercial retention limit would have beneficial impacts for Alternatives 3a and 3b for the SCS fishery. Additionally, these alternatives would also have minor beneficial socioeconomic impacts to the Atlantic SCS fishery as they would allow for the potential full-utilization of the non-blacknose SCS quota, and potentially increase average revenues by \$98,664 per year. Any foregone revenue due to under-utilization of the blacknose shark quota would be minimal in comparison.

Currently, NMFS prefers to establish a commercial retention limit of eight blacknose sharks per trip (Alternative 3c) since the retention limit would have moderate beneficial ecological impacts on blacknose sharks, neutral ecological impacts on non-blacknose SCS, and minor beneficial socioeconomic impacts for SCS fishermen because they should be able to fully utilize the non-blacknose SCS quota. NMFS does not prefer Alternative 1 (No Action alternative) since this alternative does not meet the objectives of the rule, could result in continued overharvests of the blacknose shark quota, and would continue to underutilize the non-blacknose shark SCS quota. NMFS does not prefer Alternatives 2a, 2b, and 2c establishing a commercial retention limit for non-blacknose SCS, because that could lead to an increase in dead discards of blacknose sharks while targeting non-HMS species and non-blacknose SCS depending on the commercial retention limit. In addition, the reduced blacknose shark quotas due to the estimated dead discards of blacknose sharks when the quota

linkage is removed, would implement a commercial retention limit for non-blacknose SCS south of 34°00' N. latitude earlier in the fishing season when the blacknose shark fishery is closed than the preferred alternative. Thus, the non-blacknose SCS quota may not be fully utilized under the alternatives. Furthermore, NMFS does not expect the economic benefits of Alternatives 2a, 2b, or 2c to be as high as the benefits expected under any of the sub-alternatives under Alternative 3. NMFS does not prefer Alternative 3a which would set a retention limit of 50 blacknose sharks per trip could cause the blacknose shark quota to be filled relatively quickly result in and the closure of the non-blacknose SCS fishery before the end of the fishing season. Regarding Alternative 3b, which would set a retention limit of 16 blacknose sharks per trip, at the HMS Advisory Panel meeting in March 2016, NMFS received comments from Panel members who supported maximizing the number of trips per year to land blacknose sharks as would be done in

Alternative 3c rather than Alternative 3b. Panel members were concerned that Alternative 3b would not guarantee a year-round fishery for SCS because some fishermen would land the maximum number per trip (16 blacknose sharks per trip) and close the fishery and NMFS agreed with this statement.

Administrative Changes

In addition to the preferred alternative described above, NMFS is proposing to make two small, unrelated administrative changes to existing regulatory text. Specifically, in two locations in § 635.24(a), the regulations make reference to paragraphs (a)(4)(iv) through (vi); those cross-references are unnecessary because the Commercial Caribbean Small Boat permit under (a)(4)(iv) is a separate permit from the limited access permits and there is no (a)(4)(v) regulation. Because NMFS is already proposing changes to § 635.24(a) through this rulemaking, NMFS has decided to use this opportunity to propose removal of those cross-references. This action is administrative

in nature, reflects current practice, and would not have environmental impacts or effects on current fishing operations.

Public Hearings

Comments on this proposed rule may be submitted via <http://www.regulations.gov>, mail, or fax and comments may also be submitted at a public hearing. NMFS solicits comments on this proposed rule through September 20, 2016. During the comment period, NMFS will hold one public hearing and one conference call for this proposed rule. The hearing locations will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Guý DuBeck at 301-427-8503, at least 7 days prior to the meeting. NMFS has also asked to present information on the proposed rule and draft EA to the South Atlantic Fishery Management Councils at their meetings during the public comment period. Please see their meeting notices for dates, times, and locations.

TABLE 1—DATES, TIMES, AND LOCATIONS OF UPCOMING PUBLIC HEARING AND CONFERENCE CALL.

Venue	Date/time	Meeting locations	Location contact information
Conference call	August 16, 2016, 2 p.m.–4 p.m.	To participate in conference call, call: (888) 635-5002, Passcode: 6429428. To participate in webinar, RSVP at: https://noaaevents2.webex.com/noaaevents2/onstage/g.php?MTID=e2a3c0722f8a4bee1c303445a56b6a065 , A confirmation email with webinar log-in information will be sent after RSVP is registered.
Public Hearing	August 24, 2016, 5 p.m.–8 p.m.	Cocoa Beach, FL	Cocoa Beach Public Library, 550 North Brevard Avenue, Cocoa Beach, FL 32931, (321) 868-1104.

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the hearing room; attendees will be called in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). At the beginning of the conference call, the moderator will explain how the conference call will be conducted and how and when attendees can provide comments. The NMFS representative will attempt to structure the meeting so that all the attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not they

may be asked to leave the hearing or may not be allowed to speak during the conference call.

Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. This proposed rule has been determined to be not significant for purposes of Executive Order 12866. An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule would have on small entities if adopted. A description of the action, why it is being considered, and the legal basis for this action are contained below. A

summary of the analysis follows. A copy of this analysis is available from NMFS (see ADDRESSES).

Section 603(b)(1) requires Agencies to describe reasons why the action is being considered. This proposed action is designed to implement management measures for the blacknose and non-blacknose SCS fisheries that will reduce dead discards of non-blacknose SCS while increasing the utilization of the Atlantic non-blacknose SCS quota and rebuilding and ending overfishing of Atlantic blacknose sharks.

Section 603(b)(2) requires Agencies to describe the objectives of the proposed rule. NMFS has identified the following objectives, which are consistent with existing statutes such as the Magnuson-Stevens Act and its objectives, with regard to this proposed action:

- Obtaining optimum yield from the blacknose and non-blacknose-SCS fisheries;

- Reducing dead discards of sharks, particularly small coastal sharks;
- Continuing to rebuild the Atlantic blacknose shark stock; and
- Ending overfishing of the Atlantic blacknose shark stock.

Section 603(b)(3) of the Regulatory Flexibility Act requires Agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Provision is made under the SBA's regulations for an agency to develop its own industry-specific size standards after consultation with Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the **Federal Register** (FR), which NMFS did on December 29, 2015 (80 FR 81194). In this final rule effective on July 1, 2016, NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. NMFS considers all HMS permit holders to be small entities because they all had average annual receipts of less than \$11 million for commercial fishing.

As of 2015, the proposed rule would apply to the approximately 224 directed commercial shark permit holders and 275 incidental commercial shark permit holders. Not all permit holders are active in the shark fishery in any given year. Active directed permit holders are defined as those with valid permits that landed one shark based on HMS electronic dealer reports. Of the 499 permit holders, only 27 permit holders landed SCS in the Atlantic region and, of those, only 13 landed blacknose sharks. NMFS has determined that the proposed rule would not likely affect any small governmental jurisdictions.

Section 603(b)(4) of the RFA requires Agencies to describe any new reporting, record-keeping and other compliance requirements. The action does not contain any new collection of information, reporting, or record-keeping requirements. The alternatives considered would adjust the commercial retention limits for the SCS fisheries, which would be a new compliance requirement for the shark

fishery participants in the Atlantic region south of 34°00' N. latitude but is similar to other compliance requirements the fishermen already follow.

Under section 603(b)(5) of the RFA, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed rule. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include the Magnuson-Stevens Act, the Atlantic Tunas Convention Act (ATCA), the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act (ESA), the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. This proposed rule has been determined not to duplicate, overlap, or conflict with any Federal rules.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below. Additionally, the RFA (5 U.S.C. 603(c)(1)–(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule, or any part thereof, for small entities.

In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act, NMFS cannot establish differing compliance requirements for small entities or exempt small entities from compliance requirements. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. As described below, NMFS analyzed several different alternatives in this proposed rulemaking and provides rationales for identifying the preferred alternatives to achieve the desired objectives.

The alternatives considered and analyzed are described below. The IRFA assumes that each vessel will have similar catch and gross revenues to show the relative impact of the proposed action on vessels.

Alternative 1, the No Action alternative, would not implement any new commercial retention limits for blacknose sharks and non-blacknose SCS in the Atlantic region south of 34°00' N. latitude beyond those already in effect for current Atlantic shark limited access permit holders. NMFS would continue to allow fishermen with a direct limited access permit to land unlimited sharks per trip (within available quotas), and allow fishermen with an incidental permit to land 16 combined SCS and pelagic sharks per vessel per trip. Amendment 3 to the 2006 Consolidated HMS FMP established, among other things, a quota for blacknose shark separate from the SCS quota. The 2011 blacknose shark stock assessment determined that separate stocks of blacknose sharks existed in the Gulf of Mexico and the Atlantic Ocean. Amendment 5a to the 2006 Consolidated HMS FMP established, among other things, regional quotas for non-blacknose SCS and blacknose sharks in the Gulf of Mexico and the Atlantic Ocean in 2013. These blacknose shark and non-blacknose SCS quotas are linked by region and the regional SCS fishery is closed when the blacknose shark quota is reached. These linkages have resulted in the early closure of the entire SCS fishery due to high blacknose shark landings. Closure of the fishery as a result of Atlantic blacknose rapid harvest leaves the non-blacknose shark SCS quota underutilized. Between 2014 and 2015, the Atlantic non-blacknose SCS quota has been underutilized by an average of 314,625 lb dw or 54 percent of the quota. This represents an average ex-vessel loss of \$298,583, assuming an average value of \$0.74/lb dw for meat and \$4.18/lb dw for fins. Based on the 27 vessels that landed SCS in the Atlantic, the per-vessel impact would be an approximate loss of \$11,059 per year.

Alternative 2a would implement a commercial retention limit of 50 non-blacknose SCS per trip and remove the quota linkage to blacknose sharks for shark directed limited access permit holders in the Atlantic region south 34°00' N. latitude once the blacknose shark quota is reached. Additionally, this alternative would adjust the blacknose shark quota to 15.0 mt dw (33,069 lb dw). Reduction of the blacknose shark quota would result in an average ex-vessel revenue loss of \$5,193 for the fishery, while increased

landings of non-blacknose SCS would result in an overall estimated average ex-vessel revenue gain of \$34,470 for the fishery. NMFS estimates that this bycatch retention limit would result in a net gain of \$29,277 in average ex-vessel revenue for the fishery, or \$1,084 per vessel for the 27 vessels that targeted non-blacknose SCS in 2015.

Alternative 2b would implement a commercial retention limit of 150 non-blacknose SCS per trip and remove the quota linkage to blacknose sharks for shark directed limited access permit holders in the Atlantic region south 34°00' N. latitude once the blacknose shark quota is reached. Additionally, this alternative would adjust the blacknose shark quota to 10.5 mt dw (23,148 lb dw). Reduction of the blacknose shark quota would result in an average ex-vessel revenue loss of \$15,808 for the fishery, while increased landings of non-blacknose SCS would result in an overall estimated average ex-vessel revenue gain of \$65,139 for the fishery. NMFS estimates that this bycatch retention limit would result in a net gain of \$49,331 in average ex-vessel revenue for the fishery, or approximately \$1,827 per vessel for the 27 vessels that targeted non-blacknose SCS in 2015.

Alternative 2c would implement a commercial retention limit of 250 non-blacknose SCS per trip and remove the quota linkage to blacknose sharks for shark directed limited access permit holders in the Atlantic region south 34°00' N. latitude once the blacknose shark quota is reached. This alternative would also adjust the blacknose shark quota to 6.1 mt dw (13,448 lb dw). Reduction of the blacknose shark quota would result in an average ex-vessel revenue loss of \$26,217 for the fishery, while increased landings of non-blacknose SCS would result in an estimated average ex-vessel revenue gain of \$80,339 for the fishery. NMFS estimates that this bycatch retention limit would result in a net gain of \$54,122 in average ex-vessel revenue for the fishery, or approximately \$2,004 per vessel for the 27 vessels that targeted non-blacknose SCS in 2015.

Alternative 3a would establish a commercial retention limit of 50 blacknose sharks per trip for shark directed limited access permit holders in the Atlantic region south 34°00' N. latitude. This alternative would most likely convert the blacknose shark fishery to an incidental fishery as the per-trip value of 50 blacknose sharks would only be \$270 (\$218 for meat and \$52 for fins) for the estimated 13 vessels that land blacknose sharks in the Atlantic. Based on 2015 HMS electronic

reporting system (eDealer) reports, 49 trips, or 32% of the overall number of trips, landed blacknose sharks in excess of a commercial retention limit of 50 blacknose sharks (250 lb dw). This alternative would likely increase the number of trips needed to fill the blacknose shark quota when compared to the average from 2010 through 2015 under Alternative 1. A retention limit of 50 blacknose sharks could potentially cause the SCS fisheries to close as early as June or July if every trip landing blacknose sharks landed the full retention limit, but this is highly unlikely.

Alternative 3b would establish a commercial retention limit of 16 blacknose sharks per trip all Atlantic shark limited access permit holders in the Atlantic region south 34°00' N. latitude. This alternative would have minor beneficial economic impacts as a retention limit of this size would allow an average of 80 lb dw blacknose sharks per trip and would take approximately 474 trips for fishermen to land the full blacknose shark quota. Based on 2015 eDealer reports, 83 trips, or 55% of the overall number of trips, landed blacknose sharks in excess of a commercial retention limit of 16 blacknose sharks (80 lb dw). This alternative would dramatically increase the number of trips needed to fill the blacknose shark quota when compared to the yearly averages under Alternative 1. Currently, the linkage between the blacknose shark quota and the non-blacknose SCS quota causes the closure of both fisheries once the smaller blacknose shark quota is attained. NMFS expects that, under this alternative, the blacknose shark quota would not be filled and therefore would not close the SCS fisheries in the South Atlantic region. Thus, this alternative would have minor beneficial economic impacts to the Atlantic SCS fisheries as it would allow for the potential full-utilization of the non-blacknose SCS quota, and potentially increase total ex-vessel revenue by as much as \$298,583 a year. However, given monthly trip rates in the Atlantic, the non-blacknose SCS quota is likely to remain under-utilized. Using calculations based on observed trip and landings rates of non-blacknose SCS in 2015, a more likely result of this alternative would be additional landings of 104,962 lb dw of non-blacknose SCS valued at \$98,664, or approximately \$3,654 per vessel for the 27 vessels that participated in the fishery in 2015. Any financial losses due to under-utilization of the blacknose shark quota would be minimal in comparison.

Alternative 3c, the preferred alternative, would establish a commercial retention limit of eight blacknose sharks per trip all Atlantic shark limited access permit holders in the Atlantic region south 34°00' N. latitude. This alternative would have moderate beneficial economic impacts as a retention limit of this size would allow an average of 40 lb dw blacknose sharks per trip and would take approximately 948 trips to land the full blacknose shark quota. Based on 2015 eDealer reports, 105 trips, or 69% of the overall number of trips, landed blacknose sharks in excess of the commercial retention limit of eight blacknose sharks (40 lb dw). This alternative would dramatically increase the number of trips needed to fill the blacknose shark quota when compared to the yearly averages under Alternative 1. Currently, the linkage between the blacknose shark quota and the non-blacknose SCS quota causes the closure of both fisheries once the smaller blacknose shark quota is attained. NMFS expects that, under this alternative, the blacknose shark quota would not be filled and would not close the SCS fisheries in the Atlantic region south 34°00' N. latitude. Thus, this would have moderate beneficial economic impacts as the fishermen would still be allowed to land blacknose sharks and the fishery would remain open for a longer period of time, significantly increasing non-blacknose SCS revenues by as much as \$298,583 a year on average if the non-blacknose SCS quota is fully utilized. However, given monthly trip rates in the Atlantic, the non-blacknose SCS quota is likely to remain under-utilized. Using calculations based on observed trip and landings rates of non-blacknose SCS in 2015, a more likely result of this alternative would be additional landings of 104,962 lb dw of non-blacknose SCS valued at \$98,664, or approximately \$3,654 per vessel for the 27 vessels that participated in the fishery in 2015. Any financial losses due to under-utilization of the blacknose shark quota would be minimal in comparison.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: July 28, 2016.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635 – ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

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

■ 2. In § 635.24, revise paragraphs (a)(2), (a)(3), (a)(4)(ii), and (a)(4)(iii) to read as follows:

§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.

* * * * *

(a) * * *

(2) The commercial retention limit for LCS other than sandbar sharks for a person who owns or operates a vessel that has been issued a directed LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued a directed LAP for sharks and that has been issued a shark research permit but does not have a NMFS-approved observer on board, may range between zero and 55 LCS other than sandbar

sharks per vessel per trip if the respective LCS management group(s) is open per §§ 635.27 and 635.28. Such persons may not retain, possess, or land sandbar sharks. At the start of each fishing year, the default commercial retention limit is 45 LCS other than sandbar sharks per vessel per trip unless NMFS determines otherwise and files with the Office of the Federal Register for publication notification of an inseason adjustment. During the fishing year, NMFS may adjust the retention limit per the inseason trip limit adjustment criteria listed in § 635.24(a)(8).

(3) A person who owns or operates a vessel that has been issued an incidental LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued an incidental LAP for sharks and that has been issued a valid shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 3 LCS other than sandbar sharks per vessel per trip if the respective LCS management group(s) is open per §§ 635.27 and 635.28. Such persons may not retain, possess, or land sandbar sharks.

(4) * * *

(ii) A person who owns or operates a vessel that has been issued a shark LAP and is operating south of 34°00' N. lat. in the Atlantic region, as defined at

§ 635.27(b)(1), may retain, possess, land, or sell blacknose and non-blacknose SCS if the respective blacknose and non-blacknose SCS management groups are open per §§ 635.27 and 635.28. Such persons may retain, possess, land, or sell no more than 8 blacknose sharks per vessel per trip. A person who owns or operates a vessel that has been issued a shark LAP and is operating north of 34°00' N. lat. in the Atlantic region, as defined at § 635.27(b)(1), or a person who owns or operates a vessel that has been issued a shark LAP and is operating in the Gulf of Mexico region, as defined at § 635.27(b)(1), may not retain, possess, land, or sell any blacknose sharks, but may retain, possess, land, or sell non-blacknose SCS if the respective non-blacknose SCS management group is open per §§ 635.27 and 635.28.

(iii) Consistent with paragraph (a)(4)(ii) of this section, a person who owns or operates a vessel that has been issued an incidental shark LAP may retain, possess, land, or sell no more than 16 SCS and pelagic sharks, combined, per vessel per trip, if the respective fishery is open per §§ 635.27 and 635.28. Of those 16 SCS and pelagic sharks per vessel per trip, no more than 8 shall be blacknose sharks.

* * * * *

[FR Doc. 2016-18253 Filed 8-2-16; 8:45 am]

BILLING CODE 3510-22-P

Notices

Federal Register

Vol. 81, No. 149

Wednesday, August 3, 2016

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning:

(a) The accuracy of the burden estimates; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques, or other forms of information technology.

DATES: Submit comments on or before October 3, 2016.

FOR FURTHER INFORMATION CONTACT:

Sylvia Joyner, Bureau for Management, Office of Management Services, Information and Records Division, U.S. Agency for International Development, Room 2.07C, RRB, Washington, DC 20523, (202) 712-5007 or via email sjoyner@usaid.gov.

Comments: Send comments via email to jltaylor@usaid.gov, U.S. Agency for International Development, Office of Acquisition and Assistance, 1300 Pennsylvania Avenue NW., SA-44 Room 867-C, Washington, DC 20523, 202-567-4673.

SUPPLEMENTARY INFORMATION:

OMB No:

Form No.: AID 309-1.

Title: CONTRACT WITH AN INDIVIDUAL FOR PERSONAL SERVICES.

Type of Review: A Revised Information Collection.

Purpose: United States Agency for International Development must collect information for reporting purposes to Congress and Office of Acquisition and Assistance Contract Administration. This collection is to collect personal information on applicants for USAID personal services contracts and is used to award a personal services contract with required signatures.

Annual Reporting Burden:

U.S. Respondents: 550.

Total Annual U.S. Responses: 550.

Total Annual Hours Requested: 137.50 hours.

Dated: July 18, 2016.

Lynn Winston,

Chief, Information and Records Division, US Agency for International Development.

[FR Doc. 2016-17375 Filed 8-2-16; 8:45 am]

BILLING CODE M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2015-0096]

The Scotts Co. and Monsanto Co.; Notice of Intent To Prepare an Environmental Impact Statement for Determination of Nonregulated Status of Glyphosate-Resistant Creeping Bentgrass

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are announcing that the Animal and Plant Health Inspection Service intends to prepare an environmental impact statement (EIS) to evaluate the environmental impacts that may result from the approval of a new petition for nonregulated status of glyphosate-resistant creeping bentgrass (*Agrostis stolonifera* L.) (event ASR368) from The Scotts Company and Monsanto Company following withdrawal of their 2003 petition. Issues to be addressed in the EIS include the potential environmental impacts to managed natural and non-agricultural lands, agricultural production systems, the physical environment, biological resources, human health, socioeconomic, federally listed threatened or endangered species, and cultural or historic resources. This notice of intent (NOI) replaces a

previous NOI published in September 2004 and initiates a fresh public scoping process and stakeholder engagement for the purpose of preparing an EIS. We are requesting public comments to further frame the scope of the issues to be included in the EIS, including alternatives and environmental impacts.

DATES: We will consider all comments that we receive on or before September 2, 2016.

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

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0096>.

- **Postal Mail/Commercial Delivery:** Send your comment to Docket No. APHIS-2015-0096, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0096> or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

Other Information: We have retained the public comments submitted in response to previous notices on this subject. Due to the amount of time that has passed since these comments were originally submitted, some of the comments may need to be updated with newer information. These earlier comments will be assessed as long as they reflect conditions in the current agricultural and natural environment and are relevant to issues studied in the environmental impact statement (EIS). We welcome new submissions offering scientific facts, professional observations, and perspectives about how to evaluate any new material available for analysis in the EIS.

FOR FURTHER INFORMATION CONTACT: Dr. Sidney Abel, Assistant Deputy Administrator, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737-1238; (301) 851-3896, email: Sidney.w.abel@aphis.usda.gov. To obtain copies of the petition, contact

Ms. Cindy Eck at (301) 851-3882, email: cynthia.a.eck@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the plant pest provisions of the Plant Protection Act (PPA), as amended (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in 7 CFR 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS received a new petition from The Scotts Company (Scotts) and Monsanto Company (Monsanto), APHIS Petition Number 15-300-01p, seeking a determination of nonregulated status for creeping bentgrass (*Agrostis stolonifera* L.) that is resistant to glyphosate, identified as event ASR368 or Roundup Ready® creeping bentgrass. The petition states that this regulated article is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340. These part 340 regulations are authorized by the PPA to prevent the introduction or dissemination of plant pests, and the decision on whether or not to approve the petition request will be based on this standard.

A total of six notices have been published in the **Federal Register** related to the current and previous petition. The first notice,¹ published on January 5, 2004, advised the public of receipt of petition 03-104-01p and solicited comments from the public on the petition. The second notice,²

published on September 24, 2004, announced APHIS' intent to prepare an environmental impact statement (EIS) in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*) to provide the Agency with a review and analysis of potential environmental impacts associated with the petition request. The third notice,³ published on November 18, 2004, reopened the comment period on the second notice and announced APHIS' intent to hold a public meeting to promote further public involvement in the development of the EIS. On April 11, 2005, a fourth notice⁴ invited the public to attend public EIS scoping sessions in May 2005 in Maryland and Oregon. The fifth notice,⁵ published on October 12, 2005, requested information from the public on glyphosate use and weed management in nonagricultural lands. The sixth notice⁶ published on January 8, 2016, advised the public of receipt of the current petition (15-300-01p) and solicited comment from the public, including comments related to the environmental impacts associated with the potential deregulation. APHIS received 168 comments during the 60-day comment period from a variety of stakeholders. These comments can be viewed on [Regulations.gov](http://www.regulations.gov) (see **ADDRESSES** above). In total, more than 1,000 comments were submitted to APHIS during the public comment periods and at the public meetings.

Creeping bentgrass is a perennial outcrossing species, thus major issues raised by commenters focused on plant biology and agronomic consequences of it outcrossing to weedy species that may impact agriculture and/or natural ecosystems. Issues raised specifically included the distribution of seed and pollen from creeping bentgrass, hybridization with native or naturalized species, the need for additional chemicals to control glyphosate-resistant grass species that may develop due to hybridization with creeping bentgrass, increased weediness, the ability of creeping bentgrass to establish without cultivation, potential impacts

on agricultural irrigation canals, and the development of herbicide-resistant weeds.

APHIS published a preliminary risk assessment⁷ as part of its evaluation of the petition request under 7 CFR part 340 and also a white paper⁸ to support the preliminary risk assessment, providing a summary of the biology and ecology of creeping bentgrass. These documents were published in 2005 and 2006, respectively. The preliminary risk assessment concluded that there is a possibility that ASR368 or hybrids of ASR368 could become established in various urban or rural and natural areas. At the time the preliminary risk assessment was written, there were at least 13 naturalized or native species with which creeping bentgrass could hybridize in the United States. The white paper presented biological and ecological information on creeping bentgrass, including its distribution in the United States and Canada, and the ability for it to form hybrids by natural interspecific crosses or potentially do so. APHIS will further investigate in the EIS whether or not there are any additional species that hybridize with *A. stolonifera* and associated environmental impacts. APHIS will review the 2005 preliminary risk assessment, updating it to reflect changes in turfgrass science and the current document standards of APHIS.

To fulfill its section 7 requirements under the Endangered Species Act, APHIS entered into consultation with the U.S. Fish and Wildlife Services (USFWS) on the first petition (03-104-01p). Subsequent to the withdrawal of the petition in September 2015, APHIS notified the USFWS that it was terminating the consultation on the petition. Information provided during the comment period on this notice of intent (NOI) will be used to update APHIS' assessment of the effects on threatened and endangered species and critical habitat (collectively referred to as listed resources) and, as appropriate and required by statute, will be shared with the USFWS as part of APHIS' commitment to protect listed resources. If APHIS enters into formal consultation, the USFWS will make a determination about whether nonregulated status of ASR368 will jeopardize the continued existence of federally listed plant and animal species.

Under NEPA, Federal agencies must examine the potential environmental

www.aphis.usda.gov/brs/fedregister/BRS_20040924a.pdf.

³ Docket No. 03-101-3 published on November 18, 2004, Vol. 69 No. 222; http://www.aphis.usda.gov/brs/fedregister/BRS_20041118a.pdf.

⁴ Docket No. 03-101-4 published on April 11, 2005, Vol. 70 No. 68; http://www.aphis.usda.gov/brs/fedregister/BRS_20050411a.pdf.

⁵ Docket No. 03-101-5 published on October 12, 2005, Vol. 70 No. 196 http://www.aphis.usda.gov/brs/fedregister/BRS_20051012a.pdf.

⁶ Docket No. APHIS-2015-0096 published on January 8, 2016, Vol. 81, No. 5 <https://www.regulations.gov/docket?D=APHIS-2015-0096>.

¹ Docket No. 03-101-1 published on January 5, 2004, Vol. 69 No. 2; http://www.aphis.usda.gov/brs/fedregister/BRS_20040105a.pdf.

² Docket No. 03-101-2 published on September 24, 2004, Vol. 69 No. 185; http://www.aphis.usda.gov/brs/fedregister/BRS_20040924a.pdf.

⁷ http://www.aphis.usda.gov/brs/aphisdocs/03_10401p_ra.pdf.

⁸ http://www.aphis.usda.gov/peer_review/downloads/cbg-wpFinal.pdf.

impacts of proposed major Federal actions significantly affecting the quality of the human environment before taking that action. In accordance with NEPA, the regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), USDA regulations implementing NEPA (7 CFR part 1b), and APHIS' NEPA Implementing Procedures (7 CFR part 372) require that for each submitted petition, APHIS consider the potential environmental impacts of a request for nonregulated status either by preparing an environmental assessment (EA) or an EIS. APHIS has decided to prepare an EIS to better understand the degree of uncertainty for environmental impacts associated with the deregulation of ASR368. This uncertainty is primarily related to four issues that will be studied in the EIS: (1) Potential for hybridization and introgression, (2) management of volunteer ASR368, (3) potential effects on weed management practices, and (4) potential inter-related trade and economic impacts. The EIS will examine the broad and cumulative environmental impacts of the requested deregulation of ASR368, including potential impacts of the proposed action on the human environment and alternative courses of action.

Alternatives

The Federal action being considered is whether to approve the petition for nonregulated status of ASR368. This notice identifies reasonable alternatives and potential issues that may be studied in the EIS. We are requesting public input and comment on the range of alternatives, and on the environmental impacts and issues stated in this NOI as well as suggestions for additional alternatives for consideration and new impacts or issues to be evaluated in the EIS for the petition.

The EIS will consider a range of reasonable alternatives. APHIS is currently considering two alternatives: (1) Take no action, *i.e.*, APHIS would not change the regulatory status of the glyphosate-resistant creeping bentgrass event ASR368 and such plants would continue to be regulated articles, or (2) approve the petition for determination of nonregulated status of ASR368.

Environmental Issues for Consideration

We have identified the following potential environmental issues for consideration in the EIS: Impacts on managed natural and non-agricultural lands; on agricultural production systems; on the physical environment; on biological resources; on human health; on socioeconomic issues; on

federally listed threatened or endangered species; and on cultural or historic resources. In addition to providing input and comment on these issues, we are also requesting that the public provide information on the following questions during the comment period:

Potential for Hybridization and Introgression

- What are the weed species in potential affected environments with which ASR368 may hybridize and introgress? What evidence is there that this would or could occur?
- If introgression was to occur, would the inability to identify introgression of ASR368 lead to stand failures or increasing costs for production of grass seed crops when compared to non-genetically engineered (non-GE) creeping bentgrass? What evidence is there that would support stand failure or increased costs.

Management of Volunteer ASR368

- Compared to non-GE creeping bentgrass and other grasses, would deregulation of ASR368 result in its establishment and persistence in situations where it is unwanted, unintended, or unexpected (*e.g.*, agricultural irrigation canals, habitat restoration, riparian areas, wetlands, or grasslands)?
- When compared to non-GE creeping bentgrass, could the spread of ASR368 or its relatives to areas where it is unwanted, unintended, or unexpected potentially result in adverse effects on native species or habitats, including threatened and endangered species and their habitats? What supporting information is available to conclude an adverse effect?

Potential Effects on Weed Management Practices

- Would the presence of volunteer ASR368 increase the costs and complexity of weed control for growers of non-GE creeping bentgrass and other crops? What evidence is there to support this conclusion?
- What potential changes of agronomic practices may occur as a result of the presence of ASR368 agricultural crops, including crop rotation practices, herbicide use, and tillage?

Potential Trade and Economic Impacts

- What potential impacts on GE-free grass seed exports could result from the presence of ASR368?
- What potential impacts on conventional and organic crops could result from the presence of ASR368?

Comments that identify other issues or alternatives that should be considered for examination in the EIS would be especially helpful. All comments received during the scoping period will be carefully considered in developing the final scope of the EIS. Upon completion of the draft EIS, a notice announcing its availability and an opportunity to comment on it will be published in the **Federal Register**.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 27th day of July 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–18421 Filed 8–2–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2016–0046]

Secretary's Advisory Committee on Animal Health; Intent To Renew

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent.

SUMMARY: We are giving notice that the Secretary of Agriculture intends to renew the charter for the Secretary's Advisory Committee on Animal Health for a 2-year period. The Secretary has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Dr. Diane L. Sutton, Designated Federal Officer, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737; (301) 851–3509.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA, 5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture intends to renew the Secretary's Advisory Committee on Animal Health (the Committee) for 2 years. The term for the renewed charter will extend from August 8, 2016, to August 7, 2018.

The Committee advises the Secretary on strategies, policies, and programs to prevent, control, or eradicate animal diseases. The Committee considers agricultural initiatives of national scope and significance and advises on matters of public health, conservation of national resources, stability of livestock economies, livestock disease management and traceability strategies, prioritizing animal health imperatives,

and other related aspects of agriculture. The Committee Chairperson and Vice Chairperson are elected by the Committee from among its members.

Done in Washington, DC, this 27th day of July 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016-18341 Filed 8-2-16; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2012-0103]

Privacy Act Systems of Records; Veterinary Services—Records of Accredited Veterinarians

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Animal and Plant Health Inspection Service proposed to alter an existing system of records in its inventory of record systems subject to the provisions of the Privacy Act of 1974, as amended. The system of records is Veterinary Services—Records of Accredited Veterinarians, USDA-APHIS-2. The system, as proposed, has been adopted; however, we received one comment, which is addressed in this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Todd Behre, Program Coordinator, National Veterinary Accreditation Program, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737; (518) 281-2157.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish in the **Federal Register** notice of new or revised systems of records. A system of records is a group of any records under the control of any agency, from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to an individual.

On May 12, 2015, the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) published in the **Federal Register** (80 FR 27142-27145, APHIS-2012-0103)¹ a proposal to alter a system of records, entitled Veterinary Services—Records of Accredited

Veterinarians, which maintains information pertaining to veterinarians who are or have been accredited, or who have applied for accreditation, under the authority of section 10410 of the Animal Health Protection Act (7 U.S.C. 8309).

Accredited veterinarians are veterinarians authorized by APHIS to perform certain services to control and prevent the spread of animal diseases within the United States and internationally. Duties may encompass a wide range of activities relating to companion animals, livestock, poultry, horses, and other animals, including issuing certificates of veterinary inspection and health certificates for animals moving interstate or internationally; participating in animal disease surveillance and testing activities (including surveillance for emerging and foreign animal diseases); diagnosing diseases in animals; developing herd or flock health plans; and performing veterinary tasks during animal disease emergencies. Veterinarians who wish to perform work for APHIS must become nationally accredited by APHIS and then authorized by APHIS to perform accredited duties in one or more specific States or territories.

In order to ensure that a veterinarian's accreditation is in good standing and that he or she has received the appropriate level of training commensurate with his or her duties, APHIS maintains information regarding the veterinarian in the Veterinary Services—Records of Accredited Veterinarians system. APHIS maintains information about accredited veterinarians in the system in accordance with the APHIS Records Management Handbook. Data associated with accredited veterinarians (including those whose accreditation has lapsed or been revoked) will be destroyed when 45 years old. Data will also be destroyed when the accredited veterinarian is deceased. The system also contains information about veterinarians who are applicants for accredited status.

The system contains records related to the accreditation status of veterinarians. The records include name; date of birth; business name; home and business mailing addresses, telephone numbers, and email address; type of employment; State in which licensed or legally able to practice veterinary medicine; veterinary license number; veterinary medical college graduated and date of graduation; State(s) in which the veterinarian is authorized to perform accredited duties; species of animals the veterinarian treats; primary medical discipline; date of core orientation to

accreditation and State where the veterinarian completed the orientation; the veterinarian's accreditation category; date of accreditation renewal; APHIS program certifications; APHIS-approved supplemental training completed; whether business contact information may be provided to members of the public; and information pertaining to any alleged or adjudicated violations of accreditation standards, including disposition of the case. The system also assigns a national accreditation number (NAN) to each registered accredited veterinarian.

We solicited comments on the notice for 30 days ending on June 22, 2015. We received one comment by that date from an organization that represents veterinarians. The commenter objected to the use of dates of birth in the system. The commenter stated that the use of the date of birth was unnecessary and could present a vulnerability to personal identity security.

We disagree with the commenter that the use of the date of birth is unnecessary. To the contrary, the date of birth is a necessary identifier. In fact, there are three main reasons for the use of the date of birth to maintain records of accredited veterinarians.

As previously indicated, the system includes records for each accredited veterinarian, several of these, when listed together, are considered unique identifiers, such as the full name (first and last names and middle initial), date of birth, school and year of graduation, and the system-generated NAN. In some instances accredited veterinarians with the same full name also have the same year and school of graduation. In addition, some accredited veterinarians do not remember their NAN, which consists of a six-digit number that uses leading 0's. Some relay their NAN incorrectly by superimposing numbers, not using the leading 0's, etc. In these cases, the date of birth is used as the most accurate identifier.

The date of birth is also used when we find that an accredited veterinarian has a duplicate record in the database, which means there were two separate NANs created. The date of birth is the single unique identifier used to ensure that the two records do in fact belong to the same person, in which case, we combine the records under one NAN.

Lastly, we conduct classroom training sessions at major and local veterinary meetings. Attendance at training sessions is required for an accredited veterinarian to renew his or her accreditation, and each accredited veterinarian must sign in using his or her first name, last name, and date of birth as identifiers. We require the date

¹ To view the notice and the comment we received, go to <http://www.regulations.gov/#/docketDetail;D=APHIS-2012-0103>.

of birth in this instance because it serves as a unique identifier if there should be an instance of two veterinarians signing in under the same first and last names, and as previously stated, we do not require the NAN because of problems arising when the veterinarian does not remember his or her NAN or records it incorrectly.

As to the possible vulnerability to personal identity security, as described in the system of records notice referred to above, the system is physically secured in a locked facility with access only by authorized APHIS personnel. Data is stored and backed up using protocols established by the Fort Collins, CO, data center. Access to the records in the system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. Data available to individual users is role-based, which further limits access. Users must have USDA eAuthentication credentials and sign in using authorized logins and passwords. Employees who save spreadsheets containing data from the system are responsible for protecting the data. Files on employees' computers are also protected by encryption software and login and password requirements. On an annual basis, all users are required to undergo information security training and to sign rules of behavior. Failure to comply with rules of behavior can result in corrective actions, including written reprimands, temporary suspension from duty, reassignment, demotion, or termination, suspension of system privileges, and possible criminal prosecution.

Based on our proposal to alter the system of records and the reasons given in this document, the system will remain as proposed.

Done in Washington, DC, this 27th day of July 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016-18357 Filed 8-2-16; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of a Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice announces the Department's intention to request an extension for a currently approved information collection in support of the Dairy Tariff-rate Import Quota Licensing program.

DATES: Comments should be submitted no later than October 3, 2016 to be assured of consideration.

ADDRESSES: We invite you to submit comments as requested in this document. In your comment, include the Regulation Identifier Number (RIN) and volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail, hand delivery, or courier:* Bettyann Gonzales, Dairy Import Specialist, Office of Trade Programs, Foreign Agricultural Service, 1400 Independence Avenue SW., Washington, DC 20250-1021, STOP 1021; or by email at Bettyann.Gonzales@fas.usda.gov; or by telephone at (202) 720-1344.

Comments will be available for inspection online at <http://www.regulations.gov> and at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720-2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT:

Bettyann Gonzales, Dairy Import Specialist, STOP 1021, U.S. Department of Agriculture, Foreign Agricultural Service, 1400 Independence Avenue SW., Washington, DC 20250-1021; or by telephone (202) 720-1344; or by email: Bettyann.Gonzales@fas.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Dairy Tariff-rate Import Quota Licensing Program.

OMB Number: 0551-0001.

Expiration Date of Approval: May 31, 2017.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The currently approved information collection supports the Dairy Tariff-rate Import Quota regulation (the Regulation) (7 CFR 6.20-6.36) which governs the administration

of the import licensing system applicable to most dairy products subject to tariff-rate quotas (TRQs). The TRQs were established in the Harmonized Tariff Schedule of the United States (HTS) as a result of the entry into force of certain provisions in the Uruguay Round Agreements Act (Pub. L. 103-465) that converted existing absolute quotas to TRQs. Imports of nearly all cheeses made from cow's milk (except soft-ripened cheese such as Brie) and certain non-cheese dairy products (including butter and dried milk) are subject to TRQs and the Regulation. Licenses are issued each quota year to eligible applicants and are valid for 12 months (January 1 through December 31). Only licensees may enter specified quantities of the subject dairy articles at the applicable in-quota tariff-rates. Importers who do not hold licenses may enter dairy articles only at the over-quota tariff-rates.

Each quota year, all applicants must submit form FAS 923 (rev. 7-96). This form, available online, requires applicants to: (1) Certify they are an importer, manufacturer or exporter of certain dairy products; (2) certify they meet the eligibility requirements of § 6.23 of the Regulation; and (3) submit documentation required by § 6.23 and § 6.24 as proof of eligibility for import licenses. Applicants for non-historical licenses must also submit form FAS 923-A (rev. 7-96) (cheese) and/or FAS 923-B (rev. 7-96) (non-cheese dairy products). This form requires applicants to request licenses in descending order of preference for specific products and countries listed on the form.

After licenses are issued, § 6.26 requires licensees to surrender by October 1 on form FAS 924-A, License Surrender Form, any license amount that a licensee does not intend to enter that year. These amounts are reallocated, to the extent practicable, to existing licensees for the remainder of that year based on requests submitted on form FAS 924-B, Application for Additional License Amounts. Forms 924A and 924B require the licensee to complete a table listing the surrendered amount by license number, or listing the additional amounts requested by dairy article and supplying country in descending order of preference.

The estimated total annual burden of 436 hours in the Office of Management and Budget (OMB) inventory for the currently approved information collection will remain at 436 hours. The public reporting burden for this collection of currently approved forms FAS 923, FAS 923-A and 923-B (one form) (rev. 7-96) is estimated to average

436 hours; and FAS 924-A and FAS 924-B (one form) is 23 hours.

Estimate of Burden: The average burden, including the time for reviewing instructions, gathering data needed, completing forms, and record keeping is estimated at .75 hour for form FAS 923, 923-A, 923-B (rev. 7-96) and .15 hour for form 924-A, 924-B.

Respondents: Importers and manufacturers of cheese and non-cheese dairy products, and exporters of non-cheese dairy products.

Estimated Number of Respondents: 550 for form FAS 923, 923-A, 923-B (rev. 7-96) and 150 for form 924-A, 924-B (rev. 7-96).

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden: 436 hours.

Requests for Comments: Send comments regarding (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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Copies of this information collection may be obtained from Connie Ehrhart, the Agency Information Collection Coordinator, at (202) 690-1578.

All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record.

FAS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. Electronic submission of the information collection was implemented on September 2009 in compliance with the GPEA.

Dated: July 21, 2016.

Philip C. Karsting,

Administrator, Foreign Agricultural Service.

[FR Doc. 2016-18337 Filed 8-2-16; 8:45 am]

BILLING CODE 3410-10-P

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee (RAC) will meet in Ketchikan, Alaska. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: <https://www.fs.usda.gov/main/pts>.

DATES: The meeting will be held on August 17, 2016, at 5:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Ketchikan Misty Fiords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska. A conference line is set up for those who would like to listen in by telephone. For the conference call number, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Ketchikan Misty Fiords Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Diane L. Olson, RAC Coordinator, by phone at 907-228-4105 or via email at dianelolson@fs.fed.us.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Update members on past RAC projects, and
2. Propose new RAC projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 12, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Diane L. Olson, RAC Coordinator, Ketchikan Misty Fiords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska 99901; by email to dianelolson@fsied.us, or via facsimile to 907-225-8738.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: July 19, 2016.

Jon Hyde,

Acting District Ranger.

[FR Doc. 2016-17744 Filed 8-2-16; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

Beaverhead-Deerlodge National Forest; Montana; Supplemental EIS for the Beaverhead-Deerlodge National Forest Land and Resource Management Plan To Comply With District of Montana Court Order

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Beaverhead-Deerlodge National Forest will prepare a Supplemental Environmental Impact Statement (SEIS) to the 2009 Beaverhead-Deerlodge National Forest Revised Land and Resource Management Plan (Forest Plan) environmental analysis in response to a June 14, 2016 Order from the U.S. District Court for the District of Montana. The Court directed the Forest Service to issue a supplemental EIS for the 2009 Revised Forest Plan that evaluates the potential environmental consequences of the 2002 and the 2008 MOUs. The MOUs were entered into by and between Grazing Permittees, the

Bureau of Land Management, Montana Fish, Wildlife and Parks and the Beaverhead-Deerlodge National Forest as part of Montana Fish, Wildlife and Parks' proposal to reintroduce bighorn sheep into the Greenhorn Mountain Range. The 2002 MOU was replaced by the 2008 MOU.

DATES: Under 40 CFR 1502.9(c)(4), there is no formal scoping period for this proposed action. The Draft SEIS is expected to be published in October, 2016, which will then begin, in accordance with 36 CFR 219.16(a)(2), a 90-day public comment period on the Draft SEIS.

FOR FURTHER INFORMATION CONTACT: Jan Bowey, Beaverhead-Deerlodge National Forest, 420 Barrett Street, Dillon, MT 59725 (406) 683-3900.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Dated: July 27, 2016.

Melany Glossa,
Forest Supervisor.

[FR Doc. 2016-18366 Filed 8-2-16; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Resource Coordinating Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Forest Resource Coordinating Committee (Committee) will meet via teleconference. The Committee is established consistent with the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C. App. II), and the Food, Conservation, and Energy Act of 2008 (the Act) (Pub. L. 110-246). Committee information can be found at the following Web site at <http://www.fs.fed.us/spf/coop/frcc/>.

DATES: The teleconference will be held on September 28, 2016, from 12:00 p.m. to 1:30 p.m., Eastern Daylight Time (EDT).

All meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held via teleconference. For anyone who would like to attend the teleconference, please visit the Web site listed in the **SUMMARY** section or contact Scott

Stewart at sstewart@fs.fed.us for further details.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments placed on the Committee's Web site listed above.

FOR FURTHER INFORMATION CONTACT: Scott Stewart, Designated Federal Officer, Cooperative Forestry staff, 202-205-1618.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Give recap following meeting with Undersecretary Robert Bonnie,
2. Plan agenda/logistics for November in-person meeting, and
3. Deliver educational presentation.

The teleconference is open to the public. However, the public is strongly encouraged to RSVP prior to the teleconference to ensure all related documents are shared with public meeting participants. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing 10 days before the planned meeting to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Written comments and time requests for oral comments must be sent to Scott Stewart, 1400 Independence Avenue SW., Mailstop 1123, Washington, DC 20250; or by email to sstewart@fs.fed.us. A summary of the meeting will be posted on the Web site listed above within 21 days after the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: July 29, 2016.

James E. Hubbard,

Deputy Chief, State and Private Forestry.

[FR Doc. 2016-18384 Filed 8-2-16; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Forest Service

Lower Joseph Creek Restoration Project, Wallowa-Whitman National Forest Land and Resource Management Plan Amendment for Research Natural Area Establishment

AGENCY: Forest Service, USDA.

ACTION: Notice of objection filing period.

SUMMARY: James Peña, the Regional Forester for the Pacific Northwest Region, has prepared a Final Environmental Impact Statement (FEIS) and draft Record of Decision (ROD) for the establishment of two Research Natural Areas (RNA) as part of the Lower Joseph Creek Restoration Project. The draft ROD authorizes establishment of both the Horse Pasture Ridge and Haystack Rock RNAs.

The FEIS and draft ROD are available on the forest's Web site at <http://www.fs.usda.gov/project/?project=43379>. A hardcopy of the document(s) and/or further information is available by contacting the person listed under the **FOR FURTHER INFORMATION CONTACT** section below. The draft ROD is subject to objection under 36 CFR part 219, subpart B. A written notice of objection, including any attachments, must be submitted (regular mail, express delivery, messenger service, fax, email, or hand delivery) within 60 days of the publication date of the notice in the newspaper of record, the *Oregonian*. The newspaper notice is the exclusive means for calculating the time to file an objection (36 CFR 219.56(b)(3)). An electronic scan of this notice was posted on the Web site noted above. Those wishing to object to the draft ROD should not rely upon dates or timeframe information provided by any other source.

Any objection must be submitted to Glen Casamassa, Associate Deputy Chief, who is the Objection Reviewing Officer, at one of the addresses listed in the **ADDRESSES** section below.

The objection process provides an opportunity for members of the public who have participated in the planning process for the forest plan amendment to have any unresolved concerns reviewed by the Forest Service prior to a final decision by the Responsible

Official. Under 36 CFR 219.53(a), objections will be accepted only from those individuals or organizations who have previously submitted substantive formal comments related to this amendment of the Wallowa-Whitman National Forest Plan during previous opportunities for public comment provided. Objections must be based on previously submitted substantive comments attributed to the objector, unless the objection concerns an issue that arose after the opportunities for public comment (36 CFR 219.53(a)). In addition, objections must meet the content requirements of 36 CFR 219.54(c), which can be found in

SUPPLEMENTARY INFORMATION.

All objections are open to public inspection and will be posted to the Forest Service Web site (<http://www.fs.usda.gov/project/?project=43379>). A notice of objections received will be published in the newspaper of record, the *Oregonian*, within 10 days after the close of the objection filing period.

DATES: The objection filing period began upon publication of the notice in the newspaper of record (publication occurred on July 15, 2016 in the *Oregonian*) and ends 60 days thereafter.

ADDRESSES: Objections must be submitted to one of the addresses below:

1. *Postal Delivery:* USDA Forest Service Attn: Objection Reviewing Officer, 1400 Independence Ave. SW., EMC-LEAP, Mailstop 1104, Washington, DC 20250.

2. *Express, Messenger, or Hand Delivery:* USDA Forest Service, Attn: Objection Reviewing Officer, 210 14th St. SW., EMC-LEAP, Mailstop 1104, Washington, DC 20250. The main phone line for carrier deliveries is 202-719-8488.

3. *Electronically Filed:* Email; objections-chief@fs.fed.us; Please put Objection and Lower Joseph Creek Restoration Project, establishment of Haystack Rock and Horse Pasture Ridge Research Natural Areas in the subject line. Fax: (202) 649-1172

FOR FURTHER INFORMATION CONTACT:

Darcy Weseman, Plan Amendment Project Manager, 72510 Coyote Rd. Pendleton, OR 97801, (541) 278-3755, or deweseman@fs.fed.us.

SUPPLEMENTARY INFORMATION: The office business hours for those submitting hand-delivered objections are 8:00 a.m. to 5:00 p.m. (Eastern Standard Time), Monday through Friday, except Federal holidays. Electronic objections must be submitted in a commonly used format such as an email message, plain text (.txt), rich text format (.rtf), or Microsoft Word (.doc or .docx). For electronically

mailed objections, the sender should normally receive an automated electronic acknowledgment from the agency as confirmation of receipt. If the sender does not receive an automated acknowledgment of the receipt of the objection, it is the sender's responsibility to ensure timely receipt by other means. The regulations prohibit extending the length of the objection filing period.

Any objection must include the following (30 CFR 219.54(c)):

1. The objector's name and address, telephone number or email address if available. Include the identification of the lead objector, when multiple names are listed on an objection.
2. Signature or other verification of authorship upon request (a scanned signature is allowed for electronic mail);
3. The title of the plan amendment, and the name and title of the Responsible Official;
4. A description of the issues and/or parts of the plan amendment to which the objection applies;
5. A brief statement explaining the objection and suggesting how the draft plan amendment decision may be improved. If the objector believes the plan amendment is inconsistent with law, regulation, or policy, the reasons should be included;
6. A statement that shows the link between the objector's prior substantive formal comments and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment.

Attach documents referenced in the objection except as noted at 36 CFR 219.54(b). The objector is responsible for ensuring the timely filing of written objections. Timeliness will be determined as indicated in 36 CFR 219.56(c).

The Reviewing Officer will provide written acknowledgement of receipt of the objection, if requested by the objector.

Dated: July 20, 2016.

James Peña,

Regional Forester, Pacific Northwest Region.

[FR Doc. 2016-18519 Filed 8-2-16; 8:45 am]

BILLING CODE 3411-15-M

DEPARTMENT OF AGRICULTURE

Forest Service

White Pine-Nye Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The White Pine-Nye Resource Advisory Committee (RAC) will meet in

Eureka, Nevada. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. RAC information can be found at the following Web site: https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.ns.

DATES: The meeting will be held on August 23, 2016, at 10:00 a.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Eureka County Annex, Conference Room, 701 South Main, Eureka, Nevada.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Tonopah Ranger District Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT:

Linda Bernardi, RAC Coordinator, by phone at 775-482-6286 or via email at lebernardi@fs.fed.us.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and make recommendations with regards to proposed projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 15, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Linda Bernardi, RAC Coordinator, Tonopah Ranger District, P.O. Box 3940, Tonopah, Nevada 89049; by email to lebernardi@fs.fed.us, or via facsimile to 775-482-3053.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**.

All reasonable accommodation requests are managed on a case by case basis.

Dated: July 21, 2016.

Jose Noriega,

District Ranger.

[FR Doc. 2016-18344 Filed 8-2-16; 8:45 am]

BILLING CODE 3411-15-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that Maine Advisory Committee orientation and planning meeting of the Maine Advisory Committee to the Commission will convene at 1:30 p.m. (EDT) on Tuesday, August 16, 2016, at Lewiston City Hall, 27 Pine St., Lewiston, ME 04240. The purpose of the orientation meeting is to inform the newly appointed Committee members about the rules of operation of federal advisory committees and to select additional officers, as determined by the Committee. The purpose of the planning meeting is to discuss potential topics that the Committee may wish to study.

Persons who plan to attend the meeting and who require other accommodations, please contact Evelyn Bohor at ebohor@usccr.gov at the Rocky Mountain Regional Office at least ten (10) working days before the scheduled date of the meeting.

Members of the public are invited to submit written comments; the comments must be received in the regional office by Friday, September 16, 2016. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376-7548, or emailed to Evelyn Bohor at ero@usccr.gov. Persons who desire

additional information may contact the Eastern Regional Office at (202) 376-7533.

The activities of this advisory committee, including records and documents discussed during the meeting, will be available for public viewing, as they become available at: <https://database.faca.gov/committee/meetings.aspx?cid=239>. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, www.usccr.gov, or to contact the Eastern Regional Office at the above phone number, email or street address.

AGENDA

Orientation and Administrative Matters
Barbara de La Vieu, Deputy Director,
Eastern Regional Office and
Designated Federal Official
Discussion of Potential Civil Rights
Topics
Diane Khil, Chair
Discussion of Potential Topics of Study
ME State Advisory Committee

DATES: Tuesday, August 16, 2016, at 1:30 p.m. (EDT).

ADDRESSES: 27 Pine St., Lewiston, ME 04240

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis at ero@usccr.gov, or 202-376-7533.

Dated: July 29, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016-18389 Filed 8-2-16; 8:45 am]

BILLING CODE 6335-01-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), Commerce.

Title: Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter with Foreign Affiliate.

OMB Control Number: 0608-0004.

Form Number: BE-577.

Type of Request: Regular submission.

Number of Respondents: 2,090 U.S. parents filing for 16,720 foreign affiliates per quarter, 66,880 annually.

Average Hours per Response: 1 hour is the average, but may vary considerably among respondents because of differences in company structure and complexity.

Estimated Total Annual Burden Hours: 66,880.

Needs and Uses: The Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter with Foreign Affiliate (Form BE-577)—obtains quarterly data on transactions and positions between U.S.-owned foreign business enterprises and their U.S. parents. The survey is a sample survey that covers all foreign affiliates above a size-exemption level. The sample data are used to derive universe estimates in nonbenchmark years from similar data reported in the BE-10, Benchmark Survey of U.S. Direct Investment Abroad, which is conducted every five years. The data are used in the preparation of the U.S. international transactions accounts, the input-output accounts, the national income and product accounts, and the international investment position of the United States. The data are needed to measure the size and economic significance of direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies.

The data from the survey are primarily intended as general purpose statistics. BEA's publications make the data available to answer any number of research and policy questions related to U.S. direct investment abroad.

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 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: July 28, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016-18309 Filed 8-2-16; 8:45 am]

BILLING CODE 3510-06-P

DEPARTMENT OF COMMERCE**International Trade Administration****Civil Nuclear Trade Advisory Committee: Notice of an Opportunity To Apply For Membership**

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an opportunity to apply for membership on the Civil Nuclear Trade Advisory Committee.

SUMMARY: The Department of Commerce (the Department) is seeking applications for membership on the Civil Nuclear Trade Advisory Committee (CINTAC or "Committee"). The purpose of the CINTAC is to provide advice to the Secretary of Commerce regarding the development and administration of programs to expand U.S. exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, which will be used by the Department in its role as a member of the Civil Nuclear Trade Working Group of the Trade Promotion Coordinating Committee and of the TeamUSA interagency group to promote U.S. civil nuclear trade.

DATES: All applications for immediate consideration for appointment must be received by the Office of Energy & Environmental Industries by 5:00 p.m. Eastern Daylight Time (EDT) on September 2, 2016. After that date, ITA will continue to accept applications under this notice for a period of up to two years from the deadline to fill any vacancies that may arise.

ADDRESSES: Please submit applications in pdf or MS Word format via email to jonathan.chesebro@trade.gov, or by mail to Jonathan Chesebro, Office of Energy & Environmental Industries, Room 4053, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jonathan Chesebro, Office of Energy and Environmental Industries, Room 4053, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; phone 202-482-1297 or email jonathan.chesebro@trade.gov.

SUPPLEMENTARY INFORMATION:**I. Background and Authority**

The CINTAC was established on September 17, 2008, pursuant to the Department of Commerce authority under 15 U.S.C. 1512 and the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. The CINTAC functions solely as an advisory

committee in accordance with the provisions of FACA. As noted in the **SUMMARY**, CINTAC provides advice to the Secretary of Commerce regarding the development and administration of programs to expand U.S. exports of civil nuclear goods and services which will be used by the Department in its role as a member of the Civil Nuclear Trade Working Group of the Trade Promotion Coordinating Committee and as a member of the TeamUSA interagency group to promote U.S. civil nuclear trade. In particular, the Committee advises on matters including, but not limited to:

(1) Matters concerning trade policy development and negotiations relating to U.S. civil nuclear exports;

(2) The effect of U.S. Government policies, regulations, programs, and foreign government policies and practices on the export of U.S. civil nuclear goods and services;

(3) The competitiveness of U.S. industry and its ability to compete for civil nuclear products and services opportunities in international markets, including specific problems in exporting, and provide specific recommendations regarding U.S. Government and public/private actions to assist civil nuclear companies in expanding their exports;

(4) The identification of priority civil nuclear products and services markets with the potential for high immediate returns for U.S. exports, as well as emerging markets with a longer-term potential for U.S. exports;

(5) Strategies to increase private sector awareness and effective use of U.S. Government export promotion programs, and recommendations on how U.S. Government programs may be more efficiently designed and coordinated;

(6) The development of complementary industry and trade association export promotion programs, including ways for greater and more effective coordination of U.S. Government efforts with private sector organizations' civil nuclear industry export promotion efforts; and

(7) The development of U.S. Government programs to encourage producers of civil nuclear products and services to enter new foreign markets, in connection with which CINTAC may advise on how to gather, disseminate, and promote awareness of information on civil nuclear exports and related trade issues.

II. Membership

CINTAC shall consist of approximately 40 members appointed by the Secretary, in accordance with

applicable Department of Commerce guidance and based on their ability to carry out the objectives of the Committee. Members shall represent U.S. entities involved in the export of civil nuclear products and services and reflect the diversity of this sector, including in terms of entities' size and geographic location. The Committee shall also represent the diversity of company or organizational roles in the development of civil nuclear energy projects, including, for example, U.S. civil nuclear manufacturing and services companies, U.S. utilities, U.S. trade associations, and other U.S. organizations in the U.S. civil nuclear sector. The Secretary shall appoint to the Committee at least one individual representing each of the following:

- a. Civil nuclear manufacturing and services companies;
- b. small businesses;
- c. utilities;
- d. trade associations in the civil nuclear sector;
- e. research institutions and universities; and
- f. private sector organizations involved in strengthening the export competitiveness of U.S. civil nuclear products and services.

Members shall serve in a representative capacity, expressing the views and interests of a U.S. entity, as well as its particular subsector; they are, therefore, not Special Government Employees. Each member of the Committee must be a U.S. citizen and must not be registered as a foreign agent under the Foreign Agents Registration Act. No member may represent a U.S. entity that is majority owned or controlled by a foreign government entity (or foreign government entities). The Secretary of Commerce invites applications for the CINTAC, consistent with the above membership requirements. To be considered for membership, submit the following information (2 pages maximum) by 5:00 p.m. EDT on August 3, 2016 to the email or mailing address listed in the **ADDRESSES** section. If you are interested in nominating someone to become a member of the CINTAC, please provide the following information (2 pages maximum):

- (1) Name;
- (2) Title;
- (3) Work phone, fax, and, email address;
- (4) Name of entity to be represented and address including Web site address;
- (5) Short biography of nominee including credentials;
- (6) Brief description of the entity and its business activities, size (number of

employees and annual sales), and export markets served; and,

(7) An affirmative statement that the applicant and entity to be represented meet all eligibility criteria, specifically addressing that the applicant:

(a) Is a U.S. citizen; and

(b) Is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

Please do not send organization brochures or any other information.

All applications should be submitted in pdf or MS Word format via email to jonathan.chesebro@trade.gov, or via mail to Jonathan Chesebro, Office of Energy & Environmental Industries, Room 4053, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Adam O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2016-18331 Filed 8-2-16; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

Corporation for Travel Promotion (dba Brand USA)

AGENCY: International Trade Administration, U.S. Department of Commerce

ACTION: Notice of an opportunity for travel and tourism industry leaders to apply for membership on the Board of Directors of the Corporation for Travel Promotion.

SUMMARY: The Department of Commerce is currently seeking applications from travel and tourism leaders from specific industries for membership on the Board of Directors (Board) of the Corporation for Travel Promotion (dba Brand USA). The purpose of the Board is to guide the Corporation for Travel Promotion on matters relating to the promotion of the United States as a travel destination and communication of travel facilitation issues, among other tasks.

DATES: All applications must be received by the National Travel and Tourism Office by close of business on September 23, 2016.

ADDRESSES: Electronic applications may be sent to: CTPBoard@trade.gov. Written applications can be submitted to Isabel Hill, Director, National Travel and Tourism Office, U.S. Department of Commerce, Mail Stop 10007, 1401 Constitution Avenue NW., Washington, DC 20230. Telephone: 202.482.0140. Email: Isabel.Hill@trade.gov.

FOR FURTHER INFORMATION CONTACT: Julie Heizer, Deputy Director, Industry Relations, National Travel and Tourism Office, Mail Stop 10003, 1401 Constitution Avenue NW., Washington, DC 20230. Telephone: 202.482.4904. Email: julie.heizer@trade.gov.

SUPPLEMENTARY INFORMATION:

Background: The Travel Promotion Act of 2009 (TPA) was signed into law by President Obama on March 4, 2010, and was amended in July 2010 and December 2014. The TPA established the Corporation for Travel Promotion (the Corporation), as a non-profit corporation charged with the development and execution of a plan to (A) provide useful information to those interested in traveling to the United States; (B) identify and address perceptions regarding U.S. entry policies; (C) maximize economic and diplomatic benefits of travel to the United States through the use of various promotional tools; (D) ensure that international travel benefits all States and the District of Columbia, and (E) identify opportunities to promote tourism to rural and urban areas equally, including areas not traditionally visited by international travelers.

The Corporation (doing business as Brand USA) is governed by a Board of Directors, consisting of 11 members with knowledge of international travel promotion or marketing, broadly representing various regions of the United States. The TPA directs the Secretary of Commerce (after consultation with the Secretary of Homeland Security and the Secretary of State) to appoint the Board of Directors for the Corporation.

At this time, the Department will be selecting four individuals with the appropriate expertise and experience from specific sectors of the travel and tourism industry to serve on the Board as follows:

(A) 1 shall have appropriate expertise and experience in the attractions or recreation sector;

(B) 1 shall have appropriate expertise and experience in immigration policy/law;

(C) 1 shall have appropriate expertise and experience in land or sea passenger transportation; and

(C) 1 shall have appropriate expertise and experience as an official in the passenger air transportation sector.

To be eligible for Board membership, individuals must have international travel and tourism marketing experience, be a current or former chief executive officer, chief financial officer, or chief marketing officer or have held

an equivalent management position. Additional consideration will be given to individuals who have experience working in U.S. multinational entities with marketing budgets, and/or who are audit committee financial experts as defined by the Securities and Exchange Commission (in accordance with section 407 of Pub. L. 107-204 [15 U.S.C. 7265]). Individuals must be U.S. citizens, and in addition, cannot be federally registered lobbyists or registered as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

Those selected for the Board must be able to meet the time and effort commitments of the Board.

Board members serve at the discretion of the Secretary of Commerce (who may remove any member of the Board for good cause). The terms of office of each member of the Board appointed by the Secretary shall be three (3) years. Board members can serve a maximum of two consecutive full three-year terms. Board members are not considered Federal government employees by virtue of their service as a member of the Board and will receive no compensation from the Federal government for their participation in Board activities. Members participating in Board meetings and events may be paid actual travel expenses and per diem when away from their usual places of residence by the Corporation.

Individuals who want to be considered for appointment to the Board should submit:

1. Name, title, and personal resume of the individual requesting consideration, including address, email address and phone number; and

2. A brief statement of why the person should be considered for appointment to the Board. This statement should also address the individual's relevant international travel and tourism marketing experience and indicate clearly the sector or sectors enumerated above in which the individual has the requisite expertise and experience. Individuals who have the requisite expertise and experience in more than one sector can be appointed for only one of those sectors. Appointments of members to the Board will be made by the Secretary of Commerce.

3. An affirmative statement that the applicant is a U.S. citizen and further, is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

Dated: August 1, 2016.

Julie P. Heizer

Deputy Director, National Travel and Tourism Office.

[FR Doc. 2016-18531 Filed 8-1-16; 4:15 pm]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Correction of the Antidumping Duty New Shipper Review Federal Register Notice

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Effective August 3, 2016.

FOR FURTHER INFORMATION CONTACT: Paul Walker or Kenneth Hawkins, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202-482-0413 or 202-482-6491, respectively.

SUPPLEMENTARY INFORMATION: On July 7, 2016, the Department of Commerce ("the Department") published in the *Federal Register* the *2014-2015 Final Results of the New Shipper Review on Fish Fillets from Vietnam*.¹ The *2014-2015 Final Results of the New Shipper Review on Fish Fillets from Vietnam* contained two errors.² Specifically, the period of review ("POR") is incorrectly stated as August 1, 2014, to January 1, 2015. The correct POR is August 1, 2014, to January 31, 2015. In addition, we note the Vietnam-wide rate is \$2.39/kilogram, not \$2.35/kilogram. As a result, the *2014-2015 Final Results of the New Shipper Review on Fish Fillets from Vietnam* are being corrected.

This correction to the *Federal Register* notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended.

Dated July 28, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016-18415 Filed 8-2-16; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) received a request from Zhejiang Jingli Bearing Technology Co. Ltd. (Zhejiang Jingli) for a new shipper review (NSR) of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the People's Republic of China (PRC). We have determined that this request meets the statutory and regulatory requirements for initiation. The period of review (POR) for this NSR is June 1, 2015, through May 31, 2016.

DATES: Effective August 3, 2016.

FOR FURTHER INFORMATION CONTACT:

Manuel Rey or Blaine Wiltse, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-5518 or (202) 482-6345, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 15, 1987, the Department published in the *Federal Register* the antidumping duty order on TRBs from the PRC.¹ In June 2016, the Department received a properly-filed request for an NSR from Zhejiang Jingli² during the anniversary month of the antidumping duty order, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act).

In its request, Zhejiang Jingli certified that it is a producer and exporter of TRBs from the PRC. Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Zhejiang Jingli also certified that it did not export TRBs to the United States during the period of investigation (POI).³ In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Zhejiang Jingli certified that, since the

initiation of the investigation, it has never been affiliated with any PRC exporter or producer who exported TRBs to the United States during the POI, including those respondents not individually examined during the investigation.⁴ As required by 19 CFR 351.214(b)(2)(iii)(B), Zhejiang Jingli certified that its export activities were not controlled by the government of the PRC.⁵ Finally, because Zhejiang Jingli purchased in-scope parts from unaffiliated suppliers, it also provided these same certifications from its suppliers, as required by 19 CFR 351.214(b)(2)(ii)(B), (b)(2)(iii)(A), and (b)(2)(iii)(B).⁶

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Zhejiang Jingli submitted documentation establishing the following: (1) The date on which it first sold TRBs for export to the United States and the date on which the TRBs were first entered; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.⁷

The Department conducted a U.S. Customs and Border Protection (CBP) database query to confirm that Zhejiang Jingli's shipment of subject merchandise entered the United States for consumption and that liquidation of this entry had been properly suspended for antidumping duties. The Department also examined whether the CBP data confirmed that this entry was made during the POR. The information the Department examined was consistent with that provided by Zhejiang Jingli.

Period of Review

In accordance with 19 CFR 351.214(g)(1)(i)(A), the POR for an NSR initiated in the month immediately following the anniversary month will be the twelve-month period immediately preceding the anniversary month. Therefore, the POR is June 1, 2015, through May 31, 2016. Based on the information provided by Zhejiang Jingli, the subject merchandise upon which Zhejiang Jingli's NSR request is based entered the United States during this twelve-month POR.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act, 19 CFR 351.214(b), 19 CFR 351.214(d)(1), and after reviewing the information on the record, the Department finds that the request from

¹ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Review; 2014-2015*, 81 FR 44272 (July 7, 2016) ("*2014-2015 Final Results of the New Shipper Review on Fish Fillets from Vietnam*").

² *Id.*

³ See *Antidumping Duty Order; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China*, 52 FR 22667 (June 15, 1987).

⁴ See Zhejiang Jingli's June 28, 2016, submission (Zhejiang Jingli NSR Request).

⁵ *Id.*, at Exhibit 1.

⁶ *Id.*

⁷ *Id.*

⁸ See Zhejiang Jingli's July 25, 2016, submission at Attachment.

⁹ *Id.*, at Exhibit 2.

Zhejiang Jingli meets the threshold requirements for the initiation of an NSR for shipments of TRBs from the PRC by Zhejiang Jingli.⁸ If the information supplied by Zhejiang Jingli cannot be verified, or is otherwise found to be incorrect or insufficient during the course of this proceeding, the Department may rescind the NSR or apply facts available pursuant to section 776 of the Act, depending on the facts on the record.

On February 24, 2016, the President signed into law the "Trade Facilitation and Trade Enforcement Act of 2015," H.R. 644, which made several amendments to section 751(a)(2)(B) of the Act. We will conduct this NSR in accordance with section 751(a)(2)(B) of the Act, as amended by the Trade Facilitation and Trade Enforcement Act of 2015.⁹

The Department intends to issue the preliminary results of this NSR no later than 180 days from the date of initiation, and the final results within 90 days after the date on which the preliminary results are issued, pursuant to section 751(a)(2)(B)(iii) of the Act.

It is the Department's usual practice, in cases involving non-market economy countries, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Zhejiang Jingli which will include a section requesting information concerning its eligibility for a separate rate. The review will proceed if the response provides sufficient indication that Zhejiang Jingli is not subject to either *de jure* or *de facto* government control with respect to its exports of subject merchandise.

To assist in its analysis of the *bona fides* of Zhejiang Jingli's sale pursuant to section 751(a)(2)(B)(iv) of the Act, upon initiation of this NSR, the Department will require Zhejiang Jingli to submit on an ongoing basis complete transaction information concerning any sales of subject merchandise to the United States that were made subsequent to the POR.

⁸ See Memorandum to the File from Manuel Rey, International Trade Compliance Analyst, Office II, AD/CVD Operations, entitled "Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Initiation of New Shipper Review of Zhejiang Jingli," dated concurrently with this notice.

⁹ Notably, the Trade Facilitation and Trade Enforcement Act of 2015 removed from section 751(a)(2)(B) of the Act the provision directing the Department to instruct CBP to allow an importer the option of posting a bond or security in lieu of a cash deposit during the pendency of an NSR.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: July 28, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016-18402 Filed 8-2-16; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-825]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on polyethylene terephthalate film, sheet and strip (PET film) from India for the period of review (POR) January 1, 2014, through December 31, 2014. We preliminarily determine that Jindal Poly Films Limited of India (Jindal) and SRF Limited (SRF) received countervailable subsidies during the POR. See the "Preliminary Results of Review" section, below. Interested parties are invited to comment on these preliminary results.

DATES: Effective August 3, 2016.

FOR FURTHER INFORMATION CONTACT: Elfi Blum, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-0197.

Partial Rescission of Administrative Review

The Department initiated a review of nine companies in this segment of the proceeding.¹ In response to timely filed

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 53106, 53109 (September 2, 2015) (*Initiation Notice*). The nine companies were Ester Industries Limited (Ester), Garware Polyester Ltd. (Garware),

withdrawal requests, we are rescinding this administrative review with respect to Ester, Garware, MTZ, Polyplex, Uflex Ltd., Vacmet, and Vacmet India Limited, pursuant to 19 CFR 351.213(d)(1). The remaining companies subject to the instant review are Jindal and SRF, which the Department has selected as the mandatory respondents.²

Scope of the Order

For purposes of the order, the products covered are all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet and strip, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.

Methodology

The Department is conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.*, a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.³ For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum, dated concurrently with, and hereby adopted by, this notice.

The Preliminary Decision Memorandum is a public document and

Jindal Poly Films Ltd. of India (Jindal), MTZ Polyesters Ltd. (MTZ), Polyplex Corporation Ltd. (Polyplex), SRF Limited (SRF), Vacmet, Vacmet India Limited and Uflex Ltd. DuPont Teijin Films, Mitsubishi Polyester Film, Inc., and SKC, Inc. (collectively Petitioners) requested a review for six companies (Ester, Garware, Polyplex, SRF, Jindal, and Vacmet). Polyplex USA LLC and Flex Films (USA) Inc. (collectively Domestic Interested Parties) requested a review for eight companies (Ester, Garware, Jindal, MTZ, Polyplex, SRF, Uflex Ltd., Vacmet and Vacmet India Limited). In addition, Jindal and SRF self-requested an administrative review.

² See Decision Memorandum for the Preliminary Results and Partial Rescission of the Countervailing Duty (CVD) Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from India; 2014" (Preliminary Decision Memorandum).

³ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at <http://trade.gov/enforcement/frn/index.html>. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

We preliminarily determine the total estimated net countervailable subsidy rates for the period January 1, 2014, through December 31, 2014 to be:

Manufacturer/exporter	Subsidy rate (percent <i>ad valorem</i>)
Jindal Poly Films of India Limited	5.10
SRF Limited	2.16

Disclosure and Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.⁴ Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.⁵ Rebuttal briefs must be limited to issues raised in the case briefs.⁶ Parties who submit case or rebuttal briefs are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.⁷

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system.⁸ Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform

parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.⁹ Parties should confirm by telephone the date, time, and location of the hearing. Issues addressed at the hearing will be limited to those raised in the briefs.¹⁰ All briefs and hearing requests must be filed electronically and received successfully in their entirety through ACCESS by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

Assessment Rates and Cash Deposit Requirement

Upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of review.

Pursuant to section 751(a)(2)(C) of the Act, the Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above for each of the respective companies shown above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: July 27, 2016.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary

⁹ See 19 CFR 351.310.

¹⁰ See 19 CFR 351.310(c).

2. Background
3. Partial Rescission of Administrative Review
4. Scope of the Order
5. Subsidies Valuation Information
6. Analysis of Programs
7. Recommendation

[FR Doc. 2016-18336 Filed 8-2-16; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-050]

Ammonium Sulfate From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Effective August 3, 2016.

FOR FURTHER INFORMATION CONTACT:

Robert Galantucci at (202) 482-2923 or William Horn at (202) 482-2615, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 2016, the Department of Commerce (the Department) initiated the countervailing duty (CVD) investigation of ammonium sulfate from the People's Republic of China.¹ The notice of initiation stated that, in accordance with section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.205(b)(1), we would issue our preliminary determination no later than 65 days after the date of initiation, unless postponed. Currently, the preliminary determination is due no later than August 18, 2016.

Postponement of the Preliminary Determination

Section 703(b)(1) of the Act, requires the Department to issue the preliminary determination in a CVD investigation within 65 days after the date on which the Department initiated the investigation. However, in accordance with 19 CFR 351.205(e), if the petitioner makes a timely request for an extension, section 703(c)(1)(A) of the Act allows the Department to postpone the preliminary determination until no later than 130 days after the date on which the Department initiated the

¹ See *Ammonium Sulfate From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 81 FR 40661 (June 22, 2016).

⁴ See 19 CFR 351.224(b).

⁵ See 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

⁶ See 19 CFR 351.309(d)(2).

⁷ See 19 CFR 351.309(c)(2) and (d)(2).

⁸ See 19 CFR 351.310(c).

investigation. Under 19 CFR 351.205(e), a petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reason for the request. The Department will grant the request unless it finds compelling reasons to deny the request.²

On July 22, 2016, PCI Nitrogen, LLC (Petitioner) submitted a timely request pursuant to section 703(c)(1)(A) of the Act and 19 CFR 351.205(e) to postpone the preliminary determination due to the number and complex nature of subsidy programs under investigation.³

In accordance with 19 CFR 351.205(e), Petitioner has stated the reason for requesting a postponement of the preliminary determination and the record does not present any compelling reasons to deny Petitioner's request. Therefore, the Department will extend the deadline for completion of the preliminary determination by 65 days (*i.e.*, 130 days after the date of initiation of this investigation). However, because 65 days following the current deadline falls on a Saturday, the new deadline is Monday, October 24, 2016.⁴ Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination will continue to be 75 days after the date of the preliminary determination.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: July 27, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016-18416 Filed 8-2-16; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Extension of U.S. Section Member Appointments to the United States-Brazil CEO Forum

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In March 2007, the Governments of the United States and Brazil established the U.S.-Brazil CEO

Forum (Forum). Through a **Federal Register** notice on May 29, 2013 (78 FR 32,239), the Department of Commerce solicited applicants for appointment to the U.S. Section for a term of three years to expire August 13, 2016, and appointed individuals to all twelve Member positions. Vacancies arising during the three-year term were filled through the same process (see 80 FR 13,520 (Mar. 16, 2015) and 80 FR 17,032 (Mar. 31, 2015)). For the reasons explained below, the Secretary of Commerce and the Director of the National Economic Council and Assistant to the President for Economic Policy are extending the current U.S. Section Member appointments through June 30, 2017.

ADDRESSES: U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 30013, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Raquel Silva, Office of Latin America and the Caribbean, U.S. Department of Commerce, Raquel.Silva@trade.gov, telephone: (202) 482-4157.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce and the Director of the National Economic Council and Assistant to the President for Economic Policy, together with the Brazilian Minister of Casa Civil and the Brazilian Minister of Industry, Foreign Trade and Services co-chair the U.S.-Brazil CEO Forum, pursuant to the Terms of Reference signed in March 2007 by the U.S. and Brazilian governments, as amended, which set forth the objectives and structure of the Forum. The Terms of Reference may be viewed at: <http://www.trade.gov/ceo-forum/>. The Forum, consisting of both private and public sector members, brings together leaders of the respective business communities of the United States and Brazil to discuss issues of mutual interest, particularly ways to strengthen the economic and commercial ties between the two countries. The Forum consists of the U.S. and Brazilian Government co-chairs and a Committee comprised of private sector members. The Committee is composed of two Sections, each consisting of up to twelve members from the private sector, representing the views and interests of the private sector business community in the United States and Brazil. Each government appoints the members to its respective Section. The Committee provides joint recommendations to the two governments that reflect private sector views, needs and concerns regarding the creation of an economic environment in which their respective private sectors can partner, thrive and enhance bilateral

commercial ties to expand trade between the United States and Brazil.

As stated in the amended Terms of Reference, "members [of the Forum] normally are to serve three-year terms but may be reappointed." The current U.S. Section Member appointments expire on August 13, 2016. The postponement of the most recent scheduled meeting of the United States-Brazil CEO Forum has resulted in a need for additional time for the current U.S. Section Members to finish on-going work with the Brazil Section Members to finalize and present Committee joint recommendations to the Government co-chairs. For that reason, the Secretary of Commerce and the Director of the National Economic Council and Assistant to the President for Economic Policy have decided to extend the current U.S. Section Member appointments through June 30, 2017.

Dated: July 27, 2016.

Alexander Peacher,

Acting Director for the Office of Latin America & the Caribbean.

[FR Doc. 2016-18338 Filed 8-2-16; 8:45 am]

BILLING CODE 3510-HE-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE315

Endangered Species; File Nos. 19331 and 19642

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

ACTION: Notice; issuance of permits.

SUMMARY: Notice is hereby given that Harold Brundage (File No. 19331), Environmental Research and Consulting, Inc., 126 Bancroft Rd; Kennett Square, PA 19348, and Jason Kahn (File No. 19642), NOAA Fisheries, 1315 East-West Highway, Silver Spring, MD 20910, have been issued permits to take shortnose sturgeon (*Acipenser brevirostrum*) and Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) for purposes of conducting scientific research.

ADDRESSES: The permits and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427-8401; fax (301) 713-0376.

² See 19 CFR 351.205(e).

³ See Letter from Petitioner to the Secretary of Commerce, "Ammonium Sulfate from the People's Republic of China: Request for Postponement of the Preliminary Determination," dated July 22, 2016.

⁴ See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Erin Markin, (301) 427-8401.

SUPPLEMENTARY INFORMATION: On November 27, 2015, notice was published in the **Federal Register** (80 FR 74085) that requests for scientific research permits to take shortnose sturgeon and Atlantic sturgeon had been submitted by the above-named individuals. The requested permits have been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226).

File No. 19331: The applicant's objectives are to characterize Atlantic and shortnose sturgeon habitat use in the lower Delaware River (between rkm 0 to rkm 245), studying their relative abundance, recruitment, temporal-spatial distributions, and reproduction. The permit would be valid for five years from the date of issuance.

File No. 19642: The applicant will be authorized to determine and quantify new populations of Atlantic and shortnose sturgeon in the York, Rappahannock, Potomac, and Susquehanna Rivers, and other Chesapeake Bay tributaries of Virginia and Maryland. Additionally, researchers will monitor sturgeon spawning activity, movement, and habitat use through telemetry and side-scan sonar technology. Additionally, researchers will sample Atlantic and shortnose sturgeon captured under other ESA incidental take permits or incidental take statements of other actions to track their coastal wide movements of these species. The permit would be valid for five years from the date of issuance.

Issuance of these permits, as required by the ESA, is based on a finding that such permits (1) are applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 28, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016-18348 Filed 8-2-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE776

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its *Habitat* Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, August 18, 2016, at 9 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; Phone: (508) 339-2200; Fax: (508) 339-1040.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Agenda

The committee will discuss two ongoing habitat-related management actions. Related to the Omnibus Deep-Sea Coral Amendment, the committee will review preliminary economic and biological impacts of deep-sea coral zone designations, and discuss whether the amendment should include alternatives to restrict *lobster* trap gear within these zones. Related to the Clam Dredge Framework, the committee will review habitat characterization data for two habitat management areas (HMAs) and develop guidance for the Plan Development Team related to the design of clam dredge exemption area alternatives within these HMAs. The committee may discuss other business as needed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action

under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at 978-465-0492, at least 5 days prior to the meeting date.

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

Dated: July 29, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016-18374 Filed 8-2-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE763

Marine Mammals; File No. 18879

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Heather E. Liwanag, Ph.D. (California Polytechnic State University, San Luis Obispo, CA 93407-0401), has applied in due form for a permit to conduct research on Weddell seals (*Leptonychotes weddellii*) near McMurdo Station, Antarctica.

DATES: Written, telefaxed, or email comments must be received on or before September 2, 2016.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the "Features" box on the Applications and Permits for Protected Species (APPS) home page, <https://apps.nmfs.noaa.gov>, and then selecting File No. 18879 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427-8401; fax (301) 713-0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may

also be submitted by facsimile to (301) 713-0376, or by email to NMFS.Pr1Comments@noaa.gov. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Sara Young or Amy Sloan, (301) 427-8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to study the thermoregulatory strategies (insulation, thermogenic mechanisms) by which Weddell seal pups maintain eutheria in air and in water and examine the development of diving capability (oxygen stores) as the animals prepare for independent foraging. This study will take place near McMurdo Station in Antarctica. In each field season (two field seasons total), nine pups (18 total) will be handled at five time points between two days and eight weeks of age. Protocols not requiring sedation (mass, morphometrics, core and surface temperatures, metabolic rates) will be conducted on all nine individuals at all five time points under manual restraint. Protocols requiring anesthesia (body composition, biopsies, and blood volume analysis) will be sampled twice for each animal: Once between two days and four weeks of age, and again at six weeks; one additional anesthesia procedure will be conducted for a single blood draw at seven or eight weeks. An additional 12 pups will be handled for vibrissae sampling annually, and a second cohort of nursing pups may be handled annually if study animals are not relocated at any of the 5 time points for resampling. The applicant is also proposing to take up to 700 animals for flipper tag reading, thermal imaging, and incidental harassment due to work with conspecifics. Up to six pup mortalities are requested annually, not to exceed ten over the two field seasons. The permit would be valid for three years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to

prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 28, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016-18298 Filed 8-2-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE777

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a Post Council Meeting Briefing for the public via Webinar.

DATES: The meeting will be held from 6 p.m. to 9 p.m. on Wednesday, August 24, 2016.

ADDRESSES: The meeting will take place via Webinar at: <https://attendee.gotowebinar.com/register/7233203590071678980>.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348-1630.

FOR FURTHER INFORMATION CONTACT: Emily Muehlstein, Fisheries Outreach Specialist, Gulf of Mexico Fishery Management Council; emily.muehlstein@gulfcouncil.org, telephone: (813) 348-1630.

SUPPLEMENTARY INFORMATION:

Agenda

- I. Welcome and Introductions
- II. Review of Council actions taken during the August, 2016 Council Meeting
- III. Questions and Answers
- IV. Adjourn

You may register for the Post August Council Meeting Briefing Webinar at: <https://attendee.gotowebinar.com/register/7233203590071678980>.

After registering, you will receive a confirmation email containing information about joining the Webinar.

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

Dated: July 29, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016-18373 Filed 8-2-16; 8:45 am]

BILLING CODE 3510-22-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement ("CAFTA-DR Agreement")

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement.

EFFECTIVE DATE: August 3, 2016.

SUMMARY: The Committee for the Implementation of Textile Agreements ("CITA") has determined that certain two-ply polyester yarn, as specified below, is not available in commercial quantities in a timely manner in the CAFTA-DR countries. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

For Further Information On-Line: <http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf> under "Approved Requests," Reference number: 202.2016.06.01.Yarn.ST&RforPolartec.

SUPPLEMENTARY INFORMATION:

Authority: The CAFTA-DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act ("CAFTA-DR Implementation Act"), Public Law 109-53; and Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

Background: Annex 3.25 of the CAFTA-DR Agreement contains a list of fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. Articles 3.25.4 and 3.25.5 of the CAFTA-DR Agreement provide that this list may be modified if the United States determines that a fabric, yarn, or fiber is not available in commercial quantities

in a timely manner in the territory of any Party. Section 203(o)(4) of the CAFTA–DR Implementation Act authorizes the President to make determinations regarding commercial availability of fabrics, yarns and fibers in the CAFTA–DR countries and to proclaim modifications to the list in Annex 3.25. The CAFTA–DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA–DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to CAFTA–DR (*Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement*, 73 FR 53200) (“CITA’s procedures”).

On June 1, 2016, the Chairman of CITA received a Request for a Commercial Availability Determination (“Request”) from Sandler, Travis & Rosenberg, P.A. on behalf of Polartec LLC. (“Polartec”) for a certain two-ply polyester yarn, as specified below.

On June 3, 2016, in accordance with CITA’s procedures, CITA notified interested parties of the Request, which was posted on the dedicated Web site for DR–CAFTA Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (“Response”) to the Request must be submitted by June 15, 2016, and any rebuttal comments to a Response (“Rebuttal”) must be submitted by June 21, 2016.

On June 15, 2016, the Chairman received two Responses: one from CS Central America S.A. de C.V. (“CSCA”), and one from Unifi Manufacturing, Inc. (“Unifi”). On June 24, 2016, Unifi withdrew its Response. On June 28, 2016, Polartec submitted its Rebuttal.

In accordance with Section 203(o)(4) of the DR–CAFTA Implementation Act, Article 3.25 of the DR–CAFTA, and section 8(c)(4) of CITA’s procedures, because there was insufficient information to make a determination within 30 U.S. business days, CITA extended the deadline to make its

determinations by 14 U.S. business days, and called for a public meeting on July 8, 2016, to collect additional information from representatives of Polartec and CSCA and provide the interested entities with an opportunity to submit additional evidence to support their claims regarding the capability of CSCA to supply the subject yarn. At CITA’s request, additional information was submitted by CSCA for the record on July 12 and July 13, 2016.

Section 8 of CITA’s procedures provide that after receiving a Request, a determination will be made as to whether the subject product is available in commercial quantities in a timely manner in the CAFTA–DR countries. In the instant case, CSCA provided several samples to Polartec, which both CSCA and Polartec had tested to determine if the samples met the required specifications. Because the test results provided for the record were inconclusive, CITA looked to other information in the record to determine whether CSCA had demonstrated it had the capability of supplying the subject product as specified.

Section 6(b)(3)(iv) of CITA’s procedures state that “regardless of whether a sample is provided, a respondent must demonstrate its ability to produce the subject product by providing sufficient relevant information regarding their production capability.” The record clearly indicates that, while CSCA provided some information regarding their current production and development timeline, CSCA had not provided any information regarding its production process, specifically with respect to: (1) How its experience with its current yarn production imparted the necessary expertise to make yarns with the specified physical properties and performance characteristics; or (2) what kind of modifications CSCA would have to make to its current yarn production processes to produce the subject yarn. CITA finds that, given the differences between the yarns CSCA currently produces and the specifications of the subject yarn, this information was necessary to adequately demonstrate CSCA’s capability to supply the subject yarn, which requires significantly different physical properties and performance characteristics. CSCA had several opportunities to present CITA with the information required under its procedures, but failed to do so in the course of due diligence, in its Response, or in the public meeting. Therefore, because CSCA did not provide sufficient relevant information regarding its production capability as required under CITA’s procedures, CSCA did not

demonstrate its capability to produce the subject yarn in commercial quantities in a timely manner. Therefore, in accordance with section 203(o) of the CAFTA–DR Implementation Act, and Section 8 of CITA’s procedures, as no interested entity has substantiated its ability to supply the subject product in commercial quantities in a timely manner, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA–DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings.

Specifications: Certain Two-Ply Polyester Yarn

HTSUS: 5402.33.60.

Fiber Content: 100% Polyester (60–66% Cationic, 34–40% Disperse).

Number of Plies: 2.

Yarn Size: 122 Metric (73.8 denier/82 decitex) to 103 Metric (87 denier/97 decitex).

Filaments: 144 total.

Yarn Properties: False Twist Textured—Mechanical process by which POY material(s) are heated, drawn, twisted/untwisted, and heat set in order to add bulk and comfort characteristics.

3.12 to 3.45 Break Force/Tenacity (CN) (ISO 2062)

30.68 to 33.92% Elongation (ISO 2062)

7.5 to 8.5% Crimp contraction (ASTM D4031)

8.0 to 8.8% Shrinkage (ASTM D2259)

154 to 170 Interlace per meter (manual count in 10 cm section—extrapolated to 1 m)

2.5 to 2.7% Oil pick up (ASTM D2257)

NOTE: The yarn size designations describe a range of yarn specifications for yarn before knitting, dyeing and finishing of the fabric. They are intended as specifications to be followed by the mill in sourcing yarn used to produce fabric. Dyeing, finishing, and knitting can alter the characteristics of the yarn as it appears in the finished fabric. This specification therefore includes yarns appearing in the finished fabric as finer or coarser than the designated yarn sizes provided that the variation occurs after processing of the greige yarn and production of the fabric. The specifications for the yarn apply to the yarn itself prior to cutting, sewing and finishing of a finished garment. Such processing may alter the measurements.

Janet E. Heinzen,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2016–18345 Filed 8–2–16; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF DEFENSE**Department of the Army****Record of Decision for Activities and Operations at Yuma Proving Ground, Arizona****AGENCY:** Department of the Army, DoD.**ACTION:** Notice of availability.

SUMMARY: The Department of the Army announces the availability of the Record of Decision (ROD) for implementation of activities and operations at Yuma Proving Ground (YPG), AZ. Pursuant to the National Environmental Policy Act (NEPA), the Department of the Army prepared a Programmatic Environmental Impact Statement (PEIS) that evaluated the potential environmental and socioeconomic effects of proposed construction and demolition of facilities and infrastructure, and proposed changes to current types and levels of testing and training at YPG. The Army selected the Preferred Alternative identified in the Final PEIS. The ROD explains that the Army will proceed with its Preferred Alternative to implement 296 proposed activities, including construction and demolition of facilities and infrastructure, changes to current types and levels of testing and training, and activities conducted under private industry partnerships.

ADDRESSES: For questions concerning the ROD, please contact Mr. Sergio Obregon, U.S. Army Garrison Yuma Proving Ground, National Environmental Policy Act Coordinator, IMYM-PWE, Yuma, AZ 85365-9498. Questions may be mailed to that address or emailed to

usarmy.ypg.imcom.mbx.nepa@mail.mil.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Wullenjohn, Yuma Proving Ground Public Affairs Office, at (928) 328-6189 Monday through Thursday from 6:30 a.m. to 5:00 p.m., Mountain Standard Time.

SUPPLEMENTARY INFORMATION: Yuma Proving Ground is a major range and test facility base, responsible for testing technology, equipment, and weapon systems. The purpose of the selected action is to provide upgraded facilities for testing military ground and aerial vehicle systems, weapons, ammunitions, sensors, and guidance systems for performance and reliability, and to provide realistic training for military units. The Final PEIS, published in April 2015, examined the potential environmental and socioeconomic impacts associated with implementing new activities and operations at YPG. Activities addressed in the Final PEIS included construction

and demolition of facilities and infrastructure, and changes to current types and levels of testing and training. It provided thorough analysis under NEPA for the short-term, well-defined projects and allows less well-defined projects to be implemented following a focused, site-specific NEPA analysis that would tier from the PEIS.

The ROD incorporates analysis contained in the Final PEIS for activities and operations at YPG, as well as comments provided during formal comment and review periods, to include the Final PEIS waiting period.

The Army considered reasonable alternatives for components of the activities in the Proposed Action and has selected an alternative that will have a lower impact for some projects than would the original Proposed Action. These include reduced areas and selection of a smaller area for some of the proposed activities to avoid or minimize potential impacts.

Implementation of this decision is expected to result in direct, indirect, and cumulative impacts to environmental resources. To minimize the potential adverse impacts from implementation of the selected alternative, the Army will mitigate these effects through a variety of mitigation and control measures, as described in the ROD. All practicable means to avoid or minimize environmental harm from the selected alternative have been adopted. In making this decision, the Army is aware that implementation of the selected alternative could result in potentially significant impacts to Fire Management, Soils, and Vegetation, even after implementation of mitigation measures. The selected alternative represents a balance between mission requirements and stewardship of the environment.

The full text of the ROD and the Final PEIS are available at the following Web site: <http://www.yuma.army.mil/Documents.aspx>.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2016-18364 Filed 8-2-16; 8:45 am]

BILLING CODE 5001-03-P

DEPARTMENT OF DEFENSE**Office of the Secretary****Notice of Intent To Return Human Remains: National Museum of Health and Medicine, Defense Health Agency, Silver Spring, MD****AGENCY:** Office of the Secretary, DoD.**ACTION:** Notice.

SUMMARY: The National Museum of Health and Medicine (NMHM), in consultation with appropriate descendant and memorial organizations, shall release the human remains of an unidentified child's skull, aged 6-10 years, for burial alongside other victim remains of the 1857 Mountain Meadows Massacre, interred by the U.S. Army in 1859. Next-of-kin, or representatives of any organizations who believe they have a legitimate claim to the remains of victims of the 1857 Mountain Meadows Massacre, who wish to assert a legitimate claim for these remains or otherwise direct their disposition should submit a written request to the NMHM. If no additional claimants come forward, transfer of possession of the human remains to the aforementioned descendant and memorial organizations stated in this notice may proceed.

DATES: Next-of-kin or representatives of any relevant organizations that wish to submit a legitimate claim for these remains or otherwise direct disposition should submit a written request, with information in support of their claim, to the NMHM at the address stated in the **ADDRESSES** section by September 2, 2016.

ADDRESSES: Brian Spatola, National Museum of Health and Medicine, 2460 Linden Lane #2500, Silver Spring, MD 20910. Telephone: 301-319-3353; Email: brian.f.spatola.civ@mail.mil.

SUPPLEMENTARY INFORMATION: Statutory Authority for the intended actions include: Public Law 103-337, div. A, title X, § 1067, Oct. 5, 1994, 108 Stat. 2851, as amended by Pub. L. 105-78, title VII, § 702, Nov. 13, 1997, 111 Stat. 1524 (reprinted in the notes to 10 U.S.C. 176) as statutory authority for the NMHM; and DoDD 5136.13, as the Director, Defense Health Agency's general authority over matters concerning the Museum as a component of the Defense Health Agency.

History and Description of Human Remains: The human remains consist of the cranium of a child with an estimated age of 6-10 years, based on dental development. The cranium shows evidence of a perforating gunshot wound. In 1857, members of the Church of Jesus Christ of Latter-day Saints (allegedly in coordination with Native American allies) murdered approximately 120 members of a wagon train travelling from Arkansas to California in an event known historically as the Mountain Meadows Massacre. The victims included men, women, and children. In 1859, the U.S. Army travelled to Utah to investigate the incident, bury the dead, and return the surviving children to Arkansas. At

this time, U.S. Army Officers removed a child's skull from the massacre site. In 1864, U.S. Army Surgeon, B.A. Clements, forwarded a child's skull from the Mountain Meadows Massacre to the Army Medical Museum, now the NMHM. The specimen was forwarded in accordance with the Surgeon General's order for officers to "collect and to forward . . . all specimens of morbid anatomy, surgical or medical which may be regarded as valuable . . . and other such matters as may prove of interest in the study of military medicine or surgery." Clements was stationed in the region where the massacre occurred during the time of the Army's 1859 activity. It is believed the skull was passed on to him by others who had participated in the 1859 investigation. In 2009, the NMHM began receiving requests with conflicting perspectives from multiple parties claiming the child's skull for burial and scientific testing. The parties consulting with the museum include the Mountain Meadows Massacre Descendants (MMMD), the Mountain Meadows Monument Foundation (MMMF), the Mountain Meadows Association (MMA), and Ms. Catherine Baker of North Carolina. The NMHM engaged all prior, interested parties and requested all such parties enter into a joint agreement documenting their consensus on the disposition of the remains. The NMHM has received confirmation of consensus from a majority of all such parties, advocating for the human remains to be buried alongside other victims of the 1857 Mountain Meadows Massacre in Utah.

Dated: July 29, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016-18363 Filed 8-2-16; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of DOE's

responsibility to develop a regulation pursuant to section 934 of the Energy Independence and Security Act of 2007 (EISA) on implementing the Convention on Supplementary Compensation for Nuclear Damage (CSC), including whether the information shall have practical utility; (b) the accuracy of DOE's estimate of the burden of the proposed collection of information, including whether the information shall have practical utility; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before October 3, 2016. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be submitted electronically by emailing them to: *Section934Rulemaking@Hq.Doe.Gov*. We note that email submission will avoid delay associated with security screening of U.S. Postal Service mail.

Also, written comments should be addressed to Sophia Angelini, Attorney-Advisor, Office of General Counsel for Civilian Nuclear Programs, GC-72, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Sophia Angelini, Attorney-Advisor, Office of General Counsel for Civilian Nuclear Programs, GC-72, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; telephone (202) 586-0319. Copies of the information collection instrument and instructions can be viewed at <http://www.energy.gov/gc/convention-supplementary-compensation-rulemaking>.

SUPPLEMENTARY INFORMATION: On December 17, 2014, DOE published a notice of proposed rulemaking (NPR) in the **Federal Register** (79 FR 75076) in which it proposed regulations under section 934 of EISA to establish a retrospective risk pooling program whereby, in the event of certain nuclear incidents, nuclear suppliers would be responsible to pay for any contribution by the United States government to the international supplementary fund created by the CSC. DOE held an information session on the proposed

regulation on January 7, 2015, followed by a day-long public workshop on February 20, 2015 (80 FR 4227). On March 9, 2015, DOE granted an extension of the public comment period on the NPR to April 17, 2015 (80 FR 12352). The extension notice highlighted areas of particular attention for public comment, and indicated an intent of DOE's to conduct additional data and information gathering in response to and in consideration of comments provided in the public review and comment process. This proposed collection of information responds in part to DOE's intent to gather additional data and information.

This information collection request contains: (1) OMB Number: New; (2) Information Collection Request Title: Data Collection for Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation; (3) Type of Request: New; (4) Purpose: This information collection request is necessary for DOE to develop its regulation containing the risk-informed formula required by section 934(e) of EISA for calculating the deferred payment of a nuclear supplier; (5) Annual Estimated Number of Respondents: 150; (6) Annual Estimated Number of Total Responses: 150; (7) Annual Estimated Number of Burden Hours: 5 annual burden hours per response, 750 total annual burden hours; and (8) Annual Estimated Reporting and Recordkeeping Cost Burden: \$1,500 annual cost per Respondent, \$225,000 annual cost burden for all Respondents.

Statutory Authority: Section 934(f) of the Energy Independence and Security Act of 2007.

Issued in Washington, DC, on July 29, 2016.

Samuel T. Walsh,

Deputy General Counsel for Energy Policy, Office of General Counsel.

[FR Doc. 2016-18419 Filed 8-2-16; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC16-8-000]

Commission Information Collection Activities (FERC-539); Comment Request

July 25, 2016.

Republication

Editorial Note: Notice document 2016-17896 was originally published on page

49975 in the issue of Friday, July 29, 2016. In that publication the document was incomplete. The corrected document is republished in its entirety.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collection FERC-539 (Gas Pipeline Certificates: Import & Export Related Applications) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission previously issued a Notice in the **Federal Register** (81 FR 21859, 4/13/2016) requesting public comments. The Commission received no comments on the FERC-539 and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by August 29, 2016.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902-0062, should be sent via email to the Office of Information and Regulatory Affairs: oir_submission@omb.gov. Attention: Federal Energy Regulatory Commission Desk Officer.

A copy of the comments should also be sent to the Commission, in Docket No. IC16-8-000, by either of the following methods:

- eFiling at Commission's Web site: <http://www.ferc.gov/docs-filing/efiling.asp>.

- Mail/Hand Delivery/Courier: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: <http://www.ferc.gov/help/submission-guide.asp>. For user assistance contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone at: (866) 208-3676 (toll-free), or (202) 502-8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <http://www.ferc.gov/docs-filing/docs-filing.asp>.

FOR FURTHER INFORMATION CONTACT:

Ellen Brown may be reached by email at DataClearance@FERC.gov, by telephone at (202) 502-8663, and by fax at (202) 273-0873.

SUPPLEMENTARY INFORMATION:

Title: FERC-539, Gas Pipeline Certificates: Import & Export Related Applications.

OMB Control No.: 1902-0062.

Type of Request: Three-year extension of the FERC-539 information collection requirements with no changes to the reporting requirements.

Abstract: Section 3 of the Natural Gas Act (NGA) ¹ provides, in part, that “. . . no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order from the Commission authorizing it to do so.” The 1992 amendments to Section 3 of the NGA

concern importation or exportation from/to a nation which has a free trade agreement with the United States and requires that such importation or exportation: (1) Shall be deemed to be a “first sale” (*i.e.* not a sale for a resale) and (2) shall be deemed to be consistent with the public interest. Applications for such importation or exportation should be granted without modification or delay.

The regulatory functions of Section 3 are shared by the Commission and the Secretary of Energy, Department of Energy (DOE). The Commission has the authority to approve or disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports. DOE approves the importation or exportation of the natural gas commodity.² Additionally, pursuant to the DOE Delegation Order and Executive Order Nos. 10485 and 12038, the Commission has the authority to issue Presidential Permits for natural gas facilities which cross an international border of the United States. Persons seeking Section 3 authorizations or Presidential Permits from the Commission file applications for such requests pursuant to Part 153 of the Commission's Regulations.³

Type of Respondents: The respondents include all jurisdictional natural gas companies seeking authorization from the Commission to import or export natural gas.

Estimate of Annual Burden:⁴ The Commission estimates the annual public reporting burden for the information collection as:

FERC-539: GAS PIPELINE CERTIFICATES: IMPORT & EXPORT RELATED APPLICATIONS

Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response ⁵	Total annual burden hours & total annual cost	Cost per respondent (\$)
(1)	(2)	(1)*(2)=(3)	(4)	(3)*(4)=(5)	(5)÷(1)
12	2	24	12 hrs.; \$864	288 hrs.; \$20,736	\$1,728

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the

Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection

of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection;

¹ 15 U.S.C. 717-717w.

² Secretary of DOE's current delegation of authority to the Commission relating to import and export facilities was renewed by the Secretary's Delegation Order No. 00-004.00A, effective May 16, 2006.

³ Part 153, Subpart B and Subpart C.

⁴ The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

⁵ The estimates for cost per response are derived using the 2015 FERC average salary plus benefits of \$149,489/year (or \$72.00/hour). Commission staff finds that the work done for this information collection is typically done by wage categories similar to those at FERC.

and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. R1–2016–17896 Filed 8–2–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–12532–006]

Pine Creek Mine, LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Minor License.

b. *Project No.:* 12532–006.

c. *Date filed:* February 12, 2016.

d. *Applicant:* Pine Creek Mine, LLC.

e. *Name of Project:* Pine Creek Mine Tunnel Hydroelectric Project.

f. *Location:* The project is located at Pine Creek Mine adjacent to Morgan and Pine Creeks in Inyo County, California. The project's mine access tunnel, mine plug, mine water storage cavity, penstock, generator, and most of its primary transmission line would be located under approximately 60 acres of federal land managed by the United States Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Craig Rossell, 228 West Bonita Avenue, Claremont, California 91711, (909) 482–1000.

i. *FERC Contact:* Joseph Hassell, (202) 502–8079 or joseph.hassell@ferc.gov.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system

at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–12532–006.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is now ready for environmental analysis.

l. The proposed Pine Creek Tunnel Hydroelectric Project would utilize the groundwater discharge of Pine Creek Mine and consist of: (1) The existing Pine Creek Mine site, mine entrance tunnels, mine shafts, and concrete plug; (2) an existing 30-foot-long steel pipe that runs through the concrete plug, to be used as a proposed penstock; (3) a proposed Pelton turbine generating unit located in the mine tunnel with a total installed capacity of 1.5 megawatts; (4) a proposed underground power line that would run approximately 2,500 feet from the generating unit to the mine portal; and (5) another proposed 60-foot-long transmission line from the mine portal to an existing substation on the mine site. The proposed project would have an average annual generation of 5.6 gigawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's 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.

Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "PRELIMINARY TERMS AND CONDITIONS," or "PRELIMINARY FISHWAY PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

o. *Procedural Schedule:* The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	September 2016.
Commission issues Draft EA or EIS.	March 2017.
Comments on Draft EA or EIS.	April 2017.
Modified Terms and Conditions.	June 2017.
Commission Issues Final EA or EIS.	September 2017.

p. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including

proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

q. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Dated: July 28, 2016.

Kimberly D. Bose,
Secretary.

[FR Doc. 2016-18362 Filed 8-2-16; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14550-001]

New England Hydropower Company, LLC, Hanover Pond Hydro, LLC; Notice of Transfer of Exemption

1. By letter filed July 20, 2016, New England Hydropower Company, LLC

informed the Commission that the exemption from licensing for the Hanover Pond Dam Hydroelectric Project No. 14550, originally issued May 19, 2016¹ has been transferred to Hanover Pond Hydro, LLC. The project is located on the Quinnipiac River in New Haven County, Connecticut. The transfer of an exemption does not require Commission approval.

2. Hanover Pond Hydro, LLC is now the exemptee of the Hanover Pond Dam Hydroelectric Project, No. 14550. All correspondence should be forwarded to: Mr. Michael C. Kerr, CEO, Hanover Pond Hydro, LLC, 100 Cummings Center Drive, Suite 428N, Beverly, MA 01915.

Dated: July 28, 2016.

Kimberly D. Bose,
Secretary.

[FR Doc. 2016-18359 Filed 8-2-16; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD16-16-000]

Metropolitan District; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On July 22, 2016, the Metropolitan District filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act

of 2013 (HREA). The proposed Barkhamsted Transmission Hydro No. 1 Project would have an installed capacity of 250 kilowatts (kW) and would be located at a 48-inch-diameter gravity pressure raw water supply pipe. The project would be located near the City of New Hartford in Litchfield County, Connecticut.

Applicant Contact: Scott Jellison, Metropolitan District, 555 Main Street, Hartford, CT 06142, Phone No. (860) 278-7850, Ext 3522.

FERC Contact: Robert Bell, Phone No. (202) 502-6062, email: robert.bell@ferc.gov.

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A proposed 250-kW turbine replacing the existing booster pump (which is unused) in the Puddletown booster pump station and (2) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 1,475 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA ..	The conduit is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA.	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA.	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff has preliminarily determined that

the proposal satisfies the requirements for a qualifying conduit hydropower facility under 16 U.S.C. 823a, and is

exempted from the licensing requirements of the FPA.

¹ Order Granting Exemption From Licensing (10 MW or Less), 155 FERC ¶ 62,132 (2016).

Comments and Motions to Intervene: The deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

The deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the “COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY” or “MOTION TO INTERVENE,” as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission’s regulations.¹ All comments contesting Commission staff’s preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission’s eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support 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. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at <http://www.ferc.gov/docs-filing/elibrary.asp> using the “eLibrary” link. Enter the docket number (e.g., CD16–16–000) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email FERCOnlineSupport@ferc.gov. For TTY, call (202) 502–8659.

Dated: July 28, 2016.

Kimberly D. Bose,
Secretary.

[FR Doc. 2016–18361 Filed 8–2–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD16–17–000]

Elephant Butte Irrigation District; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On July 26, 2016, Elephant Butte Irrigation District filed a notice of intent

to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Drop 8 Facility would have an installed capacity of 40 kilowatts (kW), and would be located at the existing Drop 8 check structure of Elephant Butte Irrigation District’s Westside Irrigation Canal. The project would be located near La Mesa in Doña Ana County, New Mexico.

Applicant Contact: Gary L. Esslinger, Treasurer/Manager, Elephant Butte Irrigation District, 530 S. Melendres, Las Cruces, NM 88005, Phone No. (575) 526–6671.

FERC Contact: Christopher Chaney, Phone No. (202) 502–6778, email: Christopher.Chaney@ferc.gov.

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A drywell, approximately 23 feet by 13 feet, within the canal’s right bank; (2) two new turbine/generating units with a total installed capacity of 40 kW; (3) two 24-inch-diameter, 9-foot-long intake pipes; (4) one 48-inch-diameter, 120-foot-long raceway returning water to the Westside Irrigation Canal; and (5) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 230 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory Provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA.	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA.	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA.	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA.	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

¹ 18 CFR 385.2001–2005 (2015).

Preliminary Determination: The proposed addition of the hydroelectric project along the existing irrigation canal will not alter its primary purpose. Therefore, based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the "COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY" or "MOTION TO INTERVENE," as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.¹ All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support 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. A copy of all other filings in reference to this application must be accompanied

by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at <http://www.ferc.gov/docs-filing/elibrary.asp> using the "eLibrary" link. Enter the docket number (*i.e.*, CD16-17) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or email FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659.

Dated: July 28, 2016.

Kimberly D. Bose,
Secretary.

[FR Doc. 2016-18358 Filed 8-2-16; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[Petitions IV-2014-5 and -6; FRL-9950-17-Region 4]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permits for ABC Coke and Walter Coke (Jefferson County, Alabama)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petitions to object to state operating permits.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order, dated July 15, 2016, denying petitions to object to Clean Air Act (CAA) title V operating permits issued by the Jefferson County Department of Health (JCDH) to ABC Coke for its facility located in Tarrant and Walter Coke for its facility located in North Birmingham, both in Jefferson County, Alabama. This Order constitutes a final action on the petitions submitted by Gasp (Petitioner) and received by EPA on October 3, 2014, and December 2, 2014, respectively.

ADDRESSES: Copies of the Order, the petitions, and all pertinent information relating thereto are on file at the following location: EPA Region 4; Air, Pesticides and Toxics Management Division; 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. The Order is also available electronically at the following

address: https://www.epa.gov/sites/production/files/2016-07/documents/gasp_response2014.pdf.

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562-9115 or hofmeister.art@epa.gov.

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review and, as appropriate, the authority to object to operating permits proposed by state permitting authorities under title V of the CAA, 42 U.S.C. 7661-7661f. Section 505(b)(2) of the CAA and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period. Pursuant to sections 307(b) and 505(b)(2) of the CAA, a petition for judicial review of those parts of the Order that deny issues in the petition may be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date this notice is published in the **Federal Register**.

Petitioners submitted petitions regarding the aforementioned ABC Coke and Walter Coke facilities, requesting that EPA object to the CAA title V operating permits (#4-07-0001-03 and 4-07-0355-03, respectively). Petitioner alleged that the permits were not consistent with the CAA because: (1) They lack the conditions necessary to assure compliance with the general prohibition against "air pollution"; (2) they contain conditions governing fugitive dust that are too vague or too restrictive; and (3) JCDH failed to provide Petitioner with sufficient emissions information to participate meaningfully in the permitting process with respect to Walter Coke.

On July 15, 2016, the Administrator issued an Order denying the petitions. The Order explains EPA's rationale for denying the petitions.

Dated: July 26, 2016.

Heather McTeer Toney,
Regional Administrator, Region 4.

[FR Doc. 2016-18394 Filed 8-2-16; 8:45 am]

BILLING CODE 6560-50-P

¹ 18 CFR 385.2001-2005 (2015).

FEDERAL MARITIME COMMISSION**Notice of Agreements Filed**

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (www.fmc.gov) or by contacting the Office of Agreements at (202)–523–5793 or tradeanalysis@fmc.gov.

Agreement No.: 012339–001.

Title: Sealand/APL West Coast of Central America Slot Charter Agreement.

Parties: APL Co. Pte Ltd; and American President Lines, Ltd. (collectively “APL”); Maersk Line A/S dba Sealand.

Filing Party: Wayne R. Rohde, Esq.; Cozen O’Conner; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment would add ports on the Pacific Coast of Guatemala, El Salvador, and Nicaragua to the agreement.

Agreement No.: 012429.

Title: CMA CGM/APL Panama—USEC Space Charter Agreement.

Parties: APL Co. Pte Ltd; and American President Lines, Ltd. (collectively “APL”); CMA CGM, S.A.

Filing Party: Draughn B. Arbona, Esq.; CMA CGM (America) LLC; 5701 Lake Wright Drive; Norfolk, VA 23502.

Synopsis: The agreement authorizes APL to charter space to CMA CGM in the trade between Panama and the U.S. East Coast.

Agreement No.: 012430.

Title: CMA CGM/APL Colombia/Panama–USEC Space Charter Agreement.

Parties: APL Co. Pte Ltd; and American President Lines, Ltd. (collectively “APL”)

Filing Party: Draughn B. Arbona, Esq.; CMA CGM (America) LLC; 5701 Lake Wright Drive; Norfolk, VA 23502.

Synopsis: The agreement authorizes APL to charter space to CMA CGM in the trade between Colombia and Panama on the one hand, and the U.S. East Coast on the other hand.

Agreement No.: 0123431.

Title: HSDG/Zim Asia US East Coast Slot Charter Agreement.

Parties: Hamburg Sud Amerikanische Dampfschiffahrts-Gesellschaft KG and Zim Integrated Shipping Services, Ltd.

Filing Party: Mark E. Newcomb; ZIM American Integrated Shipping Services Co., LLC; 5801 Lake Wright Dr.; Norfolk, VA 23508.

Synopsis: The Agreement would authorize Zim to charter space to Hamburg Sud in the trade between China and Korea on one hand, and Panama, Jamaica and the U.S. East Coast on the other hand. The parties have requested Expedited Review.

Agreement No.: 012432.

Title: APL/ANL Asia—USWC Space Charter Agreement.

Parties: APL Co. Pte Ltd; and American President Lines, Ltd. (collectively “APL”); and ANL Singapore Pte Ltd.

Filing Party: Draughn B. Arbona, Esq.; CMA CGM (America) LLC; 5701 Lake Wright Drive; Norfolk, VA 23502.

Synopsis: The Agreement authorizes APL to charter space to ANL in the trade between Asia and the U.S. West Coast.

Agreement No.: 012433.

Title: HLAG/MOL Slot Charter Agreement.

Parties: Hapag-Lloyd AG and Mitsui O.S.K. Lines, Ltd.

Filing Party: Wayne Rohde, Esq.; Cozen O’Connor; 1200 Nineteenth Street NW; Washington, DC 20036.

Synopsis: The Agreement authorizes Hapag-Lloyd to charter space to MOL in the trade between Puerto Rico, the Dominican Republic, and Panama.

By Order of the Federal Maritime Commission.

Dated: July 29, 2016.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016–18388 Filed 8–2–16; 8:45 am]

BILLING CODE 6731-AA-P

FEDERAL RESERVE SYSTEM**Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board’s Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices

of the Board of Governors. Comments must be received not later than August 18, 2016.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Theresa Dawley, Richfield, Minnesota, Kathryn Appold, Burnsville, Minnesota, and Delbert Dawley, Shakopee, Minnesota*, as a group acting in concert, to retain shares of Munich Bancshares, Inc., Munich, North Dakota, and thereby indirectly retain shares of Horizon Financial Bank, both in Munich, North Dakota.

Board of Governors of the Federal Reserve System, July 29, 2016.

Michele T. Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–18380 Filed 8–2–16; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Agency for Healthcare Research and Quality****Agency Information Collection Activities: Proposed Collection; Comment Request**

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: “*The Patient-Centered Medical Home (PCMH) Items Demonstration Study*.” In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by October 3, 2016.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at doris.lefkowitz@AHRQ.hhs.gov.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT:

Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at doris.lefkowitz@AHRQ.hhs.gov.

SUPPLEMENTARY INFORMATION:

Proposed Project

The Patient-Centered Medical Home (PCMH) Items Demonstration Study

This study is being conducted by AHRQ through its contractor, RAND, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of health care services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

The patient-centered medical home (PCMH) is a model for delivering primary care that is patient-centered, comprehensive, coordinated, accessible, and continuously improved through a systems-based approach to quality and safety.

As primary care practices across the United States seek National Committee for Quality Assurance (NCQA) recognition as patient-centered medical homes (PCMH), they can choose to administer the Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Clinician and Group (CG–CAHPS) survey with or without the PCMH supplemental item set (AHRQ, 2010; Hays et al., 2014; Ng et al., 2016; Scholle et al., 2012). NCQA offers a special patient experience distinction to practices that opt to use the PCMH CAHPS items set in their CG–CAHPS survey tool. While over 11,000 practices, representing an estimated 15–18% of primary care physicians, are currently recognized for PCMH by NCQA (NCQA, 2015), fewer than 3% of them submit patient experience surveys to NCQA when applying for recognition under NCQA's PCMH recognition program.

Despite the rapid movement toward PCMH primary care transformation and the increasing use of PCMH CAHPS items, little is known about the ways in which practices are using these CAHPS data and the PCMH supplemental item information (about access, comprehensiveness, self-management, shared decision making, coordination of care, and information about care and appointments) to understand and improve their patients' experiences during PCMH transformation. The PCMH Items Demonstration Study will investigate:

- How practices across the U.S. use CAHPS and the PCMH item set during PCMH transformation,
- How practices assemble and select items for inclusion in their patient

experience surveys (e.g. core, PCMH, supplemental, and custom items),

- Primary care practice leaders' perspectives on NCQA PCMH Recognition and CAHPS Patient Experience Distinction,
- Effects of changes made during PCMH transformation on patient experiences reported on CAHPS surveys and any PCMH items, and
- Associations between PCMH transformation and patient experience scores.

To achieve the goals of this project the following data collections will be implemented:

(1) Office Manager Questions administered via phone about the participating practice's characteristics to describe the type of practices in the study and to understand how practice characteristics influence PCMH transformation and patient experience.

(2) Physician Interviews administered via phone with the lead PCMH clinical expert about the details, decisions and processes of PCMH transformation, NCQA PCMH Recognition and CAHPS Patient Experience Distinction and their use of patient experience data during the transformation process.

(3) PCMH–A Assessment Tool to be completed by the lead PCMH clinical expert (before or after the interview on the standardized form via fax or email) to collect validated metrics on the “PCMH-ness” of the practice.

(4) CAHPS Patient Experience Data Files, which are patient-level, de-identified CAHPS patient experience data covering the period of PCMH transformation for the participating practice. These data are collected independently of this study by the practice (or network) via its current vendor. We will work with the PCMH clinical expert, or a designated person who handles data, in each of the participating practices to submit these CAHPS data files securely to RAND to understand CAHPS patient experience trends and associations with PCMH implementation during the practice's PCMH journey.

Characterizing the use of CAHPS and PCMH items by primary care practices will provide important insight into the activities practices conduct during PCMH transformation to improve patient experience scores. This information may be useful in supporting practices that lag behind their peers, learning from practices with outstanding records of patient experience, and providing recommendations that may be used to refine the content of the CAHPS survey items.

Estimated Annual Respondent Burden

Table 1 shows the estimated annualized burden and cost for the respondents' time to participate in this data collection. These burden estimates are based on tests of data collection conducted on nine or fewer entities. As indicated below, the annual total burden hours are estimated to be 179 hours. The annual total cost associated with the annual total burden hours is estimated to be \$16,899.

The PCMH Items Demonstration Study will recruit 150 practices including the participating practices' office managers and one physician/lead PCMH clinical expert. We will recruit and administer the Office Manager Questions by phone to 150 office managers, recruit all sampled physicians by sending them a recruitment packet that includes a cover letter, an AHRQ endorsement letter and an information sheet, and then administer the Physician Interview protocol questions by phone to 150 physicians, and 150 physicians will self-administer the PCMH–A Assessment Tool.

We have calculated our burden estimate for Office Manager Questions asked during physician recruitment using an estimate of 3–5 questions a minute as the Office Manager Questions are closed-ended survey questions. The Office Manager Questions contains 17 questions and is estimated to require an average of 5 minutes; this estimate is supported by the information gathered during a pilot of these questions. For the Physician Interview, we have calculated the burden estimate to require an average of 40 minutes per interview. For the PCMH–A Assessment Tool, we calculated our burden using a conservative estimate of 4.5 items per minute. Prior work suggests that 3–5 items on an assessment tool can typically be completed per minute, depending on item complexity and respondent characteristics (Berry, 2009; Hays & Reeve, 2010). The PCMH–A Assessment tool contains 36 items and is estimated to require an average completion time of 8–10 minutes.

Participating practices will be asked to submit any available CAHPS Patient Experience data files (e.g. submission of de-identified data including a data dictionary via encrypted transfer) for the period of time covering their NCQA PCMH Recognition history. Each practice will have an average estimate of 3 CAHPS Patient Experience data files to submit per one submission, which we based on the average number of years of PCMH history of the sample. In addition, we conservatively estimate

that half of the control practices (25/50) administer CG-CAHPS data, as this percentage is unknown; while 90% of

the participating current and past CAHPS practices (90/100) will submit CAHPS data, yielding 115 submissions

of CAHPS patient experience data files. As indicated below, the annual total burden is estimated to be 179 hours.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection task	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Office Manager Questions	150	1	5/60	12.5
Physician Interview	150	1	40/60	100
PCMH-A Assessment Tool	150 (same physicians as above)	1 (same person as above)	15/60	37.5
CAHPS Patient Experience Data Files	115	1 per practice	15/60	28.75
Total	415	1	75/60	178.75

+ The same respondent completes the Physician Interview and PCMH-A Assessment Tool and submits the CAHPS Patient Experience Data Files.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Data collection task	Number of requests	Total burden hours	Average hourly wage rate *	Total cost burden
Office Manager Questions	150	12.5	^a \$57.44	\$718.00
Physician Interview	150	100	^b 97.33	9,733.00
PCMH-A Assessment Tool	150	37.5	^b 97.33	3,649.88
CAHPS Patient Experience Data Files	115	28.75	^b 97.33	2,798.24
Total	300	178.75	55.48	16,899.12

+ The same respondent completes the Physician Interview and PCMH-A Assessment Tool and submits the CAHPS Patient Experience Data Files.

* Occupational Employment Statistics, May 2015 National Occupational Employment and Wage Estimates United States, U.S. Department of Labor, Bureau of Labor Statistics. http://www.bls.gov/oes/current/oes_nat.htm.

^a Based on the mean wages for *General and Operations Managers, 11-1021 within Healthcare Support Occupations*, the occupational group most likely tasked with completing the Office Manager Questions.

^b Based on the mean wages for *Physicians and Surgeons, 29-1060*, the occupational group most likely tasked with completing the Physician Interview, PCMH-A Assessment Tool, and submitting the CAHPS Patient Experience Data Files.

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All

comments will become a matter of public record.

Sharon B. Arnold,
Deputy Director.

[FR Doc. 2016-18392 Filed 8-2-16; 8:45 am]

BILLING CODE 4160-90-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2016-D-2049]

Medical X-Ray Imaging Devices Conformance With International Electrotechnical Commission Standards; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled "Medical X-Ray Imaging Devices Conformance With IEC Standards." This draft guidance

describes FDA's policy regarding the regulation of medical x-ray imaging equipment that are subject to requirements in the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and FDA's regulations that apply to medical devices and electronic products. The draft guidance also provides recommendations to industry on how to comply with the applicable requirements. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 1, 2016.

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-2016-D-2049 for "Medical X-Ray Imaging Devices Conformance With IEC Standards." 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.

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled "Medical X-Ray Imaging Devices Conformance With IEC Standards" to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Robert Sauer, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5628, Silver Spring, MD 20993-0002, 301-796-3580.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance describes FDA's policy regarding the regulation of medical x-ray imaging equipment that are subject to requirements in the FD&C Act and FDA's regulations that apply to medical devices and electronic products. In the draft guidance, FDA is seeking to harmonize performance

standards prescribed under section 534 of subchapter C (Electronic Product Radiation Control (EPRC)) of the FD&C Act (21 U.S.C. 360kk) with International Electrotechnical Commission (IEC) standards, where appropriate, to help to ensure streamlined regulatory review of submissions for these products. The draft guidance also provides recommendations to industry on how to comply with the applicable requirements. FDA believes industry conformance to certain IEC standards would provide the same level of or improved protection of the public health and safety from electronic radiation as certain EPRC regulatory standards. FDA also believes conformance to certain IEC standards would be sufficient to meet the 510(k) premarket notification requirement for certain devices. FDA review of related radiological health and safety data in premarket submissions, as opposed to EPRC product reports, would maintain or improve device safety while consolidating the information manufacturers submit to FDA.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on "Medical X-Ray Imaging Devices Conformance With IEC Standards." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet. A search capability for all CDRH guidance documents is available at <http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm>. Guidance documents are also available at <http://www.regulations.gov>. Persons unable to download an electronic copy of "Medical X-Ray Imaging Devices Conformance With IEC Standards" may send an email request to CDRH-Guidance@fda.hhs.gov to receive an electronic copy of the document. Please use the document number 1400014 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal Agencies must obtain approval

from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Reporting and Recordkeeping for Electronic Products—General Requirements—21 CFR parts 1002 through 1050—OMB Control Number 0910-0025—Revision

The draft guidance describes FDA's policy regarding the regulation of medical x-ray imaging equipment that are subject to FDA's regulations that apply to medical devices and electronic products. FDA believes industry conformance to certain IEC standards would be sufficient to meet the 510(k) premarket notification requirement for certain of these devices. FDA review of related radiological health and safety data in premarket submissions, as opposed to EPRC product reports, would maintain or improve device safety while consolidating the information manufacturers submit to FDA. Currently, information regarding the IEC standards is submitted as part of the premarket notification (approved under OMB control number 0910-0120). Under the draft guidance, if finalized, respondents may choose to submit declarations of conformity with certain IEC standards—in either a 510(k) or if no 510(k) is submitted in an Abbreviated Report under 21 CFR 1002.12(e)—instead of submitting EPRC reports for certain devices in the circumstances described in the draft guidance.

Based on an analysis of recent submissions from Fiscal Year (FY) 2015, approximately 93 percent of manufacturers of Class II medical x-ray imaging devices, including CT, fluoroscopy, and stationary x-ray systems, claimed conformance to an applicable IEC standard. Accordingly,

we believe that the majority of manufacturers of Class II medical x-ray imaging systems would choose to continue to submit declarations of conformity to these IEC standards and not submit EPRC product reports, supplemental reports, and annual reports under the guidance. The other 7 percent of manufacturers of Class II medical x-ray imaging devices and likely a subset of these 93 percent may choose to submit product reports, supplemental reports, and annual reports.

In FY 2015, there were 22 Class II product reports and 13 Class I product reports for x-ray imaging devices submitted to FDA. Therefore, we expect a reduction of 34 respondents to the estimated burden for the product reports, supplemental reports, and annual report information collections in table 1 of this document. Because 13 of these x-ray imaging devices are 510(k)-exempt, Class I devices, we would expect an increase of 13 respondents to the estimated burden for the information collection related to Abbreviated Reports in table 1 of this document (as these manufacturers would be submitting their declarations of conformity in these reports), which corresponds to an expected reduction of 13 respondents to the estimated burden for the product reports, supplemental reports, and annual reports information collections in table 1 of this document. This equals an overall reduction of 1,395 hours in OMB control number 0910-0025.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ^{1,2,3}

Activity/21 CFR section	FDA form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Product reports—1002.10(a)–(k).	3626—Diagnostic x-ray	1,466	1.1	1,613	24	38,712
	3627—CT x-ray					
	3639—Cabinet x-ray					
	3632—Laser					
	3640—Laser light show					
	3630—Sunlamp					
	3646—Mercury vapor lamp					
	3644—Ultrasonic therapy					
	3659—TV					
	3660—Microwave oven					
Product safety or testing changes—1002.11(a)–(b).	3801—UV lamps	966	1.5	1,449	0.5	725
Abbreviated reports—1002.12.					
	3629—General abbreviated report					
	3661—X-ray tables, etc.					
	3662—Cephalometric device	73	2	146	5	730
	3663—Microwave products (non-oven).					

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ^{1,2,3}—Continued

Activity/21 CFR section	FDA form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Annual reports— 1002.13(a)–(b).	3628—General	1,466	1	1,466	18	26,388
	3634—TV					
	3638—Diagnostic x-ray					
	3641—Cabinet x-ray					
	3643—Microwave oven					
	3636—Laser					
	3631—Sunlamp					
	3647—Mercury vapor lamp					
	3645—Ultrasonic therapy					

¹ This table includes the recalculated burden estimate only for information collections (ICs) that are applicable to this draft guidance. It does not include all ICs approved under OMB control number 0910–0025. The draft guidance, if finalized, would be a reduction to the burden estimate for these ICs, except that the Abbreviated reports IC increases. We have described the overall reduction in the text of this document. However, to avoid confusion, we have not included a total burden estimate in this table because such a total would include ICs that are not applicable to the draft guidance.

² There are no capital costs or operating and maintenance costs associated with this collection of information.

³ Totals may not sum due to rounding.

The draft guidance also refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073. The collections of information in 21 CFR parts 1002 through 1050 are approved under OMB control number 0910–0025.

Dated: July 28, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–18300 Filed 8–2–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0375]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Agreement for Shipment of Devices for Sterilization

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget

(OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 2, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to oir_submission@omb.eop.gov. All comments should be identified with the OMB control number 0910–0131. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Agreement for Shipment of Devices for Sterilization—21 CFR 801.150—OMB Control Number 0910–0131—Extension

Under sections 501(c) and 502(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 351(c) and 352(a)), nonsterile devices that are labeled as sterile but are in interstate transit to a facility to be sterilized are adulterated and misbranded. FDA regulations in § 801.150(e) (21 CFR 801.150(e)) establish a control mechanism by which firms may manufacture and label medical devices as sterile at one establishment and ship the devices in interstate commerce for

sterilization at another establishment, a practice that facilitates the processing of devices and is economically necessary for some firms.

Under § 801.150(e)(1), manufacturers and sterilizers may sign an agreement containing the following: (1) Instructions for maintaining accountability of the number of units in each shipment, (2) acknowledgment that the devices that are nonsterile are being shipped for further processing, and (3) specifications for sterilization processing. This agreement allows the manufacturer to ship misbranded products to be sterilized without initiating regulatory action and provides FDA with a means to protect consumers from use of nonsterile products. During routine plant inspections, FDA normally reviews agreements that must be kept for 2 years after final shipment or delivery of devices (§ 801.150(a)(2)).

The respondents to this collection of information are device manufacturers and contract sterilizers. FDA's estimate of the reporting burden is based on data obtained from industry over the past several years. It is estimated that each of the firms subject to this requirement prepares an average of 20 written agreements each year. This estimate varies greatly, from 1 to 100, because some firms provide sterilization services on a part-time basis for only one customer, while others are large facilities with many customers. The average time required to prepare each written agreement is estimated to be 4 hours. This estimate varies depending on whether the agreement is the initial agreement or an annual renewal, on the format each firm elects to use, and on the length of time required to reach agreement. The estimate applies only to those portions of the written agreement that pertain to the requirements

imposed by this regulation. The written agreement generally also includes contractual agreements that are a usual and customary business practice. The recordkeeping requirements of § 801.150(a)(2) consist of making copies

and maintaining the records required under the third-party disclosure section of this collection.

In the **Federal Register** of April 20, 2016 (81 FR 23309), FDA published a 60-day notice requesting public

comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping (hours)	Total hours
Record retention, 801.150(a)(2)	90	20	1,800	.5	900

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN

Activity/21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure (hours)	Total hours
Agreement and labeling requirements, 801.150(e)	90	20	1,800	4	7,200

Dated: July 28, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–18299 Filed 8–2–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Delegation of Authorities

Notice is hereby given that I have delegated to the Commissioner of Food and Drugs (the Commissioner) those authorities vested in the Secretary of the Department of Health and Human Services under sections 1002; 1003; 1004; 1005(f); and 1006(b) and (d) of the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), which relate to the functions of the Food and Drug Administration.

This authority may be re-delegated. This delegation will be exercised in accordance with the Department of Health and Human Services' applicable policies, procedures, guidelines, and regulations.

I ratify and affirm any actions taken by the Commissioner or the Commissioner's subordinates that involved the exercise of the authority delegated herein prior to the effective date of this delegation. This delegation was effective on November 17, 2015.

Dated: July 27, 2016.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2016–18417 Filed 8–2–16; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID SBIR Phase II Clinical Trial Implementation (U44).

Date: August 30, 2016.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 3F100, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Lynn Rust, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G42A, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5069, lrust@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: July 28, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–18391 Filed 8–2–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

[Docket No. SAMHSA–2016–0002]

Request for Comment on Report Entitled: Advancing the Care of Pregnant and Parenting Women With Opioid Use Disorder and Their Infants: A Foundation for Clinical Guidance

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services (HHS).

ACTION: Request for comment.

SUMMARY: SAMHSA, Center for Substance Abuse Treatment (CSAT), in HHS announces the opening of a docket to obtain public comment on a report entitled: Advancing the Care of Pregnant and Parenting Women with Opioid Use Disorder and their Infants: A Foundation for Clinical Guidance.

This report describes the formal process agreed on and followed under the guidance of the federal steering committee (FSC). It explains the RAND Corporation (RAND)/University of California Los Angeles (UCLA)

Appropriateness Method (RAM), justifies its adoption, and reports the outcomes of its application that will form the basis for the development of clinical guidance. This report will serve as the foundation for the development of clinical guidance to be used by providers caring for women with opioid use disorder and their infants.

DATES: *Comment Close Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. no later than 30 days after date of publication in the **Federal Register**.

ADDRESSES: You may submit comments identified by Docket No. [SAMHSA–2016–0002] by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Electronically:* You may submit electronic comments to: samhsa.ppdaoram@samhsa.hhs.gov.

- *By regular mail:* You may mail written comments to the following address ONLY: SAMHSA, CSAT, Division of Pharmacologic Therapies, 5600 Fishers Lane, 13E24, Rockville, MD 20852, Attn: Docket No. [SAMHSA–2016–0002]. Please allow sufficient time for mailed comments to be received before the close of the comment period.

- *By express or overnight mail:* You may send written comments to the following address ONLY: SAMHSA, Attention: DPT Federal Register Representative, Division of Pharmacologic Therapies, 5600 Fishers Lane, 13E24, Rockville, MD 20852, Attn: Docket No. [SAMHSA–2016–0002].

- *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following address prior to the close of the comment period: For delivery in Rockville, MD: SAMHSA, Attention: DPT Federal Register Representative, Division of Pharmacologic Therapies, 5600 Fishers Lane, 13E24, Rockville, MD 20852. To deliver your comments to the Rockville address, call telephone number (240) 276–2700 in advance to schedule your delivery with one of our staff members.

Instructions: To avoid duplication, please submit only one copy of your comments by only one method. All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For access to the report or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Melinda Campopiano, MD, Medical Officer, SAMHSA, CSAT, Division of Pharmacologic Therapies, 5600 Fishers Lane, 13E24, Rockville, MD 20852, Email: samhsa.ppdaoram@samhsa.hhs.gov.

SUPPLEMENTARY INFORMATION:

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. Comments received by the deadline will be available for public inspection at the SAMHSA, Division of Pharmacologic Therapies, 5600 Fishers Lane, 13E24, Rockville, MD 20852, Monday through Friday of each week from 8:30 a.m. to 4:00 p.m. To schedule an appointment to view public comments, phone (240) 276–2700.

Background: SAMHSA led a federal steering committee in overseeing the application of the RAND/UCLA Appropriateness Method (RAM) to the available evidence concerning the optimal management of opioid use disorder for women who are pregnant or parenting and the management of their infants. After completion of the literature review, generation of the indications, and the expert panel RAM rating process—all described in this report—this report was generated for the purpose of producing a clinical guide that will be written to facilitate optimal management of pregnant and parenting women with opioid use disorder and their infants across disciplines and treatment settings. The guide will have a dual purpose: First, to serve as a tool that will increase provider willingness and confidence to manage pregnant and parenting women with opioid use disorder and their infants; and second to help assure the care provided this population optimizes the outcomes for both mother and infant.

The purpose of this effort is to produce a patient-centered guide to be used in a range of clinical settings. SAMHSA plans to organize the results described in this report around clinical scenarios and interventions consistent with the range of ways that women with opioid use disorder may access substance use treatment or maternity care. The guide will provide options for clinical interventions that recognize the complexities of patients' lives. The guide will also include discussion of any conflicting evidence and clinician, treatment or patient characteristics that directly influence the appropriateness or effectiveness of a given clinical intervention. The paucity of the

evidence to support specific interventions will be addressed in the guide. As such, the guide will present options based on current clinical practice, paired with the risks and benefits of each option as currently understood.

Public comment is sought in two general areas: The outcomes of the RAM process and the strategy to translate these findings into a clinical guide. Relevant public comment will inform the development and final appearance of the guide. Members of the expert panel, FSC, and a variety of professional societies will be asked to provide input into the guide outline and drafting of the guide which will then be subject to a formal federal clearance process including scientific review.

Supporting and Related Material in the Docket: The report contains the materials to help inform public comment. The appendices include listings of participants, more detailed information about the literature search, citations of primary references and data tables that were used by SAMHSA to develop the findings in the report. The information provided includes:

(1) The REPORT.

(2) *Supporting appendices:* Appendix A: RAM Process Participants; Appendix B: Literature Review Methods; Appendix C: RAM Reference List and Appendices D–E7: Rated Indications.

Charles LoDico,

Chemist, SAMHSA/CSAP/DWP.

[FR Doc. 2016–18324 Filed 8–2–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1609]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports,

prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the

respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at www.msc.fema.gov for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below. **FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646-7659, or (email), patrick.sacbibit@fema.dhs.gov; or visit the FEMA Map Information eXchange (FMIX), online at www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures

that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at www.msc.fema.gov for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Date: June 30, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Idaho:						
Canyon	Unincorporated areas of Canyon County (16-10-0071P).	Mr. Steven J. Rule, Commissioner, Canyon County 1115 Albany Street Caldwell, ID 83605.	1115 Albany Street, Caldwell, ID 83605.	http://www.msc.fema.gov/lomc	May 4, 2016	160208
Latah	Unincorporated areas of Latah County (15-10-0568P).	The Honorable Richard Walser, Chairman, Latah County Board of Commissioners, District 1 P.O. Box 8068, Moscow, ID 83843.	Latah County Courthouse, 522 South Adams Street, Moscow, ID 83843.	http://www.msc.fema.gov/lomc	Mar. 4, 2016	160086
Illinois:						
Douglas and Moultrie.	Village of Arthur (16-05-0794X).	The Honorable Matt Bernius, Board President, Village of Arthur 120 East Progress Street, Arthur, IL 61911.	Village Hall, 120 East Progress Street, Arthur, IL 61911.	http://www.msc.fema.gov/lomc	Jun. 2, 2016	170520
Douglas	Unincorporated areas of Douglas County (16-05-0794X).	The Honorable Don Monson, Chairman, Douglas County Board, P.O. Box 467, Tuscola, IL 61953.	County Courthouse, 401 South Center Street, Tuscola, IL 61953.	http://www.msc.fema.gov/lomc	Jun. 2, 2016	170194
La Salle	City of La Salle (16-05-0561P).	The Honorable Jeff Grove, Mayor, City of La Salle, 745 2nd Street, La Salle, IL 61301.	City Hall, 745 Second Street, La Salle, IL 61301.	http://www.msc.fema.gov/lomc	Jun. 13, 2016	170401

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
La Salle	City of Peru (16-05-0561P).	The Honorable Scott J. Harl, Mayor, City of Peru, 1901 4th Street, Peru, IL 61354.	City Hall, 1901 4th Street, Peru, IL 61354.	http://www.msc.fema.gov/lomc	Jun. 13, 2016	170406
Moultrie	Unincorporated areas of Moultrie County (16-05-0794X).	The Honorable David McCabe, Chairman, Moultrie County Board, Moultrie County Courthouse, 10 South Main Street, Sullivan, IL 61951.	County Courthouse, Planning and Zoning Department, 10 South Main Street, Suite 1, Sullivan, IL 61951.	http://www.msc.fema.gov/lomc	Jun. 2, 2016	170998
Indiana:						
Allen	City of Fort Wayne (16-05-1027P).	The Honorable Tom Henry, Mayor, City of Fort Wayne, 200 East Berry Street, Suite 420, Fort Wayne, IN 46802.	200 East Berry Street, Suite 150, Fort Wayne, IN 46802.	http://www.msc.fema.gov/lomc	May 3, 2016	180003
Allen	Unincorporated areas of Allen County (16-05-1027P).	Mr. F. Nelson Peters, Commissioner, Allen County, 200 East Berry Street, Suite 410, Fort Wayne, IN 46802.	200 East Berry Street, Suite 150, Fort Wayne, IN 46802.	http://www.msc.fema.gov/lomc	May 3, 2016	180302
Lake	Town of Munster (15-05-6638P).	Mr. Dustin Anderson, Town Manager, Town of Munster, 1005 Ridge Road, Munster, IN 46321.	Town Hall, 1005 Ridge Road, Munster, IN 46321.	http://www.msc.fema.gov/lomc	Mar. 18, 2016	180139
Newton	Town of Kentland (16-05-0904P).	Mr. Lowell Mitchell, Town Council President, Town of Kentland, 300 North 3rd Street, Kentland, IN 47951.	Kentland Town Hall, 300 North 3rd Street, Kentland, IN 47951.	http://www.msc.fema.gov/lomc	May 5, 2016	180182
Kansas:						
Johnson	City of Edgerton (15-07-2149P).	The Honorable Donald B. Roberts, Mayor, City of Edgerton, 404 East Nelson Street, P.O. Box 255, Edgerton, KS 66021.	404 East Nelson Street, Edgerton, KS 66021.	http://www.msc.fema.gov/lomc	May 9, 2016	200162
Johnson	City of Gardner (15-07-2149P).	The Honorable Chris C. Morrow, Mayor, City of Gardner, 420 North Cherry Street, Gardner, KS 66030.	City Hall, 120 East Main Street, Gardner, KS 66030.	http://www.msc.fema.gov/lomc	May 9, 2016	200164
Johnson	Unincorporated areas of Johnson County (15-07-2149P).	The Honorable Ed Eilert, Chairman, Johnson County, 111 South Cherry Street, Suite 3300, Olathe, KS 66061.	111 South Cherry Street, Suite 3500, Olathe, KS 66061.	http://www.msc.fema.gov/lomc	May 9, 2016	200159
Michigan:						
Lapeer	Township of Marathon (15-05-4470P).	Mr. Fred Moorhouse, Supervisor, Township of Marathon, 4575 Pine Street, P.O. Box 457, Columbiaville, MI 48421.	4575 Pine Street, Columbiaville, MI 48421.	http://www.msc.fema.gov/lomc	May 5, 2016	260609
Lapeer	Township of Oregon (15-05-4470P).	Mr. Eldon R. Card, Supervisor, Township of Oregon, 2525 Marathon Road, Lapeer, MI 48446.	2525 Marathon Road, Lapeer, MI 48446.	http://www.msc.fema.gov/lomc	May 5, 2016	261436
Lapeer	Village of Columbiaville (15-05-4470P).	Mr. Tom Wood, President, Village of Columbiaville, 4605 Pine Street, P.O. Box 100, Columbiaville, MI 48421.	4605 Pine Street, Columbiaville, MI 48421.	http://www.msc.fema.gov/lomc	May 5, 2016	260433
Minnesota:						
Kandiyohi	Unincorporated areas of Kandiyohi County (15-05-8056P).	The Honorable Jim Butterfield, Chairman, Kandiyohi County Board of Commissioners, 400 Benson Avenue Southwest, Willmar, MN 56201.	H&H Services Building, 2200 23rd Street Northeast, Suite 2000, Willmar, MN 56201.	http://www.msc.fema.gov/lomc	Mar. 10, 2016	270629
Missouri: Independent.	City of St. Louis (15-07-1507P).	The Honorable Francis D. Slay Mayor, City of St. Louis, 1200 Market Street, Room 200, St. Louis, MO 63103.	Building Division 1200 Market Street, Room 400, St. Louis, MO 63103.	http://www.msc.fema.gov/lomc	Mar. 16, 2016	290385
New York:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Monroe	City of Rochester (15-02-1699P).	The Honorable Lovely A. Warren, Mayor, City of Rochester, City Hall, 30 Church Street, Rochester, NY 14614.	City Hall, 30 Church Street, Rochester, NY 14614.	http://www.msc.fema.gov/lomc	Jun. 16, 2016	360431
Westchester ...	City of Yonkers (15-02-1693P).	The Honorable Mike A. Spano, Mayor, City of Yonkers, City Hall Building, 40 South Broadway, Yonkers, NY 10701.	40 South Broadway, Yonkers, NY 10701.	http://www.msc.fema.gov/lomc	Jun. 16, 2016	360936
Ohio: Cuyahoga	Village of Bratenahl (15-05-6419P).	The Honorable John M. Licastro, Mayor, Village of Bratenahl, 411 Bratenahl Road, Bratenahl, OH 44108.	Village Hall, 411 Bratenahl Road, Bratenahl, OH 44108.	http://www.msc.fema.gov/lomc	May 4, 2016	390734
Oregon:						
Clackamas	Unincorporated areas of Clackamas County (15-10-1671P).	Mr. Don Krupp, County Administrator, Clackamas County, 2051 Kaen Road, Oregon City, OR 97045.	Sunnybrook Service Center Planning Division, 9101 Southeast Sunnybrook Boulevard, Clackamas, OR 97015.	http://www.msc.fema.gov/lomc	May 5, 2016	415588
Lake	Unincorporated areas of Lake County (15-10-1142P).	The Honorable Dan Shoun, 2015 Commissioner, Lake County, 513 Center Street, Lakeview, OR 97630.	Lake County Courthouse, 513 Center Street, Lakeview, OR 97630.	http://www.msc.fema.gov/lomc	May 5, 2016	410115
Marion	Unincorporated areas of Marion County (15-10-1588P).	Mr. Sam Brentano, Commissioner, Marion County, P.O. Box 14500, Salem, OR 97309.	Department of Planning, 3150 Lancaster Drive, Northeast Salem, OR 97305.	http://www.msc.fema.gov/lomc	May 26, 2016	410154
Multnomah	City of Portland (15-10-1671P).	The Honorable Charlie Hales, Mayor, City of Portland, 1221 Southwest 4th Avenue, Suite 340, Portland, OR 97204.	1221 Southwest 4th Avenue Room, 230 Portland, OR 97204.	http://www.msc.fema.gov/lomc	May 5, 2016	410183
Polk	City of Independence (15-10-1588P).	The Honorable John McArdle, Mayor, City of Independence, 240 Monmouth Street, Independence, OR 97351.	240 Monmouth Street, Independence, OR 97351.	http://www.msc.fema.gov/lomc	May 26, 2016	410189
Umatilla	City of Pendleton (15-10-0669P).	The Honorable Phillip Houk, Mayor, City of Pendleton, City Hall, 500 Southwest Dorion Avenue, Pendleton, OR 97801.	Planning and Building Department, 500 Southwest Dorion Avenue, Pendleton, OR 97801.	http://www.msc.fema.gov/lomc	Jun. 3, 2016	410211
Umatilla	Unincorporated areas of Umatilla County (15-10-0669P).	The Honorable George Murdock, Board Chair, Umatilla County, Umatilla County Courthouse, 216 Southeast 4th Street, Pendleton, OR 97801.	Umatilla County Courthouse Planning Department, 216 Southeast 4th Street, Pendleton, OR 97801.	http://www.msc.fema.gov/lomc	Jun. 3, 2016	410204
Texas:						
Dallas	City of Grand Prairie (15-06-1228P).	The Honorable Ron Jensen, Mayor, City of Grand Prairie, 317 West College Street, Grand Prairie, TX 75050.	City Development Center, 206 West Church Street, Grand Prairie, TX 75050.	http://www.msc.fema.gov/lomc	Mar. 25, 2016	485472
Dallas	City of Irving (15-06-1228P).	The Honorable Beth Van Duyne, Mayor, City of Irving, 825 West Irving Boulevard, Irving, TX 75060.	City Hall, 825 West Irving Boulevard, Irving, TX 75060.	http://www.msc.fema.gov/lomc	Mar. 25, 2016	480180
Washington: King ..	City of Redmond (16-10-0139P).	The Honorable John Marchione, Mayor, City of Redmond, P.O. Box 97010, Redmond, WA 98073.	City Hall, 15670 Northeast 85th Street, Redmond, WA 98052.	http://www.msc.fema.gov/lomc	May 25, 2016	530087
Wisconsin: Washington.	Unincorporated areas of Washington County (16-05-1498P).	Mr. Herbert J. Tennes, Chairperson, Washington County, 432 East Washington Street, Suite 3029, P.O. Box 1986, West Bend, WI 53095.	432 East Washington Street, West Bend, WI 53095.	http://www.msc.fema.gov/lomc	Jun. 2, 2016	550471

[FR Doc. 2016-18332 Filed 8-2-16; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2016-0049]

DHS Data Privacy and Integrity Advisory Committee

AGENCY: Privacy Office, DHS.

ACTION: Committee management; notice of committee charter renewal.

SUMMARY: The Secretary of Homeland Security has determined that the re-establishment of the Data Privacy and Integrity Advisory Committee is necessary and in the public interest in connection with the Department of Homeland Security's performance of its duties. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

DATES: The committee's charter is effective June 30, 2016, and expires June 30, 2018.

ADDRESSES: If you desire to submit comments on this action, they must be submitted by October 3, 2016. Comments must be identified by DHS Docket Number (DHS-2016-0049) and may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* PrivacyCommittee@dhs.gov. Include the Docket Number (DHS-2016-0049) in the subject line of the message.

- *Fax:* (202) 343-4010.
- *Mail:* Sandra Taylor, Designated Federal Officer, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0655, Washington, DC 20528.

Instructions: All submissions must include the words "Department of Homeland Security" and DHS-2016-0049, the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity

Advisory Committee, Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0655, Washington, DC 20528, by telephone (202) 343-1717, by fax (202) 343-4010, or by email to privacycommittee@hq.dhs.gov.

Responsible DHS Officials: Jonathan Cantor, Acting Chief Privacy Officer, and Sandra Taylor, Designated Federal Officer, 245 Murray Lane SW., Mail Stop 0655, Washington, DC 20528, privacyCommittee@dhs.gov, (202) 343-1717.

SUPPLEMENTARY INFORMATION:

Purpose and Objective: Under the authority of 6 U.S.C. 451, this charter re-establishes the Data Privacy and Integrity Advisory Committee as a discretionary committee, which shall operate in accordance with the provisions of the *Federal Advisory Committee Act* (FACA), 5 U.S.C. appendix. The Committee provides advice at the request of the Secretary of Homeland Security and the DHS Chief Privacy Officer on programmatic, policy, operational, administrative, and technological issues within the DHS that relate to personally identifiable information (PII), as well as data integrity and other privacy-related matters.

Dated: July 26, 2016.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2016-18434 Filed 8-2-16; 8:45 am]

BILLING CODE 9110-9L-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[16XD0120AF/DT21200000/DST000000/241A/T0110100]

Tribal Consultation and Listening Sessions on Indian Trust Asset Reform Act

AGENCY: Office of the Secretary, Interior.

ACTION: Notice; correction.

SUMMARY: The Department of the Interior published a notice in the **Federal Register** of July 20, 2016 (81 FR 47176), announcing Tribal consultation and listening sessions on the Indian Trust Asset Reform Act. This notice announces a correction to the Albuquerque, New Mexico, location listed in that notice and provides venue information for other locations.

DATES: Please see the **SUPPLEMENTARY INFORMATION** section of this notice for dates of the listening sessions and Tribal

consultation sessions. Written comments are due by September 30, 2016.

ADDRESSES: Please submit written comments by email to OST_ITARA@ost.doi.gov. If you do not have access to email, please send a hard copy to the following address, but please do not send a duplicate hard copy if you have emailed a copy: Ms. Elizabeth Appel, Office of the Assistant Secretary—Indian Affairs, 1849 C Street NW., MS 3642, Washington, DC 20240. Please see the **SUPPLEMENTARY INFORMATION** section of this notice for locations of the listening sessions and Tribal consultation sessions.

FOR FURTHER INFORMATION CONTACT: Ms. Debra DuMontier, Office of the Special Trustee for American Indians at debra_dumontier@ost.doi.gov or (505) 816-1131 or Ms. Elizabeth Appel, Office of the Assistant Secretary—Indian Affairs at elizabeth.appel@bia.gov or (202) 273-4680.

SUPPLEMENTARY INFORMATION: On June 22, 2016, President Obama signed into law the Indian Trust Asset Reform Act, Public Law 114-178. Title III of this Act:

- Allows the Secretary of the Interior to establish an Under Secretary for Indian Affairs who is to report directly to the Secretary of the Interior and coordinate with OST to ensure an orderly transition of OST functions to an agency or bureau within Interior;

- Requires Interior to prepare a transition plan and timetable for how identified OST functions might be moved to other entities within the Department of the Interior;

- Requires appraisals and valuations of Indian trust property to be administered by a single administrative entity within Interior; and

- Requires Interior to establish minimum qualifications for individuals to prepare appraisals and valuations of Indian trust property and allow an appraisal or valuation by a qualified person to be considered final without being reviewed or approved by Interior.

The Department is hosting listening sessions and consultation sessions with Indian Tribes and trust beneficiaries on each of these items at the following dates and locations. This information corrects the Albuquerque information listed in the notice published in the **Federal Register** of July 20, 2016 (81 FR 47176) and includes more specific information.

Date	Time (all times local)	Listening sessions/tribal consultation sessions	Location
Wednesday, 8/17/ 2016.	1:00 p.m.–4:00 p.m ..	Listening Session (in conjunction with the Indian Land Working Group 2016 Symposium).	Oneida Tribe of Indians of Wisconsin, Radisson Hotel and Conference Center, Airport Drive, Green Bay, WI 54313.
Monday, 8/22/2016	8:30 a.m.–12:30 p.m	Tribal Consultation	* Sheraton Albuquerque Airport Hotel, 2910 Yale Boulevard SE., Albuquerque, NM 87106. * Note: This location is a correction to the location listed in the July 20, 2016 notice.
Friday, 8/26/2016	8:30 a.m.–12:30 p.m	Tribal Consultation	Minneapolis Convention Center, 1301 Second Avenue South, Minneapolis, MN 55403.
Monday 8/29/2016	8:30 a.m.–12:30 p.m	Tribal Consultation	Henry M. Jackson Federal Building, 915 2nd Avenue, North Auditorium, Seattle, WA 98104.
Wednesday 8/31/2016	8:30 a.m.–12:30 p.m	Tribal Consultation	Billings Hotel and Convention Center, 1223 Mullooney Lane, Billings, MT 89101.
Wednesday, 9/7/2016	8:30 a.m.–12:30 p.m	Tribal Consultation	Osage Event Center, 951 West 36th St. N., Tulsa, OK 74127.
Friday, 9/9/2016	8:30 a.m.–12:30 p.m	Tribal Consultation	Convention Center at the Denny Sanford Premier Center, 1201 Northwest Ave., Sioux Falls, SD 57104.
Monday 9/12/2016	8:30 a.m.–12:30 p.m	Tribal Consultation	Agua Caliente Casino Resort Spa, 32–250 Bob Hope Drive, Rancho Mirage, CA 92270, (Palm Springs, CA).
Monday, 9/19/2016	1:30 p.m.–3:30 p.m ..	Tribal Consultation Teleconference.	(888) 282–0365, passcode: 9342929.

Additional information, including the OST functions that may be transferrable to other entities within Interior and potential options for the single entity within Interior that could perform all appraisal services for Indian trust property, are available www.doi.gov/OST/ITARA.

Dated: July 28, 2016.

Michael L. Connor,
Deputy Secretary.

[FR Doc. 2016–18385 Filed 8–2–16; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21504;
PPWOCRADNO–PCU00RP14.R50000]

Notice of Inventory Completion: University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Pennsylvania Museum of Archaeology and Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or 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 the University of Pennsylvania Museum of Archaeology and Anthropology. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or 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 the University of Pennsylvania Museum of Archaeology and Anthropology at the address in this notice by September 2, 2016.

ADDRESSES: Dr. Julian Siggers, Director, University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA 19104, telephone (215) 898–4050.

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 the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA. The human remains were removed from unknown locations in Michigan; in Wayne County, Michigan and in Milwaukee County, Wisconsin.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). 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 the University of Pennsylvania Museum of Archaeology and Anthropology professional staff in consultation with representatives of the Menominee Indian Tribe of Wisconsin; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and with the Michigan Anishinaabek Cultural Preservation & Repatriation Alliance, a non-federally recognized entity, representing the following federally recognized tribes: Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Saginaw Chippewa Indian Tribe of Michigan; and the Sault Ste. Marie Tribe of Chippewa Indians, Michigan, hereafter referred to as “The Consulted Tribes.”

History and Description of the Remains

At an unknown date between 1836 and 1839, human remains representing, at minimum, five individuals (UPM #: 97–606–35; 97–606–44; 97–606–78; 97–606–563; 97–606–1220) were removed

by “workers digging for buildings, roads, or gardens” from an unknown mound site in Milwaukee County, WI. The human remains were discovered in the vicinity of Milwaukee and acquired by Increase A. Lapham, who at the time was conducting a survey of mounds in Wisconsin. Prior to 1839, Mr. Lapham sent the human remains to Dr. Samuel G. Morton for inclusion in his collection of human crania from around the world. The human remains represent a single individual, most likely female, 25–35 years of age; an adult female 50+ years of age; an adult male 30–40 years of age; an adult male 35–40 years of age; and an adult male 50+ years of age. Each of the five individuals is represented by a cranium without a mandible. The condition of all of the human remains is consistent with burial. No known individuals were identified. No associated funerary objects are present.

At an unknown date between 1820 and 1837, human remains representing, at minimum, one individual (UPM #: 97–606–454) were removed from an unknown site in Michigan or Wisconsin by Dr. Richard S. Satterlee, Assistant Surgeon for the U.S. Army. In this capacity, Dr. Satterlee served at the Detroit Barracks, MI, Fort Howard, WI, Fort Mackinac, MI, Fort Winnebago, WI, and for a second term at Fort Howard, WI. It is during this time that the human remains were collected. In 1837, Satterlee was sent to Florida. The human remains were transferred to Dr. Samuel Morton in Philadelphia for inclusion in his collection of human crania from around the world prior to 1839. The human remains are those of a single female individual estimated to be 20–30 years old and are represented by a cranium and mandible. There is little pathology represented on the bones and teeth, and the condition of the human remains suggests they were not buried. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, one individual (UPM #: 97–606–1222) were removed from an unknown site, possibly in Michigan. Prior to 1849, Mr. John P. Wetherill of Philadelphia sent the human remains to Dr. Samuel G. Morton. The human remains are represented by a cranium and mandible of a single male, 30–40 years of age. This individual is identified as “Natonake, a Menominee Chief.” No known individuals were identified. No associated funerary objects are present.

At this time, the Academy of Natural Sciences of Philadelphia provided storage space for much of Dr. Morton’s collections, including these human

remains, until his death in 1851. In 1853, Dr. Morton’s collection, including all of the human remains described above, were purchased from Dr. Morton’s Estate and formally presented to the Academy of Natural Sciences. In 1966, Dr. Morton’s collection was loaned to the University of Pennsylvania Museum of Archaeology and Anthropology. In 1997, the collection was formally gifted to the University of Pennsylvania Museum of Archaeology and Anthropology.

Museum collections and published literature indicate that the seven sets of human remains date to the Historic Period. The human remains have been identified as Native American based on the specific cultural and geographic attributions in the museum records. Collector’s records, museum documentation and published historical sources identify the human remains above as Menominee. Scholarly ethno-historic and anthropological publications and land cession records indicate that the areas from which the human remains were removed are within the traditional aboriginal territory of the Menominee Indians, and historic Menominee occupation sites within these areas have been identified.

Determinations Made by the University of Pennsylvania Museum of Archaeology and Anthropology

Officials of the University of Pennsylvania Museum of Archaeology and Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 7 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Menominee Indian Tribe of Wisconsin.

Additional Requestors and Disposition

Lineal descendants or 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 Dr. Julian Siggers, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South Street, Philadelphia, PA 19104, telephone (215) 898–4050, by September 2, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Menominee Indian Tribe of Wisconsin may proceed.

The University of Pennsylvania Museum of Archaeology and Anthropology is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: July 8, 2016.

Melanie O’Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–18356 Filed 8–2–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0235]

Agency Information Collection Activities; Proposed Collection Comments Requested; Extension, Without Change, of a Currently Approved Collection Bulletproof Vest Partnership (BVP)

AGENCY: Office of Justice Program, Department of Justice.

ACTION: 60-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.

DATES: Comments are encouraged and will be accepted for 60 days until October 3, 2016.

FOR FURTHER INFORMATION CONTACT: If you have 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 C. Casto at 1–202–353–7193, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street NW., Washington, DC 20531 or by email at Chris.Casto@usdoj.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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection Back to Top

(1) Type of information collection: Extension, without change, of a currently approved collection.

(2) The title of the form/collection: Bulletproof Vest Partnership Application.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: None. Bureau of Justice Assistance, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Jurisdictions and law enforcement agencies with armor vest needs.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that no more than 4,500 respondents will apply each year. Each application takes approximately 1 hour to complete.

(6) An estimate of the total public burden (in hours) associated with the collection: Approximately 4,500 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., Suite 3E-405B, Washington, DC 20530.

Dated: July 29, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016-18351 Filed 8-2-16; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On July 28, 2016, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Nevada in the lawsuit entitled *United States and State of Nevada, Dept. of Conservation and*

Natural Resources v. Nevada Department of Transportation, Civil Action No.3:16-cv-453.

The complaint in this lawsuit involves claims that the Nevada Department of Transportation (“NDOT”) discharged pollutants from its municipal separate storm water system into waters of the United States in violation of its National Pollution Discharge Elimination System Permit. Under the Decree, NDOT will develop and implement programs to control discharges from construction activity, areas that are redeveloped or newly developed, and from activities NDOT conducts to operate and maintain the highway system. NDOT will pay a civil penalty of \$120,000 to be split evenly between the United States and the State of Nevada, Department of Conservation and Natural Resources. NDOT will also implement a Real-Time Water Quality Data Availability Supplemental Environmental Project.

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 and State of Nevada, Dept. of Conservation and Natural Resources v. Nevada Department of Transportation* D.J. Ref. No. 90-5-1-1-11031. 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	pubcomment-ees.enrd@usdoj.gov .
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: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$12.50 (25 cents per page

reproduction cost) payable to the United States Treasury.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016-18377 Filed 8-2-16; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1723]

Notice of Public Comment Period on the DRAFT “National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach”

AGENCY: National Institute of Justice, Justice.

ACTION: Notice.

SUMMARY: This notice announces the opening of the public comment period for the DRAFT “National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach.”

DATES: Written public comment regarding the publication should be submitted through www.regulations.gov on or before September 2, 2016.

FOR FURTHER INFORMATION CONTACT: Heather Waltke, Associate Director, Office of Investigative and Forensic Sciences, National Institute of Justice, 810 7th Street NW., Washington, DC 20531, or via email at Heather.Waltke@usdoj.gov.

SUPPLEMENTARY INFORMATION: The Sexual Assault Forensic Evidence Reporting Act of 2013 (the “SAFER Act”) was enacted as Title X of Public Law 113-4, the Violence Against Women Reauthorization Act of 2013. It was created, in part, to develop protocols and practices appropriate for the accurate, timely, and effective collection and processing of DNA evidence, including protocols and practices specific to sexual assault cases, which shall address appropriate steps in the investigation of cases that might involve DNA evidence[.]”¹ More specifically, these protocols and practices are to provide recommendations in a variety of focus areas, including outlining parameters for identifying and prioritizing DNA evidence such as sexual assault kits (SAKs) to be tested, identifying reasonable time periods for testing, identifying effective processes for communicating information about evidence testing between stakeholders,

¹ 42 U.S.C. 14135(o)(1).

and establishing standards for conducting audits of sexual assault evidence that has never been submitted to a laboratory for testing.

The National Institute of Justice (NIJ)—the research, development and evaluation agency of the U.S. Department of Justice—convened several working group meetings representing victims, victim advocates, sexual assault nurse examiners, medical examiners, forensic laboratories, law enforcement agencies, prosecutors and the judiciary. The working group was directed to address issues relating to evidence collection; prioritization of evidence and time periods for collection; evidence inventory, tracking, and auditing technology solutions; and communication strategies. The working group met over a twenty-four month period to develop recommendations for sexual assault evidence, whether it originates from a SAK collected decades ago and was recently discovered in storage during a statutorily-mandated inventory or, from a SAK collected in connection with a recent sexual assault. Following months of drafting and deliberations, including input from many stakeholders during that time, NIJ is now requesting comments on a DRAFT document titled, “*National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*.” This document is intended to provide a multidisciplinary and diverse group of practitioners with critical information that will assist in the collection, tracking, and processing of sexual assault kits. In addition, the document provides victim-centered and trauma-informed approaches to assisting victims throughout the criminal justice process.

Posting of Public Comments: To ensure proper handling of comments, please reference “Docket No. 1723” on all electronic correspondence. All comments regarding the *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach* should be submitted electronically through www.regulations.gov using the electronic comment form provided on that site. All comments submitted to www.regulations.gov will be posted for public review and are part of the official docket record. NIJ encourages the public to comment and all comments will be considered; however, no direct feedback or responses to comments will be provided.

In accordance with the Federal Records Act, please note that all comments received are considered part of the public record, and shall be made available for public inspection online at <http://www.regulations.gov>. The

comments to be posted may include personally identifiable information (such as your name, address, etc.) and confidential business information voluntarily submitted by the commenter.

DOJ will post all comments received on <http://www.regulations.gov> without making any changes to the comments or redacting any information, including any personally identifiable information provided. It is the responsibility of the commenter to safeguard personally identifiable information. You are not required to submit personally identifying information in order to comment on this document and NIJ recommends that commenters not include personally identifiable information such as Social Security Numbers, personal addresses, telephone numbers, and email addresses that they do not want made public in their comments as such submitted information will be available to the public via <http://www.regulations.gov>. Comments submitted through <http://www.regulations.gov> will not include the email address of the commenter unless the commenter chooses to include that information as part of his or her comment.

Gerald LaPorte,

Director, Office of Investigative and Forensic Sciences, National Institute of Justice.

[FR Doc. 2016–18334 Filed 8–2–16; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO): Meeting

AGENCY: Veterans' Employment and Training Service (VETS), Department of Labor.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the ACVETEO. The ACVETEO will discuss the DOL core programs and services that assist veterans seeking employment and raise employer awareness as to the advantages of hiring veterans. There will be an opportunity for individuals or organizations to address the committee. Any individual or organization that wishes to do so should contact Mr. Gregory Green at 202–693–4734.

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, and/or materials in alternative format)

should notify the Advisory Committee no later than Friday, August 26, 2016 by contacting Mr. Gregory Green at 202–693–4734. Requests made after this date will be reviewed, but availability of the requested accommodations cannot be guaranteed. The meeting site is accessible to individuals with disabilities. This Notice also describes the functions of the ACVETEO. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATE AND TIME: Wednesday, August 31, 2016 beginning at 9:00 a.m. and ending at approximately 4:00 p.m. (EST).

ADDRESSES: The meeting will take place at the U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210, Conference Room N–4437 A & B. Members of the public are encouraged to arrive early to allow for security clearance into the Frances Perkins Building.

Security Instructions: Meeting participants should use the visitors' entrance to access the Frances Perkins Building, one block north of Constitution Avenue at 3rd and C Streets NW. For security purposes meeting participants must:

1. Present a valid photo ID to receive a visitor badge.

2. Know the name of the event being attended: The meeting event is the Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO).

3. Visitor badges are issued by the security officer at the Visitor Entrance located at 3rd and C Streets NW. When receiving a visitor badge, the security officer will retain the visitor's photo ID until the visitor badge is returned to the security desk.

4. Laptops and other electronic devices may be inspected and logged for identification purposes.

5. Due to limited parking options, Metro's Judiciary Square station is the easiest way to access the Frances Perkins Building.

Notice of Intent to Attend the Meeting: All meeting participants are being asked to submit a notice of intent to attend by Friday, August 13, 2016, via email to Mr. Gregory Green at green.gregory.b@dol.gov, subject line “August 2016 ACVETEO Meeting.”

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Green, Assistant Designated Federal Official for the ACVETEO, (202) 693–4734.

SUPPLEMENTARY INFORMATION: The ACVETEO is a Congressionally mandated advisory committee

authorized under Title 38, U.S. Code, Section 4110 and subject to the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended. The ACVETEO is responsible for: Assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; assisting to conduct outreach to employers seeking to hire veterans; making recommendations to the Secretary, through the Assistant Secretary for VETS, with respect to outreach activities and employment and training needs of Veterans; and carrying out such other activities necessary to make required reports and recommendations. The ACVETEO meets at least quarterly.

Agenda

9:00 a.m. Welcome and remarks, Michael Michaud, Assistant Secretary for Veterans Employment and Training Service
 9:15 a.m. Administrative Business, Mika Cross, Designated Federal Official
 9:20 a.m. Transition and Training Subcommittee Briefing and Discussion on Fiscal Year 2016 recommendations
 10:20 a.m. Barriers to Employment Subcommittee Briefing and Discussion on Fiscal Year 2016 recommendations
 11:20 p.m. Break
 11:30 p.m. Direct Services Subcommittee briefing and discussion on Fiscal Year 2016 recommendations
 12:30 p.m. Lunch
 1:30 p.m. Finalize work on Fiscal Year 2016 recommendations
 2:30 p.m. Break
 2:45 p.m. Subcommittee Discussion/Assignments, ACVETEO Chairman
 3:00 p.m. Public Forum, Mika Cross, Designated Federal Official
 3:30 p.m. Adjourn

Signed in Washington, DC, this 26th day of July, 2016.

Teresa W. Gerton,

Deputy Assistant Secretary for Policy, Veterans' Employment and Training Service.

[FR Doc. 2016-18343 Filed 8-2-16; 8:45 am]

BILLING CODE 4510-79-P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Advertising of Excess Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: NCUA, as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a reinstatement of a previously approved collection, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35).

DATES: Written comments should be received on or before October 3, 2016 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314, Suite 5067; Fax No. 703-519-8579; or Email at PRAComments@NCUA.gov

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the address above.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133-0098.

Title: Advertising of Excess Insurance, 12 CFR 740.3.

Abstract: Requirements of 12 CFR 740.3, Advertising of excess insurance, prescribes that federally insured credit unions must disclose in advertising the share or savings account insurance provided by a party other than NCUA. This disclosure statement must include the identity of the carrier, the type and amount of such insurance and must avoid any statement or implication that the carrier is affiliated with NCUA or the federal government. The disclosure requirements under § 740.3 are necessary to ensure that share account holders are aware that their accounts are insured by carriers other than the NCUA.

Type of Review: Reinstatement without change of a previously approved collection.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 300.

Estimated No. of Responses per Respondent: 1.

Estimated Annual Responses: 300.

Estimated Burden Hours per Response: 1.

Estimated Total Annual Burden Hours: 300.

Adjustment reflects a reduction in the number of respondents due to a decline in the number of FICUs.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The

public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on July 28, 2016.

Dated: July 28, 2016.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2016-18311 Filed 8-2-16; 8:45 am]

BILLING CODE 7535-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2016-0070]

Information Collection: "NRC Form 212, Qualifications Investigation, Professional, Technical and Administrative Positions"

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of the information collection entitled, "NRC Form 212, Qualifications Investigation, Professional, Technical and Administrative Positions."

DATES: Submit comments by October 3, 2016. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID: NRC-2016-0070. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T-5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the

SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT:

David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: INFOCOLLECTS.Resource@NRC.GOV.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2016-0070 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0070. A copy of the collection of information “NRC Form 212, Qualifications Investigation, Professional, Technical and Administrative Positions” and related instructions may be obtained without charge by accessing Docket ID NRC-2016-0070 on this Web site.

• *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. A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession ML16168A149. The supporting statement is available in ADAMS under Accession No. ML16168A215.

• *NRC’s PDR:* You may examine and purchase copies of public documents at the NRC’s PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC’s Clearance Officer:* A copy of the collection of information and related instructions may be obtained without

charge by contacting NRC’s Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: INFOCOLLECTS.Resource@NRC.GOV.

B. Submitting Comments

Please include Docket ID NRC-2016-0070 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB’s approval for the information collection summarized below.

1. *The title of the information collection:* “NRC Form 212, Qualifications Investigation, Professional, Technical and Administrative Positions.”
2. *OMB approval number:* 3150-0033.
3. *Type of submission:* Extension.
4. *The form number:* NRC Form 212.
5. *How often the collection is required or requested:* On occasion. The forms are collected for every new hire to the NRC.
6. *Who will be required or asked to respond:* Former employers, supervisors, and other references indicated on job applications are asked to complete the NRC Form 212.
7. *The estimated number of annual responses:* 1,000.
8. *The estimated number of annual respondents:* 0.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 500 hours.

10. *Abstract:* Information requested on NRC Form 212, “Qualifications Investigation, Professional, Technical, and Administrative Positions” is used to determine the qualifications and suitability of external applicants for employment with the NRC. The completed form may be used to examine, rate and/or assess the prospective employee’s qualifications. The information regarding the qualifications of applicants for employment is reviewed by professional personnel of the Office of the Chief Human Capital Officer, in conjunction with other information in the NRC files, to determine the qualifications of the applicant for appointment to the position under consideration.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 28th day of July 2016.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2016-18304 Filed 8-2-16; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: NRC will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on October 6-7, 2016. A sample of agenda items to be discussed during the public session includes: An update on medical-related events; a discussion on the reporting of medical events for various

modalities; a discussion on the licensing guidance for yttrium-90 microsphere brachytherapy; a discussion on the training and experience requirements for authorized individuals for various modalities; a presentation from Spectrum Pharmaceuticals, Inc. on the training and experience requirements for alpha and beta emitters; an update on the worldwide supply of molybdenum-99; and a discussion on the licensing guidance for the NorthStar® Generator. The agenda is subject to change. The current agenda and any updates will be available at <http://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2016.html> or by emailing Ms. Michelle Smethers at the contact information below.

Purpose: Discuss issues related to 10 CFR part 35 Medical Use of Byproduct Material.

Date and Time for Open Sessions: October 06, 2016, from 8:00 a.m. to 3:00 p.m. and October 07, 2016, from 8:00 a.m. to 4:00 p.m.

Data and Time for Closed Sessions: October 06, 2016, from 7:00 a.m. to 8:00 a.m. and from 3:00 p.m. to 5:00 p.m.

Address for Public Meeting: U.S. Nuclear Regulatory Commission, Two White Flint North Building, Room T2-B3, 11545 Rockville Pike, Rockville, Maryland 20852.

Public Participation: Any member of the public who wishes to participate in the meeting in person or via phone should contact Ms. Smethers using the information below. The meeting will also be webcast live: video.nrc.gov.

FOR FURTHER INFORMATION CONTACT: Michelle Smethers, email: michelle.smethers@nrc.gov, telephone: (301) 415-6711.

Conduct of the Meeting

Philip O. Alderson, M.D., will chair the meeting. Dr. Alderson will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. Smethers using the contact information listed above. All submittals must be received by October 3, 2016, and must pertain to the topic on the agenda for the meeting.
2. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the Chairman.
3. The draft transcript and meeting summary will be available on ACMUI's Web site <http://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/>

[2016.html](http://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2016.html) on or about November 22, 2016.

4. Persons who require special services, such as those for the hearing impaired, should notify Ms. Smethers of their planned attendance.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10 of the *Code of Federal Regulations*, part 7.

Dated at Rockville, Maryland, this 28th day of July, 2016.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2016-18372 Filed 8-2-16; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2016-0045]

Steam Generator Materials and Design

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan—final section revision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final revision to Section 5.4.2.1, "Steam Generator Materials and Design," of NUREG-0800, "Standard Review Plan [SRP] for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR [Light Water Reactor] Edition." Revision 4 to Section 5.4.2.1 of the SRP reflects current NRC review methods and practices based on lessons learned from NRC reviews of design certification and combined license applications completed since the last revision of this section.

DATES: The effective date of Revision 4 to Section 5.4.2.1 of the SRP is September 2, 2016.

ADDRESSES: Please refer to Docket ID NRC-2016-0045 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0045. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "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. A mark-up showing the Revision 4 changes made to SRP Section 5.4.2.1, and the final revision of SRP Section 5.4.2.1, Revision 4, are available in ADAMS under Accession Nos. ML16147A298 and ML16147A289.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- The NUREG-0800 is available on the NRC's public Web site at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/>.

FOR FURTHER INFORMATION CONTACT:

Carolyn Lauron, telephone: 301-415-2736, email: Carolyn.Lauron@nrc.gov; or Mark Notich, telephone: 301-415.3053, email: Mark.Notich@nrc.gov. Both are staff of the Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Background

On April 22, 2016 (81 FR 23762), the NRC published for public comment the proposed revisions to SRP Section 5.4.2.1. The NRC received no comments on the proposed revisions. Therefore, the NRC is issuing Revision 4 to Section 5.4.2.1 of the SRP in final form for use. There have been minor editorial changes to this section since its issuance in proposed form for public comment. Details of the specific changes are included at the end of the revised section, under the subsection titled, "Description of Changes."

Revision 4 to Section 5.4.2.1 of the SRP reflects current NRC review methods and practices based on lessons learned from NRC reviews of design certification and combined license applications completed since the last revision of this section.

II. Backfitting and Finality Provisions

Issuance of this revised SRP section does not constitute backfitting as defined in § 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), "Backfitting," (the Backfit Rule) or

otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations:

1. *The SRP positions do not constitute backfitting, inasmuch as the SRP is internal guidance directed at the NRC staff with respect to their regulatory responsibilities.*

The SRP provides guidance to the NRC staff on how to review an application for the NRC's regulatory approval in the form of licensing. Changes in internal NRC staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. *The NRC staff has no intention to impose the SRP positions on current licensees and regulatory approvals either now or in the future.*

The NRC staff does not intend to impose or apply the positions described in the SRP to existing (already issued) licenses and regulatory approvals. Therefore, the issuance of a final SRP—even if considered guidance that is within the purview of the issue finality provisions in 10 CFR part 52—need not be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP on holders of already issued licenses in a manner which does not provide issue finality as described in the applicable issue finality provision, then the NRC staff must make the showing as set forth in the Backfit Rule or address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. *Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. This is because neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions discussed in the next paragraph—were intended to apply to every NRC action which substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The NRC staff does not, at this time, intend to impose the positions represented in the SRP in

a manner that is inconsistent with any issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP in a manner which does not provide issue finality as described in the applicable issue finality provision, then the NRC staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

III. Congressional Review Act

This SRP section revision is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 29th day of July 2016.

For the Nuclear Regulatory Commission.

Joseph Colaccino,

Chief, New Reactor Rulemaking and Guidance Branch, Division of Engineering, Infrastructure, and Advanced Reactors, Office of New Reactors.

[FR Doc. 2016–18390 Filed 8–2–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281 NRC–2016–0105]

Virginia Electric Power Company; Surry Power Station, Unit Nos. 1 and 2; Use of AREVA's M5® Alloy Fuel Rod Cladding Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a September 30, 2016, request from Virginia Electric Power Company (Dominion or the licensee) in order to use AREVA's M5® alloy fuel rod cladding material at Surry Power Station, Unit Nos. 1 and 2 (SPS).

DATES: The exemption was issued on July 27, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0105 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID: NRC–2016–0105. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: Carol.Gallagher@nrc.gov. For

technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **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 in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT:

Karen R. Cotton, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1438, email: Karen.Cotton@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Dominion is the holder of Facility Operating License Nos. DPR–32 and DPR–37, which authorize operation of SPS. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect.

The facility consists of two pressurized-water reactors (PWR) located in Surry County, Virginia.

II. Request/Action

Pursuant to § 50.12 of title 10 of the *Code of Federal Regulations* (10 CFR), “Specific exemptions,” the licensee has requested, by letter dated September 30, 2015 (ADAMS Accession No. ML15282A036), an exemption from 10 CFR 50.46, “Acceptance criteria for emergency core cooling systems [ECCS] for light-water nuclear power reactors,” and 10 CFR part 50, appendix K, “ECCS Evaluation Models,” to allow the use of fuel rods clad with AREVA's M5® alloy. The regulations in 10 CFR 50.46 require that the calculated cooling performance following postulated loss-of-coolant accidents (LOCAs) at reactors fueled with zircaloy or ZIRLO™ cladding conforms to the criteria set forth in 10 CFR 50.46(b). In addition, 10 CFR part

50, appendix K, requires, in part, that the Baker-Just equation be used to predict the rates of energy release, hydrogen concentration, and cladding oxidation from the metal/water reaction. The Baker-Just equation assumes the use of zircaloy or ZIRLO™ materials that have different chemical compositions from AREVA's M5® alloy. As written, these regulations presume only the use of zircaloy or ZIRLO™ fuel rod cladding and do not contain provisions for use of fuel rods with other cladding materials. Therefore, an exemption from the requirements of 10 CFR 50.46 and 10 CFR part 50, appendix K, is needed to support the use of a different fuel cladding material. Accordingly, the licensee requested an exemption that would allow the use of fuel rods clad with AREVA's M5® alloy to be loaded into the SPS reactor cores as non-limiting lead test assemblies (LTAs) in up to eight locations.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security. However, 10 CFR 50.12(a)(2) states that the Commission will not consider granting an exemption unless special circumstances are present as set forth in 10 CFR 50.12(a)(2). Under 10 CFR 50.12(a)(2)(ii), special circumstances are present when application of the regulation in the particular circumstances would not serve, or is not necessary to achieve, the underlying purpose of the rule.

A. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 and 10 CFR part 50, appendix K, is to establish acceptance criteria for ECCS performance to provide reasonable assurance of safety in the event of a LOCA. The special circumstance that necessitates the request for exemption to 10 CFR 50.46 and 10 CFR 50, appendix K, is that neither of these regulations explicitly allows the use of AREVA's M5® alloy fuel rod cladding material. The ultimate objective of 10 CFR 50.46 is to ensure that nuclear power reactors fueled with uranium oxide pellets within zircaloy or ZIRLO™ cladding

must be provided with an ECCS that is designed to provide core cooling following a postulated LOCA. AREVA NP, in its NRC-approved Topical Report BAW-10227-A, "Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel," February 2000 (ADAMS Accession No. ML003686365), has demonstrated that the effectiveness of the ECCS will not be affected by a change from zircaloy or ZIRLO™ clad fuel to fuel rods clad with AREVA's M5® alloy. Normal reload safety analyses will confirm that there is no adverse impact on ECCS performance.

The objective of 10 CFR 50.46(b)(2) and (b)(3), and 10 CFR part 50, appendix K I.A.5, is to ensure that cladding oxidation and hydrogen generation are appropriately limited during a LOCA and conservatively accounted for in the ECCS evaluation model. Appendix K of 10 CFR part 50 requires that the Baker-Just equation be used in the ECCS evaluation model to determine the rate of energy release, cladding oxidation, and hydrogen generation. AREVA NP has shown in an appendix of Topical Report BAW-10227-A that the Baker-Just model is conservative in all post-LOCA scenarios with respect to the use of AREVA's M5® alloy fuel rod cladding material.

Based on the regulatory review of the exemption request, the NRC staff concludes that the intent of 10 CFR 50.46 and 10 CFR part 50, appendix K, will continue to be satisfied for the planned operation of SPS with AREVA's M5® alloy fuel rod cladding material used for non-limiting LTAs and the special circumstance required by 10 CFR 50.12(a)(2)(ii) for granting of an exemption exists.

B. Authorized by Law

This exemption would allow the use of fuel rods clad with AREVA's M5® alloy in up to eight fuel assemblies at SPS. The regulations in 10 CFR 50.12 allow the NRC to grant exemptions from the requirements of 10 CFR part 50 provided that the exemptions are authorized by law. The NRC staff determined that special circumstances exist to grant the proposed exemption and that granting the exemption would not result in a violation of the Atomic Energy Act of 1954, as amended. Therefore, the exemption is authorized by law.

C. No Undue Risk to Public Health and Safety

The provisions of 10 CFR 50.46 establish acceptance criteria for ECCS performance. Topical Report BAW-10227-A contains the justification to

use AREVA's M5® alloy fuel rod cladding material, a proprietary variant of Zr1Nb, to replace Zircaloy-4 in the construction of fuel assembly components such as fuel rod cladding, guide tubes, and spacer grids. This justification is required to support the request by Dominion for an exemption to 10 CFR 50.46 to permit the use of AREVA's M5® alloy fuel rod cladding material, in addition to Zircaloy-4 and ZIRLO™. AREVA's M5® alloy is an AREVA NP proprietary material composed of 1.0 percent niobium, 0.125 percent oxygen, and the balance zirconium. AREVA's M5® alloy fuel rod cladding provides improved performance in fuel cladding corrosion and hydrogen pickup.

An AREVA NP LOCA evaluation showed compliance with 10 CFR 50.46. Topical Report BAW-10227-A has addressed all of the important aspects of AREVA's M5® alloy fuel rod cladding material with respect to ECCS performance requirements, as follows:

- Since the material properties of AREVA's M5® alloy are similar to those of zirconium-based materials, the NRC staff found it appropriately conservative to apply the criteria in 10 CFR 50.46 and 10 CFR part 50, appendix K.
- Material properties of AREVA's M5® alloy, including cladding thermal conductivity, cladding creep, clad swelling, rupture deformation, and temperature, were found to be very similar to those of Zircaloy-4.
- The retention of the Baker-Just equation for the calculation of metal-water reaction rate specified in 10 CFR part 50, appendix K, is justified to be suitably conservative.

Based on the NRC staff's evaluation of the exemption request, the staff concludes that the intent of 10 CFR 50.46 and 10 CFR part 50, appendix K, will continue to be satisfied for the planned operation of SPS, with AREVA's M5® alloy fuel rod cladding material used in up to eight non-limiting LTAs. The probability of postulated accidents is not increased. Also, based on the NRC staff's evaluation of the exemption request, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety due to using M5® alloy fuel cladding and fuel assembly material in up to eight non-limiting LTAs.

D. Consistent With the Common Defense and Security

The proposed exemption would allow the use of AREVA's M5® alloy fuel rod cladding material at SPS. This change to the plant configuration is adequately controlled by technical specification

requirements and is not related to security issues. Because the common defense and security is not impacted by this exemption, the exemption is consistent with the common defense and security.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security, and that special circumstances are present to warrant issuance of the exemption. Therefore, the Commission hereby grants SPS an exemption from the requirements of 10 CFR 50.46 and 10 CFR part 50, appendix K, paragraph I.A.5, to allow the use of AREVA's M5® alloy fuel rod cladding material in up to eight non-limiting LTAs at SPS.

Pursuant to 10 CFR 51.32, an environmental assessment and finding of no significant impact related to this exemption was published in the **Federal Register** on May 31, 2016 (81 FR 34382). Based upon the environmental assessment, the Commission has determined that issuance of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of July 2016.

For the Nuclear Regulatory Commission.

Anne T. Boland,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016-18375 Filed 8-2-16; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket No. MC2016-172; Order No. 3451]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning minor classification changes to the Country Price Lists for International Mail. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 4, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>

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:

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I. Introduction

On July 27, 2016, the Postal Service filed a notice of a minor classification change regarding the Country Price Lists for International Mail in Part D of the Mail Classification Schedule (MCS), under Commission rules 39 CFR 3020.90 and 3020.91.¹ The Postal Service also presents proposed changes to the MCS. Notice at 2; Attachment 1. The Postal Service states that the proposed changes are minor in nature and are not inconsistent with 39 U.S.C. 3642. Notice at 3.

MCS change. The Postal Service plans to provide outbound Priority Mail Express International (PMEI) service to Cuba. *Id.* at 1. Accordingly, the Postal Service seeks to assign Country Group 9 to Cuba for variable weight PMEI and Country Group 8 to Cuba for PMEI Flat Rate Envelope. *Id.* at 2.

II. Notice of Commission Action

Pursuant to 39 CFR 3020.92, the Commission has posted the Notice on its Web site and invites comments on whether the Postal Service's filings in Docket No. MC2016-172 are consistent with the policies of 39 U.S.C. 3642 and 39 CFR 3020 subpart E. Comments are due no later than August 4, 2016. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Katrina R. Martinez to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

IT IS ORDERED:

1. The Commission establishes Docket No. MC2016-172 to consider matters raised by the Notice.

2. Pursuant to 39 U.S.C. 505, Katrina R. Martinez is appointed to serve as an officer of the Commission (Public Representative) to represent the

interests of the general public in this proceeding.

3. Comments by interested persons are due by August 4, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016-18310 Filed 8-2-16; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78438; File No. SR-OCC-2016-002]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning Enhancements to The Options Clearing Corporation's Governance Arrangements

July 28, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 15, 2016, The Options Clearing Corporation ("OCC") 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 OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change by The Options Clearing Corporation ("OCC") concerns modifications and enhancements to OCC's governance arrangements. OCC is proposing to amend its Certificate of Incorporation, By-Laws, and Board of Directors ("Board") Charter to require that only one Management Director serve on OCC's Board (as opposed to the current requirement of two Management Directors). Moreover, OCC is proposing to amend its By-Laws and Rules to delete all references to the title and responsibilities of the Management Vice Chairman. In addition, OCC is proposing to amend its By-Laws to: (i) Provide that the Compensation and Performance Committee ("CPC")³ and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ As described below, the Performance Committee would be renamed as the Compensation and Performance Committee.

¹ Notice of United States Postal Service of Minor Classification Change, July 27, 2016 (Notice).

the Audit Committee ("AC") each will be chaired by a Public Director; (ii) modify the composition requirements of the Risk Committee ("RC") to, among other things, provide that an Exchange Director be a member of the Risk Committee; (iii) provide for action by the OCC Board in the nomination process for Member Directors and Public Directors; (iv) eliminate term limits for Public Directors; and (v) consolidate By-Law sections that identify the committees of the Board into a single section of the By-Laws. Finally, OCC is proposing amendments to the Charters of the Board and the AC, CPC, Governance and Nominating Committee ("GNC"), RC, and Technology Committee ("TC") (collectively, "Board Committees" or "Committees" and each a "Board Committee" or "Committee") that stem from scheduled reviews of such documents.

All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to implement a number of modifications and enhancements to OCC's governance arrangements. Specifically, as a result of the Board's continual evaluation of OCC's governance arrangements, OCC is proposing to change the composition requirements of its Board to require that one Management Director serves on OCC's Board (as opposed to two) and to eliminate the role of Management Vice Chairman to provide more clarity and transparency regarding the status of these roles at OCC. In addition, OCC is proposing to amend its By-Laws to, among other things: (i) Provide that the CPC and the AC each will be chaired by a Public Director to underscore and reinforce the independence of those committees and align with governance

best practices and practices of other self-regulatory organizations; (ii) modify the composition requirements of the RC, including to provide that an Exchange Director be a member of the RC to provide the RC with additional expertise and unique perspective on matters such as market risk and special risks arising from trading practices and strategies, and new products; (iii) provide for Board action in the nomination process for Member Directors and Public Directors of OCC's Board to ensure an appropriate level of oversight and participation by the Board in determining its own composition and that the composition of the Board fulfills its needs for particular skills and qualifications; (iv) eliminate term limits for Public Directors in the interest of ensuring that OCC has access to the full benefits of a Public Director's understanding and learning, with respect to OCC and the markets OCC serves, as that knowledge develops over time; and (v) consolidate By-Laws sections that identify the committees of the Board into a single section of the By-Laws to provide more clarity and transparency to OCC's participants regarding the existence and composition of such Committees.

OCC is also proposing amendments to the Charters of OCC's Board, AC, CPC, GNC, RC, and TC that stem from scheduled reviews of such documents. The proposed amendments to the Board and Committee Charters are designed, in general, to provide more clarity and transparency around the oversight functions and responsibilities of the Board and each of its Committees and provide for a more comprehensive and robust oversight framework for the financial reporting, audit and compliance, compensation and performance, governance and nomination, risk, and technology functions at OCC.

The proposed amendments to OCC's Certificate of Incorporation, By-Laws, Rules, Board and Committee Charters, and Amended and Restated Stockholders Agreement are described in detail below.

Proposed Amendments to OCC's Certificate of Incorporation

OCC is proposing to amend its Certificate of Incorporation to state that the number of Management Directors serving on OCC's Board shall be such number as shall be fixed by or pursuant to OCC's By-Laws.⁴ The purpose of this

⁴ The number of Management Directors required to serve on OCC's Board would be stipulated by Article III, Section 1 of OCC's By-Laws. Article XI, Section 1 of OCC's By-Laws states that Article III

proposed change is ultimately to require that only one Management Director shall serve on OCC's Board as OCC is also proposing to amend its By-Laws to state that one Management Director shall serve on OCC's Board (as discussed in more detail below). The proposed amendments would also ensure consistency between all of OCC's governing documents concerning the number of Management Directors on OCC's Board. OCC's Certificate of Incorporation and By-Laws currently state that OCC's Board shall be composed of Members Directors, Exchange Directors, Public Directors, and two Management Directors. Recently, however, there has been a vacancy for one Management Director position and only one Management Director is serving on the Board at this time.⁵ OCC's Board continually evaluates the leadership structure at OCC, including the appropriate number of Management Directors for OCC's Board, and in light of recent experience since the vacancy of the second Management Director position, believes that amending the Board composition to require one Management Director on OCC's Board would continue to provide an appropriate level of management representation in the Board-level oversight of OCC. The Executive Chairman, as Management Director, would continue to represent management's viewpoint on OCC's Board. Moreover, the Board has access to OCC's management team, which ensures that the Board has continued access to management's perspectives on the business and affairs of OCC. Furthermore, OCC notes that, prior to the addition of a second Management Director seat in 2013, OCC has historically had only one Management Director serving on its Board.⁶ Accordingly, OCC believes that the

of the By-Laws may not be amended by action of the Board without the approval of the holders of all of the outstanding Common Stock of the Corporation entitled to vote thereon. Accordingly, any proposed change in the number of Management Directors required to serve on OCC's Board would continue to be subject to stockholder approval.

⁵ In 2014, the Commission approved a proposed rule change providing that OCC's President would not be considered a Management Director and, therefore, only one Management Director (the Executive Chairman) currently serves on the Board. See Securities Exchange Act Release No. 73785 (December 8, 2014), 79 FR 73915 (December 12, 2014) (SR-OCC-2014-18).

⁶ In 2013, the Commission approved a proposed rule change by OCC to provide for the separation of the powers and duties combined in the office of OCC's Chairman of the Board of Directors into two offices, Chairman and President, and to create an additional directorship to be occupied by the President. See Securities Exchange Act Release No. 34-[sic]70076 (July 30, 2013), 78 FR 47449 (August 5, 2013) (SR-OCC-2013-09).

proposed amendments would continue to provide for prudent governance arrangements at OCC. OCC is also proposing conforming changes to the Board Charter as described below.

Proposed Amendments to OCC's By-Laws and Rules

Number of Management Directors on OCC's Board

OCC is proposing to amend Article III, Section 1 of its By-Laws to state that only one Management Director will serve on OCC's Board (as opposed to the current requirement of two). As noted above, OCC's Board continually evaluates the leadership structure at OCC, including the appropriate number of Management Directors for OCC's Board, and believes that amending the Board composition to require one Management Director on OCC's Board would continue to provide an appropriate level of management representation in the Board-level oversight of OCC. OCC is also proposing conforming changes to Article III, Sections 10 (Resignations) and 12 (Filling of Vacancies and Newly Created Directorships) of the By-Laws to reflect that only one Management Director, the Executive Chairman, would be serving on OCC's Board.

Elimination of Management Vice Chairman Role

OCC proposes to amend its By-Laws and Rules to eliminate the role of Management Vice Chairman. The office of Management Vice Chairman has been vacant for a number of years and has not been included in the Board's current discussions regarding management succession planning. During that time, the thought process surrounding leadership roles at OCC has evolved. OCC believes that any of the responsibilities of the Management Vice Chairman are already appropriately handled by other officers of OCC, primarily the Executive Chairman and President (or where applicable, other officers such as the Secretary or Directors such as the Member Vice Chairman)⁷ and as a result, this role is being eliminated from OCC's By-Laws and Rules. OCC believes the proposed amendments would more accurately reflect the current state of affairs regarding the office, ensure consistency across all of OCC's governing documents, and provide more clarity

and transparency regarding OCC's intended governance arrangements.

In particular, OCC is proposing to amend (i) By-Laws Article I.A.(13); Article II, Section 4; Article III, Section 15; Article IV; Article V, Sections 1 and 3; Article VI, Section 17; Article VIII, Section 5; Article IX, Sections 12 and 14 and (ii) Rules 305, 309, 309A, 505, 609A, 801, 804, 805, 901, 903, 1104, 1106, 1309, 1402, 1405, 1604, 1610, 2104, 2110, and 2408 to remove all references to and responsibilities of the role of Management Vice Chairman.

Committee Descriptions and Other Conforming By-Law Amendments

OCC is proposing to amend Article III of its By-Laws in order to provide descriptions of the AC, CPC, GNC, RC, and TC in a single section of the By-Laws. Specifically, OCC is proposing to consolidate existing Article III, Section 4 (which concerns the GNC) and existing Article III, Section 9 (which concerns the RC,⁸ the TC,⁹ and the Board's ability to designate persons to serve on Committees, generally), into Article III, Section 4 and add descriptions of the CPC and AC to Article III, Section 4 of its By-Laws in order to provide a more transparent, centralized, and unified statement describing all of the Board Committees. In addition, OCC proposes to make a non-substantive drafting clarification to existing language being relocated from Article III, Section 9 to the introductory section of Article III, Section 4 to clarify that the Board is required to designate persons to serve on the specifically enumerated Committees therein.

The proposed description of the AC would reflect existing requirements in the AC and GNC Charters that, on an annual basis, the Board of Directors shall appoint an AC selected from among the directors recommended by the then-constituted GNC after consultation with the Executive Chairman and shall serve at the pleasure of the Board, provided that no Management Director may serve on the Audit Committee. The proposed description of the AC would also include a new requirement that the chairman of the AC shall be designated by the Board from among the Public

Director member(s) of the Committee (as described further below).

The proposed description of the CPC would reflect the existing requirement that, on an annual basis, the Board of Directors shall appoint a CPC and that the CPC generally consists of the Executive Chairman, the Member Vice Chairman, and at least one Public Director.¹⁰ Consistent with the preceding sentence, all of the CPC members will be selected by the Board from among the directors recommended by the then-constituted GNC after consultation with the Executive Chairman and shall serve at the pleasure of the Board. The proposed description would also include a new requirement that the chairman of the CPC shall be designated by the Board from among the Public Director member(s) of the Committee (as described further below). OCC believes that consolidating the descriptions of all Board Committees into Article III, Section 4 of its By-Laws would provide more clarity and transparency to OCC's participants regarding the existence and composition of such Committees.

OCC is proposing amendments to Article IV, Section 1 of the By-Laws to provide that the Board will elect the Executive Chairman and Vice Chairman of the Board upon the nomination of the GNC and also elect the President of OCC (in addition to the Secretary and Treasurer). In addition, OCC proposes amendments to Article IV, Section 7 to delete a requirement that the Member Vice Chairman preside at the meetings of any Committee of the Board of Directors charged with the responsibility for evaluating the performance and compensation of officers as the CPC would now be chaired by a Public Director. OCC also proposes amendments to clarify that the Member Vice Chairman would preside over meetings of the Board and stockholders in the absence of the Executive Chairman because the President cannot preside over meetings of the Board.¹¹

Compensation and Performance Committee and Audit Committee Independence

In addition to the proposed changes described above, OCC is also proposing

⁸ The description of the RC in proposed Article III, Section 4(d) of the By-Laws would reflect changes to OCC's existing policy regarding the composition of the RC in order to conform the By-Law provision to changes recommended as a result of the annual review of the RC Charter (as discussed below). See *infra* note 15, and related text.

⁹ The Commission recently approved a proposed rule change by OCC to adopt a Technology Committee of the Board of Directors. See Securities Exchange Act Release No. 77042 (February 3, 2016), 81 FR 6915 (February 9, 2016) (SR-OCC-2015-018).

¹⁰ The proposed description of the CPC in the By-Laws includes the general requirement that CPC shall include the Executive Chairman, the Member Vice Chairman, and at least one Public Director. The proposed description is not intended to change the more specific CPC composition requirements in the CPC Charter that the committee consist of a Public Director chair, the Executive Chairman, the Member Vice Chairman, and three or more other directors appointed annually by the Board.

¹¹ See OCC's By-Laws Article IV, Section 8.

⁷ For example, under proposed revisions to Article IV, Section 7, the Member Vice Chairman would preside over Board and stockholder meetings in the absence of the Executive Chairman.

changes to the Board Committee descriptions in proposed Article III, Sections 4(a) and (b) of the By-Laws to reflect the requirement that a Public Director¹² chair the AC and the CPC. The GNC recently performed a review of governance trends and best practices among self-regulatory organizations as they relate to board-level compensation committees.¹³ The review was undertaken in order to further the Board's oversight of employee compensation and benefits, recognizing that the CPC primarily functions as a compensation committee (although it also has broad oversight responsibilities for financial and budget matters). The review highlighted that having the CPC chaired by a Public Director (rather than a Member Director,¹⁴ which is currently the case) would be more consistent with governance best practices and practices of other self-regulatory organizations. Moreover, such a change would ensure that compensation and related decisions are undertaken in a way that is likely to support objective judgment and independence unfettered by potential conflicts that may exist by having a Member Director chair the CPC given OCC's self-regulatory responsibilities. The Board agreed with the GNC's recommendation.

Additionally, the GNC reviewed proposed regulatory standards for audit committees of self-regulatory organizations that would require such audit committees to be independent based on facts determined by a given self-regulatory organization's board of directors. Such review caused the GNC to recommend to the Board that a Public Director should be required to chair the AC in order to align with governance best practices for audit committees and to support the objectivity of the AC. The Board agreed with the GNC's recommendation. Moreover, and in furtherance of the goal of AC independence, any currently serving Management Director(s) would not be eligible to serve on the AC.

Risk Committee Membership

OCC is proposing to amend Article III of its By-Laws to modify the composition requirements of OCC's RC. Existing Article III, Section 9 of OCC's By-Laws currently requires that the RC shall consist of the Executive Chairman,

the Member Vice Chairman, at least three other Member Directors selected on a basis that shall not discriminate against any Exchange, and one or more Public Directors. OCC is proposing to replace this description of the RC with new Article III, Section 4(d), which would relocate and modify the RC composition requirements to (i) provide that an Exchange Director¹⁵ be a member of the RC and (ii) require that at least one Member Director serve on the RC (as opposed to the current minimum requirement of four Member Directors) and (iii) remove a specific requirement that one of the Member Directors on the RC be the Member Vice Chairman.

The GNC reviewed the membership composition of the RC and determined that one Exchange Director should be a member of the RC. Historically, the RC did not include Exchange Directors because Member Directors were much more directly concerned with the risk management and membership function of OCC due to the mutualization of risk among Clearing Members as well as the fact that Clearing Members are responsible for the contribution of margin and clearing fund deposits. Given the evolution of the markets for which OCC provides clearance and settlement services, OCC now believes that an Exchange Director should be a member of the RC. Exchange Directors have expertise and unique perspective on matters such as market risk as well as sophistication as to special risks arising from trading practices, strategies and new products.

In addition, the GNC recommended, and the Board approved, a reduction in the minimum composition requirement for Member Directors on the RC to allow for greater flexibility in the selection of Directors with the requisite skills and expertise to serve on the RC. OCC believes that Member Director participation on the RC is vital and would therefore continue to require that at least one Member Director serves on the RC. OCC also believes, however, that it is necessary and appropriate to maintain flexibility to ensure that the RC is comprised of those Directors that have the appropriate mix of knowledge and expertise necessary to provide for the prudent oversight of risk matters at OCC.

Nomination Process for Member Directors and Public Directors

OCC is proposing to make amendments to Article III, Sections 5 and 6A; Article IV, Section 1; and adopt

Amendment No. 1 to Amended and Restated Stockholders Agreement to provide for Board action in the nomination process for Member Directors, Public Directors, the Executive Chairman, and Member Vice Chairman in conformance with the process set forth in the GNC Charter.¹⁶ Currently, Board action is not a part of the annual election process for Member Directors and Public Directors as described in the By-Laws and the Amended and Restated Stockholders Agreement. The proposed amendments would provide that such persons would be nominated by the GNC for purposes of the Board's annual election process and then confirmed by the Board. OCC believes that the proposed rule change would help ensure an appropriate level of oversight and participation by the full Board in determining its own composition and that the composition of the Board fulfills its needs for particular skills and qualifications.

Elimination of Public Director Term Limits

OCC is proposing to amend Article III, Section 6A of its By-Laws, Section IV.1. of the GNC Charter, and Section II.D. of the Board Charter in order to remove term limits for Public Directors. OCC believes it is appropriate to eliminate term limits for Public Directors because the learning curve for directors of OCC is significant. It is generally recognized that it often takes several years for directors who come from outside the industry to achieve the particularized degree of knowledge and understanding about the business that is necessary to provide significant value. Additionally, the GNC reviewed OCC's term limit policy for Public Directors in light of benchmark data and governance trends and determined that the elimination of term limits for Public Directors is consistent with governance arrangements at large corporations.¹⁷ Therefore, OCC is proposing to remove its term limits for Public Directors in the interest of assuring that OCC has access to the full benefit of a Public Director's understanding and learning, with respect to OCC and the markets OCC serves, as it develops over time.

¹² See Article III Section 6A of OCC's By-Laws regarding Public Directors.

¹³ The GNC Charter provides, in relevant part, that the purpose of the GNC is to review on a regular basis the overall corporate governance of OCC and recommend improvements to the Board when necessary.

¹⁴ See OCC's By-Laws Article III, Section 3 and Section 5.

¹⁵ See Article III Section 6 of OCC's By-Laws regarding Exchange Directors.

¹⁶ The GNC Charter had already been reviewed by OCC in 2014 and approved by the Commission. See Securities Exchange Act Release No. 72564 (July 8, 2014), 79 FR 40824 (July 14, 2014) (SR-OCC-2014-09).

¹⁷ According to the 2014 Spence Stuart Board Index, among S&P 500 companies, very few boards (only 3%—or 16 companies) specify director term limits. Of these, none imposes a term limit that is less than 10 years. The most common term limit is 15 years, and the longest term limit is 30 years.

Proposed Amendments to Board and Board Committee Charters

Amendments to the Board Charter and the Fitness Standards

OCC proposes amendments to the Board Charter that are intended to: (i) Harmonize the description of the Board's obligations in the Board Charter with the description of the Board's obligations in OCC's By-Laws and Rules; (ii) better align the Board Charter with the Board's Corporate Governance Principles and By-Laws; (iii) reflect recent changes involving Board Committee Charters; (iv) in general, restate the Board's oversight responsibilities in a manner designed to provide for prudent governance arrangements in light of OCC's role as a systemically important financial market utility; and (v) make certain non-substantive administrative changes to the Charter. The proposed amendments are described in more detail below.

Membership and Organization

OCC proposes amendments to Section II of the Board Charter regarding membership and organization requirements to reflect the elimination of the role of Management Vice Chairman as described above. As a result, in the event that the Executive Chairman is absent or disabled, the Member Vice Chairman shall preside over meetings of the Board. OCC also proposes amendments that would allow for additional meetings of the Board being called as the Board deems appropriate (such meetings shall be called by the Executive Chairman or his designee) and to specify that the Executive Chairman shall consult with the Corporate Secretary (in addition to other directors or officers) when establishing Board meeting agendas.

OCC also proposes amendments intended to strengthen the Board's governance framework and practices surrounding meetings in executive sessions by providing added structure regarding the convening and attendance of executive sessions and promoting the enhanced recollection of important meeting events and discussions. In particular, the proposed amendments would: (i) Require that the Board meet in executive session at each regular meeting of the Board; (ii) allow the Board to determine who will participate in such sessions; (iii) provide for the exclusion of management, invited guests, and individual directors from executive sessions where discussions may involve certain sensitive matters or conflicts of interest; and (iv) require the Board to select a Director to chair executive sessions in the absence of the

Executive Chairman. The proposed amendments would also require that Board meeting minutes reflect, at least in summary fashion, the general matters discussed in an executive session. Specifically, the chair of the executive session would determine whether separate minutes of the executive sessions are to be recorded as well as determine the level of detail to be included in such minutes, provided that Board meeting minutes must, at a minimum, reflect that an executive session was convened and broadly describe the topic(s) discussed.

In addition, OCC proposes to amend the Board Charter to state that the Board is comprised of one Management Director, rather than two Management Directors, in conformance with the proposed Certificate of Incorporation and By-Laws changes described above. The Board Charter would also be amended to reflect an increase in the number of Public Directors serving on the Board from three to five.¹⁸

Additionally, in order to achieve a balanced representation on the Board among Member Directors, OCC proposes amendments to the Board Charter to state that the considerations involved in determining the nomination of Member Directors should include the volume of business transacted with OCC during the prior year and the mix of Member Directors that are primarily engaged in agency trading on behalf of retail customers or individual investors. The proposed amendments reinforce the existing requirement in Article III, Section 5 of OCC's By-Laws that the GNC shall endeavor to achieve balanced representation among Clearing Members on the Board of Directors to assure that: (i) Not all Member Directors are representatives of the largest Clearing Member Organizations based on the prior year's volume, and (ii) the mix of Member Directors includes representatives of Clearing Member Organizations that are primarily engaged in agency trading on behalf of retail customers or individual investors. OCC proposes to remove geographic location of Clearing Members as a factor for consideration as OCC believes that location is no longer a significant consideration given modern technology and the evolution of the industry.

OCC also proposes to add language to the Board Charter to discourage Directors from attending meetings of the Board by telephone as currently provided in the Code of Conduct for

OCC Directors. Attendance by telephone would be generally discouraged because OCC believes the Board may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Board members were to meet in person.

Responsibilities of the Board

OCC proposes amendments to the Board Charter that are primarily intended to: (i) Harmonize the description of the Board's obligations in the Board Charter with the description of the Board's obligations in OCC's By-Laws and Rules as well as the Board's Corporate Governance Principles¹⁹ and (ii) restate the Board's oversight responsibilities in a manner designed to provide for prudent governance arrangements in light of OCC's position as a designated systemically important financial market utility.

In cases when an obligation of the Board is expressed in both the Board Charter and OCC's By-Laws and Rules, OCC is proposing to remove the obligation from the Board Charter. These charter provisions would be replaced by a general statement that the Board would perform those functions as the Board believes appropriate or necessary, or as otherwise prescribed by rule or regulation, including OCC's By-Laws and Rules.²⁰

OCC also proposes amendments to Section IV of the Board Charter designed to provide for prudent governance arrangements emphasizing that the Board's oversight role should operate in a manner consistent with its responsibilities as a designated systemically important financial market utility. Specifically, OCC proposes to amend the Charter to state that the responsibilities of the Board include: (i) Overseeing management's activities in managing, operating and developing

¹⁹ The purpose of the Board's Corporate Governance Principles is to assist OCC's Board in monitoring the effectiveness of policy and decision making at the Board and management levels. In particular, the Board's Corporate Governance Principles are meant to address OCC's obligations as a systemically important financial market utility to have policies and procedures in place that promote sound governance, including those policies and procedures identified in the Principles for Financial Market Infrastructures published by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions.

²⁰ The proposed change would remove from the Board Charter some of the more specific obligations of the Board as already set forth in the By-Laws and Rules in favor of a more general statement intended to reflect that the Board would perform such functions as necessary or appropriate under OCC's Rules, By-Laws and other rules or regulations. The Board Charter provisions in question can generally be identified by footnote citations to By-Law provisions included in the Board Charter in Exhibit 5C.

¹⁸ The Commission approved the increase in the minimum number of Public Directors on OCC's Board from three to five in July 2014. See Securities Exchange Act Release No. 72564 (July 8, 2014), 79 FR 40824 (July 14, 2014) (SR-OCC-2014-09).

OCC and evaluating OCC management's performance in executing its responsibilities; (ii) selecting, overseeing and, where appropriate, replacing the Executive Chairman of the Board and the President, providing counsel and advice to the Executive Chairman and the President as well as oversight of the performance of each such officer and of OCC in order to evaluate whether the business is being appropriately managed; (iii) setting expectations about the tone and ethical culture of OCC, and reviewing management's efforts to instill an appropriate tone and culture throughout OCC; (iv) providing oversight of risk assessment and risk management monitoring processes, including with respect to systemic risk and reviewing risk tolerances submitted to the Board for approval by its Risk Committee; (v) performing an annual self-evaluation of its performance, the performance of its Committees, the performance of individual directors and Committee members; and evaluating the Corporate Governance Principles and Fitness Standards; (vi) reviewing the amount of compensation for the Board's Public Directors (*i.e.*, directors who are not affiliated with any national securities exchange or national securities association or with any broker or dealer) as well as reviewing the annual study and evaluation of OCC's system of internal accounting controls; (vii) providing oversight of internal and external audit processes and financial reporting, including approving major changes in auditing and accounting principles and practices; and (viii) oversight of OCC's information technology strategy, infrastructure, resources and risks.

In addition, OCC proposes to modify certain existing Board Charter provisions related to the responsibilities of the Board. Specifically, OCC propose [sic] amendments that would specify that, in addition to overseeing major capital expenditures and approving the annual budget and corporate plan, the Board is responsible for reviewing and approving OCC's financial objectives and strategies, capital plan and capital structure, OCC's fee structure, and major corporate plans and actions, as well as periodically reviewing the types and amounts of insurance coverage available in light of OCC's clearing operations. OCC also proposes amendments to specify that the Board's responsibility for fostering OCC's compliance with applicable laws and regulations includes compliance with banking, securities and corporation laws and other applicable regulatory guidance

and standards. Additionally, OCC proposes amendments to provisions related to the oversight of succession planning and executive compensation to state more specifically that the Board is responsible for evaluating and fixing the compensation of the Executive Chairman and President; overseeing succession planning, human resource programs, and talent management processes; and overseeing the development and design of employee compensation, incentive and benefit programs.²¹ The proposed amendments would also remove a statement that OCC's Board is responsible for overseeing OCC's processes and framework for assessing, managing and monitoring strategic, financial and operational risk as this function is performed by the RC (as reflected in its Charter) with oversight from the Board.

OCC is also proposing non-substantive organizational changes in Section IV of the Board Charter. Specifically, OCC proposes amendments that would combine provisions related to the Board's responsibilities for approving and overseeing OCC's business strategies and monitoring OCC's performance of clearance and settlement services.

Other Conforming, Administrative and Non-Substantive Changes

In addition to the changes described above, certain of the proposed amendments to the Board Charter are meant to address non-substantive, administrative issues. For example, certain amendments are being proposed to Section III of the Board Charter to reflect the adoption of the TC²² the GNC, and renaming of the Performance Committee to the CPC, as described herein. In addition OCC is proposing to amend Section I of the Board Charter to more accurately state that the Board is responsible for providing direction to and overseeing the conduct of the affairs of OCC (as opposed to just managing the business and affairs) and to remove an unnecessarily specific list of OCC stakeholders. OCC also proposes amendments that would require an annual (as opposed to the less specific "periodic") review of the Board Charter, including the Corporate Governance Principles and Fitness Standards.

Fitness Standards for Directors, Clearing Members and Others

OCC also proposes to amend the Fitness Standards to remove

descriptions of the categories of directors represented on the Board and the process by which they are nominated for Board service as these descriptions are already maintained in Article III of OCC's By-Laws and the relevant Committee Charters. Eliminating these redundant descriptions in the Fitness Standards would promote efficiency and clarity by eliminating the need to ensure consistency of the same information across multiple documents. The proposed amendments would also underscore that the Fitness Standards are intended to facilitate the performance of OCC's role as a systemically important financial market utility.

Common Amendments to Each Committee Charter

OCC is proposing to make conforming amendments to the Committee Charters as a result of the Commission approving certain changes to the GNC Charter.²³ Specifically, OCC proposes to amend each Committee Charter to confirm that each Board Committee has access to all books, records, facilities and personnel of OCC in carrying out the respective Board Committee's purpose and responsibilities. This amendment to the Committee Charters would make explicit a longstanding principle under which each Committee has operated. Additionally, references to the "Governance Committee" in each Committee Charter would be changed to the "Governance and Nominating Committee" to reflect the formation of the GNC.

Furthermore, OCC proposes to delete a provision from each Committee Charter which granted the Chair of each Board Committee the authority to act on behalf of the respective Board Committee in situations in which immediate action was required and convening a Board Committee meeting was impractical. Although this provision also required each Chair to report such actions to the respective Board Committee for ratification as soon as practicable, OCC believes that removing this provision is appropriate from a governance perspective because it supports deliberation and action by a Board Committee as a whole rather than action by a Chair. In addition, historically, each Board Committee has been able to convene when necessary.

In addition, OCC is proposing a number of common changes across its Committee Charters to strengthen OCC's Board Committee governance framework and practices surrounding

²¹ OCC notes that a deleted reference to the evaluation of senior management is now covered by point (i) described in the paragraph above.

²² See *supra* note 9.

²³ See *supra* note 16.

meetings in executive sessions by providing added structure regarding the convening and attendance of executive sessions and promoting the enhanced recordation of important meeting events and discussions. Specifically, each Committee Charter would be amended to: (i) Require that each Committee meet in executive session at each regular meeting of the Committee; (ii) allow the Committee to determine who will participate in such sessions; and (iii) provide for the exclusion of management, invited guests, and individual directors from executive sessions where discussions may involve certain sensitive matters or conflicts of interest. The proposed amendments would also require that each Committee's meeting minutes reflect, at least in summary fashion, the general matters discussed in an executive session. In particular, the Chair (or Acting Chair) would determine whether separate minutes of the executive sessions are to be recorded as well as determine the level of detail to be included in such minutes, provided that Committee meeting minutes must, at a minimum, reflect that an executive session was convened and broadly describe the topic(s) discussed.

Additionally, the Committee Charters would be amended to permit any Board Committee to engage specialists or advisors to assist it in carrying out its delegated responsibilities without prior Board approval. Generally speaking, Committees must obtain pre-approval from the Board to hire advisors. While not universal, OCC's understanding is that public company board committees frequently are authorized to engage advisors without board pre-approval at the company's expense to preserve autonomy and independence and to assist them in the execution of their responsibilities as deemed necessary. Under the proposed amendments, each Committee's engagement of an advisor, including fees and expenses, would be referenced in its annual report to the Board. These proposed amendments are intended to foster Committee independence as well as timely Committee access to expertise relevant to the discharge of its delegated responsibilities while preserving Board oversight via the application of existing reporting mechanisms.

OCC is also proposing amendments to its Committee Charters to specify that that [sic] each Committee should evaluate its and its individual member's performance on an annual basis (as opposed to regularly) to provide more clarity and specificity regarding the timing of each Committee's self-assessment process.

Amendments to the Audit Committee Charter

OCC proposes amendments to the AC Charter intended to, among other things: (i) Reinforce the independence of the AC; (ii) more accurately memorialize and expand upon the activities of the AC with respect to the oversight of OCC's financial reporting processes and enhance the independence and objectivity in connection therewith; and (iii) in general, provide more explicit descriptions of the AC's functions and responsibilities. The proposed changes are described in more detail below.

Purpose, Membership and Authority

OCC proposes changes to Sections I, II and III of the AC Charter related to the purpose, membership and organization, and authority of the AC. In Section I of the AC Charter, OCC proposes to make organizational changes to certain statements regarding the AC's responsibility to serve as an independent and objective party to oversee OCC's system of internal control, compliance environment and processes. These changes are non-substantive in nature. OCC is also proposing to make various non-substantive clarifying and textual changes in Section I, including, for example, replacing the term "independent accountants" with "external auditors" and replacing "Corporation" with "OCC," which would extend throughout the entire AC Charter. The proposed amendments to change "independent accountants" to "external auditors" are not intended to signify a change in roles or responsibilities but to more accurately state that the activities described in the AC Charter as being performed by "independent accountants" are actually performed by a party acting in its capacity as OCC's "external auditor."

OCC also proposes amendments to Section II of the AC Charter that are intended to reinforce the independence of the AC. Specifically, the amendments provide that all members of the AC be independent from OCC's management, as determined by the Board from time to time, and that the Chair of the AC be a Public Director.²⁴ Additionally OCC proposes an amendment that would clarify that the Management Director, as described in Section 7 of Article III of OCC's By-Laws, is ineligible to serve on the AC.²⁵ OCC also proposes to revise

the AC Charter to state that the AC will meet regularly, and no less than once annually (as opposed to "at least annually"), with management, OCC's Chief Financial Officer, Chief Audit Executive ("CAE") and Chief Compliance Officer ("CCO") in executive sessions to discuss certain private matters. The purpose of this change is to signify that these meetings and interactions occur more than once per year. Section II of the AC Charter would also be amended to explicitly provide the authority for the CAE and CCO to communicate directly with the Chair of the AC, with respect to any of the responsibilities of the AC, outside of regular meetings to further underscore their independence. Further, OCC proposes an amendment to Section II of the AC Charter under which attendance at an AC meeting by telephone is discouraged. Attendance by telephone would be generally discouraged because OCC believes the Committee may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Committee members were to meet in person.

OCC also proposes to amend the AC Charter to provide that the AC shall make such reports to the Board as deemed necessary or advisable. This proposed change would promote effective communication between the AC and the Board is in line with requirements in other Committee Charters.

OCC proposes to amend Section III of the AC Charter to confirm that the AC's authority to hire advisors includes the authority to approve the related fee and retention terms.²⁶ In addition to more accurately reflecting current Committee practice, it would conform the AC charter to OCC's other Committee Charters (*i.e.*, the CPC, GNC, RC and TC Charters) with respect their authority to hire advisors and approve related fees and retention terms. As noted above, each of OCC's Committee Charters would be amended to permit any Board Committee to engage specialists or advisors to assist it in carrying out its delegated responsibilities without prior Board approval in order to foster Committee independence as well as timely access to relevant expertise from outside specialists or advisors. The proposed amendments would clarify that this authority also extends to the approval of related fee and retention terms.

²⁴ The change concerning the AC Chair would conform the AC Charter to proposed Article III, Section 4(a) of OCC's By-Laws, as described above.

²⁵ In the event OCC has a Non-Executive Chairman, such individual would not be considered a Management Director.

²⁶ OCC is also proposing to remove a statement concerning the AC's authority to obtain advice from independent counsel, accountants or others as such statement would be replaced by a broader expression of the AC's authority to hire advisors.

Functions and Responsibilities

OCC also proposes a number of amendments to Section IV of the AC Charter intended to reinforce and expand upon the activities of the AC with respect to the oversight of OCC's financial reporting processes, to enhance the independence and objectivity in connection therewith, and to more explicitly describe the AC's functions and responsibilities. These proposed amendments are described in more detail below.

Oversight of External Auditor and Financial Reporting

OCC proposes amendments to the AC Charter regarding the AC's oversight of financial reporting and external auditors. The proposed amendments to the AC Charter are intended to more accurately memorialize and expand upon the AC's role with respect to financial reporting at OCC. With respect to financial statements and financial reporting, the proposed amendments explicitly state that the AC is responsible for: (i) Discussing with management and external auditors OCC's audited and unaudited financial statements; (ii) upon management's recommendation, approving OCC's financial statements after reviewing with management and external auditors prior to issuance;²⁷ (iii) reviewing with management, external auditors and OCC's Internal Audit Department significant financial reporting issues and judgments made in connection with the preparation of financial statements, critical accounting policies and estimates, any major issues regarding accounting principles and financial statement presentation and the effect of regulatory and accounting initiatives; (iv) approving material changes to OCC's accounting policies; (v) resolving disagreements between management and external auditors regarding financial reporting; and (vi) reviewing and discussing with external auditors any audit problems or difficulties, and management's response thereto.

Additionally, to improve the AC's oversight and evaluation of external auditors, OCC proposes amendments to the AC Charter to state that the AC is required to: (i) Discuss with management the timing and process for implementing a rotation of the engagement partner of the external auditor and any other active audit engagement team partner; (ii) monitor

and evaluate the qualifications of both the external auditor and engagement partner; (iii) consider whether there should be a regular rotation of the audit firm itself; and (iv) pre-approve all services provided by the external auditor (as opposed to only non-audit services).

Oversight of Internal Audit, Compliance and Compliance-Related Matters

OCC is proposing to amend Section IV of the AC Charter in order to more clearly articulate the AC's responsibility for the oversight of Internal Audit. Specifically, OCC proposes amendments to state that the AC's responsibilities include reviewing and approving the Internal Audit Policy on an annual basis and monitoring ongoing internal audit activities. OCC also proposes amendments to state that the AC is responsible for approving OCC's annual internal audit plan and approving any CAE recommendations for removing or deferring any audits from a previously approved internal audit plan to explicitly codify these existing AC practices in the AC Charter. OCC believes that the AC, which serves as an independent and objective party tasked with the oversight of OCC's system of internal control, auditing, accounting, and compliance processes, is the appropriate body to approve OCC's internal audit plan and any CAE recommendations for removing or deferring any audits from a previously approved internal audit plan. The proposed amendments would provide more clarity and transparency regarding OCC's governance arrangements by codifying these responsibilities in the AC Charter.

OCC also proposes amendments to Section IV of the Charter to more clearly articulate the AC's responsibility for oversight of compliance and compliance-related matters, including: (i) Annually reviewing and approving OCC's Compliance Policy and employee Code of Conduct; (ii) reviewing and approving the Compliance Department's process for establishing the risk-based annual Compliance Testing Plan, monitoring progress against the annual Compliance Testing Plan, and approving changes to the Compliance Testing Plan recommend by the CCO; and (iii) monitoring ongoing compliance activities by reviewing reports and other communications prepared by the Compliance Department, including updates from the CCO, and inquiring of management regarding steps taken to address items raised.

In addition, OCC proposes amendments to clarify the AC's responsibilities with respect to: (i)

Reviewing on a regular basis the significant deficiencies and material weaknesses in the design or operation of OCC's internal controls (as such issues are identified by or presented to the AC); (ii) reviewing fraud involving OCC's management or other employees; and (iii) reviewing and approving (as opposed to just establishing) OCC's "whistleblower" procedures that govern reporting of illegal or unethical conduct, accounting irregularities and similar matters and discussing any substantive issues identified through such procedures with relevant parties.

Oversight of OCC's Chief Audit Executive and Chief Compliance Officer

OCC proposes amendments to Section IV of the AC Charter to provide that the CAE and CCO would each report functionally to the AC and administratively to the Executive Chairman.²⁸ The proposed amendments would make more explicit the reporting lines for these functions and underscore the independence of the CAE and CCO. In addition OCC proposes to eliminate provisions of the AC Charter that relate to the AC's assessment of the performance of the CAE and Internal Audit Department, the AC's approval of the compensation of the CAE, and the AC's assessment of the Compliance function and replace them with provisions that take into account the involvement of the Executive Chairman in those functions. Specifically, as amended, the AC Charter would state that the AC, in consultation with the Executive Chairman, would review the performance of the Internal Audit function and the CAE, the Compliance function and the CCO, and determine whether to accept or modify the Executive Chairman's recommendations with respect to the performance assessment and annual compensation for each. The proposed changes related to the performance and compensation setting regime for the CAE and CCO are intended to reflect the fact that the CAE and CCO report administratively to the Executive Chairman while reporting functionally to the AC.

Amendments to the Compensation and Performance Committee Charter

OCC is proposing changes to its CPC Charter to explicitly describe the Committee's functions and responsibilities with respect to OCC's human resources, compensation and employee benefit programs, and

²⁷ This proposed amendment is intended to restate, clarify, and expand upon an existing statement in the AC Charter regarding the AC's review of annual audited financial statements, which OCC is proposing to delete.

²⁸ This change would explicitly note existing reporting lines in the AC Charter, but would not revise those reporting lines. These provisions mirror a comparable provision in the RC Charter with respect to the Chief Risk Officer.

insurance programs. The proposed amendments would also provide for CPC oversight of OCC's Capital Plan in recognition of the importance of providing for Board-level oversight to ensure OCC's capital and Capital Plan meet or exceed minimum regulatory standards. The proposed changes are described in more detail below.

Purpose, Membership, and Authority

OCC is proposing to rename the Performance Committee to the CPC in order to more accurately reflect its role. OCC is also proposing to amend Section I of the CPC Charter to more clearly articulate that the CPC is tasked with assisting the Board in the oversight of OCC's overall performance in promptly and accurately delivering clearance, settlement and other designated industry services and in the accomplishment of other periodically-established corporate goals and objectives in light of OCC's systemically important status. The CPC Charter would further delineate that the CPC is also tasked with (i) recommending the compensation of OCC's Executive Chairman and President and approving the compensation of certain other officers, as appropriate; (ii) overseeing OCC's Capital Plan and financial performance; (iii) overseeing OCC's Human Resources program; (iv) overseeing the structure and design of the employee compensation, incentive and benefit programs; and (v) assisting the Board in reviewing OCC's leadership development and succession planning.

Additionally, OCC proposes amendments to Section II of the CPC Charter related to the membership and organization of the CPC. Specifically, OCC proposes amendments to conform the CPC Charter to proposed Article III, Section 4(b) of OCC's By-Laws to state that the Chair of the CPC shall be a Public Director. In addition, OCC proposes changes to Section II of the CPC Charter to elaborate on the CPC's responsibility to discuss and review the performance and compensation levels (including benefits and perquisites such as sign-on bonuses, retention arrangements, relocation arrangements and other financial commitments of OCC) of members of the Management Committee and certain other key officers, as appropriate.

OCC also proposes administrative amendments to Section II to clarify that the CPC would meet at least four times per year, which reflects the minimum number of regular meetings in a year in a manner consistent with the charters of other Board Committees, and to delete a provision of the CPC Charter that

requires the CPC Chair to meet in private session with the GNC Chair to discuss performance of key officers as well as a provision stating that the Chairs of the AC and RC would be invited to attend the annual meeting to discuss compensation of key officers, including the Chief Risk Officer ("CRO") and CAE.²⁹ The CPC Charter would also be amended to require that minutes of Committee meetings be circulated to the Board in conformance with general requirements applicable to all Board Committees.³⁰

OCC also proposes an amendment to the CPC Charter under which attendance at a CPC meeting by telephone is discouraged. Attendance by telephone would be generally discouraged because OCC believes the Committee may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Committee members were to meet in person. In addition, other clarifying and textual changes would be made including, for the reasons stated above, removal of references to the Management Vice Chairman.

Additionally, OCC proposes non-substantive organizational changes in Section III regarding the delegation of authority to the Administrative Committee that do not change the meaning of the rule text.

Functions and Responsibilities

OCC is proposing amendments to Section IV of the CPC Charter to provide explicit descriptions of the Committee's responsibilities with respect to OCC's capital structure, financial planning and corporate goals and objectives; human resources and compensation programs; and employee benefits programs in order to provide a more robust framework for the CPC's oversight functions. The proposed changes are described in more detail below.

Additionally, OCC proposes to remove explicit requirements in Section IV that the CPC review the Corporate Plan and Budget and OCC's performance under the Corporate Plan at each regularly scheduled meeting in favor of more general descriptions regarding the CPC's responsibilities for the oversight of the corporate financial planning process, including the corporate budget, and corporate goals and objectives. The proposed amendments are intended to

accommodate CPC review of annual Corporate Plans and Budgets and performance thereunder (as currently contemplated by the CPC Charter) as well as consideration of longer-term horizons and implications in the strategic planning process.

Oversight of OCC's Capital Plan

OCC proposes amendments to Section IV of the CPC Charter to explicitly provide for the CPC's responsibilities in connection with overseeing OCC's capital structure, financial planning, and corporate goals and objectives. Specifically, the proposed amendments would state that the CPC's responsibilities include oversight of management's processes for determining, monitoring and evaluating OCC's Capital Plan,³¹ including maintenance of required regulatory capital, and recommending approval of such plan to the Board. These amendments would also specify that the CPC is responsible for the annual review of OCC's Fee, Refund and Dividend Policies and making recommendations to the Board for changes to such policies and payments, if any, under the Refund and Dividend Policies. In addition, OCC proposes amendments to provide that the CPC's responsibilities include the review and approval of fee changes pursuant to the Capital Plan, review and recommendation to the Board of changes to OCC's fee structure, and oversight of OCC's corporate financial planning process (including reviewing the corporate budget). Moreover, the proposed amendments provide for the CPC's responsibility to review OCC's annual corporate goals and objectives and recommend approval thereof to the Board and routinely receive reports regarding progress in achieving such goals and objectives. The amendments also provide that the CPC is responsible for the periodic review of OCC's insurance program.

Oversight of Human Resources and Compensation Programs

OCC proposes amendments to Section IV of the CPC Charter to explicitly state that the CPC's responsibilities include review of OCC's Human Resources programs and policies, including OCC's talent acquisition, performance management, training, benefits and succession planning processes and review and approval of the structure, design, and funding as applicable, of employee compensation, incentive and

²⁹ These changes are being made to reflect a consultative process as between the Executive Chairman and, as applicable, the RC and Board to discuss the performance of key officers including the CRO and CAE.

³⁰ This requirement is already included in the AC, GNC, RC, and TC Charters.

³¹ See Securities Exchange Act Release No. 74387 (February 26, 2015), 80 FR 12232 [sic] (March 6, 2015) (SR-OCC-2014-813). See also Securities Exchange Act Release No. 74452 (March 6, 2015), 80 FR 13058 (March 12, 2015) (SR-OCC-2015-02).

benefit programs. This proposed amendment ensures Board Committee oversight for management's processes for hiring, retaining and developing qualified staff and is consistent with the CPC's oversight of overall succession planning processes. Additionally, OCC is proposing to amend the CPC Charter to clarify that the CPC annually reviews and approves the goals and objectives of the Executive Chairman and President.

Further, OCC is proposing amendments to the CPC Charter that would require the CPC to periodically (not less than annually) review and approve the general strategy, policies and programs with respect to salary compensation (including management compensation) and incentive compensation and seek to ensure compensation policies meet evolving compensation practices so that such policies remain effective to attract, motivate and retain executive officers and other key personnel. The proposed amendments would also require the CPC to review and approve the performance and compensation of key employees, such as members of OCC's Management Committee, at the end of each year and to make recommendations to the Board regarding the compensation of the Executive Chairman and the President. Additionally the proposed amendments would require the CPC to review proposed material changes to executive management benefits and to periodically review the compensation of Public Directors and make recommendations to the Board with respect thereto.

OCC proposes to remove from the CPC Charter certain statements regarding the review of OCC's performance under the Corporate Plan and the oversight of the administration of OCC's compensation plans as these responsibilities would be covered under the newly proposed descriptions contained therein. OCC believes that it is prudent and appropriate to provide for CPC oversight in the areas of human resources, performance, and compensation and that the proposed amendments will enhance OCC's overall governance arrangements with respect to the oversight and review of performance and compensation at OCC.

Oversight of Employee Benefit Programs and Other Responsibilities

OCC also proposes amendments to Section IV of the CPC Charter related to the CPC's oversight responsibilities for employee benefit programs. Specifically, OCC would make amendments to the CPC Charter to specify the CPC's responsibilities for

oversight, administration, and operation of employee benefit, retiree and welfare benefit plans, including the review of funding plan obligations. The proposed amendments also specify the scope of employee welfare plans that the CPC reviews and the CPC's right to adopt new compensation, retirement and welfare benefit plans or to terminate existing plans other than such plans that require Board action to amend or terminate. In addition, the proposed amendments would provide more clarity regarding the CPC's responsibilities for monitoring the Administrative Committee's duties in connection with retirement and retirement savings plans, investment strategy and performance, plan design and compliance, prudent selection of investment managers and compensation and benefits consultants, and performing such other oversight duties as called for in retirement, retirement and savings, and welfare plan documents.

OCC further proposes amendments that state that the CPC is responsible for providing updates to the Board periodically regarding: (i) Actions taken by the CPC with respect to its review of OCC's compensation, retirement and employee welfare plans; (ii) the financial position and performance of these plans; and (iii) adherence to investment guidelines, in each case, where applicable.

Amendments to the Risk Committee Charter

OCC is proposing amendments to its RC Charter which are primarily intended to enhance OCC's governance arrangements with respect to the RC's oversight functions and responsibilities. OCC also proposes amendments to better align the RC Charter with the OCC By-Laws, including changes in the composition requirements of the RC (as described above) and to reflect the adoption of the TC. The proposed changes are described as follows.

Purpose, Membership and Authority

OCC proposes amendments to Section I of the RC Charter to provide that the RC would be responsible for coordinating risk oversight with other Board Committees tasked with overseeing certain risks (*e.g.*, the TC, which assists the Board in overseeing OCC's information technology risks) in order to achieve comprehensive and holistic oversight of OCC's risk-related matters. The proposed amendments would also provide that the RC is responsible for the review of material policies and processes associated with risks related to new initiatives.

In Section II of the RC Charter, OCC proposes amendments to provide that attendance at a RC meeting by telephone is discouraged. Attendance by telephone would be generally discouraged because OCC believes the Committee may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Committee members were to meet in person. OCC also proposes to remove from the RC Charter, and by extension its rules, a requirement that a RC member shall recuse himself from any matter in which his firm has an interest, other than a common interest shared with Clearing Members generally or a particular class of Clearing Members. OCC believes that the identification and handling of conflicts of interest are already appropriately addressed in its Code of Conduct for OCC Directors,³² which governs the conduct of all directors equally regardless of category or committee assignment. Furthermore, OCC notes that, as a corporation incorporated in the state of Delaware, OCC's Directors have a fiduciary duty to protect the interests of the corporation and to act in the best interests of its shareholders³³ and are bound by a duty of loyalty to OCC, which demands that there be no conflict between duty and self-interest and that the best interest of the corporation and its shareholders takes precedence over any interest possessed by a director.³⁴

With respect to RC meetings, OCC proposes amendments to state that the RC shall meet regularly, and no less than once annually, (rather than "at least annually") with the CRO and members of management (as opposed to other appropriate corporate officers) in separate executive sessions to discuss certain private matters. The purpose of the proposed change is to signify that these meetings occur more frequently than once per year. The proposed changes would also more specifically require that the RC meet in executive session regularly with members of management. The RC would continue to have the discretion to invite any other officers it deems appropriate to meetings in executive session pursuant to the proposed common charter amendments described above. Moreover, and in order to enhance the independence and functional reporting relationship of the CRO to the RC, OCC

³² See Code of Conduct for OCC Directors available at <http://www.optionsclearing.com/components/docs/about/corporate-information/occ-code-of-conduct.pdf>.

³³ See *Cede & Co. v. Technicolor*, 634 A.2d 345, 360-361 (Del. 1993).

³⁴ See *Guth v. Loft, Inc.*, 5 A.2d 503, 510 (Del. 1939).

proposes revisions to explicitly state that the CRO is authorized to communicate with the RC Chair outside of regular meetings. OCC also proposes to amend the RC composition requirements in Section II in order to conform to the proposed By-Law changes discussed above. Specifically, the RC Charter would be revised to state that the RC shall consist of the Executive Chairman, at least one Exchange Director, at least one Member Director, and at least one Public Director. OCC is also proposing an amendment to Section II to require that the RC meet at least six times a year (as opposed to seven) in recognition of the fact that the time allotted for each individual RC meeting has been expanded. Furthermore, OCC proposes to amend Section II of the RC Charter to state that, unless a Chair is elected by the full Board, the members of the RC shall designate a Chair by majority vote. This proposed amendment is in conformance with OCC's current practices for electing Committee Chairs and as described in other Committee Charters.

OCC also proposes to amend Section III of the RC Charter to provide that, in addition to RC subcommittees, the RC may also delegate authority to OCC's Management Committee or Enterprise Risk Management Committee. As described herein, the RC is responsible for assisting the Board in overseeing OCC's policies and processes for identifying and addressing strategic, operational, and financial risks and for overseeing the overall enterprise risk management framework implemented by management. The proposed amendment would allow the RC to delegate authority to the Management Committee and Enterprise Risk Management Committee to carry out certain tasks and responsibilities in the day-to-day risk management of OCC and to implement proposals that have been approved in concept by the RC where the RC deems such delegation of authority to be appropriate.

Risk Committee Functions and Responsibilities

OCC proposes amendments to Section IV of the RC Charter to enhance its governance arrangements in connection with the oversight of membership requirements, margin requirements, the Enterprise Risk Management Program, and a number of other responsibilities.

Oversight of Membership and Margin Requirements

OCC proposes amendments to the RC Charter to provide a broader description of the RC's oversight of the adequacy

and effectiveness of OCC's framework for clearing membership. In general, these changes are not intended to substantively change or eliminate any of the RC's existing responsibilities with respect to its oversight of OCC's clearing membership framework and would continue to encompass the responsibilities currently enumerated in the charter.³⁵ Specifically, the RC Charter provisions related to the RC's oversight role with respect to clearing membership issues would be replaced with a more general statement that the RC is responsible for the oversight of OCC's framework for clearing membership, including: (i) Periodically reviewing and revising, as appropriate, OCC's initial and ongoing requirements for clearing membership;³⁶ (ii) overseeing the processes established for reviewing and monitoring clearing membership (including in respect of the continuance of potentially problematic members);³⁷ and (iii) making recommendations to the Board, as applicable, for final determination in respect of the foregoing.

In addition, OCC proposes to modify certain provisions related to the surveillance of Clearing Members and contingency planning for Clearing Member failures. Specifically, OCC proposes to consolidate these provisions to restate that the RC is responsible for the oversight of the adequacy and effectiveness of OCC's contingency plan for Clearing Member failures, including: (i) Reviewing Clearing Member surveillance criteria; (ii) overseeing the management processes for managing Clearing Members that are subject to closer than normal surveillance or are otherwise in or approaching financial or operational difficulty; (iii) imposing and modifying restrictions and requirements already imposed on Clearing Members in a manner consistent with the By-

³⁵ For example, individual provisions related to specific types of membership categories and requirements would be replaced by a broader restatement of the RC's responsibilities, which is intended to capture all of the responsibilities enumerated in the deleted provisions.

³⁶ This proposed provision is a restatement of an existing RC responsibility for periodically reviewing and recommending changes to the initial and ongoing requirements for membership and would also replace and encompass the responsibilities in an existing provision of the RC Charter stating that the RC is responsible for recommending to the Board membership requirements for non-broker-dealers.

³⁷ This proposed provision would replace and encompass the RC's responsibilities contained in existing RC Charter provisions related to the conducting of hearings for applicants proposed to be disapproved by the RC, the review and approval/disapproval of requests to participate in the Stock Loan Programs, and the approval/disapproval of the continued membership of managed Clearing Members.

Laws and Rules;³⁸ and (iv) making recommendations to the Board in respect of the foregoing.

OCC proposes similar amendments to the RC Charter to restate the RC's responsibilities in connection with its oversight of margin and clearing fund requirements. OCC proposes to remove certain existing provisions related to the oversight of margin and clearing fund requirements and replace them with a more high level description that would provide that the RC oversees OCC's processes for establishing, monitoring and adjusting margin consistent with the protection of OCC, Clearing Members, or the general public, including: (i) Reviewing and modifying OCC's margin formula, the methodologies used for determining margin and clearing fund requirements, and making recommendations to the Board, as applicable, in respect thereof;³⁹ (ii) evaluating (including increasing) the amount of margin required in respect of any contract or position; (iii) establishing and reviewing guidelines for requiring the deposit of additional margin; and (iv) reviewing and approving determinations about assets eligible for deposit as margin or clearing fund as provided in the By-Laws and Rules.⁴⁰ In general, the proposed amendments are not intended to substantively change the RC's responsibilities in the deleted provisions but would instead replace them with a broader description intended to encompass those responsibilities. OCC is proposing, however, to delete an existing RC Charter provision specifically requiring the RC to periodically review the inputs to OCC's margin formula and modify them to the extent it deems such action to be consistent with the protection of OCC, Clearing Members, or the general public. While this specific requirement is being removed from the Charter, OCC believes that the Charter continues to provide an adequate and appropriate oversight framework for the monitoring

³⁸ This proposed provision would replace and encompass the responsibilities in an existing RC Charter provision related to the RC's responsibility for reviewing and modifying or reversing restrictions or additional requirements imposed on Clearing Members pursuant to Rule 305.

³⁹ This proposed provision would include language from an existing Charter provision stating that the RC will review methodologies used for calculating margin and clearing fund requirements.

⁴⁰ This proposed provision would replace and encompass the RC's responsibilities contained in existing Charter provisions related to the oversight of acceptable margin and clearing fund assets, including the approval of classes of GSE securities for deposit as margin, prescribing intervals for revaluing debt securities deposited as margin of clearing fund, and specifying haircuts for securities provided as margin.

and development of OCC's margin formula and would provide the RC with continued authority to modify margin formula inputs if it deems such modification to be appropriate.⁴¹

OCC also proposes to delete a provision stating that the RC is responsible for making determinations regarding approval of non-U.S. institutions to issue letters of credit as a form of margin asset because this provision does not accurately reflect the RC's responsibilities. While the RC is responsible for overseeing standards used to admit non-U.S. institutions, OCC's President and Executive Chairman have general responsibility for approving financial institutions seeking to become non-U.S. letter of credit banks and that meet the requirements of OCC Rule 604, Interpretation and Policy .01 (with the exception of certain "equivalent country" and "equivalent institution" determinations that are required to be made by the RC pursuant to OCC Rule 604, Interpretations and Policies .01(b)(3) and .01(b)(4)(b)).

Oversight of OCC's Enterprise Risk Management Program and Risk Tolerances

OCC proposes amendments to restate and expand upon the RC's responsibility for overseeing OCC's Enterprise Risk Management program. Currently, the RC is responsible for overseeing the structure, staffing and resources of the Enterprise Risk Management program, reviewing periodic reports regarding the Enterprise Risk Management program, and annually reviewing and assessing the overall program. OCC proposes amendments to the RC Charter that would restate these existing responsibilities and add new responsibilities designed to enhance the risk oversight framework for the Enterprise Risk Management program. Specifically, the proposed amendments would state that the RC is responsible for overseeing OCC's Enterprise Risk Management program, including (in addition to the existing responsibilities noted above), reviewing the systems and procedures that management has developed to manage the risks to OCC's business operations and regularly discussing these systems and procedures with management, reviewing with management the

interrelated nature of OCC's risks, and annually approving the Enterprise Risk Management program's goals and objectives. OCC believes that explicitly incorporating these responsibilities into the RC Charter will provide for a more comprehensive oversight framework for the Enterprise Risk Management program.

OCC also proposes amendments to restate and expand upon the RC's responsibility for the oversight of OCC's risk appetite and risk tolerances. Currently, the RC Charter provides that the RC is responsible for reviewing and recommending for Board approval the OCC Risk Appetite Statement and reviewing and monitoring OCC's risk profile for consistency with OCC's Risk Appetite Statement. The proposed amendments to the RC Charter would state that, in addition to these responsibilities, the RC would be responsible for reviewing and monitoring determinations regarding appropriate risk tolerances, including reviewing with management on a regular basis management's view of appropriate risk tolerances and assessing whether this view is appropriate, and recommending risk tolerance parameters to the Board. OCC believes that explicitly incorporating these responsibilities into the RC Charter will provide for a more comprehensive oversight framework for OCC's risk appetite and risk tolerances.

Other Oversight Responsibilities

Section I of the RC Charter currently provides that the RC is responsible for the oversight and review of material policies and processes relating to member and other counterparty risk exposure assessments. OCC proposes amendments to Section IV that would further specify that the RC oversees the adequacy and effectiveness of OCC's processes for setting, monitoring and acting on risk exposures to OCC presented by banks, depositories, financial market utilities and trade sources. OCC believes that the oversight of such risk exposures is critical to ensuring the safety and soundness of OCC and that specifically including this responsibility in the RC Charter will provide for greater clarity and transparency regarding the RC's role in overseeing these risks. Section I of the RC Charter also currently provides that the RC is responsible for the oversight and review of material policies and processes (i) for identifying liquidity risks and (ii) relating to liquidity requirements and the maintenance of financial resources. The proposed amendments to Section IV would further specify that the RC oversees the

processes established by OCC for setting, monitoring and managing liquidity needs necessary for OCC to perform its obligations as a systemically important financial market utility. OCC believes that comprehensive oversight of liquidity risks and liquidity risk management is critical to ensuring the safety, soundness, and resilience of OCC and that providing more specificity regarding the RC's responsibilities with respect to liquidity risk will provide for greater clarity and transparency regarding the RC's role in such oversight. In addition, the RC Charter would be amended to provide that the RC and management would discuss on a regular basis the impact on systemic stability that may arise as a result of OCC's actions in responding to an extraordinary market event, including the impending or actual failure of a Clearing Member, and the development of strategies to mitigate these effects. OCC believes it is prudent for management and the RC to engage in regular discussions concerning OCC's actions in extreme market events and the potential impacts on systemic stability given OCC's role as a systemically important financial market utility.

OCC also proposes to elaborate on the statement that the RC would perform the responsibilities delegated to it by the Board under OCC's By-Laws and Rules by specifying that this would include the authorization of the filing of regulatory submissions pursuant to such delegation. Additionally, OCC proposes amendments to state that the RC would oversee management's responsibility for handling financial (*i.e.*, credit, market, liquidity and systemic) risks, including the structure, staffing and resources of OCC's Financial Risk Management department. In addition, OCC proposes amendments to state that the RC's oversight responsibilities include: (i) Identifying issues relating to strategic, credit, market, operational, liquidity and systemic risks that should be escalated to the Board for final action and (ii) reviewing, approving and reassessing reporting metrics reflecting the risks for which the RC has oversight.

Further, the proposed amendments would specify that the RC oversees OCC's model risk management process, policies and controls, including: (i) Overseeing model risk governance; (ii) reviewing the findings of any third party engaged by management to evaluate OCC's risk models; and (iii) annually reviewing and approving the Model Validation Plan and receiving periodic reports thereunder. Moreover, the amendments would provide that the RC is responsible for reviewing the results

⁴¹ As noted above, the proposed amendments to the RC Charter provide that the RC is responsible for overseeing the processes established for establishing, monitoring and adjusting margin consistent with the protection of OCC, Clearing Members, or the general public, including reviewing and modifying OCC's margin formula.

of any audits (internal and external), regulatory examinations and supervisory examination reports as to significant risk items or any other matter relating to the areas that the RC oversees, as well as management's responses pertaining to matters that are subject to the oversight of the RC.

Conforming, Administrative and Non-Substantive Changes

In order to conform the RC Charter to the GNC Charter and AC Charter, OCC proposes amendments to the RC Charter that would eliminate provisions under which the RC Chair attends the year-end CPC meeting to discuss the performance and compensation levels of the CRO. Rather, under the proposed amended RC Charter, the RC, in consultation with the Executive Chairman, would review the performance of the Enterprise Risk Management and Model Validation programs as well as the CRO and determine whether to accept or modify the Executive Chairman's recommendations with respect to the performance assessment and annual compensation for the CRO.⁴² This change reflects the reporting of the CRO to the Executive Chairman for administrative purposes, while preserving functional reporting to the Committee.

Further, the proposed amendments confirm that the RC has the responsibility for ratifying, modifying, or reversing action taken by OCC officers that have been delegated authority to consider requests by Clearing Members to expand clearing activities to include additional account types and/or products. Moreover, OCC proposes amendments to the RC Charter to clarify that the RC has the authority to authorize the filing of a regulatory submission pursuant to authority delegated to it by the Board.

Amendments to the Governance and Nominating Committee Charter

OCC proposes amendments to the GNC Charter to reflect the elimination of term limits for Public Directors as discussed above and to state that attendance of GNC meetings by telephone is discouraged. Attendance by telephone would be generally discouraged because OCC believes the Committee may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Committee members were to meet in person. OCC also proposes to delete a provision stating that a

designated officer of management shall serve to assist the Committee and act as a liaison between staff and the Committee because OCC believes that experience has shown that designating a formal role for a liaison was unnecessary. Deleting this requirement would also maintain uniformity across all Committee Charters, as no other Committee has a formally designated liaison.

OCC also proposes amendments to the GNC Charter to specify that the Chair (or the Chair's designee) shall consult with the Corporate Secretary, in addition to management, to prepare an agenda in advance of each GNC meeting as the Corporate Secretary is responsible for coordinating the preparation and distribution of Board and Board Committee meeting agendas. In addition, OCC is proposing non-substantive drafting changes regarding: (i) The numbering of certain provisions in Section I of the GNC Charter and (ii) the requirements for GNC Committee reports to the Board in Section II of the Charter.

Amendments to the Technology Committee Charter

OCC is proposing amendments to its TC Charter to require that the Committee meet regularly, and no less than once annually, with OCC's Chief Security Officer ("CSO") and to provide that the CSO is authorized to communicate with directly with [sic] the Chair of the TC in between meetings of the Committee in order to strengthen the autonomy and independence of the CSO role at OCC. OCC also proposes to amend the TC Charter to provide that the TC shall make such reports to the Board as deemed necessary or advisable. This proposed change would promote effective communication between the TC and the Board is in line with requirements in other Committee Charters. OCC also proposes non-substantive amendments to Section III of the TC Charter to eliminate a provision that referenced approval of non-audit services which appeared to be an inadvertent carry-over from the Audit Committee Charter and to Section IV of the Charter to change the term "the Company" to "OCC" and "Board of Directors" to "Board."

2. Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A of the Act⁴³ and the rules thereunder applicable to OCC. OCC's governance arrangements, which include, but are not limited to, OCC's Certificate of

Incorporation, By-Laws, the Board Charter, and the Committee Charters promote the effectiveness of OCC's Board and Board Committees' oversight on OCC's business, risk management, and operational processes. OCC believes that the proposed changes to its governance arrangements would enhance the effectiveness of the Board and Board Committees' oversight on such matters and are designed to provide more clarity and transparency with respect to OCC's governance arrangements, thereby promoting the prompt and accurate clearance and settlement of securities transactions, and in general, protecting investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁴⁴ and ensuring that OCC has clear and transparent governance arrangements consistent with Rule 17Ad-22(d)(8)⁴⁵ thereunder. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended. The statutory basis for the proposed amendments is discussed in more detail below.

Amendments to OCC's Certificate of Incorporation, By-Laws, and Rules

OCC is proposing to amend its Certificate of Incorporation and By-Laws to modify the composition requirements for OCC's Board to require that only one Management Director shall serve on OCC's board. Currently, there is a vacancy for one Management Director position on the Board (OCC also notes that, prior to the addition of a second Management Director seat in 2013, OCC has historically had only one Management Director serving on its Board). OCC's Board continually evaluates the leadership structure at OCC, including the appropriate number of Management Directors for OCC's Board, and in light of recent experience with the current Management Director vacancy, the Board believes that amending the Board composition to require one Management Director would continue to provide an appropriate level of management representation in the Board-level oversight of OCC. The Executive Chairman, as Management Director, would continue to represent management's viewpoint on OCC's Board. Moreover, the Board has access to OCC's management team, which ensures that the Board has continued access to management's perspectives on the business and affairs of OCC. Accordingly, OCC believes that the proposed amendments to OCC's governance arrangements are designed,

⁴² This change is consistent with comparable changes to the AC Charter with respect to the annual compensation of the CAE and CCO, respectively.

⁴³ 15 U.S.C. 78q-1.

⁴⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁵ 17 CFR 240.17Ad-22(d)(8).

in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁴⁶ and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act⁴⁷ applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)⁴⁸ thereunder.

OCC is also proposing to amend its By-Laws and Rules to eliminate the role of Management Vice Chairman. The office of Management Vice Chairman has been vacant for a number of years and has not been included in the Board's current discussions regarding management succession planning. OCC believes that the responsibilities of the Management Vice Chairman are appropriately handled by other officers of OCC (and are currently handled by such officers), primarily the Executive Chairman and President, or where applicable, other officers such as the Secretary or directors such as the Member Vice Chairman, and as a result, the title is being eliminated from OCC's By-Laws and Rules. OCC believes the proposed amendments would more accurately reflect the current state of affairs regarding the office of Member Vice Chairman, ensure consistency across all of OCC's governing documents, provide more clarity and transparency regarding OCC's intended governance arrangements, and continue to provide for appropriate and prudent governance arrangements at OCC. Accordingly, OCC believes the proposed amendments are designed in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁴⁹ and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act⁵⁰ applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)⁵¹ thereunder.

The proposed amendments to OCC's By-Laws also would require that the CPC and AC each be chaired by a Public Director, which will help to ensure the objectiveness and independence of those committees. It would also eliminate term limits for Public Directors, allowing OCC's Public Directors the time necessary to develop the particularized degree of knowledge and understanding of OCC's business to ensure that they are able to provide significant value in the governance process. OCC therefore believes that the

proposed changes are designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁵² and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act⁵³ applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)⁵⁴ thereunder.

In addition, the proposed rule change would require that at least one Exchange Director be a member of the RC and would reduce the minimum composition requirement for Member Directors on the RC to allow for greater flexibility in the selection of Directors with the requisite skills and expertise to serve on the RC. The addition of an Exchange Director to the RC will enhance the RC's oversight capabilities by providing additional expertise and unique perspectives on matters such as market risk as well as sophistication as to special risks arising from trading practices, strategies, and new products. Moreover, the reduction in the minimum number of Member Directors serving on the RC would provide OCC with greater flexibility to ensure that the RC is comprised of those Directors that have the appropriate mix of knowledge and expertise necessary to provide for the prudent oversight of risk matters at OCC. It would also continue to ensure the fair representation of Member Directors on OCC's RC as the minimum number Member Directors would be consistent with requirements that the Executive Chairman (as the lone Management Director), one Exchange Director, and at least one Public Director serve on the RC. OCC therefore believes that the proposed amendments are designed, and in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act,⁵⁵ are reasonably designed to be clear and transparent to promote the effectiveness of OCC's risk management procedures in accordance with Rule 17Ad-22(d)(8)⁵⁶ thereunder, and are designed to ensure a fair representation of OCC's members and participants in the administration of its affairs (as they pertain to the oversight of risk matters at OCC) in accordance with Section 17A(b)(3)(C) of the Act.⁵⁷

OCC is also proposing a number of other amendments to better align its By-Laws and Board and Board Committee Charters and to provide more clarity and

transparency with respect to OCC's governance arrangements. In particular, OCC proposes amendments to Article IV, Section 7 to: (i) Delete a requirement that the Member Vice Chairman preside at the meetings of any committee of the Board charged with reviewing and evaluating the performance and compensation of officers as the CPC would now be chaired by a Public Director and (ii) clarify that the Member Vice Chairman would preside over meetings of the Board and stockholders in the absence of the Executive Chairman because the President cannot preside over meetings of the Board. OCC believes that the proposed changes would provide more clarity, transparency, and accuracy regarding its governance arrangements with respect to the responsibilities of the Member Vice Chairman and President and are therefore designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements in Section 17A of the Act⁵⁸ in accordance with Rule 17Ad-22(d)(8).⁵⁹

Amendments to the Board Charter and the Fitness Standards

The proposed rule change would amend the Board Charter, as described in detail above, to: (i) Harmonize the description of the Board's obligations in the Board Charter with the description of the Board's obligations in OCC's By-Laws and Rules; (ii) reflect recent changes involving Board Committee Charters; (iii) reflect recent changes to the Board's composition; and (iv) in general, restate the responsibilities of the Board in overseeing the management of the affairs of OCC in light of its role as a systemically important financial market utility. The proposed amendments would provide more clarity around the responsibilities of the Board, specifically with respect to its role in: (i) Overseeing management's activities in managing, operating and developing OCC, including the selection, oversight and replacement of key positions (*i.e.*, Executive Chairman, CEO, and the President) as well as evaluating their performance and compensation awards; (ii) setting expectations about the tone and ethical culture at OCC and its ability to ensure compliance with applicable laws and regulations; (iii) reviewing and approving financial objectives and strategies, capital plan and capital structure, fee structure, capital expenditures and budgets; (iv) the oversight of governance processes,

⁴⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁷ 15 U.S.C. 78q-1.

⁴⁸ 17 CFR 240.17Ad-22(d)(8).

⁴⁹ 15 U.S.C. 78q-1(b)(3)(F).

⁵⁰ 15 U.S.C. 78q-1.

⁵¹ 17 CFR 240.17Ad-22(d)(8).

⁵² 15 U.S.C. 78q-1(b)(3)(F).

⁵³ 15 U.S.C. 78q-1.

⁵⁴ 17 CFR 240.17Ad-22(d)(8).

⁵⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁵⁶ 17 CFR 240.17Ad-22(d)(8).

⁵⁷ 15 U.S.C. 78q-1(b)(3)(C).

⁵⁸ 15 U.S.C. 78q-1.

⁵⁹ 17 CFR 240.17Ad-22(d)(8).

including performing annual self-evaluations on a group and individual level; and (v) the oversight of risk assessment and risk tolerances. OCC believes the proposed changes would provide for prudent governance arrangements with respect to the Board's oversight role over OCC as a systemically important financial market utility and are therefore reasonably designed to ensure that OCC has governance arrangements that, in general, protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Act⁶⁰ and are clear and transparent to fulfill the public interest requirements in Section 17A of the Act⁶¹ applicable to clearing agencies and to support the objectives of owners and participants in accordance with Rule 17Ad-22(d)(8) thereunder.⁶²

In addition, OCC proposes to amend the Board Charter to state that the Board is comprised of one Management Director, rather than two Management Directors, in conformance with the proposed amendments to the Certificate of Incorporation and By-Laws described above. OCC also proposes amendments to the Fitness Standards to remove redundant descriptions of Board composition and the nomination process and to underscore that the Fitness Standards are intended to facilitate the performance of OCC's role as a systemically important financial market utility. OCC believes that the proposed changes provide additional clarity and transparency regarding its governance arrangements and are therefore designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements in Section 17A of the Act⁶³ applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8).⁶⁴

Additionally, OCC proposes amendments that would allow for additional meetings of the Board to be called as the Board deems appropriate (such meetings being called by the Executive Chairman or his designee), which will provide the Board with increased flexibility in performing its oversight functions. Accordingly, OCC believes the proposed amendments to its governance arrangements are designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁶⁵ and are reasonably designed to be clear and transparent to fulfill the public

interest requirements in Section 17A of the Act⁶⁶ applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)⁶⁷ thereunder.

Common Amendments to the Committee Charters

OCC is proposing to make a number of common amendments to the Committee Charters as a result of the Commission approving certain changes to the GNC Charter.⁶⁸ Specifically, OCC proposes to amend each Committee Charter to confirm that each Committee has access to all books, records, facilities and personnel of OCC in carrying out the respective Board Committee's purpose and responsibilities and to delete a provision from each Committee Charter which granted the Chair of each Board Committee the authority to act on behalf of the respective Board Committee in situations in which immediate action was required and convening a Board Committee meeting was impractical. The proposed amendments would ensure that each Committee has access to all books, records, facilities and personnel of OCC in carrying out its respective responsibilities and would support deliberation and action by a Board Committee as a whole, rather than action by solely its Chair, and as a result, would help to ensure that each Committee is able to make fully informed, collective decisions regarding the governance of OCC. OCC therefore believes the proposed amendments are designed in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁶⁹ and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act⁷⁰ applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)⁷¹ thereunder.

In addition, OCC is proposing a number of common changes across its Committee Charters to strengthen OCC's Board Committee governance framework and practices surrounding meetings in executive sessions by providing added structure regarding the convening and attendance of executive sessions (and specifically requiring that each Committee meet in executive session at each regular meeting of the Committee) and by promoting the enhanced recordation of important meeting events and discussions by

requiring that each Committee's meeting minutes reflect, at a minimum, that an executive session was convened and broadly describe the topic(s) discussed. OCC believes that meetings in executive session are an important tool for Board Committees to discuss matters of a sensitive nature or for which certain persons may have conflicts of interest; however, OCC also believes that it is important that these sessions be documented, at least in summary fashion, in the interest of transparency. OCC therefore believes the proposed amendments providing for added structure regarding the convening, attendance, and recordation of executive sessions are designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁷² and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act⁷³ applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)⁷⁴ thereunder.

Additionally, the Committee Charters would be amended to permit any Board Committee to engage specialists or advisors to assist it in carrying out its delegated responsibilities without requiring pre-approval from the Board. Under the proposed amendments, each Committee's engagement of an advisor, including fees and expenses, would be referenced in its annual report to the Board. These proposed amendments are intended to foster Committee independence as well as timely Committee access to expertise relevant to the discharge of its delegated responsibilities while preserving Board oversight via the application of existing reporting mechanisms. Accordingly, OCC believes that the proposed amendments are designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁷⁵ and are reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act⁷⁶ applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)⁷⁷ thereunder.

OCC is also proposing amendments to its Committee Charters to specify that that [sic] each Committee should evaluate its and its individual member's performance on an annual basis (as opposed to regularly) to provide more clarity and specificity regarding the timing of each Committee's self-

⁶⁰ 15 U.S.C. 78q-1(b)(3)(F).

⁶¹ 15 U.S.C. 78q-1.

⁶² 17 CFR 240.17Ad-22(d)(8).

⁶³ 15 U.S.C. 78q-1.

⁶⁴ 17 CFR 240.17Ad-22(d)(8).

⁶⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶⁶ 15 U.S.C. 78q-1.

⁶⁷ 17 CFR 240.17Ad-22(d)(8).

⁶⁸ See *supra* note 16.

⁶⁹ 15 U.S.C. 78q-1(b)(3)(F).

⁷⁰ 15 U.S.C. 78q-1.

⁷¹ 17 CFR 240.17Ad-22(d)(8).

⁷² 15 U.S.C. 78q-1(b)(3)(F).

⁷³ 15 U.S.C. 78q-1.

⁷⁴ 17 CFR 240.17Ad-22(d)(8).

⁷⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁷⁶ 15 U.S.C. 78q-1.

⁷⁷ 17 CFR 240.17Ad-22(d)(8).

assessment process. OCC believes the proposed amendments are therefore reasonably designed to be clear and transparent to fulfill the public interest requirements in Section 17A of the Act⁷⁸ applicable to clearing agencies in accordance with Rule 17Ad-22(d)(8)⁷⁹ thereunder.

Amendments to the Audit Committee Charter

The proposed amendments to the AC Charter are designed to: (i) Underscore the independence of the AC; (ii) underscore and expand upon the activities of the AC with respect to the oversight of OCC's financial reporting processes and enhance the independence and objectivity in connection therewith; (iii) promote effective communication between the CAE, CCO, CFO and the AC and between the AC and the Board; and (iv) in general, provide more explicit descriptions of the AC's functions and responsibilities. Specifically, the proposed changes would underscore the independence of the AC by providing that all members of the AC be independent from OCC's management, as determined by the Board from time to time; that the Chair of the AC be a Public Director; and clarify that the Management Director is ineligible to serve on the AC. The proposed changes would also require the AC to meet regularly, and no less than once annually, (as opposed to at least annually) with management, the CAE, CCO, and CFO in executive sessions to discuss certain private matters and provide the authority for the CAE and CCO to communicate directly with the Chair of the AC with respect to any of the responsibilities of the AC outside of regular meetings to further underscore the independence these roles at OCC. In addition, the proposed changes underscore and expand upon the AC's oversight role in connection with OCC's financial reporting processes, enhance the independence and objectivity in connection therewith, and more explicitly describe the AC's functions and responsibilities with respect to its oversight of external auditors as well as OCC's internal audit and compliance functions (as described in detail above). The proposed amendments would also provide that the AC shall make such reports to the Board as deemed necessary or advisable.

OCC believes that by underscoring and reinforcing the independence of the AC in OCC's governance framework, promoting effective communication

between certain officers, the AC, and the Board, and providing further clarity around the AC's functions and responsibilities, the proposed changes are reasonably designed to ensure that OCC's governance arrangements with respect to the role of the AC are designed to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁸⁰ and are clear and transparent to fulfill the public interest requirements in Section 17A of the Act⁸¹ applicable to clearing agencies and to support the objectives of owners and participants consistent with Rule 17Ad-22(d)(8).⁸²

Amendments to the Compensation and Performance Committee Charter

OCC proposes amendments to the CPC Charter intended to more clearly articulate that the CPC is tasked with assisting the Board in the oversight of OCC's overall performance in promptly and accurately delivering clearance, settlement and other designated industry services and in the accomplishment of other periodically-established corporate goals and objectives in light of OCC's systemically important status. The proposed amendments would provide a more robust framework for the CPC's oversight functions by clearly stating the CPC's role in: (i) Recommending the compensation of OCC's Executive Chairman and President and approving the compensation of certain other officers, as appropriate; (ii) overseeing OCC's Capital Plan, capital structure, financial planning and corporate goals and objectives; (iii) overseeing OCC's Human Resources program; (iv) overseeing the structure and design of the employee compensation, incentive and benefit programs; and (v) assisting the Board in reviewing OCC's leadership development and succession planning. Accordingly, OCC believes that the proposed changes to the CPC Charter are reasonably designed [sic] to ensure that OCC's governance arrangements with respect to the CPC are designed to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁸³ and are clear and transparent to fulfill the public interest requirements in the Act applicable to clearing agencies and to support the objectives of owners and participants consistent with Rule 17Ad-22(d)(8).⁸⁴

⁸⁰ 15 U.S.C. 78q-1(b)(3)(F).

⁸¹ 15 U.S.C. 78q-1.

⁸² 17 CFR 240.17Ad-22(d)(8).

⁸³ 15 U.S.C. 78q-1(b)(3)(F).

⁸⁴ 17 CFR 240.17Ad-22(d)(8).

Amendments to the Risk Committee Charter

OCC proposes amendments to its RC Charter primarily intended to better align the RC Charter with the OCC By-Laws (including, for example, changes in the composition requirements of the RC and to reflect the adoption of the TC), to restate and elaborate on the responsibilities of the RC, and to replace more granular descriptions with general statements regarding the RC's functions and responsibilities, as described in detail above. In particular, the amendments would restate and expand on the RC's functions and responsibilities with respect to the oversight of membership requirements, margin requirements, the Enterprise Risk Management Program, and OCC's risk appetite and risk tolerances. The proposed amendments also elaborate on the RC's role in overseeing the adequacy and effectiveness of OCC's processes for setting, monitoring and acting on risk exposures to OCC presented by banks, depositories, and financial market utility counterparties and the processes established by OCC for setting, monitoring and managing liquidity needs necessary for OCC to perform its obligations as a systemically important financial market utility. Additionally, in recognition of OCC's role as a systemically important financial market utility, the RC Charter would provide that the RC and management would discuss on a regular basis the impact on systemic stability that may arise as a result of OCC's actions in responding to an extraordinary market event, including the impending or actual failure of a clearing member, and the development of strategies to mitigate these effects. OCC believes that the proposed amendments to the RC Charter provide for comprehensive and robust governance arrangements with respect to the RC's oversight role at OCC and are therefore designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds, and in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁸⁵ and are reasonably designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements of Section 17A of the Act⁸⁶ applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's

⁸⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁸⁶ 15 U.S.C. 78q-1.

⁷⁸ 15 U.S.C. 78q-1.

⁷⁹ 17 CFR 240.17Ad-22(d)(8).

risk management procedures as required under Rule 17Ad-22(d)(8).⁸⁷

Additionally, OCC proposes to delete an existing RC Charter provision specifically requiring the RC to periodically review and modify the inputs to OCC's margin formula and would amend the RC Charter to state that the RC is generally responsible for overseeing the processes established for establishing, monitoring and adjusting margin consistent with the protection of OCC, Clearing Members, or the general public, including reviewing and modifying OCC's margin formula. OCC believes that the proposed amendments continue to provide an adequate and appropriate oversight framework for the monitoring and development of OCC's margin formula and would provide the RC with the continued authority to modify margin formula inputs if it deems such modification to be appropriate. OCC also proposes to delete a provision stating that the RC is responsible for making determinations regarding the approval of non-U.S. institutions to issue letters of credit as a form of margin asset because this provision does not accurately reflect the RC's responsibilities. Accordingly, OCC believes that the proposed changes are reasonably designed to be clear and transparent to promote the effectiveness of the clearing agency's risk management procedures as required under Rule 17Ad-22(d)(8).⁸⁸

In addition, OCC proposes amendments to state that the RC shall meet regularly, and no less than once annually, (rather than "at least annually") with the CRO and members of management (as opposed to other appropriate corporate officers) in separate executive sessions to discuss certain private matters to provide more specificity regarding the frequency of these meetings (*i.e.*, that these meetings occur more frequently than once per year). The proposed changes would also more specifically require that the RC meet in executive session regularly with members of management. The RC would continue to have the discretion to invite any other officers it deems appropriate to meetings in executive session pursuant to the proposed common charter amendments described above. OCC believes that the proposed amendments provide more clarity and transparency with respect to RC meetings in executive session and are therefore reasonably designed to be clear and transparent to promote the effectiveness of the clearing agency's

risk management procedures as required under Rule 17Ad-22(d)(8).⁸⁹

Finally, OCC proposes to remove from the RC Charter certain mandatory recusal requirements designed to apply to Member Directors of the RC. OCC believes that the identification and handling of conflicts of interest are already appropriately addressed in its Code of Conduct for OCC Directors, which is a publicly available document that governs the conduct of all directors equally regardless of category or committee assignment. Furthermore, as discussed above, OCC's Directors have a fiduciary duty under Delaware law to protect the interests of the corporation and to act in the best interests of its shareholders and are bound by a duty of loyalty to OCC, which demands that there be no conflict between duty and self-interest and that the best interest of the corporation and its shareholders takes precedence over any interest possessed by a director. OCC believes that this specific recusal requirement contained in the RC charter is unnecessary in light of the existing requirements under Delaware law and OCC's Code of Conduct for OCC Directors. Accordingly, OCC believes that its governance arrangements with respect to conflicts of interest for RC members continue to be designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁹⁰ and are reasonably designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements of Section 17A of the Act⁹¹ applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures as required under Rule 17Ad-22(d)(8).⁹²

Amendments to the Governance and Nominating Committee Charter

OCC proposes amendments to the GNC Charter to reflect the elimination of term limits for Public Directors as discussed above, to state that attendance of GNC meetings by telephone is discouraged, and to delete a provision stating that a designated officer of management shall serve to assist the Committee and act as a liaison between staff and the Committee. The proposed amendments are primarily intended to conform the GNC Charter with proposed changes to the By-Laws and existing practices contained in other Committee

Charters and would continue to provide for appropriate governance arrangements with respect to the GNC's oversight role. OCC therefore believes the proposed changes are reasonably designed to ensure that OCC's governance arrangements are clear and transparent to fulfill the public interest requirements of Section 17A of the Act⁹³ applicable to clearing agencies as required under Rule 17Ad-22(d)(8).⁹⁴

Amendments to the Technology Committee Charter

OCC is proposing amendments to its TC Charter to require that the Committee meet regularly, and no less than once annually, with OCC's CSO and to provide that the CSO is authorized to communicate with directly with [*sic*] the Chair of the TC in between meetings of the Committee. OCC also proposes to amend the TC Charter to provide that the TC shall make such reports to the Board as deemed necessary or advisable. The proposed amendments are designed to strengthen the autonomy and independence of the CSO role at OCC and to promote effective communication between the CSO and the TC and between TC and the Board and are in line with requirements in other Committee Charters. OCC therefore believes the proposed amendments are designed to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act⁹⁵ and are clear and transparent to fulfill the public interest requirements in the Act applicable to clearing agencies and to support the objectives of owners and participants consistent with Rule 17Ad-22(d)(8).⁹⁶

Amendment No. 1 to Amended and Restated Stockholders Agreement

OCC also proposes to adopt Amendment No. 1 to Amended and Restated Stockholders Agreement in order to provide for Board action in the nomination process for Member Directors, Public Directors, the Executive Chairman and Member Vice Chairman in conformance with the process set forth in the GNC Charter. The proposed change would ensure an appropriate level of Board oversight and participation in the nomination process and provide consistency between the processes described in the GNC Charter and Amended and Restated Stockholders Agreement thereby ensuring that OCC's governance

⁸⁹ *Id.*

⁹⁰ 15 U.S.C. 78q-1(b)(3)(F).

⁹¹ 15 U.S.C. 78q-1.

⁹² 17 CFR 240.17Ad-22(d)(8).

⁹³ 15 U.S.C. 78q-1.

⁹⁴ 17 CFR 240.17Ad-22(d)(8).

⁹⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁹⁶ 17 CFR 240.17Ad-22(d)(8).

⁸⁷ 17 CFR 240.17Ad-22(d)(8).

⁸⁸ *Id.*

arrangements are clear and transparent to fulfill the public interest requirements of Section 17A of the Act⁹⁷ applicable to clearing agencies as required under Rule 17Ad-22(d)(8).⁹⁸

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would have any impact or impose any burden on competition.⁹⁹ The proposed changes to OCC's By-Laws, the Board Charter, and the Committee Charters would promote the effectiveness of OCC's Board and Board Committees' oversight on OCC's business, risk management, and operational processes and provide more clarity and transparency with respect to OCC's governance arrangements. The proposed rule change would also enhance the descriptions of the duties and functions of the Board and its members as well as the AC, the CPC, and the RC. The proposed rule change also promotes more effective governance arrangements for OCC, for example, by removing term limits for Public Directors and requiring the Chair of the AC and the CPC to be Public Directors. As a result, OCC does not believe that the proposed changes would have any impact between or among clearing agencies, Clearing Members, or other market participants. The proposed modifications to OCC's governance arrangements would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user because they relate to the governance structure of OCC, which affects all users, and do not relate directly to any particular service or particular use of OCC's facilities.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not have any impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve or disapprove the proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-OCC-2016-002 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-OCC-2016-002. 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 OCC and on OCC's Web site at http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_16_002.pdf. 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-OCC-2016-002 and should be submitted on or before August 24, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰⁰

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-18320 Filed 8-2-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32196; 812-14650]

CSat Investment Advisory, L.P., et al.; Notice of Application

July 28, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(f) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies ("Funds") to issue shares redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the

⁹⁷ 15 U.S.C. 78q-1.

⁹⁸ 17 CFR 240.17Ad-22(d)(8).

⁹⁹ 15 U.S.C. 78q-1(b)(3)(I).

¹⁰⁰ 17 CFR 200.30-3(a)(12).

Funds ("Funds of Funds") to acquire shares of the Funds.

APPLICANTS: CSat Investment Advisory, L.P. ("CSat"), a Delaware limited partnership registered as an investment adviser under the Investment Advisers Act of 1940, ETF Series Solutions ("Trust"), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Quasar Distributors, LLC ("Distributor"), a Delaware limited liability company and broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act").

FILING DATES: The application was filed on May 11, 2016.

HEARING OR NOTIFICATION OF HEARING:

An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 23, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090; Applicants: CSAT: 625 Avis Drive, Ann Arbor, MI 48108; The Trust and the Distributor: Michael Barolsky, Esq., 615 East Michigan Street, 4th Floor, Milwaukee, WI 53202.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551-6811, or Daniele Marchesani, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as index

exchange traded funds ("ETFs").¹ Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an "Authorized Participant", which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond generally to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act ("Affiliated Person"), or an affiliated person of an Affiliated Person ("Second-Tier Affiliate"), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.²

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments ("Deposit Instruments"), and shareholders redeeming their shares will receive specified instruments ("Redemption Instruments"). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section

5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c-1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the

¹ Applicants request that the order apply to CSAT US Equity ETF and any additional series of the Trust, and any other open-end management investment company or series thereof (each, included in the term "Fund"), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an "Underlying Index"). Any Fund will (a) be advised by CSat or an entity controlling, controlled by, or under common control with CSat (each, an "Adviser") and (b) comply with the terms and conditions of the application.

² Each Self-Indexing Fund will post on its Web site the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.³ The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

³ The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-18321 Filed 8-2-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78435; File No. SR-FINRA-2016-028]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify the Operation of the Regulation NMS Plan To Address Extraordinary Market Volatility

July 28, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 22, 2016, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to clarify the operation of the Regulation NMS Plan to Address Extraordinary Volatility (“Plan”) following a Trading Pause or Regulatory Halt in a security subject to the Plan.⁴

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ Unless otherwise specified, the capitalized terms used herein have the same meanings as set forth in the Plan.

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 Rule 6121.01 (Trading Pauses) (“Rule”) sets forth requirements applicable to member firms in connection with Trading Pauses.⁵ The Rule addresses the Plan’s provisions regarding Trading Pause, including that no trades in an NMS Stock are permitted to occur during a Trading Pause, and sets forth the circumstances under which trading in an NMS Stock can resume after a Trading Pause. Currently, the Rule also provides that FINRA may permit the resumption of trading otherwise than on an exchange if trading has commenced on at least one other national securities exchange. In addition, FINRA Rule 6190 (Compliance with Regulation NMS Plan to Address Extraordinary Market Volatility) provides, among other things, that a member that is a Trading Center in an NMS Stock must establish, maintain and enforce written policies and procedures reasonably designed to comply with the requirements of the Plan, including to prevent the execution of trades at prices below the Lower Price Band or above the Upper Price Band for an NMS Stock. The pilot period for the Plan was recently extended through April 21, 2017.⁶

FINRA and other self-regulatory organizations (SROs) are taking measures to clarify the operation of the Plan that results from the short period of time (generally up to three milliseconds) following the resumption of trading after a Trading Pause or Regulatory Halt and before the Price Bands are received from the Processor for securities that are subject to the

⁵ 17 CFR 242.608.

⁶ See Securities Exchange Act Release No. 77679 (April 21, 2016), 81 FR 24908 (April 27, 2016).

Plan.⁷ Specifically, FINRA is proposing an amendment to Rule 6121.01 to provide that, following a Trading Pause or Regulatory Halt in an NMS Stock that is subject to the Plan, a member may resume trading otherwise than on an exchange if trading has commenced on the primary listing exchange (or on another national securities exchange in the case of the resumption of trading following a ten-minute trading pause) and either: (1) The member has received the Price Bands from the Processor; or (2) if immediately following a Trading Pause or Regulatory Halt the member has not yet received the Price Bands from the Processor, the member has calculated an upper price band and lower price band consistent with the methodology provided for in Section V of the Plan and ensures that any transactions prior to the receipt of the Price Bands from the Processor are within the ranges provided for pursuant to the Plan, consistent with Section VI(A)(1) of the Plan.

The proposed rule change also clarifies what activity is permitted around the resumption of trading following a Trading Pause. Previously, the Rule provided that FINRA may permit the resumption of trading following a Trading Pause if trading has resumed on any national securities exchange. FINRA is revising the Rule to provide that members may resume trading following a Trading Pause if trading has resumed on the Primary Listing Exchange or, where the Primary Listing Exchange does not reopen for trading at the end of a ten-minute Trading Pause (and has issued notice that it cannot resume trading for a reason other than a significant imbalance), a member may resume trading otherwise than on an exchange if trading has commenced in such NMS Stock on at least one other national securities exchange.⁸

Thus, the proposed amendment addresses the brief time between the

resumption of trading following a Trading Pause or Regulatory Halt and when the Price Bands are received from the Processor by requiring members to take measures to ensure bands are in place (either by waiting for the receipt of the Price Bands from the Processor or calculating an interim upper price band and lower price band and ensuring that trades occur within those bands). Members may not rely on interim bands beyond the short period of time (generally up to three milliseconds) between the resumption of trading and the receipt of Price Bands by market participants.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be August 22, 2016.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁹ 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act¹⁰ in that it seeks to assure fair competition among brokers and dealers and among exchange markets.

The proposed rule change is designed to better implement the goals of the Plan, which has been approved by the Commission as reasonably designed to prevent potentially harmful price volatility, including severe volatility of the kind that occurred on May 6, 2010. In clarifying the operation of the Plan, the proposed rule change seeks to help ensure that the goals of the Plan are met. Accordingly, FINRA believes that the proposed rule change will further the goals of investor protection and fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change seeks to require members to take measures to ensure that their trading activity is in compliance with FINRA Rule 6190 and the Plan, and does not impose requirements that do not currently exist under FINRA rules, FINRA guidance and the Plan.

Specifically, a member that is a Trading Center in an NMS Stock already is required to establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the requirements of the Plan, including to prevent the execution of trades at prices that are outside of the Price Bands. To comply with this requirement, members must be aware of the upper and lower price bands applicable to their trading activity. This proposal provides that, immediately following a halt of a security subject to the Plan, a member may not resume trading until trading has resumed on the primary listing exchange (or on another national securities exchange in the case of the resumption of trading following a ten-minute pause) and either the member has received the Price Bands from the processor or has established interim bands calculated in compliance with the Plan.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

⁷ See NASDAQ Equity Trader Alert #2016-79 (NASDAQ Announces Improved Protections for Equity Markets Coming Out of Halts ("Leaky Bands")) (April 12, 2016); See Bats Release Notes (Bats Announces Updates to Halt Resumption Behavior Effective July 15, 2016) (June 2, 2016). FINRA anticipates that other SROs will adopt similar measures to calculate an interim band for their listed securities to be applied in the brief time between the resumption of trading and when the Price Bands are subsequently received from the Processor.

⁸ Deleted language from paragraph (b) is no longer applicable because it addressed a transitional period in Plan implementation prior to the Plan becoming effective as to all NMS Stocks. The Plan applied to all NMS Stocks on December 8, 2013. Rights and warrants are excluded from the Plan. See Securities Exchange Act Release No. 70273 (August 27, 2013), 78 FR 54321 (September 3, 2013) (File No. 4-631).

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78k-1(a)(1).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 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-FINRA-2016-028 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-FINRA-2016-028. 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-2016-028 and should be submitted on or before August 24, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-18317 Filed 8-2-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78433; File No. SR-NYSEArca-2016-100]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Shares of the Direxion Daily Municipal Bond Taxable Bear 1X Fund Under NYSE Arca Equities Rule 5.2(j)(3)

July 28, 2016.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (the "Act") ² and Rule 19b-4 thereunder, ³ notice is hereby given that, on July 13, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, the shares of the Direxion Daily Municipal Bond Taxable Bear 1X Fund. The proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares ("Shares") of the Direxion Daily Municipal Bond Taxable Bear 1X Fund ("Fund") under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, which governs the listing and trading of Investment Company Units ("Units") based on fixed income securities indexes.⁴ The Fund is a series of the

⁴ The Commission previously has approved proposed rule changes relating to listing and trading on the Exchange of Units based on municipal bond indexes. See Securities Exchange Act Release Nos. 67985 (October 4, 2012), 77 FR 61804 (October 11, 2012) (SR-NYSEArca-2012-92) (order approving proposed rule change relating to the listing and trading of iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 67729 (August 24, 2012), 77 FR 52776 (August 30, 2012) (SR-NYSEArca-2012-92) (notice of proposed rule change relating to the listing and trading of iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 71232 (January 3, 2014), 79 FR 1662 (January 9, 2014) (SR-NYSEArca-2013-118) (order approving listing and trading of shares of the Market Vectors Short High-Yield Municipal Index ETF under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 72523, (July 2, 2014), 79 FR 39016 (July 9, 2014) (SR-NYSEArca-2014-37) (order approving proposed rule change relating to the listing and trading of iShares 2020 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 72172 (May 15, 2014), 79 FR 29241 (May 21, 2014) (SR-NYSEArca-2014-37) (notice of proposed rule change relating to the listing and trading of iShares 2020 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 75376 (July 7, 2015), 80 FR 40113 (July 13, 2015) (SR-NYSEArca-2015-18) (order approving proposed rule change relating to the listing and trading of Vanguard Tax-Exempt Bond Index Fund under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 75468 (July 16, 2015), 80 FR 43500 (July 22, 2015) (SR-NYSEArca-2015-25) (order approving proposed rule change relating to the listing and trading of iShares iBonds 2021 and 2022 AMT-Free Muni Bond ETF under NYSE Arca Equities Rule 5.2(j)(3)). The Commission also has issued a notice of filing and immediate effectiveness of a proposed rule change relating to listing and trading on the Exchange of shares of the iShares Taxable Municipal Bond Fund. See Securities Exchange Act Release No. 63176 (October 25, 2010), 75 FR 66815 (October 29, 2010) (SR-NYSEArca-2010-94). The Commission has approved for Exchange listing and trading of shares of two actively managed funds of the PIMCO ETF Trust that principally hold municipal bonds. See Securities Exchange Act Release No. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (order approving listing and trading of shares of the PIMCO Short-Term Municipal Bond Strategy Fund and PIMCO Intermediate Municipal Bond Strategy Fund). The Commission also has approved listing and trading on the Exchange of shares of the SPDR® Nuveen S&P High Yield Municipal Bond Fund under Commentary .02 of NYSE Arca Equities Rule 5.2(j)(3). See Securities Exchange Act Release No. 63881 (February 9, 2011), 76 FR 9065 (February 16, 2011) (SR-NYSEArca-2010-120).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹³ 17 CFR 200.30-3(a)(12).

Direxion Shares ETF Trust ("Trust").⁵ Rafferty Asset Management, LLC will be the investment adviser to the Fund ("Adviser").

Bank of New York Mellon will serve as transfer agent, accounting agent and custodian for the Fund ("Transfer Agent"). Foreside Fund Services, LLC will be the distributor ("Distributor") for the Fund's Shares. U.S. Bancorp Fund Services, LLC will serve as the Fund's administrator.

Principal Investments

According to the Registration Statement, the Fund will seek to track 100% of the inverse of the performance of a benchmark index that measures the investment-grade segment of the U.S. municipal bond market. The Fund, under normal circumstances,⁶ will create net short positions by investing at least 80% of the Fund's assets (plus any borrowings for investment purposes) in the following financial instruments ("Financial Instruments"): Options on securities, including exchange-traded funds ("ETFs") and indices, traded on U.S. exchanges; swaps; and short positions in ETFs, as described below in this "Principal Investments" section, that, in combination, provide inverse exposure to the Standard & Poor's National AMT-Free Municipal Bond Index ("Index").⁷ The Fund will seek daily inverse investment results and will not seek to achieve its stated investment objective over a period of time greater than one day. The Fund will not seek income that is exempt from federal, state or local income taxes.

The Fund may invest in options that provide short exposure to the Index or various ETFs including, iShares National Muni Bond ETF, SPDR Nuveen Barclays Municipal Bond ETF, iShares Short-term National Muni Bond ETF, SPDR Nuveen Barclays Short-Term Municipal Bond ETF, Market Vectors High-Yield Municipal Index ETF, SPDR Nuveen S&P High Yield Municipal Bond ETF, Market Vectors AMT-Free Intermediate Municipal Index ETF, PowerShares National AMT-Free Municipal Bond Portfolio, Vanguard Tax-Exempt Bond ETF and the PIMCO Intermediate Municipal Bond Active Exchange-Traded Fund.

The Fund may invest in swaps that provide short exposure to the securities included in the Index and various ETFs, including iShares National Muni Bond ETF, SPDR Nuveen Barclays Municipal Bond ETF, iShares Short-term National Muni Bond ETF, SPDR Nuveen Barclays Short-Term Municipal Bond ETF, Market Vectors High-Yield Municipal Index ETF, SPDR Nuveen S&P High Yield Municipal Bond ETF, Market Vectors AMT-Free Intermediate Municipal Index ETF, PowerShares National AMT-Free Municipal Bond Portfolio, Vanguard Tax-Exempt Bond ETF and the PIMCO Intermediate Municipal Bond Active Exchange-Traded Fund.

The Fund may take direct short positions in ETFs, such as the iShares National Muni Bond ETF, SPDR Nuveen Barclays Municipal Bond ETF, iShares Short-term National Muni Bond ETF, SPDR Nuveen Barclays Short-Term Municipal Bond ETF, Market Vectors High-Yield Municipal Index ETF, SPDR Nuveen S&P High Yield Municipal Bond ETF, Market Vectors AMT-Free Intermediate Municipal Index ETF, PowerShares National AMT-Free Municipal Bond Portfolio, Vanguard Tax-Exempt Bond ETF and the PIMCO Intermediate Municipal Bond Active Exchange-Traded Fund.⁸ The Fund will not take long positions in ETFs.

The Fund has proposed to use the Index as its benchmark index.⁹ The Index is a broad, comprehensive, market value-weighted index designed to

measure the performance of the tax-exempt, investment-grade U.S. municipal bond market. Index constituents are derived from the Standard & Poor's/InvestorTools Municipal Bond Index. In order to be classified as an eligible bond for inclusion in the Index, a bond must meet all of the following criteria on the rebalancing date: The bond issuer is a state, local government, or agency such that interest on the bond is exempt from federal income tax; a bond must have a rating of at least BBB- by Standard & Poor's, Baa3 by Moody's, or BBB- by Fitch; the bond must be denominated in U.S. Dollars ("USD"); each bond must be a constituent of a deal where the deal's original offering amount was at least \$100 million USD; as of the next rebalancing date, the bond must have a minimum term to maturity and/or call date greater than or equal to one calendar month plus one calendar day; the amount outstanding, or par amount, is used to determine the weight of the bond in the Index; and the bond must have a minimum par amount of \$25 million USD. At each monthly rebalancing, no issuer can represent more than 25% of the weight of the Index, and individual issuers that represent 5% of the Index's weight cannot account for more than 50% of the Index in aggregate. The Index is generally reviewed and rebalanced on a monthly basis. The following bond types are specifically excluded from the Index: Bonds subject to the alternative minimum tax; commercial paper; derivative securities (inverse floaters, forwards, swaps); housing bonds; insured conduit bonds where the obligor is a for-profit institution; non-insured conduit bonds; non-rated bonds; notes; taxable municipals; tobacco bonds; and variable rate debt.

The Fund may gain inverse exposure to only a representative sample of the securities in the Index that have aggregate characteristics similar to those of the Index. The Fund will gain this inverse exposure by investing in a combination of financial instruments that provide inverse exposure to the underlying securities of the Index. The Fund will invest in derivatives as a substitute for directly shorting securities in order to gain inverse exposure to the Index or its components. The Fund will seek to remain fully invested at all times consistent with its stated investment objective. At the close of the markets each trading day, the Adviser will position the Fund's portfolio so that its exposure to the Index is consistent with the Fund's investment objective. The impact of the Index's movements during

⁵ On February 29, 2016, the Trust filed a registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) ("1933 Act") and the Investment Company Act of 1940 ("1940 Act") (15 U.S.C. 80a-1) (File Nos.: 811-22201 and 333-150525) (the "Registration Statement"). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 27773 (April 2, 2007) (File No. 812-13336).

⁶ The term "under normal circumstances" includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

⁷ The Commission previously has approved a proposed rule change relating to listing and trading on the Exchange of Units based on the Index. See Securities Exchange Act Release No. 75376 (July 7, 2015), 80 FR 40113 (July 13, 2015) (SR-NYSEArca-2015-18) (order approving proposed rule change relating to the listing and trading of Vanguard Tax-Exempt Bond Index Fund under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02).

⁸ For purposes of this filing, ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The Fund will not invest in inverse, leveraged or inverse leveraged ETFs (e.g., -2X, -3X, 2X or 3X).

⁹ S&P Dow Jones Indices is the "Index Provider" with respect to the Index. The Index Provider is not a broker-dealer or affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.

the day will affect whether the Fund's portfolio needs to be re-positioned. For example, if the Index has fallen on a given day, net assets of the Fund should rise, meaning that the Fund's exposure will need to be increased. Conversely, if the Index has risen on a given day, net assets of the Fund should fall, meaning the Fund's exposure will need to be reduced. This re-positioning strategy typically results in high portfolio turnover.

According to the Registration Statement, because of daily rebalancing and the compounding of each day's return over time, the return of the Fund for periods longer than a single day will be the result of each day's returns compounded over the period, which will very likely differ from – 100% of the return of the Index over the same period.

Non-Principal Investments

While under normal circumstances, at least 80% of the Fund's assets will be invested in Financial Instruments to establish net short positions, as described above, the Fund's remaining assets may be used to invest in cash and the following cash equivalents (in addition to cash or cash equivalents used to collateralize the Fund's investments in Financial Instruments): Money market funds, depository accounts with institutions with high quality credit ratings, U.S. government securities that have terms-to-maturity of less than 397 days and repurchase agreements that have terms-to-maturity of less than 397 days.

Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities deemed illiquid by the Adviser, consistent with Commission guidance. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.¹⁰

¹⁰ The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets

The Fund is classified as diversified within the meaning of the 1940 Act.¹¹

The Fund intends to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a "regulated investment company" for purposes of the Internal Revenue Code of 1986.¹²

The Exchange is submitting this proposed rule change because the Index for the Fund does not meet all of the "generic" listing requirements of Commentary .02(a) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of Units based on fixed income securities indexes. The Index meets all such requirements except for those set forth in Commentary .02(a)(2).¹³ Specifically, as of May 23, 2016, 32.75% of the weight of the Index components have a minimum original principal amount outstanding of \$100 million or more.

As of May 23, 2016, 95.87% of the weight of the Index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of \$100 million or more for all maturities of the offering. In addition, as of May 23, 2016, the total dollar amount outstanding of issues in the Index was approximately \$248 billion and the average dollar amount outstanding of issues in the Index was approximately \$81 million. Further, as of May 23, 2016, the most heavily weighted component represents 0.43% of the weight of the Index and the five most heavily weighted components represent 1.88% of the weight of the Index.¹⁴

in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

¹¹ The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

¹² 26 U.S.C. 851.

¹³ Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3) provides that components that in the aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of \$100 million or more.

¹⁴ Commentary .02(a)(4) to NYSE Arca Equities Rule 5.2(j)(3) provides that no component fixed-income security (excluding Treasury Securities and

Therefore, the Exchange believes that, notwithstanding that the Index does not satisfy the criterion in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(a)(2), the Index is sufficiently broad-based to deter potential manipulation, given that it is composed of approximately 3,063 issues and 474 unique issuers. In addition, the Index securities are sufficiently liquid to deter potential manipulation in that a substantial portion (95.87%) of the Index weight is composed of maturities that are part of an entire municipal bond offering with a minimum original principal amount outstanding of \$100 million or more, and in view of the substantial total dollar amount outstanding and the average dollar amount outstanding of Index issues, as referenced above.

All statements and representations made in this filing regarding (i) the description of the portfolio, (ii) limitations on portfolio holdings or reference assets or (iii) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

Valuation Methodology for Purposes of Determining Net Asset Value

The NAV of Shares, under normal market conditions, will be calculated each day that the New York Stock Exchange ("NYSE") is open for business except for days on which the U.S. municipal bond markets are closed. The NAV will be calculated on each such day as of the close of the NYSE, which is typically 4:00 p.m. Eastern Time ("E.T."). On days that the U.S. municipal bond markets close early, the NAV will be calculated as of the recommended closing time for the bond markets, which may be before 4:00 p.m. E.T., subject to the discretion of the Adviser.

GSE Securities, as defined therein) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.

For purposes of calculating NAV, the Fund will value its assets on the basis of market quotations, last sale prices or estimates of value furnished by pricing services or brokers who make markets in such instruments. If such information is not available for a security or instrument held by a Fund, if such information is determined to be unreliable by the Adviser, if the Adviser determines that the market price is stale or if, to the Adviser's knowledge, such information does not reflect a significant event occurring after the close of the market on which the security principally trades but prior to the time at which the Fund calculates the NAV, the security will be valued at fair value estimates by the Adviser pursuant to policies and procedures established by the Board of Trustees ("Board"). The Fund may also establish fair value for an instrument if trading in a particular instrument is halted and trading does not resume prior to the closing of the relevant exchange or market. If a reliable market quotation becomes available for a security formerly valued through fair valuation techniques, the Adviser will compare the market quotation to the fair value price to evaluate the effectiveness of the Fund's fair valuation procedures and will use that market value in the next calculation of NAV.

If no last sale is reported on an exchange, the mean of the last bid and last offer prices will be used. Securities that are primarily traded on the NASDAQ Global Market ("NASDAQ") for which market quotations are readily available shall be valued using the NASDAQ Official Closing Price. If the NASDAQ Official Closing Price is not available, such securities shall be valued at the last sale price on the day of valuation, or if there has been no sale on such day, at the mean between the last bid and last sale prices.

Options will be valued at the last sales price of the respective exchange on which they trade. If there have been no trades for an option on that trading day, then the option will be valued at the mean of the last bid and ask quotations.

Swaps will be valued based upon prices from third party vendor models or quotations from market makers to the extent available.

Repurchase agreements will be valued on the basis of broker quotes or valuations provided by a third party pricing service, which in determining value utilizes information regarding recent sales, market transactions in comparable securities, quotations from dealers and various relationships between securities.

Short-term debt instruments having a remaining maturity of 60 days or less

will be valued at amortized cost, which approximates market value. If the Board determines that the amortized cost method does not represent the fair value of the short-term debt instrument, the investment will be valued at fair value as determined by policies and procedures adopted by the Board. Debt instruments with a maturity of greater than 60 days (other than U.S. government securities with maturities of greater than 60 days) will be valued at prices that reflect broker/dealer supplied valuations or are obtained from independent pricing services, which may consider the trade activity, treasury spreads, yields or price of bonds of comparable quality, coupon, maturity and type, as well as prices quoted by dealers who make markets in such securities.

Money market funds and depository accounts will be valued at NAV.

U.S. government securities with maturities of greater than 60 days will be valued at the mean of the closing bid price and offer price provided by an independent third-party pricing service.

Securities and other assets for which market quotations are not readily available, or for which the Adviser has reason to question the validity of quotations received, will be valued at fair value in accordance with policies and procedures adopted by the Board.

Derivatives Valuation Methodology for Purposes of Determining Intraday Indicative Value

In order to provide additional information regarding the intraday value of Shares of the Fund, the NYSE Arca or a market data vendor or other information providers will disseminate every 15 seconds an updated Intraday Indicative Value ("IIV") for the Fund as calculated by a third party market data provider.

A third party market data provider will calculate the IIV for the Fund. The third party market data provider may use market quotes if available or may fair value securities against proxies (such as swap or yield curves). Swaps will be valued intraday based on the value of the reference assets as determined by a third-party market data provider. U.S. exchange-listed options may be valued intraday using the relevant exchange data, or another proxy as determined to be appropriate by the third party market data provider.

Purchase and Issuance of Creation Units

The Trust will issue and sell Shares only in aggregations of "Creation Units" on a continuous basis through the Distributor, without a sales load, at their NAV next determined after receipt, on

any business day, of an order in proper form received by the Distributor by 4:00 p.m. E.T. on any day that the NYSE is open for business except for days on which the U.S. municipal bond markets are closed. The number of Shares that constitute a Creation Unit will be 50,000 Shares and the value of such Creation Unit will be \$1.25 million USD. The size of a Creation Unit is subject to change.

Creation Units of Shares may be purchased only by or through an "Authorized Participant."¹⁵ Creation Units will be sold only for cash at their NAV next determined after receipt of the order, plus a transaction fee.

Purchase orders will be processed either through a manual clearing process ("Manual Clearing Process") run at the Depository Trust Company ("DTC") or through an enhanced clearing process ("Enhanced Clearing Process") that is available only to those DTC participants that also are participants in the Continuous Net Settlement System of NSCC.

Redemption of Creation Units

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor on any business day. A redemption order must be received in good order by the Transfer Agent by 4:00 p.m. E.T. on any day that the NYSE is open for business except for days on which the U.S. municipal bond markets are closed in order to receive the NAV determined on that day.

Orders to redeem Creation Units of the Fund using the Enhanced Clearing Process must be delivered through a DTC participant that has executed the Authorized Participant Agreement and has the ability to transact through the Federal Reserve System. A DTC participant who wishes to place a redemption order need not be an Authorized Participant, but such redemption orders must state that the DTC Participant is not using a clearing process and that redemption of Creation Units will instead be effected through the Manual Clearing Process (for cash and U.S. government securities). The order must be accompanied or preceded by the requisite number of Shares specified in such order, which delivery must be made through DTC or the

¹⁵ "Authorized Participants" include market makers, large investors and institutions who wish to deal in Creation Units directly with the Fund that have entered into an authorized participant agreement ("Authorized Participant Agreement") with the Distributor and the Transfer Agent, or purchase through a dealer that has entered into an Authorized Participant Agreement.

Federal Reserve System to the custodian by the third business day following such date on which the order is received by the Transfer Agent.

The redemption proceeds for a Creation Unit of the Fund will consist solely of cash in an amount equal to the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, less the redemption transaction fee.

The right of redemption may be suspended or the date of payment postponed with respect to the Fund (1) for any period during which the NYSE is closed (other than customary weekend and holiday closings); (2) for any period during which trading on the NYSE is suspended or restricted; (3) for any period during which an emergency exists as a result of which disposal of the Shares of the Fund's portfolio securities or determination of its net asset value is not reasonably practicable; or (4) in such other circumstance as is permitted by the Commission.

The Exchange represents that: (1) Except for Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares of the Fund currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units shall apply to the Shares; and (3) the Trust is required to comply with Rule 10A-3 under the Act¹⁶ for the initial and continued listing of the Shares. In addition, the Exchange represents that the Shares will comply with all other requirements applicable to Units including, but not limited to, requirements relating to the dissemination of key information such as the value of the Index and the applicable Intraday Indicative Value ("IIV"),¹⁷ rules governing the trading of equity securities, trading hours, trading halts, surveillance, and the Information Bulletin to Equity Trading Permit Holders ("ETP Holders"), as set forth in Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.¹⁸

¹⁶ 17 CFR 240.10A-3.

¹⁷ The IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session of 9:30 a.m. to 4:00 p.m., E.T. Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from the Consolidated Tape Association ("CTA") or other data feeds.

¹⁸ See, e.g., Securities Exchange Act Release Nos. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR-NYSE Arca-2007-36) (order approving NYSE Arca generic listing standards for Units based on a fixed income index); 44551 (July 12, 2001), 66 FR

The current value of the Index will be widely disseminated by one or more major market data vendors at least once per day, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(b)(ii). The IIV for Shares of the Fund will be disseminated by one or more major market data vendors, updated at least every 15 seconds during the Exchange's Core Trading Session, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(c).

The Index value, calculated and disseminated at least once daily, as well as the components of the Index and their percentage weighting, will be available from major market data vendors. In addition, as disclosed in the Registration Statement, the portfolio of securities held by the Fund will be disclosed daily on the Fund's Web site at www.direxioninvestments.com.

Availability of Information

The Fund's Web site (www.direxioninvestments.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) the prior business day's reported composite closing price ("Market Close Price") and NAV, and a calculation of the premium and discount of the Market Close Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Market Close Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Trust will disclose on its Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; market value of the holding; and

37716 (July 19, 2001) (SR-PCX-2001-14) (order approving generic listing standards for Units and Portfolio Depositary Receipts); 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-98-29) (order approving rules for listing and trading of Units).

the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

Investors can also obtain the Fund's Summary Prospectus, Prospectus, Statement of Additional Information ("SAI") and its Shareholder Reports, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust. Additionally, the SAI and the Trust's N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's Web site.

Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high speed line. Quotation and last sale information for such U.S. exchange-listed securities will be available from the exchange on which they are listed. Quotation and last sale information for exchange-listed options cleared via the Options Clearing Corporation will be available via the Options Price Reporting Authority. One source of price information for municipal securities is the Electronic Municipal Market Access, which is administered by the Municipal Securities Rulemaking Board.

Price information for cash equivalents and swaps may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements.

In addition, the IIV as defined in NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(c) will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.¹⁹ Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares of the Fund inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. If the IIV, Index

¹⁹ See NYSE Arca Equities Rule 7.12.

value or the value of the Index components is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange will obtain a representation from the Fund that the NAV for the Fund will be calculated daily and will be made available to all market participants at the same time. Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV for the Fund is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2), except that the Index will not meet the requirements of Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), as described above. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3²⁰ under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the

existing trading surveillances administered by the Exchange as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.²¹ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange, or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, ETFs and options with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement ("CSSA").²² FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

Not more than 10% of the net assets of the Fund in the aggregate invested in exchange-traded options shall consist of options whose principal market is not a member of ISG or is a market with which the Exchange does not have a CSSA.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

²¹ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

²² For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all securities and financial instruments held by the Fund may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares of the Fund. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV or Index value will not be calculated or publicly disseminated; (4) how information regarding the IIV and Index value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares of the Fund will be calculated after 4:00 p.m. E.T. each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement

²⁰ 17 CFR 240 10A-3.

under Section 6(b)(5)²³ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 5.2(j)(3). The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.²⁴ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets that are members of the ISG or with which the Exchange has in place a CSSA. The Exchange and FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. The Index Provider is not a broker-dealer or affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index. As of May 23, 2016, there were approximately 3,063 issues in the Index. The Index meets all such requirements except for those set forth in Commentary

.02(a)(2).²⁵ Specifically, as of May 23, 2016, 32.75% of the weight of the Index components have a minimum original principal amount outstanding of \$100 million or more.

As of May 23, 2016, 95.87% of the weight of the Index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of \$100 million or more for all maturities of the offering. In addition, as of May 23, 2016, the total dollar amount outstanding of issues in the Index was approximately \$248 billion and the average dollar amount outstanding of issues in the Index was approximately \$81 million. Further, as of May 23, 2016, the most heavily weighted component represents 0.43% of the weight of the Index and the five most heavily weighted components represent 1.88% of the weight of the Index.²⁶ Therefore, the Exchange believes that, notwithstanding that the Index does not satisfy the criterion in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(a)(2), the Index is sufficiently broad-based to deter potential manipulation, given that it is composed of approximately 3,063 issues and 474 unique issuers. The Index securities are sufficiently liquid to deter potential manipulation in that a substantial portion (95.87%) of the Index weight is composed of maturities that are part of an entire municipal bond offering with a minimum original principal amount outstanding of \$100 million or more, and in view of the substantial total dollar amount outstanding and the average dollar amount outstanding of Index issues, as referenced above.

The Index value, calculated and disseminated at least once daily, as well as the components of the Index and their respective percentage weightings, will be available from major market data vendors. In addition, as disclosed in the Registration Statement, the portfolio of securities held by the Fund will be disclosed on the Fund's Web site. The IIV for Shares of the Fund will be disseminated by one or more major market data vendors, updated at least every 15 seconds during the Exchange's Core Trading Session.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. As disclosed in the

Registration Statement, the Fund's portfolio holdings will be periodically disclosed on the Fund's Web site. Moreover, the IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. The current value of the Index will be disseminated by one or more major market data vendors at least once per day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Fund will include the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in a Bulletin of the special characteristics and risks associated with trading the Shares. If the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. If the IIV or the Index values are not being disseminated as required, the Corporation may halt trading during the day in which the interruption to the dissemination of the applicable IIV or Index value occurs. If the interruption to the dissemination of the applicable IIV or Index value persists past the trading day in which it occurred, the Corporation will halt trading. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 7.34, which sets forth circumstances under which Shares of the Fund may be halted. In addition, investors will have ready access to information regarding the IIV, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect

²³ 15 U.S.C. 78f(b)(5).

²⁴ FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

²⁵ See note 13, *supra*.

²⁶ See note 14, *supra*.

investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that invests principally in municipal securities and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA. In addition, investors will have ready access to information regarding the IIV and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of financial investments related to exchange-traded product that invests principally in municipal securities and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2016-100 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2016-100. 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-NYSEArca-2016-100 and should be submitted on or before August 24, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-18315 Filed 8-2-16; 8:45 am]

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²⁷ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78432; File No. SR-NYSEMKT-2016-58]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Relating to Amendments to NYSE MKT Rules 1600 *et seq.* and the Listing Rules Applicable to the Shares of the Nuveen Diversified Commodity Fund and the Nuveen Long/Short Commodity Total Return Fund

July 28, 2016.

On May 24, 2016, NYSE MKT LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to among other things, amend NYSE MKT Rules 1600 *et seq.* and to amend the listing rules applicable to the shares of the Nuveen Diversified Commodity Fund and the Nuveen Long/Short Commodity Total Return Fund, which the Exchange currently lists and trades. The proposed rule change was published for comment in the **Federal Register** on June 13, 2016.³

Section 19(b)(2) of the Act⁴ provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates September 9, 2016, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 78000 (June 7, 2016), 81 FR 38232.

⁴ 15 U.S.C. 78s(b)(2).

⁵ *Id.*

disapprove the proposed rule change (File Number SR-NYSEMKT-2016-58).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-18314 Filed 8-2-16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78436; File No. SR-NYSE-2016-51]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending the Ninth Amended and Restated Operating Agreement of the Exchange

July 28, 2016.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (the “Act”) ² and Rule 19b-4 thereunder, ³ notice is hereby given that, on July 22, 2016, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Ninth Amended and Restated Operating Agreement of the Exchange (“Operating Agreement”) to change the process for nominating non-affiliated directors and remove an obsolete reference. The proposed rule change is available on the Exchange’s Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received

on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Operating Agreement to change the process for nominating non-affiliated directors and replace an obsolete reference to NYSE Market (DE), Inc. (“NYSE Market (DE)”).

Process for Nominating Non-Affiliated Directors

Pursuant to the Operating Agreement, at least 20% of the Board of Directors of the Exchange (“Board”) is made up of “Non-Affiliated Directors” (commonly referred to as “fair representation directors”).⁴ Pursuant to Section 2.03(a) of the Operating Agreement, the nominating and governance committee (“NGC”) of the board of directors of ICE, the indirect parent of the Exchange, nominates the candidates for Non-Affiliated Directors, who are then elected by NYSE Group, as the sole member of the Exchange. The Exchange proposes to amend Section 2.03(a) to have the Director Candidate Recommendation Committee (“DCRC”) of the Exchange assume the role currently played by the ICE NGC, and to make a conforming change to Section 2.03(h)(i).

In addition, if the Member Organizations endorse a petition candidate for Non-Affiliated Director, pursuant to Section 2.03(a)(iv) the ICE NGC makes the determination of whether the person is eligible.⁵ The Exchange proposes to amend Section 2.03(a)(iv) to have the Exchange make

such determination instead of the ICE NGC.

Currently, the nomination by the ICE NGC is the final step in the process for electing a Non-Affiliated Director. First, the DCRC recommends a candidate, whose name then is announced to the Exchange’s Member Organizations. The Member Organizations may propose alternate candidates by petition. If there are no petition candidates, the DCRC recommends its candidate(s) to the ICE NGC. If petition candidates are proposed, the ICE NGC makes the determination of whether the candidates are eligible, and then all of the eligible candidates are submitted to the Member Organizations for a vote. The DCRC recommends to the ICE NGC the candidate receiving the highest number of votes. The ICE NGC is obligated to designate the DCRC-recommended candidate(s) as the nominee, and NYSE Group is obligated to elect such candidate(s) as a Non-Affiliated Director.

The Exchange believes obligating the ICE NGC to nominate the candidate(s) for Non-Affiliated Directors based on the DCRC’s unalterable recommendation is neither necessary nor meaningful. Pursuant to Section 2.03(a)(iii), the ICE NGC is obligated to designate whomever the DCRC recommends or, if there is a petition candidate, whomever emerges from the petition process. The ICE NGC does not have any discretion. Removing this unnecessary step would make the NYSE process more efficient.

The Exchange believes that having the Exchange determine whether persons endorsed to be petition candidates are eligible also would be more efficient, as it would not require action from the ICE NGC, thereby removing the possibility of any delay in the process. The proposed change would be consistent with the petition processes of the Exchange’s affiliate, NYSE MKT LLC (“NYSE MKT”), and the Nasdaq Stock Market LLC. In both cases the exchange determines the eligibility of proposed nominees.⁶

The Exchange believes that the proposed changes will make its process more consistent with the process by which its affiliates, NYSE MKT and NYSE Arca, Inc. (“NYSE Arca”), designate their fair representation

⁴ Pursuant to Section 2.03(a) of the Operating Agreement, Non-Affiliated Directors are persons who are not members of the board of directors of Intercontinental Exchange, Inc. (“ICE”) but qualify as independent. A person may not be a Non-Affiliated Director unless he or she is free of any statutory disqualification, as defined in Section 3(a)(39) of the Exchange Act. The Exchange’s independence requirements are set forth in the Company Director Independence Policy of the Exchange. See Securities Exchange Act Release No. 67564 (August 1, 2012), 77 FR 47161 (August 7, 2012) (SR-NYSE-2012-17) (approving, among other things, the Exchange’s Company Director Independence Policy).

⁵ Pursuant to Section 2.02 of the Operating Agreement, “Member Organizations” refers to members, allied members and member organizations of the Exchange.

⁶ See Article II, Section 2.03(a) of the Ninth Amended and Restated Operating Agreement of NYSE MKT LLC; Securities Exchange Act Release No. 77901 (May 25, 2016), 81 FR 35092 (June 1, 2016) (SR-NYSEMKT-2016-26) (“NYSE MKT 2016 Release”) and By-Laws of the Nasdaq Stock Market LLC, Art. II, Sec. 1(b) (“The Company may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a Member Representative Director.”).

⁶ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

directors, in which the ICE NGC plays no role.⁷

Accordingly, the Exchange proposes to revise Section 2.03(a)(iii)–(v) of the Operating Agreement to amend the process for electing Non-Affiliated Directors. As proposed, the process would be as follows. First, as is currently the case, the DCRC would recommend a candidate, whose name would be announced to the Member Organizations, and the Member Organizations could propose alternate candidates by petition. Second, if there were no petition candidates, the DCRC would nominate the candidate(s) it had previously recommended. If there were petition candidates, the Exchange would make the eligibility determination of petition candidates, all eligible candidates would be submitted to the Member Organizations for a vote, and the DCRC would nominate the candidate receiving the highest number of votes. Finally, NYSE Group would be obligated to elect the DCRC-nominated candidate as a Non-Affiliated Director.

The Exchange would make a conforming change to Section 2.03(h)(i) to state that the DCRC “will be responsible for nominating Non-Affiliated Director Candidates.” Currently, the provision states that the DCRC “will be responsible for recommending Non-Affiliated Director Candidates to the ICE NGC.”

Reference to NYSE Market (DE), Inc.

Section 2.02 of the Operating Agreement sets forth the Board’s general supervision over Member Organizations and approved persons in connection with their conduct with or affecting Member Organizations. It provides that the Board “shall have supervision relating to the collection, dissemination and use of quotations and of reports of prices on NYSE Market (DE), Inc.” The Exchange proposes to amend Section 2.02 to replace the reference to NYSE Market (DE) with a reference to “the exchange operated by the Company.”⁸

Following the merger of New York Stock Exchange, Inc. with Archipelago Holdings, Inc., the Exchange and its

subsidiaries NYSE Market (DE) and NYSE Regulation, Inc. entered into a Delegation Agreement, pursuant to which the Exchange delegated its market functions to NYSE Market (DE) and its regulatory functions to NYSE Regulation, Inc.⁹

The Delegation Agreement terminated in April 2016. Accordingly, NYSE Market (DE) no longer is delegated the Exchange’s market functions, making the reference to NYSE Market (DE) in Section 2.02 obsolete. The Exchange therefore proposes to update the reference to NYSE Market (DE) with a reference to “the exchange operated by the Company.”

The proposed change would be consistent with Article II, Section 2.02 of the operating agreement of the Exchange’s affiliate NYSE MKT, which states that its board of directors “shall have supervision relating to the collection, dissemination and use of quotations and of reports of prices on the exchange operated by the Company.”¹⁰

Finally, the Exchange proposes to make technical and conforming changes to the recitals and signature page of the Operating Agreement.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act¹¹ in general, and with Section 6(b)(1)¹² in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposed change would remove the requirement that the ICE NGC nominate the candidates for Non-Affiliated Directors and have the DCRC nominate the candidates for Non-Affiliated Director directly. This proposed change would remove an unnecessary step in the process of nominating candidates for Non-Affiliated Directors and increase efficiency. In addition, the proposed change would remove the requirement that the ICE NGC make the determination whether persons

endorsed to be petition candidates are eligible to be Non-Affiliated Directors, and have the Exchange make such determination instead. By not requiring action from the ICE NGC, the possibility of any resulting delay in the process is removed. For these reasons, the Exchange believes that the proposed rule change would contribute to the orderly operation of the Exchange and would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members. The Exchange therefore believes that approval of the proposed is consistent with Section 6(b)(1) of the Act.

The Exchange believes that amending Section 2.02 of the Operating Agreement to replace the reference to NYSE Market (DE) with a reference to “the exchange operated by the Company” would remove an obsolete reference to an entity that is no longer delegated the Exchange’s market functions, thereby reducing potential confusion that may result from retaining obsolete references in the Exchange’s Operating Agreement. The proposed replacement will clarify that the Board has supervision relating to the collection, dissemination and use of quotations and of reports of prices on the Exchange. The Exchange believes that replacing such obsolete reference would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion. Removing such obsolete reference will also further the goal of transparency and add clarity to the Exchange’s rules.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act¹³ because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that having the DCRC nominate the candidates for Non-

⁷ See Article II, Section 2.03(a) of the Ninth Amended and Restated Operating Agreement of NYSE MKT LLC; NYSE MKT 2016 Release, *supra* note 6; and Article III, Section 3.02 of the NYSE Arca Bylaws and NYSE Arca Rule 3.2(b)(2). Similarly, the board of directors of The NASDAQ OMX Group, Inc., the sole member of the Nasdaq Stock Market LLC, plays no role in nominating or determining the eligibility of Member Representative Directors. See By-Laws of the Nasdaq Stock Market LLC, Art. II, Sec. 1.

⁸ See Article II, Section 2.02 of the proposed Tenth Amended and Restated Operating Agreement of New York Stock Exchange LLC. References to the “Company” in the Operating Agreement are to the Exchange.

⁹ See Securities Exchange Act Release No. 75991 (September 28, 2015), 80 FR 59837 (October 2, 2015) (SR-NYSE-2015-27), at 59839.

¹⁰ Article II, Section 2.02 of the Ninth Amended and Restated Operating Agreement of NYSE MKT LLC.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(1).

¹³ 15 U.S.C. 78f(b)(5).

Affiliated Director would remove impediments to and perfect a national market system because the proposed rule change would remove an unnecessary step in the process for nominating candidates for Non-Affiliated Directors and would remove the ICE NGC from making the determination whether persons endorsed to be petition candidates are eligible to be Non-Affiliated Directors. By not requiring action from the ICE NGC, the possibility of any resulting delay in the process is removed. The Exchange believes that the proposed rule change is therefore consistent with and facilitates a governance and regulatory structure that furthers the objectives of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the administration and functioning of the Exchange and its Board.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2016-51 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-NYSE-2016-51. 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-NYSE-2016-51 and should be submitted on or before August 24, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-18318 Filed 8-2-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78437; File No. SR-NASDAQ-2016-056]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To List and Trade Shares of the PowerShares Variable Rate Investment Grade Portfolio, a Series of the PowerShares Actively Managed Exchange-Traded Fund Trust

July 28, 2016.

I. Introduction

On April 13, 2016, The NASDAQ Stock Market LLC ("Exchange" or "Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares ("Shares") of the PowerShares Variable Rate Investment Grade Portfolio ("Fund"), a series of the PowerShares Actively Managed Exchange-Traded Fund Trust ("Trust") under Nasdaq Rule 5735. The proposed rule change was published for comment in the **Federal Register** on May 2, 2016.³ On May 5, 2016, the Exchange filed Amendment No. 1 to the proposed rule change. On June 14, 2016, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On June 29, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.⁶ On July 15, 2016, the Exchange filed Amendment No. 3 to the proposed rule change.⁷ The Commission received no

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 77715 (April 26, 2016), 81 FR 26285 ("Notice").

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 78063, 81 FR 39972 (June 20, 2016). The Commission designated July 29, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁶ On July 15, 2016, the Exchange withdrew Amendment No. 2.

⁷ In Amendment No. 3, which amended and replaced the original filing as modified by Amendment No. 1, the Exchange: (a) Clarified the scope of mortgage-backed securities ("MBS") that could be held by the Fund; (b) clarified that the Fund will not invest (i) in commercial loans, (ii) in leveraged, inverse, or inverse leveraged exchange-

Continued

¹⁴ 17 CFR 200.30-3(a)(12).

comments on the proposal. The Commission is publishing this notice to solicit comments on Amendment No. 3 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

II. Exchange's Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund is a series of the Trust and will be an actively-managed ETF. The Trust, which was established as a Delaware statutory trust on November 6, 2007 and is registered with the Commission as an investment company, has filed with the Commission a post-effective amendment to its registration statement on Form N-1A ("Registration Statement").⁸ Invesco PowerShares Capital Management LLC will serve as the investment adviser ("Adviser") to the Fund, and Invesco Advisers, Inc. will serve as the sub-adviser to the Fund ("Sub-Adviser"). Invesco Distributors, Inc. will serve as the principal underwriter and distributor ("Distributor") of the Fund's Shares.⁹

traded funds ("ETFs"), or (iii) more than 20% of its net assets in the aggregate in asset-backed securities ("ABS") or non-agency MBS; (c) amended the quantitative standards applicable to the portfolio, including identifying the quantitative standards that must be met on a continuous basis; (d) clarified that the Fund may invest in non-exchange listed securities of money market mutual funds beyond the limits permitted under the Investment Company Act of 1940 ("1940 Act"); (e) clarified certain aspects of the net asset value ("NAV") calculation and the availability of price information for certain holdings; and (f) made certain technical amendments. Amendment No. 3 is available at: <https://www.sec.gov/comments/sr-nasdaq-2016-056/nasdaq2016056-3.pdf>.

⁸ See Registration Statement for the Trust, filed on September 4, 2015 (File Nos. 333-147622 and 811-22148). The Exchange represents that the Trust has obtained certain exemptive relief from the Commission under the 1940 Act. See Investment Company Act Release No. 28171 (February 27, 2008) (File No. 812-13386).

⁹ The Exchange represents that, while the Adviser and the Sub-Adviser are not broker-dealers, they are affiliated with the Distributor, a broker-dealer. The Exchange states that the Adviser and the Sub-Adviser have implemented and will maintain a fire wall between themselves and the Distributor with respect to access to information concerning the composition of, and changes to, the Fund's portfolio. In the event (a) the Adviser or Sub-Adviser becomes newly affiliated with a different broker-dealer (or becomes a registered broker-dealer), or (b) any new adviser or sub-adviser to the Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, each will implement and maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition of, and changes to, the Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of

The Bank of New York Mellon will act as the administrator, accounting agent, custodian ("Custodian") and transfer agent for the Fund.

The Exchange has made the following representations and statements in describing the Fund and its investment strategies, including the Fund's portfolio holdings and investment restrictions.¹⁰

A. Exchange's Description of the Fund's Principal Investments

The Fund's investment objectives are to seek to generate current income while maintaining low portfolio duration, as a primary objective, and capital appreciation, as a secondary objective. The Fund will seek to achieve its investment objectives by investing, under normal market conditions,¹¹ at least 80% of its net assets (plus any borrowings for investment purposes) in a portfolio of investment-grade, variable rate¹² debt securities that are denominated in U.S. dollars and are issued by U.S. private sector entities or U.S. government agencies and instrumentalities. The Adviser or Sub-Adviser will select the following types of securities for the Fund: (i) Floating rate non-agency commercial MBS,¹³

material, non-public information regarding such portfolio.

¹⁰ The Commission notes that additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, NAV calculation, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions, and taxes, among other information, is included in the Notice, as modified by Amendment No. 3, and the Registration Statement, as applicable. See Amendment No. 3 and Registration Statement, *supra* notes 7 and 8, respectively, and accompanying text.

¹¹ According to the Exchange, the term "under normal market conditions" includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance. The Exchange states that, for temporary defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objectives. The Fund may adopt a defensive strategy when the Adviser or Sub-Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

¹² According to the Exchange, with respect to this filing, the term "variable-rate" includes similar terms, such as "floating rate" and "adjustable rate."

¹³ For purposes of this filing, MBS will consist of: (1) Residential MBS; (2) commercial MBS; (3) stripped MBS; and (4) collateralized mortgage obligations and real estate mortgage investment conduits.

variable rate non-agency residential MBS, variable rate agency MBS,¹⁴ and floating rate non-agency ABS;¹⁵ (ii) floating rate corporate debt securities, which will be comprised of corporate notes, bonds, or debentures, and 144A securities;¹⁶ (iii) floating rate government sponsored enterprise credit risk transfers; (iv) variable rate preferred stock;¹⁷ (v) floating rate U.S. government securities, including floating rate agency debt securities; and (vi) ETFs that invest primarily in any or all of the foregoing securities, to the extent permitted by the 1940 Act¹⁸ (any or all of the foregoing securities, excluding variable rate preferred stock and ETFs, collectively, "Variable Rate Debt Instruments"; Variable Rate Debt Instruments, variable rate preferred stock, and ETFs, collectively, "Variable Rate Investments").

At least 80% of the Fund's net assets will be invested in Variable Rate Debt Instruments or variable rate preferred

¹⁴ Agency securities for these purposes generally includes securities issued by the following entities: Government National Mortgage Association; Federal National Mortgage Association; Federal Home Loan Banks; Federal Home Loan Mortgage Corporation; Farm Credit System ("FCS"); Farm Credit Banks; Student Loan Marketing Association; Resolution Funding Corporation; Financing Corporation; and the FCS Financial Assistance Corporation. Agency securities can include, but are not limited to, MBS.

¹⁵ The Fund currently intends to invest in ABS that are consumer and corporate ABS. According to the Exchange, floating rate non-agency ABS also include floating rate non-agency commercial real estate collateralized loan obligations ("CLOs").

¹⁶ The Fund will invest in floating rate corporate securities that have interest rates that reset periodically. The interest rates are based on a percentage above the London Interbank Offered Rate, a U.S. bank's prime or base rate, the overnight federal funds rate, or another rate. Corporate securities in which the Fund invests may be senior or subordinate obligations of the borrower. The Fund will not invest in senior or junior commercial loans. The Fund will generally invest in floating rate corporate securities that the Adviser or Sub-Adviser (as applicable) deems to be liquid with readily available prices. Notwithstanding the foregoing, the Fund may invest in corporate securities that are deemed illiquid so long as the Fund complies with the 15% limitation on investments of its net assets in illiquid assets described below.

¹⁷ The variable rate preferred stock in which the Fund may invest will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group ("ISG") or exchanges that are parties to a comprehensive surveillance sharing agreement with the Exchange.

¹⁸ ETFs in which the Fund invests will be listed and traded in the U.S. on registered exchanges. The ETFs in which the Fund will invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depositary Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). The shares of ETFs in which the Fund may invest will be limited to securities that trade in markets that are members of the ISG or exchanges that are parties to a comprehensive surveillance sharing agreement with the Exchange. The Fund will not invest in leveraged ETFs, inverse ETFs, or inverse leveraged ETFs.

stock that are, at the time of purchase, investment grade, or in ETFs that invest primarily in any or all of the foregoing securities. Under normal market conditions, Variable Rate Debt Instruments or variable rate preferred stock will be investment grade if, at the time of purchase, they have a rating in one of the highest four rating categories of at least one nationally recognized statistical ratings organization ("NRSRO").¹⁹ Unrated securities may be considered investment grade if, at the time of purchase, and under normal market conditions, the Adviser or Sub-Adviser determines that such securities are of comparable quality based on a fundamental credit analysis of the unrated security and comparable NRSRO-rated securities.

The Fund will not invest more than 20% of its net assets in the aggregate in ABS or non-agency MBS.

Under normal market conditions, the Fund will satisfy the following requirements, with respect to (i) and (iii) on a continuous basis, and with respect to (ii) and (iv) on a continuous basis measured at the time of purchase: (i) At least 75% of the investments in corporate debt securities shall have a minimum original principal amount outstanding of \$100 million or more; (ii) no Variable Rate Investment (excluding U.S. government securities) will represent more than 30% of the weight of the Variable Rate Debt Instrument component of the Fund's portfolio, and the five most heavily weighted portfolio securities will not in the aggregate account for more than 65% of the weight of the Variable Rate Debt Instrument component of the Fund's portfolio; (iii) the portfolio will include a minimum of 13 non-affiliated issuers; and (iv) portfolio securities that in aggregate account for at least 90% of the weight of the portfolio will be (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Exchange Act, (b) from issuers that have a worldwide market value of outstanding common equity held by non-affiliates of \$700 million or more, (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion, or (d) exempted securities as defined in Section 3(a)(12) of the Exchange Act.

Under normal market conditions, the Fund will have investment exposure to a wide variety of Variable Rate

Investments. During periods of market volatility, however, the Fund may allocate a significant portion of its net assets to floating rate U.S. Treasury debt securities and agency MBS.

B. Exchange's Description of the Fund's Other Investments

According to the Exchange, under normal market conditions, the Fund will invest primarily in the Variable Rate Investments described above to meet its investment objectives. In addition, the Fund may invest up to 20% of its net assets in Variable Rate Debt Instruments or variable rate preferred stock rated below investment grade, and in fixed-rate debt instruments that are rated either investment grade or below investment grade.

The Fund may invest in the following fixed-rate debt instruments: (i) Fixed-rate MBS and ABS (which includes fixed-rate commercial real estate CLOs);²⁰ (ii) fixed-rate U.S. government and agency securities; (iii) fixed-rate corporate debt securities, which will be comprised of corporate notes, bonds, or debentures, and 144A corporate securities;²¹ (iv) fixed-rate exchange traded preferred stock;²² and (v) ETFs that invest primarily in any or all of the foregoing securities²³ (any or all of the foregoing securities, excluding fixed-rate exchange-traded preferred stock and ETFs, collectively, "Fixed Rate Debt Instruments, fixed-rate exchange traded preferred stock, and ETFs, collectively, "Fixed Rate Investments").

The Fund may invest in non-exchange listed securities of money market mutual funds beyond the limits permitted under the 1940 Act, subject to certain terms and conditions set forth in a Commission exemptive order issued to the Trust pursuant to Section 12(d)(1)(j)

²⁰ As noted above, the Fund will not invest more than 20% of its net assets in the aggregate in ABS or non-agency MBS.

²¹ The Fund will generally invest in fixed-rate corporate securities that the Adviser or Sub-Adviser (as applicable) deems to be liquid with readily available prices. Notwithstanding the foregoing, the Fund may invest in corporate securities that are deemed illiquid so long as the Fund complies with the 15% limitation on investments of its net assets in illiquid assets described below.

²² The fixed-rate preferred stock in which the Fund may invest will be limited to securities that trade in markets that are members of the ISG or that are parties to a comprehensive surveillance sharing agreement with the Exchange.

²³ The shares of ETFs in which the Fund may invest will be limited to securities that trade in markets that are members of the ISG or that are parties to a comprehensive surveillance sharing agreement with the Exchange.

of the 1940 Act, or other Commission relief.²⁴

The Fund may also take a temporary defensive position and hold a portion of its assets in cash and cash equivalents and money market instruments²⁵ if there are inadequate investment opportunities available due to adverse market, economic, political or other conditions, or atypical circumstances such as unusually large cash inflows or redemptions.²⁶

C. Exchange's Description of the Fund's Investment Restrictions

The Fund may not concentrate its investments (*i.e.*, invest more than 25% of the value of its net assets) in securities of issuers in any one industry or group of industries. This restriction will not apply to obligations issued or guaranteed by the U.S. government, its agencies, or instrumentalities.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A corporate debt securities deemed illiquid by the Adviser.²⁷ The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities or other illiquid assets. Illiquid securities and other illiquid assets include those subject to contractual or other restrictions on resale and other instruments or assets that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund will not invest in futures, options, forwards, swaps, or other derivatives.

²⁴ See Investment Company Act Release No. 30238 (October 23, 2012) (File No. 812-13820).

²⁵ For the Fund's purposes, money market instruments will include: short-term, high quality securities issued or guaranteed by non-U.S. governments, agencies, and instrumentalities; non-convertible corporate debt securities with remaining maturities of not more than 397 days that satisfy ratings requirements under Rule 2a-7 of the 1940 Act; money market mutual funds; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions.

²⁶ See *supra* note 11.

²⁷ In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades.

¹⁹ According to the Exchange, if a security is rated by multiple NRSROs and receives different ratings, the Fund will treat the security as being rated in the highest rating category received from any one NRSRO.

The Fund intends to qualify for and to elect to be treated as a regulated investment company under Subchapter M of the Internal Revenue Code.

The Fund's investments will be consistent with the Fund's investment objectives. Additionally, the Fund may engage in frequent and active trading of portfolio securities to achieve its investment objectives. The Fund does not presently intend to engage in any form of borrowing for investment purposes and will not be operated as a "leveraged ETF," *i.e.*, it will not be operated in a manner designed to seek a multiple or inverse multiple of the performance of an underlying reference index.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the Exchange's proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁸ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,²⁹ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,³⁰ which sets forth the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares. The Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service, will be widely disseminated by one or more major market data vendors at least every

15 seconds during the Exchange's Regular Market Session.³¹ On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets ("Disclosed Portfolio" as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.³² The Fund's Web site will also include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Intraday, executable price quotations, as well as closing price information on exchange-listed securities, Variable Rate Debt Instruments, Fixed Rate Debt Instruments, and other assets not traded on an exchange will be available from major broker-dealer firms or market data vendors or from the exchange on which they are traded, as well as from automated quotation systems, published or other public sources, or online information services.³³ Additionally, the Financial Industry Regulatory Authority's ("FINRA") Trade Reporting and Compliance Engine ("TRACE") will be a source of price information for

corporate bonds, privately-issued securities, MBS, and ABS to the extent transactions in such securities are reported to TRACE. Intraday and closing price information related to U.S. government securities, money market mutual funds, and other short-term investments held by the Fund also will be available through subscription services, such as Bloomberg, Markit, and Thomson Reuters, which can be accessed by authorized participants and other investors.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily, and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). In addition, trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth additional circumstances under which Shares of the Fund may be halted.

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Further, the Commission notes that the Reporting Authority³⁴ that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.³⁵

²⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁹ 15 U.S.C. 78f(b)(5).

³⁰ 15 U.S.C. 78k-1(a)(1)(C)(iii).

³¹ See Nasdaq Rule 4120(b)(4) (describing the trading sessions on the Exchange).

³² In addition to disclosing the identities and quantities of the portfolio of securities and other assets in the Disclosed Portfolio, the Fund also will disclose on a daily basis on its Web site the following information, as applicable to the type of holding: Ticker symbol, if any; CUSIP number or other identifier, if any; a description of the holding (including the type of holding); quantity held (as measured by, for example, par value, number of shares or units); maturity date, if any; coupon rate, if any; market value of the holding; and percentage weighting of the holding in the Fund's portfolio. The Web site and information will be publicly available at no charge. The Fund's administrator will calculate the Fund's NAV per Share as of the close of regular trading (normally 4:00 p.m. E.T.) on each day the New York Stock Exchange is open for business.

³³ Quotation and last-sale information for any exchange-traded instruments (including preferred stocks and ETFs) also will be available in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans.

³⁴ Nasdaq Rule 5735(c)(4) defines "Reporting Authority."

³⁵ See Nasdaq Rule 5735(d)(2)(B)(ii).

In addition, the Exchange states that the Adviser and the Sub-Adviser are affiliated with the Distributor, a broker-dealer, and that the Adviser and the Sub-Adviser have implemented, and will maintain, a fire wall between themselves and the Distributor with respect to access to information concerning the composition of, and changes to, the Fund's portfolio.³⁶ Moreover, Nasdaq Rule 5735(g) requires that personnel who make decisions on the Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio.

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both the Exchange and FINRA, on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.³⁷ The Exchange further represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Moreover, the Exchange states that, prior to the commencement of trading, it will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares.

The Exchange represents that the Shares are deemed to be equity

securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including the following:

(1) The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and other exchange-traded securities (including ETFs and preferred stock) and instruments held by the Fund with other markets and other entities that are members of the ISG,³⁸ and FINRA may obtain trading information regarding trading in the Shares and other exchange-traded securities (including ETFs and preferred stock) and instruments held by the Fund from such markets and other entities. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain Variable Rate Debt Instruments, Fixed Rate Debt Instruments, and other debt securities held by the Fund reported to FINRA's TRACE. In addition, the Exchange may obtain information regarding trading in the Shares and other exchange-traded securities (including ETFs and preferred stock) and instruments held by the Fund from markets and other entities that are members of ISG, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the

requirement that members purchasing Shares from the Fund for resale to investors deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Act.³⁹

(6) The Fund will not invest more than 20% of its net assets in the aggregate in ABS or non-agency MBS. In addition, the Fund will not invest in senior or junior commercial loans.

(7) The variable and fixed-rate preferred stock in which the Fund may invest will be limited to securities that trade in markets that are members of the ISG, or that are parties to a comprehensive surveillance sharing agreement with the Exchange.

(8) The shares of ETFs in which the Fund may invest will be limited to securities that trade in markets that are members of the ISG, or that are parties to a comprehensive surveillance sharing agreement with the Exchange. In addition, the Fund will not invest in leveraged ETFs, inverse ETFs, or inverse leveraged ETFs.

(9) Under normal market conditions, the Fund will satisfy the following requirements, with respect to (i) and (iii) on a continuous basis, and with respect to (ii) and (iv) on a continuous basis measured at the time of purchase: (i) At least 75% of the investments in corporate debt securities shall have a minimum original principal amount outstanding of \$100 million or more; (ii) no Variable Rate Investment (excluding U.S. government securities) will represent more than 30% of the weight of the Variable Rate Debt Instrument component of the Fund's portfolio, and the five most heavily weighted portfolio securities will not in the aggregate account for more than 65% of the weight of the Variable Rate Debt Instrument component of the Fund's portfolio; (iii) the portfolio will include a minimum of 13 non-affiliated issuers; and (iv) portfolio securities that in aggregate account for at least 90% of the weight of the portfolio will be (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Exchange Act; (b) from issuers that have a worldwide market value of outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; or (d)

³⁶ See *supra* note 9. The Exchange states an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and the Sub-Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with the Advisers Act and Rule 204A-1 thereunder. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

³⁷ The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

³⁸ For a list of the current members of ISG, see www.isgportal.org.

³⁹ See 17 CFR 240.10A-3.

exempted securities as defined in Section 3(a)(12) of the Exchange Act.

(10) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A corporate debt securities deemed illiquid by the Adviser.

(11) The Fund's investments will be consistent with the Fund's investment objectives. The Fund does not presently intend to engage in any form of borrowing for investment purposes, and will not be operated as a "leveraged ETF," *i.e.*, it will not be operated in a manner designed to seek a multiple or inverse multiple of the performance of an underlying reference index.

(12) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.⁴⁰ If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

This order is based on all of the Exchange's representations, including those set forth above and in the Notice, as modified by Amendment No. 3. The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735 for the Shares to be listed and traded on the Exchange.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment

No. 3, is consistent with Section 6(b)(5) of the Act⁴¹ and Section 11A(a)(1)(C)(iii) of the Act⁴² and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 3

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 3 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File No. SR-NASDAQ-2016-056 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-NASDAQ-2016-056. 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 No. SR-NASDAQ-

2016-056, and should be submitted on or before August 24, 2016.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of Amendment No. 3 in the **Federal Register**. The changes and additional information in Amendment No. 3 helped the Commission to evaluate the Shares' susceptibility to manipulation and whether the listing and trading of the Shares would be consistent with the protection of investors and the public interest. Amendment No. 3 also provided clarifications and additional details to the proposed rule change. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.⁴³

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁴⁴ that the proposed rule change (SR-NASDAQ-2016-056), as modified by Amendment No. 3, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-18319 Filed 8-2-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78434; File No. 4-700]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Order Approving and Declaring Effective a Proposed Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and the Investors Exchange LLC

July 28, 2016.

On June 20, 2016, the Financial Industry Regulatory Authority, Inc. ("FINRA") and the Investors Exchange LLC ("IEX") (together with FINRA, the "Parties") filed with the Securities and Exchange Commission ("Commission" or "SEC") a plan for the allocation of

⁴⁰ The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. *See, e.g.*, Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428 (April 7, 2016) (SR-BATS-2016-04). In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of a fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

⁴¹ 15 U.S.C. 78f(b)(5).

⁴² 15 U.S.C. 78k-1(a)(1)(C)(iii).

⁴³ 15 U.S.C. 78s(b)(2).

⁴⁴ *Id.*

⁴⁵ 17 CFR 200.30-3(a)(12).

regulatory responsibilities, dated June 20, 2016 ("17d-2 Plan" or the "Plan"). The Plan was published for comment on July 5, 2016.¹ The Commission received no comments on the Plan. This order approves and declares effective the Plan.

I. Introduction

Section 19(g)(1) of the Securities Exchange Act of 1934 ("Act"),² among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.³ Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁴ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁵ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.⁶ Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.⁷ When an SRO has been named as a common member's DEA, all other

SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.⁸ Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. Proposed Plan

The proposed 17d-2 Plan is intended to reduce regulatory duplication for firms that are common members of both IEX and FINRA.⁹ Pursuant to the proposed 17d-2 Plan, FINRA would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the "IEX Certification of Common Rules," referred to herein as the "Certification") that lists every IEX rule, and select federal securities laws, rules, and regulations, for which FINRA would bear responsibility under the Plan for

overseeing and enforcing with respect to IEX members that are also members of FINRA and the associated persons therewith ("Dual Members").

Specifically, under the 17d-2 Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Dual Members with the rules of IEX that are substantially similar to the applicable rules of FINRA,¹⁰ as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification ("Common Rules"). In the event that a Dual Member is the subject of an investigation relating to a transaction on IEX, the plan acknowledges that IEX may, in its discretion, exercise concurrent jurisdiction and responsibility for such matter.¹¹

Under the Plan, IEX would retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving IEX's own marketplace, including, without limitation, registration pursuant to its applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules); its duties as a DEA pursuant to Rule 17d-1 under the Act; and any IEX rules that are not Common Rules.¹²

III. Discussion

The Commission finds that the proposed Plan is consistent with the factors set forth in Section 17(d) of the Act¹³ and Rule 17d-2(c) thereunder¹⁴ in that the proposed Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for common members that would otherwise be performed by IEX and FINRA. Accordingly, the proposed Plan promotes efficiency by reducing costs to

¹ See Securities Exchange Act Release No. 78179 (June 28, 2016), 81 FR 43673.

² 15 U.S.C. 78s(g)(1).

³ 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

⁴ 15 U.S.C. 78q(d)(1).

⁵ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

⁶ 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

⁷ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

⁸ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

⁹ The proposed 17d-2 Plan refers to these common members as "Dual Members." See Paragraph 1(c) of the proposed 17d-2 Plan.

¹⁰ See paragraph 1(b) of the proposed 17d-2 Plan (defining Common Rules). See also paragraph 1(f) of the proposed 17d-2 Plan (defining Regulatory Responsibilities). Paragraph 2 of the Plan provides that annually, or more frequently as required by changes in either IEX rules or FINRA rules, the parties shall review and update, if necessary, the list of Common Rules. Further, paragraph 3 of the Plan provides that IEX shall furnish FINRA with a list of Dual Members, and shall update the list no less frequently than once each calendar quarter.

¹¹ See paragraph 6 of the proposed 17d-2 Plan.

¹² See paragraph 2 of the proposed 17d-2 Plan.

¹³ 15 U.S.C. 78q(d).

¹⁴ 17 CFR 240.17d-2(c).

common members. Furthermore, because IEX and FINRA will coordinate their regulatory functions in accordance with the Plan, the Plan should promote investor protection.

The Commission notes that, under the Plan, IEX and FINRA have allocated regulatory responsibility for those IEX rules, set forth in the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a common member's activity, conduct, or output in relation to such rule. In addition, under the Plan, FINRA would assume regulatory responsibility for certain provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The Common Rules covered by the Plan are specifically listed in the Certification, as may be amended by the Parties from time to time.

According to the Plan, IEX will review the Certification, at least annually, or more frequently if required by changes in either the rules of IEX or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add IEX rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete IEX rules included in the then-current list of Common Rules that are no longer substantially similar to FINRA rules; and confirm that the remaining rules on the list of Common Rules continue to be IEX rules that are substantially similar to FINRA rules.¹⁵ FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Plan. Under the Plan, IEX will also provide FINRA with a current list of common members and shall update the list no less frequently than once each quarter.¹⁶ The Commission believes that these provisions are designed to provide for continuing communication between the Parties to ensure the continued accuracy of the scope of the proposed allocation of regulatory responsibility.

The Commission is hereby declaring effective a Plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all IEX rules that are substantially similar to the rules of FINRA for common members of IEX and FINRA. Therefore,

modifications to the Certification need not be filed with the Commission as an amendment to the Plan, provided that the Parties are only adding to, deleting from, or confirming changes to IEX rules in the Certification in conformance with the definition of Common Rules provided in the Plan. However, should the Parties decide to add an IEX rule to the Certification that is not substantially similar to a FINRA rule; delete an IEX rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification an IEX rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Plan, which must be filed with the Commission pursuant to Rule 17d-2 under the Act.¹⁷

IV. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4-700. The Parties shall notify all members affected by the Plan of their rights and obligations under the Plan.

IT IS THEREFORE ORDERED, pursuant to Section 17(d) of the Act, that the Plan in File No. 4-700, between FINRA and IEX, filed pursuant to Rule 17d-2 under the Act, is approved and declared effective.

IT IS FURTHER ORDERED that IEX is relieved of those responsibilities allocated to FINRA under the Plan in File No. 4-700.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-18316 Filed 8-2-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78431; File No. SR-BX-2016-045]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Tiers Related to SPY Options

July 28, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

¹⁷ The Commission also notes that the addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Plan for examining, and enforcing compliance by, common members, also would constitute an amendment to the Plan.

¹⁸ 17 CFR 200.30-3(a)(34).

(“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on July 14, 2016, NASDAQ BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Options Pricing at Chapter XV Section 2, entitled “BX Options Market—Fees and Rebates,” which governs pricing for BX members using the BX Options Market (“BX Options”). The Exchange proposes to modify fees and rebates (per executed contract) for certain Penny Pilot³ Options to: (a) Delete SPY Options from the Select Symbols Options Tier Schedule; and (b) adopt a SPY Options Tier Schedule.⁴

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqbx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Penny Pilot was established in June 2012 and extended through 2016. See Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030) (order approving BX option rules and establishing Penny Pilot); and 78036 (June 10, 2016), 81 FR 39308 (June 16, 2016) (SR-BX-2016-021) (notice of filing and immediate effectiveness extending the Penny Pilot through December 31, 2016).

⁴ SPY, Select Symbols Options Tier Schedule, and SPY Options Tier Schedule are discussed below.

¹⁵ See paragraph 2 of the Plan.

¹⁶ See paragraph 3 of the Plan.

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 Chapter XV, Section 2 to modify fees and rebates⁵ for certain Penny Pilot Options to: (a) Delete SPY⁶ Options from the Select Symbols Options Tier Schedule; and (b) adopt a SPY Options Tier Schedule with explanatory notes. The proposed SPY Options Tier Schedule would apply to Customers⁷ that remove liquidity from Customers, Non-Customers,⁸ BX Options Market Makers,⁹ and Firms.¹⁰

Currently, Chapter XV, Section 2 subsection (1) has a Select Symbols Options Tier Schedule that includes SPY,¹¹ but it does not have a SPY Options Tier Schedule. Both of these issues are addressed in the current filing and each specific change is described in detail below.

Change 1—Penny Pilot Options: Remove SPY Options From Select Symbols Options Tier Schedule

In Change 1, under Penny Pilot Options, the Exchange proposes to remove SPY Options from the Select Symbols Options Tier Schedule. The Exchange simultaneously proposes to establish a new SPY Options Tier Schedule.

⁵ Fees and rebates are per executed contract. Chapter XV, Section 2(1).

⁶ "SPY" or Standard and Poor's Depository Receipts/SPDRs options are Penny Pilot Options that are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500. Options on SPY ("SPY Options") are among the highest volume options traded on the Exchange.

⁷ The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Chapter I, Section 1(a)(48)). BX Chapter XV. This is known as being marked in the Customer range.

⁸ Note 1 to Chapter XV, Section 2 states: "A Non-Customer includes a Professional, Broker-Dealer and Non-BX Options Market Maker."

⁹ The term "BX Options Market Maker" or ("M") means a Participant that has registered as a Market Maker on BX Options pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security. BX Chapter XV.

¹⁰ The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC. BX Chapter XV.

¹¹ See Securities Exchange Act Release No. 77339 (March 10, 2016), 81 FR 14155 (March 16, 2016) (SR-BX-2016-016) (notice of filing and immediate effectiveness to adopt Select Symbols Options Tier Schedule).

Specifically, the Exchange proposes, commensurate with establishing the SPY Options Tier Schedule, to delete SPY from the BX Options Select Symbol List. The Select Symbols on this list represent, similarly to SPY, some of the highest volume Penny Pilot Options traded on the Exchange and in the U.S. The following are currently Select Symbols: ASHR, DIA, DXJ, EEM, EFA, EWJ, EWT, EWW, EWY, EWZ, FAS, FAZ, FXE, FXI, FXP, GDX, GLD, HYG, IWM, IYR, KRE, OIH, QID, QLD, QQQ, RSX, SDS, SKF, SLV, SPY, SRS, SSO, TBT, TLT, TNA, TZA, UNG, URE, USO, UUP, UVXY, UYG, VXX, XHB, XLB, XLE, XLF, XLI, XLK, XLP, XLU, XLV, XLY, XME, XOP, XRT. The Select Symbol List is similar to that of other options exchanges (e.g., the MIA X Options Exchange ("MIA X")).¹² Whereas the current Select Symbols Options Tier Schedule has four Tiers, the proposed SPY Options Tier Schedule will have three Tiers. Moreover the SPY Options Tier requirements as well as the proposed fees and rebates are, as described below, very similar to those currently applicable to Select Symbols.

As proposed, the BX Options Select Symbol List in Chapter XV, Section 2 subsection (1) will not include SPY and will read as follows:

BX Options Select Symbol List

The following are Select Symbols: ASHR, DIA, DXJ, EEM, EFA, EWJ, EWT, EWW, EWY, EWZ, FAS, FAZ, FXE, FXI, FXP, GDX, GLD, HYG, IWM, IYR, KRE, OIH, QID, QLD, QQQ, RSX, SDS, SKF, SLV, SRS, SSO, TBT, TLT, TNA, TZA, UNG, URE, USO, UUP, UVXY, UYG, VXX, XHB, XLB, XLE, XLF, XLI, XLK, XLP, XLU, XLV, XLY, XME, XOP, XRT.

Change 2—Penny Pilot Options: Add SPY Options Tier Schedule

For Penny Pilot Options, in Change 2 the Exchange is proposing to modify fees and rebates for Customer and BX Options Market Maker in respect of SPY Options.¹³ Specifically, the Exchange is proposing to add a SPY Options Tier Schedule. This schedule will have three Tiers for Rebate to Remove Liquidity for Customer and several notes. The three new Tiers, described below along with several proposed notes, together make up the "SPY Options Tier Schedule".

Proposed Tier 1 in the SPY Options Tier Schedule, which is similar in structure to current Tier 1 in the Select Symbols Options Tier Schedule Rebate

to Remove Liquidity,¹⁴ states that a BX Participant ("Participant") may earn a rebate if he removes less than 1500 SPY Options contracts per day in the Customer range.¹⁵ Proposed Tier 1 offers a \$0.10 rebate when a Customer trades with Non-Customer, BX Options Market Maker, Customer, or Firm. The proposed \$0.10 rebate is a modest increase from the current \$0.00 rebate in the Select Symbols Options Tier Schedule now applicable to SPY Options. This increase is, as further discussed, reasonable because it incentivizes Participants to bring SPY Options volume to the Exchange. Whereas the Select Symbols Options Tier Schedule takes into account total industry Customer volume per month including equity and ETF options ADV contracts, in order to incentivize Participants to transact more SPY Options volume on the Exchange, proposed Tier 1 looks only at the amount of daily SPY Options volume in the Customer range that is removed by the Participant.

Proposed Tier 2 in the SPY Options Tier Schedule, which is similar in structure to current Tier 2 in the Select Symbols Options Tier Schedule Rebate to Remove Liquidity, states that a Participant may earn a rebate if he removes 1500 to not more than 2999 SPY Options contracts per day in the Customer range. Proposed Tier 2 offers a \$0.42 rebate when a Customer trades with Non-Customer, BX Options Market Maker, Customer, or Firm. The proposed \$0.42 rebate is a modest increase from the current \$0.25 rebate in the Select Symbols Options Tier Schedule now applicable to SPY Options. This increase is, as further discussed, reasonable because it incentivizes Participants to bring SPY Options volume to the Exchange. Whereas the Select Symbols Options Tier Schedule takes into account total industry Customer volume per month including equity and ETF options ADV contracts, in order to incentivize Participants to transact more SPY Options volume on the Exchange, proposed Tier 2 looks only at the amount of daily SPY Options volume in the Customer range that is removed by the Participant.

The highest proposed Tier 3 in the SPY Options Tier Schedule, which is similar in structure to current Tier 3 in

¹⁴ Current Select Symbols Options Tiers use industry customer equity and ETF Option ADV to determine tier level. Rather than industry ADV, proposed SPY Options Tier 1 looks only at how many SPY Options contracts Participant removes in a day.

¹⁵ For a discussion of Customer range, see note 7 above.

¹² See MIA X fee schedule at <https://www.miaxoptions.com/content/fees>.

¹³ The Non-Penny Pilot Options pricing will remain unchanged.

the Select Symbols Options Tier Schedule Rebate to Remove Liquidity, states that a Participant may earn a rebate if he removes more than 2999 SPY Options contracts per day in the customer range. Proposed Tier 3 offers a \$0.51 rebate when a Customer trades with Non-Customer, BX Options Market Maker, Customer, or Firm. The proposed \$0.51 rebate is a modest increase from the current \$0.37 rebate in the Select Symbols Options Tier Schedule now applicable to SPY Options. This increase is, as further discussed, reasonable because it incentivizes Participants to bring SPY Options volume to the Exchange. Whereas the Select Symbols Options Tier Schedule takes into account total industry Customer volume per month including equity and ETF options ADV contracts, in order to incentivize Participants to transact more SPY Options volume on the Exchange, proposed Tier 3 looks only at the amount of daily SPY Options volume in the Customer range that is removed by the Participant.

As part of the new SPY Options Tier Schedule the Exchange proposes six

notes regarding certain fees to add liquidity and fees to remove liquidity. The first four proposed notes are taken directly from the Select Symbols Options Tier Schedule and use the same language except that these proposed notes refer to SPY Options rather than Select Symbols. The Exchange is also adding a sentence to the fourth note to state: There will be no fee or rebate for Customer SPY Options that add liquidity when contra to Firm, BX Options Market Maker or Non Customer.¹⁶ The Exchange also proposes two additional notes. Proposed note 5 would state that BX Options Market Maker fee to add liquidity and BX Options Market Maker fee to remove liquidity in SPY Options will each be \$0.44 per contract when trading with Customer. Proposed note 6 would state that BX Options Market Maker fee to add liquidity in SPY Options will be \$0.10 per contract when trading with Firm, BX Options Market Maker or Non Customer.

Today, when BX Options Market Maker trades in SPY Options with Customer, the fee to add liquidity is between \$0.29 and \$0.44 per contract

and the fee to remove liquidity is between \$0.25 and \$0.42 per contract, according to Tiers. Going forward, per proposed note 5, both the fee to add liquidity in SPY Options and the fee to remove liquidity in SPY Options when BX Options Market Maker trades with Customer will be \$0.44 per contract. Today the fee to add liquidity when BX Options Market maker trades in SPY Options with Non-Customer or BX Options Market Maker, or Firm is between \$0.14 and \$0.00 per contract, according to Tiers. Going forward per proposed note 6 the BX Options Market Maker fee to add liquidity will be \$0.10 per contract when trading SPY Options with Firm, BX Options Market Maker or Non Customer. The Exchange believes that it is reasonable to normalize the fees discussed in note 5 and in note 6 so that they are the same for BX Options Market Makers when trading such SPY Options.

As proposed, the SPY Options Tier Schedule in Chapter XV, Section 2 subsection (1) will read as follows:

SPY Options Tier Schedule

REBATE TO REMOVE LIQUIDITY

[per contract]

Applied to: Customer

Trading with: Non-Customer, BX Options Market Maker, Customer, or Firm

Tier 1	Participant removes less than 1500 SPY Options contracts per day in the customer range	\$0.10
Tier 2	Participant removes 1500 to not more than 2999 SPY Options contracts per day in the customer range.	0.42
Tier 3	Participant removes more than 2999 SPY Options contracts per day in the customer range	0.51

- **Note 1:** Firm fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.33 per contract, regardless of counterparty.
- **Note 2:** Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.46 per contract, regardless of counterparty.
- **Note 3:** BX Options Market Maker fee to remove liquidity in SPY Options will be \$0.46 per contract when trading with Firm, Non-Customer, or BX Options Market Maker.
- **Note 4:** Customer fee to add liquidity in SPY Options when contra to another Customer will be \$0.33 per contract. There will be no fee or rebate for Customer SPY Options that add liquidity when contra to Firm, BX Options Market Maker or Non Customer.
- **Note 5:** BX Options Market Maker fee to add liquidity and BX Options Market Maker fee to remove liquidity in SPY Options will each be \$0.44 per contract when trading with Customer.
- **Note 6:** BX Options Market Maker fee to add liquidity in SPY Options will be \$0.10 per contract when trading with Firm, BX Options Market Maker or Non Customer.

The Exchange is adopting a separate SPY Options Tier Schedule because it believes that it will provide even greater incentives for execution of SPY Options contracts on the BX Options Market. The Exchange believes that its proposal should provide increased opportunities for participation in SPY Options executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,¹⁷ in general, and with Section 6(b)(4) and 6(b)(5) of the Act,¹⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair

discrimination between customers, issuers, brokers, or dealers. Attracting order flow to the Exchange benefits all Participants who have the opportunity to interact with this order flow.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the

¹⁶ The Exchange believes that while the fourth note applicable to Select Symbols Options now states that Customer fee to add liquidity in when contra to another Customer is \$0.33 per contract,

the proposed change is reasonable in light of the overall Exchange efforts to incentivize Participants to bring SPY Options liquidity to the Exchange.

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f (b) (4) and (5).

current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁹

Likewise, in *NetCoalition v. Securities and Exchange Commission*²⁰ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.²¹ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”²²

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²³ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that its proposal should provide increased opportunities for participation in SPY Options executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

The Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory for the following reasons.

Change 1—Penny Pilot Options: Remove SPY Options From Select Symbols Options Tier Schedule

For Penny Pilot Options, in Change 1, the Exchange proposes modifications to remove SPY Options from the Select Symbols Options Tier Schedule. The Exchange simultaneously proposes to establish a new SPY Options Tier Schedule.

Deleting SPY Options from the Select Symbols Options Tier Schedule of rebates and fees is reasonable because SPY Options are proposed to have their own new Tier structure to further incentivize Participants to send SPY Options order flow to the Exchange. The Exchange believes it is equitable and not unfairly discriminatory to delete SPY Options from Select Symbols and establish the SPY Options Tier Schedule because this schedule will be applied uniformly to all similarly situated Participants. This is further discussed below.

Change 2—Penny Pilot Options: Add SPY Options Tier Schedule

For Penny Pilot Options, in Change 2 the Exchange is proposing to modify fees and rebates for Customer and BX Options Market Maker in respect of SPY Options.²⁴ Specifically, the Exchange is proposing to add a SPY Options Tier Schedule as discussed. In adding the new Tiers in the SPY Options Tier Schedule, the current SPY Options pricing in the Select Symbols Options Tier Schedule will be replaced with the proposed SPY Options Tier Schedule specifically applicable to SPY Options, which are among the very highest volume options traded on the Exchange. The proposed SPY Options Tier Schedule will have three Tiers for Rebate to Remove Liquidity for Customer as well as several notes. The three new Tiers, which make up the “SPY Options Tier Schedule,” are similar in structure to the current Select Symbols Options Tier Schedule Rebate to Remove Liquidity.²⁵

The Exchange believes that it is reasonable to establish separate SPY Options Tiers to attract SPY Options volume to the Exchange while separately setting forth fees and rebates related to SPY Options. The Exchange believes that the proposed Tiers in the SPY Options Tier Schedule are reasonable in that they reflect a

structure that is not novel in the options markets but rather is similar to that of other options markets and competitive with what is offered by other exchanges.²⁶ In addition, the Exchange believes that making changes to add Tiers applicable to the Customer in terms of Rebate to Remove Liquidity is reasonable because it encourages the desired Customer behavior by attracting Customer interest to the Exchange. Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Establishing SPY Option Tiers for Rebate to Remove Liquidity is reasonable because it encourages market participant behavior through progressive tiered fees and rebates using an accepted methodology among options exchanges.²⁷ The proposed Tiers in the SPY Options Tier Schedule clearly reflect the progressively increasing nature of Participant executions structured for the purpose of attracting order flow to the Exchange. That is, as discussed if a Participant removes more SPY Options contracts per day in the customer range he can earn higher rebates. For example, in the highest proposed SPY Options Tier 3 Rebate to Remove Liquidity, for which Participant must remove more than 2999 SPY Options contracts per day in the customer range, the Participant can earn the highest \$0.51 rebate (per contract). And in the lowest proposed SPY Options Tier 1 Rebate to Remove Liquidity, for which Participant must remove less than 1500 SPY Options contracts per day in the customer range, the Participant can earn the lowest \$0.10 rebate (per contract).

For Penny Pilot Options, establishing the Customer-related and BX Options Market Maker-related fee and rebate changes in respect of SPY Options, which includes the new SPY Options Tiers with notes, is equitable and not unfairly discriminatory because the Exchange’s proposal to assess fees and pay rebates according to the SPY

¹⁹ Securities Exchange Act Release No. 51808 (June 29, 2005), 70 FR 37496 at 37499 (File No. S7-10-04) (“Regulation NMS Adopting Release”).

²⁰ *Net Coalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

²¹ See *id.* At 534–535.

²² See *id.* At 537.

²³ See *id.* At 539 (quoting Securities Exchange Act Commission at [sic] Release No. 59039 (December 2, 2008), 73 FR 74770 at 74782–74783 (December 9, 2008) (SR-NYSEArca-2006–21)).

²⁴ Fees and rebates, as well as Tiers, for all other Select Symbols options will remain unchanged.

²⁵ Unlike the Select Symbols Options Tier Schedule, in the SPY Options Tier Schedule there is no tier 4, which in the Select Symbols Options Tier Schedule for a rebate requires an even higher amount of volume or volume associated with the Price Improvement Mechanism Auction (“PRISM”).

²⁶ See, e.g., the MIAX fee schedule at <https://www.miaxoptions.com/content/fees> and the BOX fee schedule at <http://boxoptions.com/fee-schedule/>.

²⁷ See, e.g., fee and rebate schedules of other options exchanges, including, but not limited to, NASDAQ Options Market (“NOM”), NASDAQ PHILX LLC (“Phlx”), and Chicago Board Options Exchange (“CBOE”).

Options Tier Schedule will apply uniformly to all similarly situated Participants. Thus, for example, certain Participants would earn a Rebate to Remove Liquidity according to the same Tiers per the SPY Options Tier Schedule.

The fee and rebate schedule as proposed continues to reflect differentiation among different market participants. The Exchange believes that the differentiation is equitable and not unfairly discriminatory, as well as reasonable, and notes that unlike others (e.g. Non-Customers) some market participants like BX Options Market Makers commit to various obligations. Despite the fact that certain BX Options Market Maker fees to add and remove liquidity are proposed to be increased as discussed, the BX Options Market Maker fees to add and remove will be lower as compared to other non-Customer market participants. Unlike other non-Customer market participants, BX Options MMs have obligations to the market and regulatory requirements, which normally do not apply to other market participants.²⁸ A BX Options Market Maker has the obligation to make continuous markets, engage in course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with course [sic] of dealings. Customers will continue to be assessed the lowest fees because Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

As part of the new SPY Options Tier Schedule the Exchange proposes six notes regarding certain fees to add liquidity and fees to remove liquidity. The Exchange believes that this is reasonable. The first four proposed notes are taken directly from the Select Symbols Options Tier Schedule and use the same language except that these

proposed notes refer to SPY Options rather than Select Symbols; and note four has one proposed added sentence.²⁹ Proposed note 4 would state that Customer fee to add liquidity in SPY Options when contra to another Customer will be \$0.33 per contract. There will be no fee or rebate for Customer SPY Options that add liquidity when contra to Firm, BX Options Market Maker or Non Customer.³⁰ The Exchange also proposes two additional notes. Proposed note 5 would state that BX Options Market Maker fee to add liquidity and the BX Options Market Maker fee to remove liquidity in SPY Options will each be \$0.44 per contract when trading with Customer. Proposed note 6 would state that BX Options Market Maker fee to add liquidity in SPY Options will be \$0.10 per contract when trading with Firm, BX Options Market Maker or Non Customer.

Today, when BX Options Market Maker trades in SPY Options with Customer, the fee to add liquidity is between \$0.29 and \$0.44 per contract and the fee to remove liquidity is between \$0.25 and \$0.42 per contract, according to Tiers. Going forward, per proposed note 5, both the fee to add liquidity in SPY Options and the fee to remove liquidity in SPY Options when BX Options Market Maker trades with Customer will be \$0.44 per contract. Today the fee to add liquidity when BX Options Market maker trades in SPY Options with Non-Customer or BX Options Market Maker, or Firm is between \$0.14 and \$0.00 per contract, according to Tiers. Going forward per proposed note 6 the BX Options Market Maker fee to add liquidity will be \$0.10 per contract when trading SPY Options with Firm, BX Options Market Maker or Non Customer.³¹ The Exchange believes

that it is reasonable to normalize the fees discussed in note 5 and in note 6 so that they are the same for BX Options Market Makers when trading such SPY Options. The Exchange believes that to incentivize bringing SPY Options liquidity to the Exchange it is reasonable to make the proposed change in notes 1, 2, 3, and 4 (with the added sentence in note 4 as noted) to refer to SPY Options rather than the Select Symbol Tier Schedule. The Exchange believes that to incentivize bringing SPY Options liquidity to the Exchange it is reasonable to normalize note 5 and note 6 fees so that they are the same under all circumstances for BX Options Market Makers when trading such SPY Options.³²

For Penny Pilot Options, establishing the Customer-related and BX Options Market Maker-related fee and rebate changes in respect of SPY Options, which includes the new SPY Options Tiers with notes, is equitable and not unfairly discriminatory. This is because the Exchange's proposal to assess fees and pay rebates according to the SPY Options Tier Schedule will apply uniformly to all similarly situated Participants. Thus, for example, Participants would earn a Rebate to Remove Liquidity according to the same Tiers per the SPY Options Tier Schedule. It is equitable and not unfairly discriminatory to assess the same fee and rebate in respect of SPY Options regardless of industry trade volume where this is applied uniformly to all similarly situated Participants.

The Exchange believes that by making the proposed changes it is incentivizing Participants to bring more SPY Options volume to the Exchange to further enhance liquidity in this market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically,

in SPY Options for all Tiers. The Exchange believes this change is reasonable and not inequitable or unfairly discriminatory in light of the overall Exchange efforts to incentivize Participants to bring SPY Options liquidity to the Exchange.

³² As part of the Select Symbol Tier Schedule a BX Options Market Maker, when trading with a Customer, would be assessed a fee to add liquidity between \$0.29 to \$0.44 depending on tier; and as proposed in note 5 there will be a \$0.44 fee to add liquidity in SPY options for all Tiers. As part of the Select Symbol Tier Schedule a BX Options Market Maker, when trading with a Non-Customer or BX Options Market Maker, or Firm, would be assessed a fee to add liquidity between \$0.00 to \$0.14 depending on tier, and as proposed in note 5 [sic] there will be a \$0.10 fee to add liquidity in SPY options for all Tiers.

²⁸ Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a Market Maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder. See Chapter VII, Section 5."

²⁹ The sentence proposed to be added to the fourth note would state: There will be no fee or rebate for Customer SPY Options that add liquidity when contra to Firm, BX Options Market Maker or Non Customer.

³⁰ Previously, as part of the Select Symbol Tier Schedule, a Customer, when trading with Firm, BX Options Market Maker or Non Customer could receive a Rebate to add liquidity (\$0.00 to \$0.25 rebate); and now there is no fee or rebate when a Customer adds liquidity in SPY Options when trading with Firm, BX Options Market Maker or Non Customer. The Exchange believes this change is reasonable and not inequitable or unfairly discriminatory in light of the overall Exchange efforts to incentivize Participants to bring SPY Options liquidity to the Exchange.

³¹ Previously, as part of the Select Symbol Tier Schedule, BX Options Market Maker when trading with Customer would be assessed a fee to remove liquidity in SPY Options (\$0.25 to \$0.42), and BX Options Market Maker when trading with Customer would be assessed a fee to add liquidity (\$0.29 to \$0.44); and as proposed there will be a \$0.44 fee to remove liquidity and a \$0.44 fee to add liquidity

the Exchange does not believe that its proposal to make changes to its Penny Pilot Options fees and rebates and to establish the SPY Options Tier Schedule with notes for such fees and rebates will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-competitive because the Exchange is simply continuing its fees and rebates and establishing separate Tiers for SPY Options in order to remain competitive in the current environment.

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In terms of intra-market competition, the Exchange notes that price differentiation among different market participants operating on the Exchange (e.g., Customer, BX Options Market Maker, and Non-Customer) is reasonable. Customer activity, for example, enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants (particularly

in response to pricing) in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Moreover, unlike others (e.g., Non-Customers) each BX Options Market Maker commits to various obligations. These obligations include, for example, transactions of a BX Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings.

In this instance, the proposed changes to the fees and rebates for execution of contracts on the Exchange, and establishing SPY Options Tiers with notes for such fees and rebates, do not impose a burden on competition because the Exchange's execution and routing services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Additionally, the changes proposed herein are pro-competitive to the extent that they continue to allow the Exchange to promote and maintain order executions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.³³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BX-2016-045 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-BX-2016-045. 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-BX-2016-045, and should be submitted on or before August 24, 2016.

³³ 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-18313 Filed 8-2-16; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice: 9658]

Notice of Renewal of the Charter of the International Telecommunication Advisory Committee (ITAC)

SUMMARY: This notice announces the renewal of the Charter for the International Telecommunication Advisory Committees (ITAC). In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. Appendix) and the general authority of the Secretary of State and the Department of State set forth in Title 22 of the United States code, in particular Sections 2656 and 2707, the charter of the International Telecommunication Advisory Committee has been extended until July 22, 2016.

The ITAC primarily consists of members of the telecommunications industry, ranging from network operators and service providers to equipment vendors, members of academia, members of civil society, and officials of interested government agencies. The ITAC provides views and advice to the Department of State on positions on international telecommunications and information policy matters. This advice has been a major factor in ensuring that the United States is well prepared to participate effectively in the international telecommunications and information policy arena.

FOR FURTHER INFORMATION CONTACT: Please contact Franz Zichy at 202-647-5778, zichyffj@state.gov.

Dated: July 26, 2016.

Julie N. Zoller,

Senior Deputy Coordinator, International Communications and Information Policy, U.S. State Department.

[FR Doc. 2016-18369 Filed 8-2-16; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 9660]

International Telecommunication Advisory Committee; Solicitation of Membership

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The U.S. Coordinator for International Communications and Information Policy (“the Coordinator”), in the U.S. Department of State Bureau of Economic and Business Affairs, is accepting applications for membership on the International Telecommunication Advisory Committee (ITAC).

DATES: Applications must be received by the Department of State (at the email addresses at the end of this Notice) not later than August 26, 2016.

SUPPLEMENTARY INFORMATION: The Department of State is soliciting applications from subject matter experts who are U.S. citizens or legal permanent residents and representatives of scientific or industrial organizations that are engaged in the study of telecommunications or in the design or manufacture of equipment intended for telecommunication services, representatives of civil society organizations and academia, and individuals of any other corporation or organization engaged in telecommunications and information policy matters. Applicants should include experience participating in international organizations addressing telecommunications and information technical and policy issues, participating in U.S. preparatory activities for conferences and meetings of international organizations addressing technical and policy issues, and serving on U.S. delegations.

The ITAC is a federal advisory committee under the authority of 22 U.S.C. 2651a and 2656 and the Federal Advisory Committee Act, 5 U.S.C. Appendix. (“FACA”). The purpose of the ITAC is to advise the Coordinator and the Department of State with respect to, and provide strategic recommendations on, communication and information policy matters related to U.S. participation in the work of the International Telecommunication Union (ITU), the Organization of American States Inter-American Telecommunication Commission (CITEL), the Organization for Economic Cooperation and Development (OECD), the Asia Pacific Economic Cooperation Telecommunications & Information Working Group (APEC TEL) and other international bodies addressing

communications and information policy issues.

Members are appointed by the Coordinator and must be U.S. citizens or legal permanent residents of the United States, appointed as representative of U.S. organizations. To ensure diversity in advice, ITAC membership will include not more than one representative from any affiliated agency or organization so long as the threshold of no fewer than 30 members is met. Membership in subcommittees is not limited to a prescribed number, and there may be more than one member designated to a subcommittee for each affiliated agency or organization. The ITAC charter calls for representative members; therefore, a prospective member must represent a company or organization. Solo members (who “represent themselves”) will not be selected. ITAC members must be versed in the complexity of international communications and information policy issues and must be able to advise the Coordinator and the Department of State on these matters. Members are expected to use their expertise and provide candid advice.

Please note that ITAC members will not be reimbursed for travel, per diem, nor other expenses incurred in connection with their duties as ITAC members. For those interested in applying, the ITAC currently intends to hold a meeting on or about October 12, 2016. A separate **Federal Register** notice will be published to announce the details of that meeting.

How to Apply: Email applications in response to this notice to the addresses at the end of this notice. Applications must contain the following information: (1) Name of applicant; (2) citizenship of the applicant; (3) organizational affiliation and title, as appropriate; (4) mailing address; (5) work telephone number; (6) email address; (7) résumé; (8) summary of qualifications for ITAC membership and (9) confirmation that your organization or company expects you to represent their interests.

This information should be emailed to: zichyffj@state.gov, gadsdensf@state.gov, and jacksonln@state.gov.

FOR FURTHER INFORMATION CONTACT: Please contact Franz Zichy at 202-647-5778, zichyffj@state.gov.

Dated: July 27, 2016.

Julie N. Zoller,

Senior Deputy Coordinator, International Communications and Information Policy, U.S. State Department.

[FR Doc. 2016-18378 Filed 8-2-16; 8:45 am]

BILLING CODE 4710-AE-P

³⁴ 17 CFR 200.30-3(a)(12).

SURFACE TRANSPORTATION BOARD**[Docket No. AB 272X]****Morristown & Erie Railway, Inc.—
Abandonment Exemption—In
Roseland, Essex County, N.J.**

Morristown & Erie Railway, Inc. (M&E) has filed a verified notice of exemption¹ under 49 CFR pt. 1152 subpart F—*Exempt Abandonments* to abandon less than one mile of rail line consisting of 490,140 square feet located on the westerly side of Harrison Avenue, part of Block 12, between milepost 9 and the end of the line at Harrison Avenue in the Borough of Roseland, Essex County, N.J. (the Line). The Line traverses U.S. Postal Service Zip Code 07068.

M&E has certified that: (1) No local or overhead traffic has moved over the Line for a least two years; (2) any overhead traffic that could move over the Line can be rerouted; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 2, 2016, unless stayed pending reconsideration.² Petitions to stay that do not involve environmental

issues,³ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),⁴ and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 12, 2016. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 23, 2016, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to M&E's representative: John K. Fiorilla, Capehart & Scatchard, PA, 8000 Midlantic Drive, Suite 300S, Mt. Laurel, NJ 08054.

If the verified notice contains false or misleading information, the exemption is void ab initio.

M&E has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by August 8, 2016. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling OEA at (202) 245-0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877-8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), M&E shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by filing of a notice of consummation by August 3, 2017, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "WWW.STB.DOT.GOV."

³ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Serv. Rail Lines*, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

⁴ Each OFA must be accompanied by the filing fee, which is currently set at \$1,600. See 49 CFR 1002.2(f)(25).

Decided: July 29, 2016.

By the Board, Rachel D. Campbell,
Director, Office of Proceedings.

Kenyatta Clay,
Clearance Clerk.

[FR Doc. 2016-18365 Filed 8-2-16; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****[Docket Number FRA-2016-0071]****Notice of Application for Approval of
Discontinuance or Modification of a
Railroad Signal System**

In accordance with Part 235 of Title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated July 11, 2016, the Georgia and Florida Railway LLC (GFR) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA-2016-0071.

Applicant: Georgia and Florida Railway LLC, Mr. Jason Scott, Vice President Signals and Communications, 1019 Coastline Avenue, Albany, GA 31705.

GFR seeks approval of the discontinuance of the automatic interlocking at Darrow Jct., GA. The discontinuance will consist of removal of signals on the former Seaboard Coast Line Railroad (SCLRR), at Milepost (MP) 695 and MP 697.3; removal of signals from the former Georgia Northern Railroad (GNR) at MP 61.7 and MP 63.3; and removal of interlocking controls and signals at the diamond at Darrow Jct. on the Albany Subdivision.

These changes are being proposed by GFR, which operates on both of the tracks at the interlocking, due to the system being outdated. The former SCLRR line is now being used for the temporary storage of cars and the former GNR line is a through track. Gates and derails will be placed on the former SCLRR line to control movements over the diamond.

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 between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

¹ M&E filed its notice of exemption on July 14, 2016. On July 25, 2016, M&E filed copies of correspondence inadvertently omitted from its initial filing.

² Although M&E states in its verified notice that the proposed consummation date of this transaction is August 15, 2016, this transaction cannot be consummated until September 2, 2016 (50 days from its filing date). 49 CFR 1152.50(d)(2).

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 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 September 19, 2016 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 www.regulations.gov.

Issued in Washington, DC, on July 29, 2016.

Karl Alexy

Director, Office of Safety Analysis.

[FR Doc. 2016-18386 Filed 8-2-16; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2016-0067; Notice 1]

Michelin North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Michelin North America, Inc. (MNA), has determined that certain MNA tires do not fully comply with paragraph S5.5.1(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New pneumatic radial tires for light vehicles*. MNA filed a report dated May 5, 2016, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. MNA then petitioned NHTSA under 49 CFR part 556 requesting a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

DATES: The closing date for comments on the petition is September 2, 2016.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Deliver:* Deliver comments by hand to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) Web site at <http://www.regulations.gov/>. Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are

provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All documents submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <http://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown at the heading of this notice.

DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477-78).

SUPPLEMENTARY INFORMATION:

I. *Overview:* Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), MNA submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of MNA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. *Tires Involved:* Affected are approximately 186 MNA Uniroyal Tiger Paw AWP II size P215/70R15 97T passenger car tires that were manufactured between January 10, 2016 and January 13, 2016.

III. *Noncompliance:* MNA explains that two of the digits in the tire identification number (TIN) that identify the week and year of manufacture were inadvertently switched. This resulted in the tires, which were manufactured in the second week of 2016, being molded with a manufacturing date of "0126" rather than the correct marking of "0216,"

contrary to the requirements specified in paragraph S5.5.1 of FMVSS No. 139 and 49 CFR 574.5(g)(4).

IV. *Rule Text:* Paragraph S5.5.1 of FMVSS No. 139 requires in pertinent part:

S5.5.1 Tire Identification Number.

(b) *Tires manufactured on or after September 1, 2009.* Each tire must be labeled with the tire identification number required by 49 CFR part 574 on the intended outboard sidewall of the tire.

49 CFR 574.5(g)(4) provides that the fourth grouping of symbols within the tire identification number shall “identify the week and year of manufacture.” The regulation specifies that “[t]he first and second symbols of the date code must identify the week of the year,” and “[t]he third and fourth symbols of the date code identify the last two digits of the year of manufacture.” Applying these requirements, the subject tires, which were manufactured during week 2 of 2016, should display “0216” as the date code, but instead display “0126” as the date code.

V. *Summary of MNA’s Petition:* MNA believes that this noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, MNA submitted the following information and analysis of the subject noncompliance:

1. MNA stated that although the date code is not correct, it specifies a date well into the future and thus offers a unique identification for the subject tires. Furthermore, the incorrect but unique coding has been recorded in MNA’s records and can be used to identify the subject tires in the event of a future market action.

2. MNA also stated that there should be no risk of duplication of the TIN in the future since the current 2 digit plant code will evolve to a 3 digit plant code by April 25, 2025, thus creating a new TIN sequence prior to week 1 of 2026 (the date inadvertently specified on the subject tires).

3. MNA further noted that the incorrect date code does not compromise the ability to register the tire. Tire registration cards accept the date as marked (0126). Moreover, the Uniroyal tire registration Web page accepts the TIN with the date as described.

4. MNA also stated that Michelin’s consumer care team has been informed should there be any questions from a consumer or dealer.

5. MNA concluded by noting that all other markings on the subject tires conform to the applicable regulations

and meet all performance requirements of FMVSS No. 139.

In its part 573 Report, MNA stated that there is no imminent safety risk associated with the mismarking.

In summation, MNA believes that the described noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition, to exempt MNA from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that MNA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after MNA notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

Jeffrey M. Giuseppe,
Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–18308 Filed 8–2–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0072; Notice 1]

Cooper Tire & Rubber Company, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Cooper Tire & Rubber Company (Cooper), has determined that certain Mastercraft and Big O tires do not fully comply with paragraph S5.5(f) of Federal Motor Vehicle Safety

Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. Cooper filed a report dated May 24, 2016, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Cooper then petitioned NHTSA under 49 CFR part 556 for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

DATES: The closing date for comments on the petition is September 2, 2016.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and be submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- **Hand Deliver:** Deliver comments by hand to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

- **Electronically:** Submit comments electronically by logging onto the Federal Docket Management System (FDMS) Web site at <http://www.regulations.gov/>. Follow the online instructions for submitting comments.

- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible.

When the petition is granted or denied, notice of the decision will also

be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All documents submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <http://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477-78).

SUPPLEMENTARY INFORMATION:

I. *Overview*: Pursuant to 49 U.S.C. 30118(d) and 30120(h) and their implementing regulations at 49 CFR part 556, Cooper submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of Cooper's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. *Tires Involved*: Affected are 22,188 of the following tubeless radial tires manufactured between January 10, 2016, and April 30, 2016:

- Mastercraft LSR Grand Touring size 215/60R16.
- Mastercraft LSR Grand Touring size 225/60R16.
- Big O Legacy Tour Plus size 215/60R16.
- Big O Legacy Tour Plus size 225/60R16.

III. *Noncompliance*: Cooper explains that due to a mold error, the number of tread plies indicated on the sidewall of the subject tires does not match the actual number of plies in the tire construction. The tires are marked "TREAD 1 PLY NYLON + 2 PLY STEEL + 2 PLY POLYESTER" whereas the correct marking should be: "TREAD 1 PLY NYLON + 2 PLY STEEL + 1 PLY POLYESTER." As a consequence, these tires do not meet the requirements specified in paragraph S5.5(f) of FMVSS No. 139.

IV. *Rule Text*: Paragraph S5.5(f) of FMVSS No. 139 states, in pertinent part:

S5.5 *Tire Markings*. Except as specified in paragraph (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one sidewall with the information specified in S5.5(e) through (i) according to

the phase-in schedule specified in S7 of this standard . . .

(f) The actual number of plies in the sidewall, and the actual number of plies in the tread area, if different.

V. *Summary of Cooper's Petition*: Cooper described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates motor vehicle safety and is unlikely to have an adverse impact on motor vehicle safety.

In support of its petition, Cooper submitted the following information pertaining to the subject noncompliance:

(a) Cooper states that the mislabeled number of plies indicated on the sidewalls has no impact on the operational performance or durability of the subject tires or on the safety of vehicles on which those tires are mounted. Cooper states that while the subject tires do not indicate the correct number of plies in the tread on the outboard side, they meet all other performance requirements under the Federal Motor Vehicle Safety Standards. Cooper notes that the number of plies in the tread does not impact the performance or operation of a tire and does not create a safety concern to either the operator of the vehicle on which the tires are mounted, or the safety of personnel in the tire repair, retread and recycle industry.

(b) Cooper also states that the subject tires were built as designed and meet or exceed all performance requirements and testing requirements specified under FMVSS No. 139. Cooper states that the subject tires completed all Cooper Tire internal compliance testing criteria, including passing shipping certification testing in January 2016. In addition, the 215/60R16, Mastercraft LRS Grand Touring, serial week 1116, passed all surveillance testing conducted in early March 2016.

(c) Cooper's states that the stamping deviation occurred as a result of an administrative error when incorrect information was entered into Cooper Tire's electronic specification system at the corporate level. That system communicates information to the mold management system which in turn generates the construction stamping pocket plate. The electronic specification system incorrectly listed the specific tire sizes and brands as two-ply, when the tires were actually designed with an HPL construction or as having a single ply in the tread. The incorrect construction information was then engraved in the pocket plate and then installed in the affected molds.

(d) Cooper states that it is not aware of any crashes, injuries, customer complaints, or field reports associated with the mislabeling.

Cooper states that the mislabeling has been corrected at the corporate level and the pocket plates of the molds have been replaced, therefore, no additional tires will be manufactured or sold with the noncompliance. Cooper also states that it has conducted training with tire engineers at the corporate level responsible for inputting information into the electronic specification system on the importance of the information they are submitting.

Cooper observed that NHTSA has previously granted inconsequential noncompliance petitions regarding noncompliances that are similar to the subject noncompliance.

Cooper concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that Cooper no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Cooper notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,
Director, Office of Vehicle Safety Compliance.
[FR Doc. 2016-18306 Filed 8-2-16; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****[Docket No. NHTSA–2016–0071; Notice 1]****Cooper Tire & Rubber Company, Receipt of Petition for Decision of Inconsequential Noncompliance****AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).**ACTION:** Receipt of petition.

SUMMARY: Cooper Tire & Rubber Company (Cooper), has determined that certain MULTI-MILE Grand Tour LS passenger vehicle tires do not fully comply with paragraph S5.5.1(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Tires Radial Tires for Light Vehicles*. Cooper filed a report dated May 24, 2016, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Cooper then petitioned NHTSA under 49 CFR part 556 for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

DATES: The closing date for comments on the petition is September 2, 2016.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and be submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- **Hand Deliver:** Deliver comments by hand to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- **Electronically:** Submit comments electronically by logging onto the Federal Docket Management System (FDMS) Web site at <http://www.regulations.gov/>. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If

comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All documents submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <http://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

SUPPLEMENTARY INFORMATION: I. Overview: Pursuant to 49 U.S.C. 30118(d) and 30120(h) and their implementing regulations at 49 CFR part 556, Cooper submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of Cooper's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Tires Involved: Affected are approximately 37 Cooper Tire MULTI-MILE Grand Tour LS Size 205/70R15 Tubeless Radial Tires manufactured between March 24, 2016 and March 29, 2016.

III. Noncompliance: Cooper explains that the noncompliance is that the outboard sidewalls of the subject tires are labeled with an incorrect manufacturer's identification mark and therefore do not fully meet all applicable requirements of paragraph S5.5.1(b) of FMVSS No. 139.

Specifically, the tires are labeled with the manufacturer's identification mark “Y9,” assigned to a manufacturing facility in P.T. Gadjah Tunggal, Kabupaten Tangerang, Jawa Barat, Indonesia, instead of “U9,” assigned to Cooper's manufacturing facility in Tupelo, Mississippi, where the tires were actually produced.

IV. Rule Text: Paragraph S5.5.1 of FMVSS No. 139 requires in pertinent part:

S5.5.1 Tire Identification Number.

(b) *Tires manufactured on or after September 1, 2009.* Each tire must be labeled with the tire identification number required by 49 CFR part 574 on the intended outboard sidewall of the tire. Except for retreaded tires, either the tire identification number or a partial tire identification number, containing all characters in the tire identification number, except for the date code and, at the discretion of the manufacturer, any optional code, must be labeled on the other sidewall of the tire. Except for retreaded tires, if a tire does not have an intended outboard sidewall, the tire must be labeled with the tire identification number required by 49 CFR part 574 on one sidewall and with either the tire identification number or a partial tire identification number, containing all characters in the tire identification number except for the date code and, at the discretion of the manufacturer, any optional code, on the other side wall.

V. Summary of Cooper's Petition: Cooper states its belief that the subject noncompliance is inconsequential to motor vehicle safety on account of the fact that while the subject tires contain an incorrect manufacturer's identification mark on the outboard sidewall, the full and correct tire code (including the correct manufacturer's identification mark) is available on the intended inboard sidewall.

Cooper also indicated that it has taken the following steps to ensure proper registration of the subject tires:

(a) Cooper has informed all internal personnel responsible for manual processing of tire registration cards about the incorrect manufacturer identification issue so that cards containing the “Y9” designation will be accepted and properly processed when all other information accurately identifies the subject tires. Additionally, consistent with its usual practices, whenever a tire registration card is submitted with inaccurate or incomplete information, Cooper sends a mailing to the consumer seeking additional information by providing a prepaid response card.

(b) Cooper has also modified its database to accept “Y9” when other information (brand, serial weeks affected etc.) is accurate.

(c) Cooper has contacted Computerized Information and Management Services, Inc. (CIMS), a third-party vendor that collects and provides tire registration cards to Cooper, so that tire registration cards will not be rejected solely due to improper plant code information.

Cooper also noted that while the subject tires are mislabeled on the outboard side, they meet all other performance requirements of the applicable standard. The company observed that plant code information has no bearing on the performance or operation of a tire and does not create a safety concern to either the operator of the vehicle on which the tires are mounter of the safety of personnel in the tire repair, retread and recycle industry. Cooper also stated that on April 22, 2016 the incorrect mold that caused the stamping error was removed from production and replaced with a corrected plug, thereby eliminating the problem in future production.

Please refer to Cooper's petition for its complete reasoning and any associated illustrations. The petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) Web site at: <http://www.regulations.gov/> and following the online search instructions to locate the docket number listed in the title of this notice.

In summation, Cooper believes that the described noncompliance of the subject tires is inconsequential as it relates to motor vehicle safety, and that its petition, to exempt Cooper from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and remedying the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that Cooper no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Cooper notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8,

Jeffrey M. Giuseppe,
Director, Office of Vehicle Safety Compliance.
[FR Doc. 2016-18307 Filed 8-2-16; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

List of Applications Delayed More Than 180 Days

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice, list of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of special permit applications

Meaning of Application Number Suffixes

N—New application
M—Modification request
R—Renewal Request
P—Party To Exemption Request

Issued in Washington, DC, on July 19, 2016.

Donald Burger,
Chief, General Approvals and Permits.

Application No.	Applicant	Reason for delay	Estimated date of completion
Modification to Special Permits			
13173-M	Luxfer Canada Limited, Calgary, AB	4	08-10-2016
13192-M	Thomas Gray & Associates, Inc., Orange, CA	4	07-31-2016
15537-M	Alaska Pacific Powder Company, Watkins, CO	4	07-31-2016
7607-M	Thermo Fisher Scientific, Franklin, MA	4	07-31-2016
15610-M	TechKnowServ Corp., State College, PA	4	07-31-2016
New Special Permit Applications			
16615-N	Special Devices, Incorporated, Simi Valley, CA	4	07-31-2016
16559-N	HTEC Hydrogen Technology & Energy Corporation, North Vancouver, BC Canada	4	07-30-2016
16524-N	Quantum Fuel Systems Technologies Worldwide, Inc., Lake Forest, CA	4	07-15-2016
15767-N	Union Pacific Railroad Company, Omaha, NE	3	07-31-2016
16620-N	Westeel Canada Inc., Winnipeg, Canada	4	07-31-2016
Party to Special Permits Application			
12412-P	Seaco Technologies, Inc., Bakersfield, CA	4	07-31-2016

[FR Doc. 2016-18197 Filed 8-2-16; 8:45 am]

BILLING CODE 4910-60-M

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 Thursday, August 18, 2016, 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 Thursday, August 18, 2016, 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/8fq130?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 11:59 p.m. Eastern Time on Friday, August 12, 2016)

2. Contact the Federal Insurance Office (FIO), at (202) 622-0512, by 5:00 p.m. Eastern Time on Friday, August 12, 2016, 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:

Chester McPherson, Deputy Director, Consumer Affairs, FIO, Room 1410, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, at (202) 622-0512 (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 insurance issues related to autonomous vehicles, implications of the recent United Kingdom referendum on membership in the European Union, the overall effectiveness of the Terrorism Risk Insurance Program, and the impact of a low interest rate environment on the availability of affordable retirement security products. The Committee will also receive updates from its subcommittees.

Michael T. McRaith,

Director, Federal Insurance Office.

[FR Doc. 2016-18403 Filed 8-2-16; 8:45 am]

BILLING CODE 4810-25-P



FEDERAL REGISTER

Vol. 81

Wednesday,

No. 149

August 3, 2016

Part II

Department of Agriculture

Farm Service Agency

Commodity Credit Corporation

Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency

7 CFR Parts 761, 762, 763, et al.

Environmental Policies and Procedures; Compliance With the National Environmental Policy Act and Related Authorities; Final Rule

DEPARTMENT OF AGRICULTURE**Farm Service Agency**

7 CFR Parts 761, 762, 763, 764, 765, 766, 767, 770, 772, 773, 774, and 799

Commodity Credit Corporation

7 CFR Part 1436

Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency

7 CFR Part 1940

RIN 0560-AH02

Environmental Policies and Procedures; Compliance With the National Environmental Policy Act and Related Authorities

AGENCY: Farm Service Agency, Commodity Credit Corporation, Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is consolidating, updating, and amending its regulations implementing the National Environmental Policy Act of 1969, as amended (NEPA). FSA's previous NEPA regulations had been in place since 1980. Significant changes to the structure of FSA and the scope of FSA's programs require changes in FSA's NEPA regulations. The changes will also better align FSA's NEPA regulations with the President's Council on Environmental Quality (CEQ) NEPA regulations and meet the FSA responsibilities for periodic review of their categorical exclusions (CatExs). CatExs involve proposed actions that typically do not result in individual or cumulative significant environmental effects or impacts and therefore do not merit further environmental review in an Environmental Assessment (EA) or Environmental Impact Statement (EIS). The additions to the existing list of CatExs improves the clarity and consistency of the regulations. This final rule also expands and clarifies the list of proposed actions that require an EA. The FSA NEPA implementing regulations also cover the Commodity Credit Corporation (CCC) programs that FSA administers on behalf of CCC. In addition, this rule makes conforming changes to existing references to FSA NEPA regulations in other FSA regulations. The revisions to the FSA NEPA implementing regulations are intended to improve transparency and

clarity of the FSA NEPA process for FSA program participants, and to provide for a more efficient environmental review that will lead to better decisions and outcomes for stakeholders and the environment. Finally, in coordination with the Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, this rule removes the old NEPA regulations.

DATES: Effective: August 3, 2016.

FOR FURTHER INFORMATION CONTACT: Nell Fuller; telephone (202) 720-6303.

Persons with disabilities or who require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The proposed rule for this rulemaking initiative was published in the **Federal Register** on September 3, 2014 (79 FR 52239 through 52259) and discussed the changes to consolidate, clarify, and update the FSA NEPA regulations. As discussed below in the section titled Summary of Public Comments and FSA Responses, some additional clarifying changes of certain provisions are being made in response to public comments received on the proposed rule. The majority of the changes this rule is making to the FSA NEPA regulations are the changes introduced in the proposed rule.

NEPA

NEPA (Pub. L. 91-190, 42 U.S.C. 4321-4370) establishes a national environmental policy, sets goals for the protection, maintenance, and enhancement of the environment, and provides a process for carrying out the policy and working toward those policy goals. The NEPA process requires different levels of environmental review and analysis of Federal agency proposed actions, depending on the nature of the proposed action. As stated in 40 CFR 1508.18(a), proposed actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals. Some proposed actions, because of the nature of their potential environmental effects, are categorically excluded from further environmental review and are known as CatExs. If a proposed action is not categorically excluded, additional review will be performed either through an EA, or, where the circumstances warrant, a

more rigorous EIS to ensure that the additional time and analysis is both expeditious and serves to better inform the decision makers. Rules specifying the requirements for NEPA review are in government-wide NEPA regulations issued by CEQ and available in 40 CFR parts 1500 through 1508, and in individual agency regulations, including the USDA's NEPA implementing regulations (7 CFR part 1b). This rule updates the FSA NEPA implementing regulations.

A CatEx is used typically for proposed actions that do not have a significant impact on the quality of the human environment, individually or cumulatively, such as a farm loan consolidation or funding for the maintenance of existing buildings. The general NEPA regulations define the human environment as the natural and physical environment, and the relationship of people with that environment (40 CFR 1508.14). This final rule specifies categories of FSA proposed actions that are categorically excluded, if there are no extraordinary circumstances for the specific proposed action. As used in this rule, the term "extraordinary circumstance" refers to the presence of circumstances specified in 7 CFR 799.33 and the impacts of those circumstances—for example, impacts that are potentially adverse, significant, uncertain, or involve unique or unknown risks; in addition, it will be determined if the impacts can be avoided or mitigated. The results of the review for extraordinary circumstances will be the determination if the proposed action can be categorically excluded or if an EA or EIS is required. If a proposed action is not categorically excluded, then the next step in the NEPA process is usually an EA. An EA is prepared to analyze the potential environmental impacts of a Federal agency proposed action and alternatives to the proposed action to determine whether proposed actions can proceed without supplemental environmental review through an EIS. An EA can result in:

- A proposed action not proceeding,
- A Finding of No Significant Impact (FONSI), or
- A determination that the environmental impact will be significant and therefore, an EIS is required.

If the agency determines at an early stage that there is clearly the potential for significant environmental impacts, FSA can start the EIS process without first doing an EA.

NEPA requires a Federal agency to prepare an EIS for any major Federal proposed action that significantly affects

the quality of the human environment (see 42 U.S.C. 4332(c)). The criteria for what constitutes a “major Federal action significantly affecting the quality of the human environment” are specified in the general NEPA regulations that apply to all Federal agencies in 40 CFR 1508.18. The EIS must include a detailed evaluation of:

- (1) The environmental impacts of the proposed action;
- (2) Any adverse environmental effects that cannot be avoided;
- (3) Alternatives to the proposed action;
- (4) The relationship between the local, short-term resource uses and the maintenance and enhancement of long-term ecosystem productivity; and
- (5) Any irreversible and irretrievable commitments of resources.

NEPA requires that the environmental review must be started once a proposed action is concrete enough to warrant review and must be completed at the earliest possible time to ensure that planning and implementation decisions reflect environmental values. The NEPA review informs the decision maker and the affected public, and must be completed before a decision is made.

NEPA also establishes CEQ. Executive Order 11514, “Protection and Enhancement of Environmental Quality,” as amended by Executive Order 11991, “Relating to Protection and Enhancement of Environmental Quality,” directs CEQ to prepare binding regulations governing how Federal agencies are to implement NEPA. The CEQ NEPA regulations (40 CFR parts 1500–1508) provide this general regulatory framework.

The CEQ NEPA regulations require every Federal agency to develop agency-specific procedures for implementing NEPA. Each Federal agency’s NEPA implementing procedures supplement the CEQ regulations to address the agency’s specific environmental review needs. This final rule supplements the CEQ’s NEPA regulations, and the USDA general NEPA regulations in 7 CFR part 1b, and specifies their implementation by FSA.

FSA Organizational History

FSA was created in 1995 as required by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354); the former Agricultural Stabilization and Conservation Service (ASCS) and the farm loan portion of the Farmers Home Administration (FmHA) were merged and are currently the Farm Programs and Farm Loan Programs, respectively. Since that reorganization, FSA has operated under two separate

sets of NEPA regulations, one for the programs within the scope of Farm Programs and one for the programs within the scope of Farm Loan Programs. This final rule consolidates, clarifies, and updates FSA NEPA regulations to establish a single set of NEPA regulations for FSA, and to ensure that those regulations reflect current FSA organizational structure, environmental laws, Executive Orders, and CEQ requirements.

FSA’s scope also includes field operations and commodity warehouse activities that were included in the scope of the former ASCS. These activities are already categorically excluded as inventory, informational, or administrative actions under USDA’s general NEPA implementing rules in 7 CFR part 1b, and those CatExs continue to be available for application by FSA. This rule does not change the USDA department-wide CatExs that apply to FSA programs that solely involve those proposed actions or similar proposed actions identified in 7 CFR 1b.3.

Previous Structure of FSA NEPA Regulations; Restructuring in This Rule

The Farm Programs part of FSA oversees conservation, disaster assistance, price support, farm storage facility loans, and commodity loan programs. Previously, the NEPA regulations governing FSA Farm Programs were specified in 7 CFR part 799, which this rule revises. Many current FSA programs did not exist in 1980 and were therefore not specifically addressed under the previous NEPA regulations in 7 CFR part 799.

The Farm Loan Programs part of FSA is responsible for providing direct farm loans, guaranteed farm loans, and land contract guaranteed loans. Previously, the NEPA regulations governing Farm Loan Programs in 7 CFR part 1940, subpart G applied to FSA farm loans and to other USDA activities associated with the Rural Development agencies: Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, (also formerly part of FmHA). The regulations in 7 CFR part 1940 contained provisions that refer to programs that either no longer exist or are not FSA programs. This rule specifies the NEPA regulations for FSA Farm Loan Programs in 7 CFR part 799; part 1940 will no longer apply to those programs. The Rural Development agencies (Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service) published a final rule on March 2, 2016 (81 FR 11000–11053), amending part 1940, subpart G, to specify that subpart G does not apply to programs administered by the Rural

Housing Service or the Rural Business-Cooperative Service. (NOTE: Subpart G had not applied to the Rural Utilities Service.) Therefore, with the changes made by this rule, the regulations in subpart G will no longer be used by any agency. Therefore, this rule removes subpart G to part 1940 in its entirety.

FSA is also responsible for NEPA compliance for the CCC programs that FSA administers on behalf of CCC. FSA has no separate NEPA regulations for CCC programs; previous FSA NEPA regulations in 7 CFR part 799 applied to CCC programs that are administered by FSA. Those CCC programs continue to be included in the scope of 7 CFR 799, as revised by this rule.

The revised part 799 has six subparts, titled “General FSA Implementing Regulations for NEPA,” “FSA and Program Participant Responsibilities,” “Environmental Screening Worksheet,” “Categorical Exclusions,” “Environmental Assessments,” and “Environmental Impact Statements.” The “FSA and Program Participant Responsibilities” subpart includes an overview chart of the FSA NEPA process.

The changes are intended to improve clarity in the regulations, allow more efficient program implementation at the field level, provide more openness and transparency during FSA’s environmental decision-making, and simplify program administration.

Following the discussion of the regulatory changes, a summary table provides a general comparison of the major NEPA provisions, the previous regulations, and this final regulation. In general, FSA has already administratively implemented FSA NEPA procedures to meet current NEPA requirements as specified in Executive Orders and CEQ regulations; this rule revises the regulations to include those currently implemented FSA NEPA procedures. For example, Programmatic EAs (PEAs) were not in the previous regulations, but FSA already does such analyses in compliance with current CEQ regulations. The provisions for PEAs are a revision to the regulations. A detailed crosswalk comparing the specific regulatory changes between the previous FSA regulations and these final regulations would not accurately reflect the changes in FSA NEPA procedures that impact the public. Combining the requirements from the previous 7 CFR parts 799 and 1940 involved significant editing and restructuring. This resulted in final regulations that are significantly rewritten, but the underlying FSA NEPA procedures remain largely unchanged. Therefore, the summary table highlights

the substantive procedural changes, rather than the detailed editorial restructuring and removal of obsolete provisions. This table is intended to provide a quick comparison of the major NEPA provisions and show how they are treated in both the previous regulations and this final regulation to clarify the actual changes that will have an impact on the public and the actions that FSA funds.

The CEQ regulations require that Federal agencies implement NEPA procedures, in part to “reduce paperwork and the accumulation of extraneous background data and to emphasize real environmental issues and alternatives” (40 CFR 1500.2(b)). FSA believes that the changes meet that requirement by clarifying the procedures for completing EAs and EISs and expanding and making the CatEx list more specific. The changes will reduce paperwork and allow FSA to focus limited resources on real environmental issues and alternatives, as appropriate.

Emergency circumstances will continue to be handled consistent with 40 CFR 1506.11.

Environmental Screening Worksheet

This rule includes procedures to increase transparency and accountability of FSA’s NEPA process. One of those procedures is a new worksheet that will be used to assess the need for, and extent of, NEPA reviews for all FSA programs. This final rule describes the use of the new environmental screening worksheet (ESW) in 7 CFR part 799, subpart C. The ESW and the process for using it represent a substantive change from previous practice. Implementation of the ESW consolidates two forms previously required by 7 CFR parts 799 and 1940, subpart G, reducing total paperwork and ensuring better compliance with NEPA. FSA staff will use the ESW as an initial screening tool to record the use of a CatEx and review any likely environmental impacts of proposed actions and determine the potential significance and appropriate level of NEPA review (CatEx, EA, or EIS). For CatExs, completion of the ESW will be used to record the relevant CatEx being used; review and document the determination of whether extraordinary circumstances exist; and determine whether the CatEx is appropriately applied or if further environmental review of that proposed action is necessary. The new ESW consolidates the review criteria from multiple forms and checklists previously used by FSA for environmental review. Having one

form will reduce the paperwork for FSA and ensure compliance with NEPA.

As revised by this rule, 7 CFR part 799, subpart C, now specifies the categories of proposed actions that require the use of the ESW and how the ESW will be used. The ESW will be used to either record the CatEx or for a review, unless it is clear that the proposed action requires an EA or EIS or related environmental review, such as a PEA or PEIS. Generally, all proposed actions listed in § 799.31 will not require further documentation beyond that provided in the substantiation for establishing the CatEx and the project file for specific proposed actions. The review using the ESW will be required for all proposed actions listed in § 799.32. As noted in the proposed rule, an administrative record was created, in consultation with CEQ, to substantiate the CatExs in this rule. The administrative record includes benchmarking CatExs by other government agencies and documentation from previous FSA environmental review of these types of proposed actions.

The next section of this document explains the new categories of CatExs. Examples of CatEx proposed actions specified in § 799.31 that do not require review include many loan-related proposed actions, fence repair, and maintenance of existing buildings. For those proposed actions, instead of a full review, FSA staff will simply use the ESW form to record the specific CatEx being used and to ensure that no extraordinary circumstances exist.

The proposed actions specified in § 799.32 of this rule may be categorically excluded depending on the outcome of the review documented in the ESW. Those CatEx proposed actions require a review using an ESW to determine if extraordinary circumstances exist that require further environmental review. Examples of these proposed actions that will be analyzed with a review using an ESW include loan transfers with planned new land disturbance and fence installation.

Extraordinary circumstances, as specified in this rule, are considered in the context of a specific action and include situations with potentially significant impacts. If such circumstances do exist, then an EA is required for a proposed action that would otherwise be categorically excluded.

For all proposed actions for which there is no applicable CatEx, if necessary, the ESW can be used to determine whether an EA or an EIS is the next step in the NEPA process, but

the ESW is not required if it is clear to FSA that an EA or EIS is required.

USDA agencies and other Federal agencies have similar environmental screening tools (for example, USDA’s Natural Resources Conservation Service (NRCS) and Rural Development, the Department of Energy, the Department of Defense). FSA reviewed those screening tools and considered these agencies’ approaches during development of the ESW. For the purposes of this rule, references to the ESW also refer to alternate documentation comparable to the ESW and that has been approved in advance by the FSA National Environmental Compliance Manager, such as related environmental documentation, including, but not limited to, the related documentation from NRCS or another agency.

The ESW replaces the previous form FSA–850, “Environmental Evaluation Checklist” document and the RD–1940–22 form, which local FSA staff and County Office Committee reviewers have found to be outdated and confusing. The new, more concise ESW is designed to be applied consistently and provide a more transparent review of anticipated environmental effects.

This final rule specifies the situations in which the ESW will be used by FSA. The ESW will be completed by FSA field office personnel during the review of an application for any FSA program, unless the program is categorically excluded from further environmental review as shown by the CatEx recorded on the ESW, or unless FSA receives technical assistance with the environmental review from USDA or another Federal agency that can be used in place of the ESW. For example, FSA often receives technical assistance from NRCS, which uses its own review form. The NRCS form provides the same information as the ESW and therefore is used instead of the ESW when NRCS supplies FSA technical assistance. The use of the new FSA ESW as specified in this rule is expected to make overall proposed action planning and project-specific environmental reviews more timely and cost effective. It is also expected to provide more clarity and transparency to the environmental review process.

CatEx Changes

This rule updates and clarifies the CatEx requirements that apply to FSA programs and groups those requirements in a new subpart. Consistent with CEQ regulations, subpart D of the rule specifies that a CatEx is an agency proposed action that normally has no individual or

cumulative significant effect on the human environment (see 7 CFR 799.30). In subpart D, 7 CFR 799.31 and 799.32 provide longer and more specific lists of categorically excluded proposed actions than were in the previous regulations. The updated and expanded list of CatExs represents a substantive change. Many of the proposed actions included in this rule as CatExs were not explicitly listed as CatExs in the previous FSA NEPA regulation, but have been considered as CatExs under the Departmental regulations (for example, 7 CFR part 1b(3)(a)(2) activities which deal solely with funding programs). In the past, some program regulations should have been categorically excluded, but were not.

The proposed rule requested public comment on all of the proposed CatExs. After reviewing and incorporating clarifications based on comments received, this rule adds all such proposed actions that should have been categorically excluded. Adding the specific list of CatExs to the FSA NEPA regulation adds clarity and transparency to the NEPA process by consolidating all FSA CatExs in a single regulation.

Some of the CatExs in this rule are similar to the CatExs of other Federal agencies and reflect FSA's experience with similar factual circumstances. For example, the proposed action of "fencing" is a proposed action that FSA has categorized as a CatEx that also has been identified as a CatEx by other agencies, including the Departments of Energy and Interior, in their NEPA implementing regulations. It has also been documented in several FSA EISs for the Emergency Conservation Program to have no significant impact on the environment. Other new CatExs are more specific to FSA and reflect FSA's past experience with similar factual circumstances. These CatExs have been found to have no potential to produce significant impacts, individually or cumulatively, on the human environment based on past NEPA documentation by FSA environmental experts and their review of the impacts for implementing those proposed actions. For example, many of the loan program proposed actions conducted by FSA, such as refinancing, closing cost payments, and deferral of loan payments, have been shown consistently to have no potential to significantly impact the human environment as a result of the FSA proposed action, individually or cumulatively. In addition, those proposed actions were previously categorically excluded in 7 CFR 1940.310(e)(2) as loan closing and servicing activities.

There are many CatExs in this rule that are excluded on the basis of the location where the specific proposed actions are to occur. For example, various proposed actions that would take place within previously disturbed or developed farmland, and proposed actions on land where the former state of the area and its ecological functions have already been altered, are appropriate for a CatEx. These also include proposed actions on land that has been previously cultivated, as long as the new proposed action would not disturb below the plow zone, and amount to very limited disturbance. The Department of Energy uses this same "previously disturbed ground" criteria as an integral component of their CatExs.

This rule separates FSA proposed actions into three broad categories with regard to CatExs and any further required environmental review. As explained below, these three categories are proposed actions that:

(1) Are automatically excluded from further environmental review without further documentation (beyond recording the specific CatEx on the ESW for the administrative record),

(2) Require review using the ESW, but may be excluded from further environmental review based on the result of the ESW, or

(3) Are not excluded and require further environmental review (EA or EIS) because they fall into one of the following groups:

- First, those proposed actions that are categorically excluded from further environmental review without documentation, beyond recording the specific CatEx on the ESW for the administrative record. There are a total of 66 of these types of proposed actions in this rule, and includes proposed actions such as paying loan closing costs, refinancing debt, and a payment to support commodity prices with no requirement for any proposed action on part of the recipient. FSA may also add additional CatExs to the regulations in the future. As specified in this rule and discussed below, future CatExs would be proposed in the **Federal Register** with an opportunity for public comment (see § 799.34 and 40 CFR 1507.3). FSA will consult with CEQ on any new CatExs prior to publication, as is the normal process for establishing CatExs, and as was done with this rule.

- Second, those proposed actions that are considered as CatExs so long as they are reviewed and documented with an ESW. Extraordinary circumstances, as specified in this rule in § 799.33, are unique to a specific proposed action and include situations where a proposed

action has potential impacts. The review for the presence or absence of such extraordinary circumstances will be documented by the completion of the ESW. There are a total of 24 of these proposed actions in this rule, including proposed actions such as loans for livestock purchases, construction in previously disturbed areas, grading, shaping, leveling, and refilling. These are categories of proposed actions where such extraordinary circumstances with the potential for environmental impacts have rarely resulted in potential effects. But, due to the potential for impacts, a review using the ESW is necessary to determine that no extraordinary circumstances exist.

- Third, those proposed actions that typically have the potential to have a significant impact on the human environment but for which, as a general matter, mitigation measures can be applied to decrease the level of significance to support a Finding of No Significant Impact. For those proposed actions, an environmental review in the form of an EA or EIS will be required and a CatEx will not be considered. If the context and intensity of the impacts are uncertain, these could be analyzed by completing the ESW and using the results to determine the need for an EA or an EIS. Otherwise, the ESW step can be skipped and the proposed action addressed using an EA or EIS, as appropriate. There are a total of 46 of these proposed actions and include proposed actions such as pond planning and construction, dike planning and construction, and operating loans for proposed actions with demolition or construction planned. As is true for every FSA proposed action, if a property is deemed historic, these proposed actions are also considered as undertakings that have the potential to affect a historic property and will therefore be subject to section 106 of the National Historic Preservation Act (NHPA; 54 U.S.C. 306108). Consultation with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), Tribal governments, and the affected public will be conducted, as appropriate, based on the location, nature, and scale of the proposed action. This is also true if a proposed action has the potential to impact species or habitats listed under the Endangered Species Act (ESA) (16 U.S.C. 1531 through 1544); consultation is required with the U.S. Fish and Wildlife Service or National Marine Fisheries Service, or both, as appropriate. Other consultations or reviews may be needed, given the

resources potentially impacted, such as wetlands or floodplains.

As specified in § 799.34 of this rule and the CEQ regulations in 40 CFR 1507.3, FSA is required to publish a document in the **Federal Register** to announce new CatExs. The document must provide for public comment. The proposed rule, as published in the **Federal Register**, served as the notice of the new CatExs in this rule, and comments were requested for a 90-day period on all of the proposed rule, including the CatExs specified in §§ 799.31 and 799.32. FSA analyzed the public comments and has made changes in response to comments as discussed below in the Summary of Public Comments and FSA Responses section.

The inclusion in the regulations of CatExs that were previously not explicitly listed as CatExs in the FSA NEPA regulations, but were previously documented as CatExs in their corresponding program regulations and FSA handbooks, will increase transparency and clarity of FSA's NEPA process. The new CatExs that this rule adds to the regulation, and the new ESW, will reduce the time and effort required for the environmental review of proposed actions that in the past required EAs, but almost always resulted in FONSI as the result of the EAs.

EA Changes

The previous FSA NEPA regulations in 7 CFR part 1940, subpart G, have two categories of Environmental Assessments (Class I and Class II). As currently specified by CEQ, there is no variation on EA requirements; for example, a checklist does not meet the definition of an EA (40 CFR 1508.9). This regulation has only one category of Environmental Assessment, which makes the FSA NEPA process consistent with the CEQ regulations and less complex than previously. This is a substantive change in the regulation, but not in the existing process.

The previous FSA Farm Programs NEPA regulations in 7 CFR part 799 do not specify the types of proposed actions for which an EA is required. This rule now includes a specific list of proposed actions for which an EA is normally required, in addition to the previously discussed list of CatExs where an ESW may be needed to determine if an EA is required (see 7 CFR 799.31 and 799.32, respectively). This rule also specifies the information that must be included in an EA (see 7 CFR 799.42). These provisions help add clarity to the NEPA process.

This rule adds criteria for developing a PEA if proposed actions in a program

individually have an insignificant environmental impact, but cumulatively could have a significant impact (see 7 CFR 799.40(c)). FSA has performed PEAs in the past in conformance with CEQ requirements, but the previous FSA regulations did not specify the procedures for doing so. FSA's PEAs are broad NEPA documents that examine a program or policy on a larger scale and provide an analytical framework to examine environmental impacts in a comprehensive manner, while providing the basis for future proposed actions and site-specific analyses ("tiering"). The PEA process eliminates the need to review and prepare an ESW for each of the individual incentives to provide public access or to implement public access-related activities for any single parcel of land in a State. The PEA process:

- Allows FSA to identify similar proposed actions that share common issues, timing or geography;
- Provides a framework for future tiered analyses to be consistent with one another; shortens development time; and
- Reduces funding needs while streamlining or eliminating the environmental review process for certain individual proposed actions analyzed in the PEA.

The use of the updated CatEx lists will likely substantially reduce the number of EAs that FSA is required to complete in a year, as compared to the number of EAs that FSA has completed in the past. The expected reduction in the number of EAs will depend on the finding of no extraordinary circumstances during the ESW review, and in some cases the ESW process could result in a finding that an EA is required. Specifically, many Farm Loan Programs proposed actions that previously required an EA will be categorically excluded with documentation required using the new ESW process. Some will be categorically excluded as recorded on the ESW without requiring additional supporting documentation.

EIS Changes

This rule includes a new subpart on the EIS process that consolidates EIS requirements from the previous regulations, and more specifically describes the processes involved. As specified in this rule and as required by NEPA and CEQ regulations, an EIS is required for the following four types of proposed actions:

- Legislative proposals, not including appropriations requests, drafted and submitted to Congress by FSA, that have the potential to have significant impact

on the quality of the human environment, as specified in 40 CFR 1506.8;

- Regulations for new and substantively discretionary programs, if through the preparation of an ESW or EA, as appropriate, FSA has determined that an EIS is necessary;

- Broad Federal assistance programs administered by FSA involving significant financial assistance for ground disturbing activities or payments to program participants that may have significant cumulative impacts on the human environment or national economy; and

- Ongoing programs that have been found through previous environmental analyses to have major environmental concerns.

These four categories of proposed actions, while more clearly defined in this rule than in the previous regulations, are substantially similar to the requirements in the previous NEPA regulations for FSA Farm Programs in 7 CFR part 799. The previous NEPA regulations for FSA Farm Loan Programs in 7 CFR part 1940, subpart G, specify some general criteria for determining if an EIS is needed, with an emphasis on the location of the proposed action (for example, floodplains, wetlands). This rule clarifies the requirements for an EIS, but is not intended to substantively change when an EIS is required. This rule is not expected to result in a change in the number of EISs that FSA conducts each year. This rule explains more clearly the procedures and process FSA will follow when preparing an EIS, including specific requirements for the information that must be included in an EIS. This rule also adds specific information on the process for developing a programmatic EIS (PEIS), which was previously specified in FSA handbooks rather than the regulations. As noted earlier, much of that process has already been implemented administratively.

Summary of Substantive Changes

This final rule consolidates and reorganizes the provisions previously in 7 CFR parts 799 and 1940, subpart G, into a revised 7 CFR part 799, adds longer and more specific lists of CatExs and of proposed actions requiring EAs, and adds new provisions to comply with current CEQ regulations. As discussed below, additional minor changes and clarifications were made based on comments received on the proposed rule. The following table summarizes how the major provisions in this regulation compare to similar provisions in the previous regulations.

TABLE 1—PREVIOUS 7 CFR PARTS 799 AND 1940 COMPARED TO REVISED 7 CFR PART 799

Major provisions	Previous 7 CFR part 799	Previous 7 CFR part 1940	7 CFR part 799 (as revised; this rule)	Additional information
CatExs	The term CatEx or categorical exclusion was not used, although there is a list of proposed actions not normally requiring an EA or EIS.	Some specific Farm Loan Programs proposed actions were categorically excluded under 7 CFR 1940.310(d).	Lists all categories of FSA proposed actions and separates them into two categories: <ul style="list-style-type: none"> Proposed actions that are always CatExs, with no review required; the use of these CatExs will be recorded on the ESW. Proposed actions that are categorically excluded with review using the ESW to determine whether an extraordinary circumstance exists, in which case an EA will be required. 	
EAs	Required NEPA process to be followed but did not specify which Farm Programs proposed actions require an EA.	Required EAs, depending on circumstances, for certain Farm Loan Programs proposed actions. See 7 CFR 1940.311, 312, 318, and 319.	Lists all specific FSA proposed actions that require an EA and those that require review through an ESW to determine if an EA is required (based on existence of extraordinary circumstances). Eliminates the Class I and Class II EA process for Farm Loan Programs.	Some proposed actions that previously required an EA are now categorically excluded proposed actions.
EIS	Specified general categories of FSA Farm Programs proposed actions that are likely to have a significant impact on the environment, and specific programs that are not.	Specified criteria for determining significant impacts, with an emphasis on floodplains and wetlands. See 7 CFR 1940.313, 314, and 320.	Specifies the general categories of FSA proposed actions that are likely to have a significant impact on the environment. Specifies the content of an EIS and the review process.	No change in the types of proposed actions for which an EIS is required, but more detail on the content and review process of an EIS.
ESW	An appendix provided the now obsolete ASCS-929 form.	Environmental Evaluation (RD-1940-22) could be required to determine if a Class I or Class II EA should be prepared. See 7 CFR 1940.317(c).	Review with an ESW is required for FSA proposed actions using a CatEx requiring documentation to determine if an extraordinary circumstance exists and if an EA or EIS should be prepared.	The ESW and instructions are in the handbooks.
Programmatic NEPA Process.	Not addressed.	Not addressed specifically, although tiering was in 7 CFR 1940.327.	Specifies process for conducting programmatic NEPA for FSA programs and proposed actions that have a national scope.	This is not a new process for FSA, but the process was previously not specified in the FSA regulations.
Integration of other environmental laws and regulations.	NEPA and CEQ's NEPA regulations were the only environmental laws and regulations referenced.	Some other environmental law requirements were mentioned, but not in detail and with little guidance on how they apply.	Many environmental laws, Executive Orders, and regulations are added as references. Compliance with other environmental laws, such as ESA, is explained in detail and integrated into the ESW.	FSA already complies with the Executive Orders, USDA regulations, laws, and CEQ regulations listed in the final rule, but most of those references were not in the previous regulations.

Consolidating and Clarifying Amendments

Many of the changes in this rule are essentially minor, technical, and clarifying changes; some changes reorganize the requirements from the previous regulations. This section

discusses the technical and structural changes to the regulations that are intended to increase clarity and remove obsolete provisions, but do not change requirements for the public or change the environmental review processes administratively.

All of the definitions that apply to NEPA implementation for FSA Farm Programs, Farm Loan Programs, and CCC programs administered by FSA are now in § 799.4. In addition to the definitions already in the previous regulations, this rule adds definitions

for “Administrator,” “application,” “construction,” “consultation,” “environmental screening worksheet,” “financial assistance,” “historic properties,” “memorandum of agreement,” “plow zone,” “program participant,” “protected resources,” “State Historic Preservation Officer,” “Tribal Historic Preservation Officer,” and “wetlands.” These terms are all already used in FSA’s current NEPA implementation and Environmental Quality Programs handbook (1–EQ); adding them to the regulations will provide clarity to the FSA NEPA process, but will not change the existing process.

Similarly, for consistency within USDA, the definition for “consultation” in this rule includes the process of considering the views of other participants in the environmental review process and working toward agreement where feasible. This is consistent with how other USDA agencies (for example, NRCS) define “consultation” in their NEPA regulations.

All of the FSA NEPA compliance responsibilities are specified in 7 CFR part 799. The regulation clarifies who is responsible for NEPA and NHPA compliance at the national level by specifying that the Administrator or designee will appoint a National Environmental Compliance Manager as required by 40 CFR 1507.2(a), and a Federal Preservation Officer as required by section 110 of NHPA (54 U.S.C. 306101) and Executive Order 13287. These are not new responsibilities; this rule simply clarifies the requirements. To update the previous position titles in FSA, the FSA positions previously referred to as “State Director” are now referred to as “State Executive Director.” Other revised provisions clarify the role of the State Environmental Coordinator, to be consistent with current practice.

The requirements for CatExs, EAs, and EISs are organized into separate subparts, so that it is clearer which requirements and processes apply to each type of environmental review. For example, the section on “tiering,” a process that is relevant to the EA and EIS processes, but not used for CatExs, will be included in the EA and EIS provisions, but the requirements for “tiering” will not change.

Many of the changes in this rule remove obsolete provisions and terminology. For example, references to agencies that no longer exist have been removed and replaced with current references. This rule also removes references to programs that no longer exist (such as the Agricultural

Conservation Program, Water Bank Program, Tobacco Production Adjustment Program, Bee Indemnity Program, and Naval Stores Program), replacing them with more general provisions that apply to types of programs and proposed actions rather than to specific programs. These changes make the regulations clearer, more transparent, and up to date, but are not substantive changes and should have no impact on the environmental review process.

The previous regulations in 7 CFR parts 799 and 1940, subpart G, have numerous exhibits and appendices. These include obsolete forms and obsolete organizational charts. This rule removes those exhibits and appendices, which does not change the existing process because these items are no longer used. In § 799.1, “Purpose,” this rule adds references to several dozen relevant environmental laws, Executive Orders, and regulations that were developed since the previous regulations were published. References to departmental regulations previously listed in appendices to 7 CFR part 1940 have also been moved to this list of references. FSA is already required to comply with these laws, Executive Orders, departmental regulations, and regulations of other agencies, so listing all of the relevant references in one consolidated section will not be a change to the existing practice.

Conforming Changes

In addition to the changes discussed above, a number of changes needed to be made in other related FSA regulations to update references to the appropriate NEPA regulations. Throughout the FSA regulations, this rule updates references to NEPA regulations and environmental compliance to refer to 7 CFR part 799. This rule removes environmental compliance sections that are now redundant. For example, the separate environmental compliance section for the Farm Storage Facility Loan Program, which was in 7 CFR part 1436, is not necessary because that program is subject to the same environmental compliance requirements as every other FSA program.

Along with the changes to the regulations, FSA will make conforming changes to any references to 7 CFR part 1940, subpart G in, for example, forms and handbooks.

Summary of Public Comments and FSA Responses

The 90-day comment period for the proposed rule ended December 2, 2014. FSA received 24 comments on the

proposed rule. Comments were received from farming and food safety organizations, government agencies, financial institutions, and private individuals. Some of the comments received reflected misunderstandings of FSA’s current and proposed NEPA processes, which are now clarified in this rule as discussed below. Other comments suggested specific changes, which are discussed below.

The following discussion summarizes the issues raised by commenters and FSA’s responses to those comments.

Comment: Do not require a Notice of Intent (NOI) for an EA.

Response: We are not requiring NOIs for EAs. This has been clarified and a change made in response to this comment in § 799.15(b)(3).

Comment: Include the ESW in the regulation. The ESW should have been included in the proposed rule so that the public had a chance to comment on it.

Response: The ESW is an internal document only. As such, it will be included in the FSA handbook. The ESW will remain flexible over time. No change in being made in response to this comment.

Comment: Clarify Animal Feeding Operation (AFO) and Confined AFO (CAFO) definitions and requirements. There were also questions about the NEPA requirements for CAFOs, including impact on floodplains and watersheds, and making CAFOs pay for the cost of EAs and EIS. Do not increase these requirements.

Response: We continue to use the U.S. Environmental Protection Agency’s definitions for CAFOs, which are specified in 40 CFR 122.23. We have not increased the NEPA requirements for CAFOs from the current process; currently, the NEPA requirements for medium and large CAFOs are synonymous with the process included in this rule.

Comment: Prepare an environmental review of the changes in this rule.

Response: NEPA, CEQ Implementing Regulations, and the recent CEQ Guidance on Establishing New CatExs, do not require an environmental review of the changes in this rule. Rather, CEQ will review this regulation, the CatExs, and all other provisions, and prepare a Conformity Determination, with which they will determine whether or not this rule conforms to the specifications of NEPA and CEQ’s Implementing Regulations. No change in being made in response to this comment.

Comment: Add two additional CatExs, one for minor amendments and another for adopting CatExs of other agencies for shared proposed actions.

Response: We have added the adoption of CatEx by other agencies in 799.32(c)(3)(v) and modified a proposed CatEx in 799.31(b)(2)(iii) to better reflect the CatEx of minor amendments to already approved proposed actions.

Comment: Discontinue approving loans for CAFOs.

Response: Science and technology have transformed the agriculture sector over the second half of the 20th century. CAFOs provide a cost effective means of livestock production, an efficient use of available resources (land and labor), and an efficient means of ensuring a supply of reasonably priced protein for the nation. Environmentally safe and compliant CAFO operations are ensured by the U.S. Environmental Protection Agency regulation, permitting, and related monitoring and enforcement actions.

CAFO's represent an important part of modern American agriculture; therefore, FSA lending for new or expanded CAFO operations is consistent with FSA's stated vision of providing economic opportunity through innovation, helping rural America thrive; promoting agriculture production; as well as being in step with its stated mission of fostering a market-oriented, economically, and environmentally sound American agriculture delivering an abundant, safe, and affordable food and fiber supply while sustaining quality agricultural communities. No change is being made in response to this comment.

Comment: Expand list of sensitive resources to include impaired waters.

Response: We have added waterbodies that are listed as impaired waters under section 303(d) of the Clean Water Act (33 U.S.C. 1251–1387) to the list of protected resources in § 799.33(e)(3).

Comment: Prepare an environmental review on commodity support and crop insurance payments.

Response: To the extent FSA has discretionary authority over changes to these programs, and changes are more than administrative in nature, we will perform appropriate environmental review. No change in being made in response to this comment.

Comment: Document the rationale for CatExs.

Response: This documentation and analysis has been done as part of the conformity review for this rulemaking process by CEQ. No change in being made in response to this comment.

Comment: Combine federal NEPA requirements with state-level requirements.

Response: State-level requirements are not consistent nationally. As such, it

would not be appropriate to attempt to combine all state requirements with FSA's agency-wide NEPA rule. That said, where possible and appropriate, FSA always encourages combining and streamlining shared compliance processes. No change in being made in response to this comment.

Comment: If FSA accepts NRCS documentation, separate consultation should not be needed.

Response: As lead agency for its proposed actions, FSA still needs to consult with NRCS regardless of environmental documentation provided by NRCS. FSA encourages combined consultation to the extent these can be appropriately combined on a case-by-case basis. No change in being made in response to this comment.

Comment: Define "plow zone."

Response: This rule now includes a definition of "plow zone" in § 799.4(b) to specify that it is the depth to which a site has been previously disturbed by plows during agricultural tillage or other legal actions.

Comment: Clarify requirements for "cattle loans."

Response: This rule more clearly identifies which projects involving cattle will require additional internal FSA documentation, such as youth loans (§ 799.31(b)(1)(v)), loans for livestock purchases (§ 799.32(c)(1)(ii)), or construction of a CAFO (§ 799.41(a)(9)).

Comment: Clarify documentation for CatExs with and without the ESW.

Response: To document our NEPA decisions, FSA decided that all FSA proposed actions will require completion of the ESW, unless it is clear to FSA that an EA or EIS is required. To clarify this, the form has been split in separate portions. The first portion is to record the use of CatExs included in § 799.31. The second portion is to document the review of CatExs included in § 799.32.

Comment: More specifically define the following terms:

- Land clearing,
- Commercial facilities and structures,
- Minor planting and management, and
- Pesticides and fertilizers.

Response: Minor planting and management was determined to be sufficiently defined in § 799.31(b)(4). The use of the following terms have been further clarified in the following locations:

- Land clearing § 799.41(a)(5),
- Commercial facilities and structures § 799.41(a)(8), and
- Pesticides and fertilizers § 799.31(b)(5)(vi).

Comment: As proposed, the provisions for medium CAFOs would be an onerous impediment to obtaining financing for operations that will often include young or beginning farmers.

Response: We revised the provisions to clarify that EAs will only be required for large CAFOs; ESW review will be completed for small and medium CAFOs if there are no extraordinary circumstances involved in the proposed action.

Comment: The phrase "installation or enlargement of irrigation facilities" must be removed from the list of proposed actions requiring an EA or more specifically defined. Including wells, pumping plants, and sprinklers in the list of proposed actions requiring an EA could subject a large number of harmless and extremely low risk projects to additional onerous steps, costs and financing delays. Some provisions in the EA section are overly broad and ambiguous.

Response: As specified in § 799.41(a)(4), the EA requirement for proposed actions related to the installation or enlargement of irrigation facilities are when those facilities are designed to irrigate an aggregate of greater than 320 acres. Therefore, these proposed actions may not be related to low risk projects. No change in being made in response to this comment.

Comment: Some of the proposed actions under § 799.31 and some of the loan proposed actions involving construction included in § 799.34 are too broad and inconsistent with the NEPA regulations in 40 CFR 1508.25.

Response: The CatExs that involve construction have been revised to clarify and add context to require the appropriate level of environmental review. In addition to the clarifications, the CatExs that were proposed in § 799.34 have also been moved into § 799.32.

Miscellaneous Changes

In addition to the changes discussed above, during the development of this final rule and in keeping with the overall nature of the changes and clarifications made in response to the public comments, we determined that the following changes need to be made to the rule:

- Removed references to NHPA throughout the rule, as impacts to NHPA-governed resources are included as an extraordinary circumstance in § 799.33(e)(1).
- Amended the definition of floodplains under § 799.4(b) to be consistent with the new Executive Order 13690.

- Clarified in § 799.2(a)(2) FSA's commitment to resource protection.
- Clarified and broadened public notice options specified in § 799.2(a)(4).
- Clarified in § 799.2(b) that a proposed action can be categorically excluded only if all the components of the proposed action are considered CatExs, and no extraordinary circumstances are triggered, and that the component triggering the highest level of NEPA review dictates the overall level of review for the proposed action.
- Clarified in § 799.6(a)(2) the requirement to appoint SECs.
- Clarified FSA program participant responsibilities in § 799.7(a)(7) through (10).
- Removed a provision in § 799.7(c), which had been proposed, requiring FSA to provide information to participants regarding the level of information required for evaluating proposed actions, as these responsibilities are internal, need to remain flexible to adapt to changing external requirements, could mislead participants regarding the level of review needed for their proposed action, and may need to be state- or locally-specific.
- Clarified in § 799.12(d) the environmental compliance requirements for emergency actions to address immediate post-emergency health or safety hazards.
- Clarified in § 799.15(d) the notification requirements for the opportunity for the public to review of FONSI's in the certain limited circumstances as specified in CEQ regulations in 40 CFR 1501.4(e)(2)(i) through (ii).
- Clarified in § 799.17(b)(4) that the FSA Administrator can decide if public meetings are needed for a given proposed action.
- Clarified in § 799.18 and throughout when the ESW or related environmental documentation, for example, the related NRCS form, is required. The use of the ESW depends on whether the appropriate CatExs covering a given FSA proposed action are in §§ 799.31 or 799.32. For those CatExs listed in § 799.31, the ESW is used to record the CatEx. For those CatExs listed in § 799.32, the ESW is used to review the proposed action to determine if the CatEx applies or if there are extraordinary circumstances.
- Moved a CatEx in § 799.31 from the paragraph covering administrative actions to the paragraph covering repair, improvement, or minor modification proposed actions.
- Added "minor management" and "minor construction" to the heading of

§ 799.32(c)(2) for consistency with the actual CatExs included in the category.

- Moved "nutrient management" from § 799.31 to § 799.32 for consistency with the potential for environmental impacts.
- Clarified in § 799.32(d)(2) that an ESW is not needed if it is already known, based on anticipated impacts, that an EA or EIS is needed.
- Clarified in § 799.33(b)(4) that a violation of a Federal, State, or local law or policy is an extraordinary circumstance that prevents the use of the ESW.
- Clarified provisions in § 799.41(a)(7) for consistency with the requirements for a Concentrated Aquatic Animal Production Facility (CAAP), as defined by the U.S. Environmental Protection Agency in 40 CFR 122.24–25.
- Clarified in § 799.41(a)(8) that commercial facilities or structures are those used for processing or handling of farm production or for public sales.
- Clarified in § 799.41(a)(10) the refinancing proposed actions involving large CAFOs and specifically, that an EA is required if the CAFO has been in operation for 24 months or less. This was changed from 12 months to avoid any potential circumvention of federal environmental compliance requirements.
- Clarified in § 799.41(a)(11) through (12) that an EA is required for new rules only when they are substantively discretionary.
- Clarified in § 799.41(b) that proposed actions that do not meet the thresholds defined in § 799.41(a) and are not listed in §§ 799.31 or 799.32, require review using the ESW to determine if an EA or EIS is warranted.
- Clarified in § 799.42(c) FSA's role in applicant-prepared EAs.

Effective Date

In general, the Administrative Procedure Act (5 U.S.C. 553) requires that before rules are issued by Government agencies, the rule must be published in the **Federal Register**, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is that section 553 does not apply when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. Therefore, because this rule relates to FSA benefit and loan programs, section 553, including the 30-day effective period requirement, does not apply. This final rule is effective when published in the **Federal Register**.

Executive Orders 12866 and 13563

Executive Order 12866, "Regulatory Planning and Review," and Executive

Order 13563, "Improving Regulation and Regulatory Review," direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this final rule as not significant under Executive Order 12866, "Regulatory Planning and Review," and has therefore not reviewed this rule.

Clarity of the Regulations

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. Comments were solicited as part of the proposed rule process and clarifications have been made to the text of this regulation as a result of the comments received.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Even though a proposed rule was published for this rulemaking initiative, this rule is not subject to the Regulatory Flexibility Act because the agencies were not required by any law to publish a proposed rule for public comments for this rulemaking.

Environmental Review

The Council on Environmental Quality regulations do not direct agencies to prepare an environmental review or document before establishing Agency procedures (such as this regulation) that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of proposed actions:

- (1) Those that normally require preparation of an environmental impact statement;

(2) Those that normally require preparation of an environmental assessment; and

(3) Those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)).

CatExs are one part of those agency procedures, and therefore establishing CatExs does not require preparation of an environmental review or related document. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of environmental review is required for a particular proposed action. The requirements for establishing agency NEPA procedures are specified in 40 CFR 1505.1 and 1507.3. The determination that establishing CatExs does not require environmental review and related documentation has been upheld in *Heartwood, Inc. v. U.S. Forest Service*, 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), *aff'd*, 230 F.3d 947, 954–55 (7th Cir. 2000).

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. This rule does not provide grants, cooperative agreements, or any other benefits. Therefore, FSA has concluded that this rule does not require consultation with State and local officials as when USDA provides Federal financial assistance or direct Federal development (see 7 CFR 3015.307). Therefore, this rule is not subject to Executive Order 12372.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. The rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, all administrative appeal provisions in 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on 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, except as required by law. Nor will this rule impose substantial direct compliance costs on State and local governments. The provisions in this rule may impose compliance costs on State and local governments, but these are not new costs, as the provisions in this rule have already been implemented as required by per various Executive Orders, laws, and CEQ regulations. Therefore, consultation with the States is not required.

Executive Order 13175

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

FSA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under Executive Order 13175. To ensure this, with assistance from the USDA Office of Tribal Relations, FSA engaged in Tribal consultation in 2014 jointly with the USDA Rural Development Mission Area, who also amended their NEPA regulations. No comments were received as a result of this consultation. If a Tribe requests additional consultation, FSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided.

Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, or the private sector. Agencies generally must prepare a

written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule does not contain any Federal mandates, as defined in Title II of UMRA, for State, local, or Tribal governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

SBREFA Congressional Review

This rule is not a major rule under SBREFA (Pub. L. 104–121). Therefore, there is no requirement to delay the effective date for 60 days from the date of publication to allow for Congressional review. This rule is effective on the date of publication in the **Federal Register**.

Federal Assistance Programs

This rule applies to all Farm Service Agency Federal assistance programs found in the Catalog of Federal Domestic Assistance.

Paperwork Reduction Act of 1995

Previously, as specified in 7 CFR 1940.350, the OMB control number approving the NEPA information collection for FSA and the Rural Development agencies was 0575–0094. The changes to the regulation eliminate FSA's use of the form, RD–1940–22, Request for Environmental Information, previously used by FSA and included in that approval. In the past, financial institutions completed the form RD–1940–22 and submitted the form to FSA; that process has been revised and that form is no longer used. The burden hours will be reduced by 1,050 hours for this change in OMB 0575–0094 when that is renewed.

The FSA NEPA regulation does not have any information collection activities related to the NEPA process. The appropriate FSA employee gathers information from soil maps, wetland maps, etc., then may visit the site. The FSA employee uses the ESW form, which is an internal form within FSA only. The ESW is completed by the appropriate FSA staff, with relevant information from one or more of the existing FSA forms with information collection approval. There is no information collection burden for this rule because it is associated with application for or participation in one or

more FSA programs and that information collection burden is approved for each respective FSA program, as needed. A few specific FSA program-related forms will require conforming changes including, but not limited to, replacing references on the forms to 7 CFR 1940 to 7 CFR 799; such changes will be addressed under the specific program control number.

As shown in § 799.42(c), FSA may request that a program participant provide information for use in an EA. That supplemental information will be case specific; the primary information comes from the information the applicant gave to the program itself (already covered by the relevant OMB control number for the respective FSA or CCC program) and site visits. Any additional information will be specific to the action in question. Therefore, it does not require additional approval under the Paperwork Reduction Act (44 U.S.C. chapter 35) for this rule.

E-Government Act Compliance

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

List of Subjects

7 CFR Part 761

Accounting, Loan programs—agriculture, Rural areas.

7 CFR Part 762

Agriculture, Banks, Banking, Credit, Loan programs—agriculture, Reporting and recordkeeping requirements.

7 CFR Part 763

Agriculture, Banks, Banking, Credit, Loan programs—agriculture.

7 CFR Part 764

Agriculture, Disaster assistance, Loan programs—agriculture.

7 CFR Part 765

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs—agriculture.

7 CFR Part 766

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs—agriculture.

7 CFR Part 767

Agriculture, Credit, Government property, Government property management, Indians—loans, Loan programs—agriculture.

7 CFR Part 770

Credit, Indians, Loan programs—agriculture, Reporting and recordkeeping requirements.

7 CFR Part 772

Agriculture, Credit, Loan programs—agriculture, Rural areas.

7 CFR Part 773

Apples, Loan programs—agriculture.

7 CFR Part 774

Loan programs—agriculture, Seeds.

7 CFR Part 799

Environmental impact statements.

7 CFR Part 1436

Administrative practice and procedure, Loan programs—agriculture, Penalties, Price support programs, Reporting and recordkeeping requirements.

7 CFR Part 1940

Agriculture, Environmental protection, Flood plains, Grant programs—agriculture, Grant programs—housing and community development, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements, Rural areas, Truth in lending.

For the reasons discussed above, the regulations in 7 CFR chapters VII, XIV, and XVIII are amended as follows:

7 CFR Chapter VII

PART 761—FARM LOAN PROGRAMS; GENERAL PROGRAM ADMINISTRATION

■ 1. The authority citation for part 761 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 761.10 [Amended]

■ 2. Amend § 761.10(c)(3) by removing the words “subpart G of 7 CFR part 1940” and adding the words “part 799 of this chapter” in their place.

PART 762—GUARANTEED FARM LOANS

■ 3. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 762.128 [Amended]

■ 4. Amend § 762.128 as follows:

■ a. In paragraph (a) remove the words “part 1940, subpart G, of this title” and add the words “part 799 of this chapter” in their place; and

■ b. In paragraph (c)(3) remove the words “part 1940, subpart G” and add the words “part 799 of this chapter” in their place.

PART 763—LAND CONTRACT GUARANTEE PROGRAM

■ 5. The authority citation for part 763 continues to read as follows:

Authority: 5 U.S.C. 501 and 7 U.S.C. 1989.

§ 763.7 [Amended]

■ 6. In § 763.7(b)(12) remove the words “part 1940, subpart G, of this title” and add the words “part 799 of this chapter” in their place.

§ 763.16 [Amended]

■ 7. In § 763.16(a) remove the words “part 799 and part 1940, subpart G, of this title” and add the words “part 799 of this chapter” in their place.

PART 764—DIRECT LOAN MAKING

■ 8. The authority citation for part 764 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§§ 764.51 and 764.106 [Amended]

■ 9. Amend §§ 764.51(b)(7) and 764.106(b) by removing the words “subpart G of 7 CFR part 1940” and adding the words “part 799 of this chapter” in their place.

PART 765—DIRECT LOAN SERVICING—REGULAR

■ 10. The authority citation for part 765 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 765.205 [Amended]

■ 11. Amend § 765.205:

■ a. In paragraph (a)(3) by removing the words “subpart G of 7 CFR part 1940” and adding the words “part 799 of this chapter” in their place; and

■ b. In paragraph (b)(3)(xiii) by removing the words “part 1940, subpart G of this title” and adding the words “part 799 of this chapter” in their place.

§§ 765.252 and 765.351 [Amended]

■ 11a. Amend §§ 765.252 and 765.351 by removing the words “subpart G of 7 CFR part 1940” and adding the words “part 799 of this chapter” in their place in the following places:

■ a. § 765.252(b)(3)(ii); and

■ b. § 765.351(a)(6).

PART 766—DIRECT LOAN SERVICING—SPECIAL

■ 12. Revise the authority citation for part 766 to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 1981d(c).

Subpart C—Loan Servicing Programs

§§ 766.102 and 766.112 [Amended]

■ 13. Amend §§ 766.102 and 766.112 by removing the words “subpart G of 7 CFR part 1940” and adding the words “part 799 of this chapter” in their place in the following places:

- a. § 766.102(b)(3)(ii); and
- b. § 766.112(a)(6).

PART 767—INVENTORY PROPERTY MANAGEMENT

■ 14. The authority citation for part 767 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 767.201 [Amended]

■ 15. Amend § 767.201 introductory text, by removing the words “subpart G of 7 CFR part 1940” and adding the words “part 799 of this chapter” in their place.

PART 770—INDIAN TRIBAL LAND ACQUISITION LOANS

■ 16. Revise the authority citation for part 770 to read as follows:

Authority: 5 U.S.C. 301 and 25 U.S.C. 488.

§ 770.5 [Amended]

■ 17. Amend § 770.5(a) by removing the words “exhibit M to subpart G of part 1940 of this title” and adding the words “part 799 of this chapter” in their place.

PART 772—SERVICING MINOR PROGRAM LOANS

■ 18. Revise the authority citation for part 772 to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 25 U.S.C. 490.

§ 772.4 [Amended]

■ 19. In § 772.4 remove the words “7 CFR part 1940, subpart G and the exhibits to that subpart and”.

§ 772.6 [Amended]

■ 20. Amend § 772.6(a)(6) by removing the words “7 CFR part 1940, subpart G” and adding the words “part 799 of this chapter” in their place.

PART 773—SPECIAL APPLE LOAN PROGRAM

■ 21. The authority citation for part 773 continues to read as follows:

Authority: Pub. L. 106–224.

§ 773.9 [Removed]

■ 22. Remove § 773.9.

§ 773.18 [Amended]

■ 23. Amend § 773.18(a)(3) by removing the words “7 CFR part 1940, subpart G” and adding the words “part 799 of this chapter” in their place.

PART 774—EMERGENCY LOAN FOR SEED PRODUCERS PROGRAM

■ 24. The authority citation for part 774 continues to read as follows:

Authority: Pub. L. 106–224.

§ 774.9 [Removed]

■ 25. Remove § 774.9.

§ 774.17 [Amended]

■ 26. Amend § 774.17(d) by removing the words “7 CFR part 1940, subpart G” and adding the words “part 799 of this chapter” in their place.

■ 27. Revise part 799 to read as follows:

PART 799—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

Subpart A—General FSA Implementing Regulations for NEPA

Sec.

- 799.1 Purpose.
- 799.2 FSA environmental policy.
- 799.3 Applicability.
- 799.4 Abbreviations and definitions.

Subpart B—FSA and Program Participant Responsibilities

- 799.5 National office environmental responsibilities.
- 799.6 FSA State office environmental responsibilities.
- 799.7 FSA program participant responsibilities.
- 799.8 Significant environmental effect.
- 799.9 Environmental review documents.
- 799.10 Administrative records.
- 799.11 Actions during NEPA reviews.
- 799.12 Emergency circumstances.
- 799.13 FSA as lead agency.
- 799.14 FSA as cooperating agency.
- 799.15 Public involvement in environmental review.
- 799.16 Scoping.
- 799.17 Public meetings.
- 799.18 Overview of FSA NEPA process.

Subpart C—Environmental Screening Worksheet

- 799.20 Purpose of the ESW.

Subpart D—Categorical Exclusions

- 799.30 Purpose of categorical exclusion process.
- 799.31 Categorical exclusions to be recorded on an ESW.
- 799.32 Categorical exclusions requiring review with an ESW.
- 799.33 Extraordinary circumstances.
- 799.34 Establishing and revising categorical exclusions.

Subpart E—Environmental Assessments

- 799.40 Purpose of an EA.
- 799.41 When an EA is required.
- 799.42 Contents of an EA.

799.43 Tiering.

799.44 Adoption of an EA prepared by another entity.

799.45 Finding of No Significant Impact (FONSI).

Subpart F—Environmental Impact Statements

799.50 Purpose of an *Environmental Impact Statement (EIS)*.

799.51 When an EIS is required.

799.52 Notice of intent to prepare an EIS.

799.53 Contents of an EIS.

799.54 Draft EIS.

799.55 Final EIS.

799.56 Supplemental EIS.

799.57 Tiering.

799.58 Adoption of an EIS prepared by another entity.

799.59 Record of Decision.

Authority: 42 U.S.C. 4321–4370.

Subpart A—General FSA Implementing Regulations for NEPA

§ 799.1 Purpose.

(a) This part:

(1) Explains major U.S. Department of Agriculture (USDA) Farm Service Agency (FSA) environmental policies.

(2) Establishes FSA procedures to implement the:

(i) National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 through 4370);

(ii) Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500 through 1518); and

(iii) USDA NEPA regulations (§§ 1b.1 through 1b.4 of this title).

(3) Establishes procedures to ensure that FSA complies with other applicable laws, regulations, and Executive Orders, including, but not limited to, the following:

(i) American Indian Religious Freedom Act (42 U.S.C. 1996);

(ii) Archaeological and Historic Preservation Act (16 U.S.C. 469 through 469c);

(iii) Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa through 470mm);

(iv) Clean Air Act (42 U.S.C. 7401 through 7671q);

(v) Clean Water Act (33 U.S.C. 1251 through 1387);

(vi) Coastal Barrier Resources Act (16 U.S.C. 3501 through 3510);

(vii) Coastal Zone Management Act of 1972 (CZMA) (16 U.S.C. 1451 through 1466);

(viii) Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 through 9675);

(ix) Endangered Species Act (ESA) (16 U.S.C. 1531 through 1544);

(x) Farmland Protection Policy Act (7 U.S.C. 4201 through 4209);

(xi) Migratory Bird Treaty Act (16 U.S.C. 703 through 712);

(xii) National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. 300101 through 307101),

(xiii) Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 through 3013);

(xiv) Resource Conservation and Recovery Act (42 U.S.C. 6901 through 6992k);

(xv) Safe Drinking Water Act (42 U.S.C. 300h through 300h.8);

(xvi) Wild and Scenic Rivers Act (16 U.S.C. 1271 through 1287);

(xvii) Wilderness Act (16 U.S.C. 1131 through 1136);

(xviii) Advisory Council on Historic Preservation regulations in 36 CFR part 800 "Protection of Historic Properties;"

(xix) USDA, Office of Environmental Quality regulations in part 3100 of this title, "Cultural and Environmental Quality" (see part 190, subpart F, of this title, "Procedures for the Protection of Historic and Archaeological Properties," for more specific implementation procedures);

(xx) USDA, Natural Resources Conservation Service regulations in part 658 of this title, "Farmland Protection Policy Act;"

(xxi) USDA regulations in part 12 of this title, "Highly Erodible Land and Wetland Conservation;"

(xxii) U.S. Department of the Interior, National Park Service regulations in 36 CFR part 60, "National Register of Historic Places;"

(xxiii) U.S. Department of the Interior, National Park Service regulations in 36 CFR part 63, "Determinations of Eligibility for Inclusion in the National Register of Historic Places;"

(xxiv) USDA, Departmental Regulation 9500-3, "Land Use Policy;"

(xxv) USDA, Departmental Regulation 9500-4, "Fish and Wildlife Policy;"

(xxvi) Executive Order 11514, "Protection and Enhancement of Environmental Quality;"

(xxvii) Executive Order 11593, "Protection and Enhancement of the Cultural Environment;"

(xxviii) Executive Order 11988, "Floodplain Management;"

(xxix) Executive Order 11990, "Protection of Wetlands;"

(xxx) Executive Order 11991, "Relating to Protection and Enhancement of Environmental Quality;"

(xxxi) Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations;"

(xxxii) Executive Order 13007, "Indian Sacred Sites;"

(xxxiii) Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments;"

(xxxiv) Executive Order 13186, "Responsibilities of Federal Agencies to Protect Migratory Birds;"

(xxxv) Executive Order 13287, "Preserve America;" and

(xxxvi) Executive Order 13690, "Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input."

(b) The procedures and requirements in this part supplement CEQ and USDA regulations; they do not replace or supersede them.

§ 799.2 FSA environmental policy.

(a) FSA will:

(1) Use all practical means to protect and, where possible, improve the quality of the human environment and avoid or minimize any adverse environmental effects of FSA actions;

(2) Ensure protection of basic resources, including important farmlands and forestlands, prime rangelands, wetlands, floodplains, and other protected resources. Consistent with Departmental Regulations and related Executive Orders, it is FSA policy not to approve or fund proposed actions that, as a result of their identifiable impacts, direct, indirect, or cumulative, would lead to or accommodate either the conversion of these land uses or encroachment upon them.

(3) Ensure that the requirements of NEPA and other State and national environmental policies designed to protect and manage impacts on the human environment are addressed:

(i) As required by 40 CFR 1501.2, at the earliest feasible stage in the planning of any FSA action,

(ii) Concurrently and in a coordinated manner,

(iii) During all stages of the decision making process,

(iv) Using professional and scientific integrity in their discussions and analyses, identifying applicable methodologies, and explaining the use of the best available information, and

(v) In consultation with all interested parties, including Federal, State, and Tribal governments;

(4) As appropriate, make environmental review available to the public through various means, which can include, but are not limited to: Posting on the National FSA Web site or a State FSA Web site, publishing in the *Federal Register*, or publishing in a newspaper in the area of interest; and

(5) Ensure that, if an FSA proposed action represents one of several phases of a larger action, the entire action is the subject of an environmental review independent of the phases of funding. If

the FSA proposed action is one segment of a larger action, the entire action will be used in determining the appropriate level of FSA environmental review.

(b) A proposed action that consists of more than one categorically excluded proposed action may be categorically excluded only if all components of the proposed action are included within one or more categorical exclusions and trigger no extraordinary circumstances. The component of a proposed action that requires the highest level of NEPA review will be used to determine the required level of the NEPA review.

§ 799.3 Applicability.

(a) Except as provided for in paragraph (b) of this section, this part applies to:

(1) The development or revision of FSA rules, regulations, plans, policies, or procedures;

(2) New or continuing FSA proposed actions and programs, including, on behalf of the Commodity Credit Corporation (CCC), CCC programs, Farm Loan Programs, and Farm Programs; and

(3) FSA legislative proposals, not including appropriations requests, developed by FSA or with significant FSA cooperation and support.

(b) This part does not apply to FSA programs specifically exempted from environmental review by the authorizing legislation for those programs.

§ 799.4 Abbreviations and definitions.

(a) The following abbreviations apply to this part:

CAAP Concentrated Aquatic Animal Production Facilities.

CAFO Concentrated Animal Feeding Operation.

CCC Commodity Credit Corporation.

CEQ Council on Environmental Quality.

EA Environmental Assessment.

EIS Environmental Impact Statement.

ESA Endangered Species Act.

ESW Environmental Screening Worksheet.

FONSI Finding of No Significant Impact.

FPO Federal Preservation Officer.

FSA Farm Service Agency.

MOA Memorandum of Agreement.

MOU Memorandum of Understanding.

NECM National Environmental Compliance Manager.

NEPA National Environmental Policy Act.

NHPA National Historic Preservation Act.

NOA Notice of Availability.

NOI Notice of Intent.

PEA Programmatic Environmental Assessment.

PEIS Programmatic Environmental Impact Statement.

RAO Responsible Approving Official.

RFO Responsible Federal Officer.

ROD Record of Decision.

SEC State Environmental Coordinator.

SED State Executive Director for FSA.

SEIS Supplemental Environmental Impact Statement.

SHPO State Historic Preservation Officer.

THPO Tribal Historic Preservation Officer.

USDA United States Department of Agriculture.

(b) The definitions in 40 CFR part 1508 apply and are supplemented by parts 718 and 1400 of this title; in the event of a conflict the definitions in this section will be controlling. In addition, the following definitions apply to this part:

Administrator means the Administrator, Farm Service Agency, including designees.

Application means the formal process of requesting FSA assistance.

Construction means actions that include building, rehabilitation, modification, repair, and demolition of facilities, and earthmoving.

Consultation means the process of soliciting, discussing, and considering the views of other participants in the environmental review process and working toward agreement where feasible.

Environmental screening worksheet, or ESW, means the FSA screening procedure used to record the use of categorical exclusions, review if a proposed action that can be categorically excluded involves extraordinary circumstances, and evaluate the appropriate level and extent of environmental review needed in an EA or EIS when a categorical exclusion is not available or not appropriate. For the purposes of this part, the ESW may be represented by alternate documentation comparable to the ESW, and that has been approved in advance by the NECM, such as related environmental documentation, including, but not limited to, the related documentation from another agency.

Financial assistance means any form of loan, loan guarantee, grant, guaranty, insurance, payment, rebate, subsidy, or any other form of direct or indirect Federal monetary assistance.

Floodplains means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, including, at a minimum, those that are subject to a 1-percent or greater chance of flooding in any given year.

Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior as defined in 36 CFR 800.16.

Memorandum of Agreement means a document that records the terms and conditions agreed upon to resolve the

potential effects of a Federal agency proposed action or program. Often used interchangeably with Memorandum of Understanding.

Plow zone means the depth of previous tillage or disturbance.

Programmatic Environmental Assessment (PEA) means an assessment prepared when the significance of impacts of a program are uncertain to assist in making this determination.

Programmatic Environmental Impact Statement (PEIS) means an analysis of the potential impacts that could be associated with various components of a program or proposed action that may not yet be clearly defined or even known, to determine if the program or its various components have the potential to significantly affect the quality of the human environment.

Program participant means any person, agency, or other entity that applies for or receives FSA program benefits or assistance.

Protected resources means environmentally sensitive resources that are protected by laws, regulations, or Executive Orders for which FSA proposed actions may pose potentially significant environmental effects.

State Historic Preservation Officer (SHPO) means the state official appointed or designated under the NHPA to administer a State historic preservation program, or a representative to act for the SHPO.

Tribal Historic Preservation Officer (THPO) means the Tribal official appointed by a Tribe's chief governing authority or designated by a Tribal ordinance or preservation program, who has assumed the responsibilities of the SHPO on Tribal lands under the NHPA.

Wetlands means areas that are inundated by surface or ground water with a frequency sufficient to support and, under normal circumstances, do support or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas, such as sloughs, prairie potholes, wet meadows, river overflows, mudflats, and natural ponds.

Subpart B—FSA and Program Participant Responsibilities

§ 799.5 National office environmental responsibilities.

(a) The FSA Administrator or designee:

(1) Is the Responsible Federal Officer (RFO) for FSA compliance with applicable environmental laws, regulations, and Executive Orders,

including NEPA, and unless otherwise specified, will make all determinations under this part;

(2) Will ensure responsibilities for complying with NEPA are adequately delegated to FSA personnel within their areas of responsibility at the Federal, State, and county levels;

(3) Will appoint a National Environmental Compliance Manager (NECM), as required by 40 CFR 1507.2(a), who reports directly to the FSA Administrator; and

(4) Will appoint a qualified Federal Preservation Officer (FPO), as required by Executive Order 13287 "Preserve America" section 3(e) and by section 110 of NHPA (54 U.S.C. 306101). This individual must meet the National Park Service professional qualification standards requirements referenced in 36 CFR part 61 and will report directly to the NECM.

(b) The NECM or designee coordinates FSA environmental policies and reviews under this part on a national basis and is responsible for:

(1) Ensuring FSA legislative proposals and multistate and national programs are in compliance with NEPA and other applicable environmental and cultural resource laws, regulations, and Executive Orders;

(2) Providing education and training on implementing NEPA and other environmental compliance requirements to appropriate FSA personnel;

(3) Serving as the principal FSA advisor to the FSA Administrator on NEPA and other environmental compliance requirements;

(4) Representing FSA, and serving as an intra- and inter-agency liaison, on NEPA- and environmental compliance-related matters on a national basis;

(5) Maintaining a record of FSA environmental compliance actions; and

(6) Ensuring State and county office compliance with NEPA and other applicable environmental laws, regulations, and Executive Orders.

(c) The FPO or designee coordinates NHPA compliance under this part and is responsible for:

(1) Serving as the principal FSA advisor to the NECM on NHPA requirements;

(2) Representing FSA, and serving as FSA intra- and inter-agency liaison, on all NHPA-related matters on a national basis;

(3) Maintaining current FSA program guidance on NHPA requirements;

(4) Maintaining a record of FSA environmental actions related to the NHPA; and

(5) Ensuring State and county office compliance with the NHPA and other cultural resource-related requirements.

§ 799.6 FSA State office environmental responsibilities.

(a) FSA State Executive Directors (SEDs) or designees are the responsible approving officials (RAOs) in their respective States and are responsible for:

(1) Ensuring FSA proposed actions within their State comply with applicable environmental laws, regulations, and Executive Orders, including NEPA; and

(2) Appointing two or more collateral duty State Environmental Coordinators (SECs) or at least one full time SEC.

(b) An SED will not appoint more than one SEC for Farm Programs and one SEC for Farm Loan Programs in a State unless approved in writing by the NECM.

(c) SECs or designees are responsible for:

(1) Serving as the environmental compliance coordinators on all environmental-related matters within their respective State;

(2) Advising SEDs on environmental issues;

(3) Providing training, in coordination with the NECM, on NEPA and other environmental compliance requirements to appropriate FSA State and county office personnel;

(4) Providing assistance on environmental-related matters on a proposed action-by-action basis to State and county office personnel, as needed;

(5) When feasible, developing controls for avoiding or mitigating adverse environmental impacts and monitoring the implementation of those controls;

(6) Reviewing FSA proposed actions that are not categorically excluded from documentation in an environmental assessment or environmental impact statement, or that otherwise require State office approval or clearance, and making appropriate recommendations to the approving official;

(7) Providing assistance to resolve post-approval environmental issues at the State office level;

(8) Maintaining decision records for State office environmental compliance matters;

(9) Monitoring their respective State's compliance with environmental laws, regulations, and Executive Orders;

(10) Acting as a liaison on FSA State office environmental compliance matters with the public and other Federal, State, and Tribal governments;

(11) Representing the SED on environmental issues, as requested;

(12) Delegating duties under this section with the approval of both the SED and NECM; and

(13) Other NEPA and environmental compliance-related duties as assigned.

(d) County Executive Directors, District Directors, and Farm Loan Programs loan approval officers or designees are responsible for compliance with this part within their geographical areas.

§ 799.7 FSA program participant responsibilities.

(a) Potential FSA program participants requesting FSA assistance must do all of the following:

(1) Consult with FSA early in the process about potential environmental concerns associated with program participation. The program participation information required to start participation in an FSA program varies by FSA program and may be in the form of an offer, enrollment, sign-up, contract, note and security agreement, or other as is required by the relevant FSA program.

(2) Submit applications for all Federal, regional, State, and local approvals and permits early in the planning process.

(3) Coordinate the submission of program participation information to FSA and other agencies (for example, if a conservation plan is required, then the program participation information is also submitted to USDA's Natural Resources Conservation Service).

(4) Work with other appropriate Federal, State, and Tribal governments to ensure all environmental factors are identified and impacts addressed and, to the extent possible, mitigated, consistent with how mitigation is defined in 40 CFR 1508.20.

(5) Inform FSA of other Federal, State, and Tribal government environmental reviews that have previously been completed or required of the program participant.

(6) Provide FSA with a list of all parties affected by or interested in the proposed action.

(7) If requested by FSA, provide information necessary for FSA to evaluate a proposed action's potential environmental impacts and alternatives.

(8) Ensure that all compliance documentation provided is current, sufficiently detailed, complete, and submitted in a timely fashion.

(9) Be in compliance with all relevant laws, regulations, and policies regarding environmental management and protection.

(10) Not implement any component of the proposed action prior to the completion of FSA's environmental review and final decision, or FSA's approval for that proposed action, consistent with 40 CFR 1506.1.

(b) When FSA receives program participation information for assistance

or notification that program participation information will be filed, FSA will contact the potential program participant about the environmental information the program participant must provide as part of the process. This required information may include:

(1) Design specifications;

(2) Topographical, aerial, and location maps;

(3) Surveys and assessments necessary for determining the impact on protected resources listed in

§ 799.33(a)(2);

(4) Nutrient management plans; and

(5) Applications, plans, and permits for all Federal, regional, State and local approvals including construction permits, storm water run-off and operational plans and permits, and engineering designs and plans.

§ 799.8 Significant environmental effect.

(a) In determining whether a proposed action will have a significant effect on the quality of the human environment, FSA will consider the proposed action's potential effects in the context of society as a whole, the affected region and interests, the locality, and the intensity of the potential impact as specified in 40 CFR 1508.27.

(b) [Reserved]

§ 799.9 Environmental review documents.

(a) FSA may prepare the following documents during the environmental review process:

(1) ESW;

(2) Programmatic Environmental Assessment (PEA);

(3) Environmental Assessment (EA);

(4) Supplemental Environmental Assessment;

(4) Programmatic Environmental Impact Statement (PEIS);

(5) Environmental Impact Statement (EIS);

(6) Supplemental Environmental Impact Statement (SEIS);

(7) Finding of No Significant Impact (FONSI);

(8) Record of Decision (ROD);

(9) Notice of Intent (NOI) to prepare any type of EIS;

(10) Notice of Availability (NOA) of environmental documents;

(11) Notice of public scoping meetings;

(12) Other notices, including those required under Executive Order 11988, "Floodplain Management," Executive Order 13690, "Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input," and Executive Order 11990, "Protection of Wetlands;"

(13) Memorandums of Agreement or Understanding (MOA or MOU), such as

those for mitigation of adverse effects on historic properties as specified in 36 CFR part 800, "Protection of Historic Properties;" and

(14) Environmental studies, as indicated and appropriate.

(b) [Reserved]

§ 799.10 Administrative records.

(a) FSA will maintain an administrative record of documents and materials that FSA created or considered during its NEPA decision making process for a proposed action and referenced as such in the NEPA documentation, which can include any or all the following:

(1) Any NEPA environmental review documents listed in § 799.9, as applicable;

(2) Technical information, permits, plans, sampling results, survey information, engineering reports, and studies, including environmental impact studies and assessments;

(3) Policies, guidelines, directives, and manuals;

(4) Internal memorandums or informational papers;

(5) Contracts or agreements;

(6) Notes of professional telephone conversations and meetings;

(7) Meeting minutes;

(8) Correspondence with agencies and stakeholders;

(9) Communications to and from the public;

(10) Documents and materials that contain any information that supports or conflicts with the FSA decision;

(11) Maps, drawings, charts, and displays; and

(12) All public comments received during the NEPA comment periods.

(b) The administrative record may be used, among other purposes, to facilitate better decision making, as determined by FSA.

§ 799.11 Actions during NEPA reviews.

(a) Except as specified in paragraphs (b) and (c) of this section, FSA or a program participant must not take any action, implement any component of a proposed action, or make any final decision during FSA's NEPA and environmental compliance review process that could have an adverse environmental impact or limit the range of alternatives until FSA completes its environmental review by doing one of the following:

(1) Determines that the proposed action is categorically excluded under NEPA under subpart D of this part and does not trigger any extraordinary circumstances; or

(2) Issues a FONSI or ROD under subpart E or F of this part.

(b) FSA may approve interim actions related to proposed actions provided the:

(1) Interim actions will not have an adverse environmental impact;

(2) Expenditure is necessary to maintain a schedule for the proposed action;

(3) Interim actions and expenditures will not compromise FSA's environmental compliance review and decision making process for the larger action;

(4) Interim actions and expenditures will not segment otherwise connected actions; and

(5) NEPA and associated environmental compliance review has been completed for the interim action or expenditure.

(c) FSA and program participants may develop preliminary plans or designs, or perform work necessary to support an application for Federal, State, or local permits or assistance, during the NEPA review process, provided all requirements in paragraphs (a) and (b) of this section are met.

§ 799.12 Emergency circumstances.

(a) If emergency circumstances exist that make it necessary to take action to mitigate harm to life, property, or important natural, cultural, or historic resources, FSA may take an action with significant environmental impact without complying with the requirements of this part.

(b) If emergency circumstances exist, the NECM will consult with CEQ as soon as feasible about alternative NEPA arrangements for controlling the immediate impact of the emergency, as specified in 40 CFR 1506.11.

(c) If emergency circumstances exist, the FPO will follow the emergency procedures specified in 36 CFR 800.12 regarding preservation of historic properties, if applicable.

(d) FSA assistance provided in response to a Presidentially-declared disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5121–5207, is exempt from NEPA requirements, as specified in 42 U.S.C. 5159. Under a Presidentially-declared disaster, the following actions to specifically address immediate post-emergency health or safety hazards are exempt from environmental compliance requirements:

(1) Clearing roads and constructing temporary bridges necessary for performing emergency tasks and essential community services;

(2) Emergency debris removal in support of performing emergency tasks and essential community services;

(3) Demolishing unsafe structures that endanger the public or could create a public health hazard if not demolished;

(4) Disseminating public information and assistance for health and safety measures;

(5) Providing technical assistance to State, regional, local, or Tribal governments on disaster management control;

(6) Reducing immediate threats to life, property, and public health and safety; and

(7) Warning of further risks and hazards.

(c) Proposed actions other than those specified in paragraph (d) of this section that are not specifically to address immediate post-emergency health or safety hazards require the full suite of environmental compliance requirements and are not exempt.

§ 799.13 FSA as lead agency.

(a) When FSA acts as the lead agency in a NEPA review as specified in 40 CFR 1501.5, FSA will:

(1) Coordinate its review with other appropriate Federal, State, and Tribal governments; and

(2) Request other agencies to act as cooperating agencies as specified in 40 CFR 1501.6, and defined in 40 CFR 1508.5, as early in the review process as possible.

(b) If FSA acts as a lead agency for a proposed action that affects more than one State, the NECM will designate one SEC to act as RAO.

(c) If the role of lead agency is disputed, the NECM will refer the matter to the FSA Administrator, who will attempt to resolve the matter with the other agency. If the Federal agencies cannot agree which will serve as the lead agency, the FSA Administrator will follow the procedures specified in 40 CFR 1501.5(e) to request that CEQ determine the lead agency.

§ 799.14 FSA as cooperating agency.

(a) FSA will act as a cooperating agency if requested by another agency, as specified in 40 CFR 1501.6 and defined in 40 CFR 1508.5. However, FSA may decline another agency's request if FSA determines the proposed action does not fall within FSA's area of expertise or FSA does not have jurisdiction by law. If FSA declines such a request to cooperate, that will be documented in writing to the requesting agency and a copy will be provided to CEQ.

(b) FSA may request to be designated as a cooperating agency if another agency's proposed action falls within FSA's area of expertise.

§ 799.15 Public involvement in environmental review.

(a) FSA will involve the public in the environmental review process as early as possible and in a manner consistent with 40 CFR 1506.6. To determine the appropriate level of public participation, FSA will consider:

- (1) The scale of the proposed action and its probable effects;
- (2) The likely level of public interest and controversy; and
- (3) Advice received from knowledgeable parties and experts.

(b) Depending upon the scale of the proposed action, FSA will:

- (1) Coordinate public notices and consultation with the U.S. Fish and Wildlife Service, USDA's Natural Resources Conservation Service, Federal Emergency Management Agency, the National Marine Fisheries Service, the U.S. Army Corps of Engineers, and other agencies, as appropriate, if wetlands, floodplains, ESA-listed species, or other protected resources have the potential to be impacted;

- (2) Make appropriate environmental documents available to interested parties by request;

- (3) Publish a Notice of Intent (NOI) to prepare an EIS, as specified in subpart F of this part; and

- (4) Publish a Notice of Availability (NOA) of draft and final EISs and RODs, as specified in subpart F of this part.

(c) If the effects of a proposed action are local in nature and the scale of the proposed action is likely to generate interest and controversy at the local level, then in addition to the proposed actions specified in paragraphs (a) and (b) of this section, FSA will:

- (1) Notify appropriate State, local, regional, and Tribal governments and clearinghouses, and parties and organizations, including the State Historic Preservation Officer (SHPO) and Tribal Historic Preservation Officer (THPO), known to have environmental,

cultural, and economic interests in the locality affected by the proposed action; and

- (2) Publish notice of the proposed action in the local media.

(d) Public review for 30 days for a FONSI is necessary if any of the limited circumstances specified in 40 CFR 1501.4(e)(2)(i) or (ii) applies.

§ 799.16 Scoping.

(a) FSA will determine the appropriate scoping process for the environmental review of a proposed action based on the nature, complexity, potential significance of effects, and level of controversy of the proposed action.

(b) As part of its scoping process, FSA will:

- (1) Invite appropriate Federal, State, and Tribal governments, and other interested parties to participate in the process, if determined necessary by FSA;

- (2) Identify the significant issues to be analyzed;

- (3) Identify and eliminate from further review issues that were determined not significant or have been adequately addressed in any prior environmental reviews;

- (4) Determine the roles of lead and cooperating agencies, if appropriate;

- (5) Identify any related EAs or EISs;

- (6) Identify other environmental reviews and consultation requirements, including NHPA requirements and State, local, regional, and Tribal requirements, so they are integrated into the NEPA process;

- (7) Identify the relationship between the timing of the environmental review process and FSA's decision making process;

- (8) Determine points of contact within FSA; and

- (9) Establish time limits for the environmental review process.

(c) FSA may hold public meetings as part of the scoping process, if

appropriate and as time permits. The process that FSA will use to determine if a public scoping meeting is needed, and how such meetings will be announced, is specified in § 799.17.

§ 799.17 Public meetings.

(a) In consultation with the NECM, the SEC will determine if public meetings will be held on a proposed action to:

- (1) Inform the public about the details of a proposed action and its possible environmental effects;

- (2) Gather information about the public concerns; and

- (3) Resolve, address, or respond to issues raised by the public.

(b) In determining whether to hold a public meeting, FSA will consider and determine whether:

- (1) There is substantial controversy concerning the environmental impact of the proposed action;

- (2) There is substantial interest in holding a public meeting;

- (3) Another Federal agency or Tribal government has requested a public scoping meeting and their request is warranted; or

- (4) The FSA Administrator has determined that a public meeting is needed.

(c) FSA will publish notice of a public meeting, including the time, date and location of the meeting, in the local media or *Federal Register*, as appropriate, at least 15 days before the first meeting. A notice of a public scoping meeting may be included in a Notice of Intent to prepare an EIS.

(d) If a NEPA document is to be considered at a public meeting, FSA will make the appropriate documentation available to the public at least 15 days before the meeting.

§ 799.18 Overview of FSA NEPA process.

If the proposed action:	FSA:
Is an emergency action	Follows the procedures in § 799.12
Is exempt from section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)) by authorizing legislation for the program.	Implements the action.
Is categorically excluded under § 799.31(b) or § 1b.3 of this title	Implements the action after recording the specific categorical exclusion on the ESW (no review needed).
Is a proposed action that has the potential to impact historic properties as specified in § 799.33(e) and therefore requires the completion of an ESW.	Completes an ESW to determine if there will be an impact on historic properties. FSA will prepare an EA or EIS, as indicated, before implementing the action.
Is a categorically excluded proposed action listed in § 799.32 that requires the completion of an ESW.	Completes an ESW to determine whether extraordinary circumstances are present, as defined in § 799.33. This review includes a determination of whether the proposed action will potentially impact protected resources. If there are no extraordinary circumstances, FSA implements the action; if there are extraordinary circumstances, FSA will prepare an EA or EIS, as indicated, before implementing the action.
Involves a category of proposed actions requiring an EA listed in § 799.41.	Prepares an EA.

If the proposed action:	FSA:
Involves a category of proposed actions requiring an EIS listed in § 799.51.	Prepares an EIS.

Subpart C—Environmental Screening Worksheet

§ 799.20 Purpose of the ESW.

(a) FSA uses the ESW as an initial screening tool to evaluate record the use of a categorical exclusion for a proposed action and to determine the required type of environmental review.

(b) Review with the ESW is not required for proposed actions that are categorically excluded as specified in § 799.31(b) or § 1b.3 of this title, or for proposed actions where FSA determines at an early stage that there is a need to prepare an EA or EIS.

Subpart D—Categorical Exclusions

§ 799.30 Purpose of categorical exclusion process.

(a) FSA has determined that the categories of proposed actions listed in §§ 799.31 and 799.32 do not normally individually or cumulatively have a significant effect on the human environment and do not threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, including requirements of Executive Orders and other USDA regulations in this chapter. Based on FSA's previous experience implementing these actions and similar actions through the completion of EAs, these proposed actions are categorically excluded.

(b) If a proposed action falls within one of the categories of proposed actions listed in § 1b.3 of this title, § 799.31, or § 799.32, and there are no extraordinary circumstances present as specified in § 799.33, then the proposed action is categorically excluded from the requirements to prepare an EA or an EIS.

(c) Those proposed actions in categories in § 799.31 or § 799.32 will be considered categorical exclusions unless it is determined there are extraordinary circumstances, as specified in § 799.33.

§ 799.31 Categorical exclusions to be recorded on an ESW.

(a) Proposed actions listed in this section involve no new ground disturbance below the existing plow zone (does not exceed the depth of previous tillage or disturbance) and therefore only need to be recorded on the ESW; no further review will be required. Unless otherwise noted, the proposed actions in this section also do

not have the potential to cause effects to historic properties, and will therefore not be reviewed for compliance with section 106 of NHPA (54 U.S.C. 306108) or its implementing regulations, 36 CFR part 800. However, some proposed actions may require other Federal consultation to determine if there are extraordinary circumstances as specified in § 799.33.

(b) The following proposed actions are categorically excluded. These proposed actions are grouped into broader categories of similar types of proposed actions. Those proposed actions that are similar in scope (purpose, intent, and breadth) and the potential significance of impacts to those listed in this section, but not specifically listed in § 799.31 or § 799.32, will be considered categorical exclusions in this category, unless it is determined that extraordinary circumstances exist, as specified in § 799.33:

(1) *Loan actions.* The following list includes categorical exclusions for proposed actions related to FSA loans:

- (i) Closing cost payments;
- (ii) Commodity loans;
- (iii) Debt set asides;
- (iv) Deferral of loan payments;
- (v) Youth loans;
- (vi) Loan consolidation;
- (vii) Loans for annual operating expenses, except livestock;
- (viii) Loans for equipment;
- (ix) Loans for family living expenses;
- (x) Loan subordination, with no or minimal construction below the depth of previous tillage or ground disturbance, and no change in operations, including, but not limited to, an increase in animal numbers to exceed the current CAFO designation (as defined by the U.S. Environmental Protection Agency in 40 CFR 122.23);
- (xi) Loans to pay for labor costs;
- (xii) Loan (debt) transfers and assumptions with no new ground disturbance;
- (xiii) Partial or complete release of loan collateral;
- (xiv) Re-amortization of loans;
- (xv) Refinancing of debt;
- (xvi) Rescheduling loans;
- (xvii) Restructuring of loans; and
- (xviii) Writing down of debt;

(2) *Repair, improvement, or minor modification actions.* The following list includes categorical exclusions for repair, improvement, or minor modification proposed actions:

- (i) Existing fence repair;
- (ii) Improvement or repair of farm-related structures under 50 years of age; and

(iii) Minor amendments or revisions to previously approved projects, provided such proposed actions do not substantively alter the purpose, operation, location, impacts, or design of the project as originally approved;

(3) *Administrative actions.* The following list includes categorically excluded administrative proposed actions:

(i) Issuing minor technical corrections to regulations, handbooks, and internal guidance, as well as amendments to them;

(ii) Personnel actions, reduction-in-force, or employee transfers; and

(iii) Procurement actions for goods and services conducted in accordance with Executive Orders;

(4) *Planting actions.* The following list includes categorical exclusions for planting proposed actions:

- (i) Bareland planting or planting without site preparation;
- (ii) Bedding site establishment for wildlife;
- (iii) Chiseling and subsoiling;
- (iv) Clean tilling firebreaks;
- (v) Conservation crop rotation;
- (vi) Contour farming;
- (vii) Contour grass strip establishment;
- (viii) Cover crop and green manure crop planting;
- (ix) Critical area planting;
- (x) Firebreak installation;
- (xi) Grass, forbs, or legume planting;
- (xii) Heavy use area protection;
- (xiii) Installation and maintenance of field borders or field strips;
- (xiv) Pasture, range, and hayland planting;
- (xv) Seeding of shrubs;
- (xvi) Seedling shrub planting;
- (xvii) Site preparation;
- (xviii) Strip cropping;
- (xix) Wildlife food plot planting; and
- (xx) Windbreak and shelterbelt establishment;

(5) *Management actions.* The following list includes categorical exclusions of land and resource management proposed actions:

- (i) Forage harvest management;
- (ii) Integrated crop management;
- (iii) Mulching, including plastic mulch;
- (iv) Netting for hard woods;
- (v) Obstruction removal;

(vi) Pest management (consistent with all labelling and use requirements);
 (vii) Plant grafting;
 (viii) Plugging artesian wells;
 (ix) Residue management including seasonal management;
 (x) Roof runoff management;
 (xi) Thinning and pruning of plants;
 (xii) Toxic salt reduction; and
 (xiii) Water spreading; and

(6) *Other FSA actions.* The following list includes categorical exclusions for other FSA proposed actions:

(i) Conservation easement purchases with no construction planned;

(ii) Emergency program proposed actions (including Emergency Conservation Program and Emergency Forest Restoration Program) that have a total cost share of less than \$5,000;

(iii) Financial assistance to supplement income, manage the supply of agricultural commodities, or influence the cost and supply of such commodities or programs of a similar nature or intent (that is, price support programs);

(iv) Individual farm participation in FSA programs where no ground disturbance or change in land use occurs as a result of the proposed action or participation;

(v) Inventory property disposal or lease with protective easements or covenants;

(vi) Safety net programs administered by FSA;

(vii) Site characterization, environmental testing, and monitoring where no significant alteration of existing ambient conditions would occur, including air, surface water, groundwater, wind, soil, or rock core sampling; installation of monitoring wells; installation of small scale air, water, or weather monitoring equipment;

(viii) Stand analysis for forest management planning;

(ix) Tree protection including plastic tubes; and

(x) Proposed actions involving another agency that are fully covered by one or more of that agency's categorical exclusions (on the ESW, to record the categorical exclusion, FSA will name the other agency and list the specific categorical exclusion(s) that applies).

§ 799.32 Categorical exclusions requiring review with an ESW.

(a) Proposed actions listed in this section may be categorically excluded after completion of a review with an ESW to document that a proposed action does not involve extraordinary circumstances as specified in § 799.33.

(b) This section has two types of categorical exclusions, one without

construction and ground disturbance and one with construction and ground disturbance that will require additional environmental review and consultation in most cases.

(c) Consultations under NHPA, ESA, and other relevant environmental mandates, may be required to document that no extraordinary circumstances exist.

(d) The following proposed actions are grouped into broader categories of similar types of proposed actions without ground disturbance. Those proposed actions that are similar in scope (purpose, intent, and breadth) and the potential significance of impacts to those listed in this section, but not specifically listed in this section, will be considered categorical exclusions in this category, unless it is determined that extraordinary circumstances exist, as specified in § 799.33:

(1) *Loan actions.* The following list includes categorical exclusions for proposed actions related to FSA loans:

(i) Farm storage and drying facility loans for added capacity;

(ii) Loans for livestock purchases;

(iii) Release of loan security for forestry purposes;

(iv) Reorganizing farm operations; and

(v) Replacement building loans;

(2) *Minor management, construction, or repair actions.* The following list includes categorical exclusions for minor construction or repair proposed actions:

(i) Minor construction, such as a small addition;

(ii) Drain tile replacement;

(iii) Erosion control measures;

(iv) Grading, leveling, shaping, and filling;

(v) Grassed waterway establishment;

(vi) Hillside ditches;

(vii) Land-clearing operations of no more than 15 acres, provided any amount of land involved in tree harvesting (without stump removal) is to be conducted on a sustainable basis and according to a Federal, State, Tribal, or other governmental unit approved forestry management plan;

(viii) Nutrient management;

(ix) Permanent establishment of a water source for wildlife (not livestock);

(x) Restoring and replacing property;

(xi) Soil and water development;

(xii) Spring development;

(xiii) Trough or tank installation; and

(xiv) Water harvesting catchment; and

(3) *Other FSA actions.* The following list includes categorical exclusions for other FSA proposed actions:

(i) Fence installation and replacement;

(ii) Fish stream improvement;

(iii) Grazing land mechanical treatment; and

(iv) Inventory property disposal or lease without protective easements or covenants (this proposed action, in particular, has the potential to cause effects to historic properties and therefore requires analysis under section 106 of NHPA (54 U.S.C. 306108), as well as under the ESA and wetland protection requirements).

(e) The following proposed actions are grouped into broader categories of similar types of proposed actions with ground disturbance, each of the listed proposed actions has the potential for extraordinary circumstances because they include construction or ground disturbance. Therefore, additional environmental review and consultation will be necessary in most cases. Those proposed actions that are similar in scope (purpose, intent, and breadth) and the potential significance of impacts to those listed in this section, but not specifically listed in this section, will be considered categorical exclusions in this category, unless it is determined that extraordinary circumstances exist, as specified in § 799.33:

(1) *Loan actions.* The following list includes categorical exclusions for proposed actions related to FSA loans:

(i) Loans and loan subordination with construction, demolition, or ground disturbance planned;

(ii) Real estate purchase loans with new ground disturbance planned; and

(iii) Term operating loans with construction or demolition planned;

(2) *Construction or ground disturbance actions.* The following list includes categorical exclusions for construction or ground disturbance proposed actions:

(i) Bridges;

(ii) Chiseling and subsoiling in areas not previously tilled;

(iii) Construction of a new farm storage facility;

(iv) Dams;

(v) Dikes and levees;

(vi) Diversions;

(vii) Drop spillways;

(viii) Dugouts;

(ix) Excavation;

(x) Grade stabilization structures;

(xi) Grading, leveling, shaping and filling in areas or to depths not previously disturbed;

(xii) Installation of structures designed to regulate water flow such as pipes, flashboard risers, gates, chutes, and outlets;

(xiii) Irrigation systems;

(xiv) Land smoothing;

(xv) Line waterways or outlets;

(xvi) Lining;

(xvii) Livestock crossing facilities;

(xviii) Pesticide containment facility;

(xix) Pipe drop;

(xx) Pipeline for watering facility;
 (xxi) Ponds, including sealing and lining;
 (xxii) Precision land farming with ground disturbance;
 (xxiii) Riparian buffer establishment;
 (xxiv) Roads, including access roads;
 (xxv) Rock barriers;
 (xxvi) Rock filled infiltration trenches;
 (xxvii) Sediment basin;
 (xxviii) Sediment structures;
 (xxix) Site preparation for planting or seeding in areas not previously tilled;
 (xxx) Soil and water conservation structures;
 (xxxi) Stream bank and shoreline protection;
 (xxxii) Structures for water control;
 (xxxiii) Subsurface drains;
 (xxxiv) Surface roughening;
 (xxxv) Terracing;
 (xxxvi) Underground outlets;
 (xxxvii) Watering tank or trough installation, if in areas not previously disturbed;
 (xxxviii) Wells; and
 (xxxix) Wetland restoration.

(3) *Management and planting type actions.* The following list includes categorical exclusions for resource management and planting proposed actions:

- (i) Establishing or maintaining wildlife plots in areas not previously tilled or disturbed;
- (ii) Prescribed burning;
- (iii) Tree planting when trees have root balls of one gallon container size or larger; and
- (iv) Wildlife upland habitat management.

§ 799.33 Extraordinary circumstances.

(a) As specified in 40 CFR 1508.4, in the definition of categorical exclusion, procedures are required to provide for extraordinary circumstances in which a normally categorically excluded action may have a significant environmental effect. The presence and impacts of extraordinary circumstances require heightened review of proposed actions that would otherwise be categorically excluded. Extraordinary circumstances include, but are not limited to:

- (1) Scientific controversy about environmental effects of the proposed action;
- (2) Impacts that are potentially adverse, significant, uncertain, or involve unique or unknown risks, including, but not limited to, impacts to protected resources. Protected resources include, but are not limited to:
 - (i) Property (for example, sites, buildings, structures, and objects) of historic, archeological, or architectural significance, as designated by Federal, Tribal, State, or local governments, or

property eligible for listing on the National Register of Historic Places;

(ii) Federally-listed threatened or endangered species or their habitat (including critical habitat), or Federally-proposed or candidate species or their habitat;

(iii) Important or prime agricultural, forest, or range lands, as specified in part 657 of this chapter and in USDA Departmental Regulation 9500–3;

(iv) Wetlands, waters of the United States, as regulated under the Clean Water Act (33 U.S.C. 1344), highly erodible land, or floodplains;

(v) Areas having a special designation, such as Federally- and State-designated wilderness areas, national parks, national natural landmarks, wild and scenic rivers, State and Federal wildlife refuges, and marine sanctuaries; and

(vi) Special sources of water, such as sole-source aquifers, wellhead protection areas, or other water sources that are vital in a region;

(3) A proposed action that is also “connected” (as specified in 40 CFR 1508.25(a)(1)) to other actions with potential impacts;

(4) A proposed action that is related to other proposed actions with cumulative impacts (40 CFR 1508.25(a)(2));

(5) A proposed action that does not comply with 40 CFR 1506.1, “Limitations on actions during NEPA process;” and

(6) A proposed action that violates any existing Federal, State, or local government law, policy, or requirements (for example, wetland laws, Clean Water Act-related requirements, water rights).

(b) FSA will use the ESW to review proposed actions that are eligible for categorical exclusion to determine if extraordinary circumstances exist that could impact protected resources. If an extraordinary circumstance exists, and cannot be avoided or appropriately mitigated, an EA or EIS will be prepared, as specified in this part. Specifically, FSA will complete a review with the ESW for proposed actions that fall within the list of categorical exclusions specified in § 799.32 to determine whether extraordinary circumstances are present.

(c) For any proposed actions that have the potential to cause effects to historic properties, endangered species, waters of the United States, wetlands, and other protected resources, FSA will ensure appropriate analyses is completed to comply with the following mandates:

(1) For section 106 of the NHPA (54 U.S.C. 306108), the regulations in 36 CFR part 800, “Protection of Historic Properties;” if an authorized technical

representative from another Federal agency assists with compliance with 36 CFR part 800, FSA will remain responsible for any consultation with SHPO, THPO, or Tribal governments;

(2) For section 7 of the ESA that governs the protection of Federally proposed, threatened and endangered species and their designated and proposed critical habitats; and

(3) For the Clean Water Act and related Executive Order provisions for avoiding impacts to wetlands and waters of the United States, including impaired waters listed under Section 303(d) of the Clean Water Act.

(d) If technical assistance is provided by another Federal agency, FSA will ensure that the environmental documentation provided is commensurate to or exceeds the requirements of the FSA ESW. If it is not, a review with an ESW is needed to determine if an EA or EIS is warranted.

§ 799.34 Establishing and revising categorical exclusions.

(a) As part of the process to establish a new categorical exclusion, FSA will consider all relevant information, including the following:

- (1) Completed FSA NEPA documents;
- (2) Other Federal agency NEPA documents on proposed actions that could be considered similar to the categorical exclusion being considered;
- (3) Results of impact demonstration or pilot projects;
- (4) Information from professional staff, expert opinions, and scientific analyses; and
- (5) The experiences of FSA, private, and public parties that have taken similar actions.

(b) FSA will consult with CEQ and appropriate Federal agencies while developing or modifying a categorical exclusion.

(c) Before establishing a new final categorical exclusion, FSA will follow the CEQ specified process for establishing Categorical Exclusions, including consultation with CEQ and an opportunity for public review and comment as required by 40 CFR 1507.3.

(d) FSA will maintain an administrative record that includes the supporting information and findings used in establishing a categorical exclusion.

(e) FSA will periodically review its categorical exclusions to identify and revise exclusions that no longer effectively reflect environmental circumstances or current FSA program scope.

(f) FSA will use the same process specified in this section and the results of its periodic reviews to revise a

categorical exclusion or remove a categorical exclusion.

Subpart E—Environmental Assessments

§ 799.40 Purpose of an EA.

(a) FSA prepares an EA to determine whether a proposed action would significantly affect the environment, and to consider the potential impacts of reasonable alternatives and the potential mitigation measures to the alternatives and proposed action.

(b) FSA will prepare a PEA to determine if proposed actions that are broad in scope or similar in nature have cumulative significant environmental impacts, although the impacts of the proposed actions may be individually insignificant.

(c) The result of the EA process will be either a FONSI or a determination that an EIS is required. FSA may also determine that a proposed action will significantly affect the environment without first preparing an EA; in that case, an EIS is required.

§ 799.41 When an EA is required.

(a) Proposed actions that require the preparation of an EA include the following:

- (1) New Conservation Reserve Enhancement Program (CREP) agreements;
- (2) Development of farm ponds or lakes greater than or equal to 20 acres;
- (3) Restoration of wetlands greater than or equal to 100 acres aggregate;
- (4) Installation or enlargement of irrigation facilities, including storage reservoirs, diversions, dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate greater than 320 acres aggregate;
- (5) Land clearing operations (for example, vegetation removal, including tree stumps; grading) involving greater than or equal to 40 acres aggregate;
- (6) Clear cutting operations for timber involving greater than or equal to 100 acres aggregate;
- (7) Construction or major enlargement of a Concentrated Aquatic Animal Production Facility (CAAP), as defined by the U.S. Environmental Protection Agency in 40 CFR 122.24;
- (8) Construction of commercial facilities or structures for processing or handling of farm production or for public sales;
- (9) Construction or major expansion of a large CAFO, as defined by the U.S. Environmental Protection Agency in 40 CFR 122.23, regardless of the type of manure handling system or water system;
- (10) Refinancing of a newly constructed large CAFO, as defined by

the U.S. Environmental Protection Agency in 40 CFR 122.23, or CAAPs as defined by the U.S. Environmental Protection Agency in 40 CFR 122.24 through 122.25, that has been in operation for 24 months or less;

(11) Issuance of substantively discretionary FSA regulations, **Federal Register** notices, or amendments to existing programs that authorize FSA or CCC funding for proposed actions that have the potential to significantly affect the human environment;

(12) Newly authorized programs that involve substantively discretionary proposed actions and are specified in § 799.32(d);

(13) Any FSA proposed action that has been determined to trigger extraordinary circumstances specified in § 799.33(c); and

(14) Any proposed action that will involve the planting of a potentially invasive species, unless exempted by Federal law.

(b) Proposed actions that do not reach the thresholds defined in paragraph (a) of this section, unless otherwise identified under § 799.31(b) or § 799.32(c), require a review using the ESW to determine if an EA is warranted.

§ 799.42 Contents of an EA.

(a) The EA should include at least the following:

- (1) FSA cover sheet;
 - (2) Executive summary;
 - (3) Table of contents;
 - (4) List of acronyms;
 - (5) A discussion of the purpose of and need for the proposed action;
 - (6) A discussion of alternatives, if the proposed action involves unresolved conflicts concerning the uses of available resources;
 - (7) A discussion of the existing pre-project environment and the potential environmental impacts of the proposed action, with reference to the significance of the impact as specified in § 799.8 and 40 CFR 1508.27;
 - (8) Likelihood of any significant impact and potential mitigation measures that FSA will require, if needed, to support a FONSI;
 - (9) A list of preparers and contributors;
 - (10) A list of agencies, tribes, groups, and persons solicited for feedback and the process used to solicit that feedback;
 - (11) References; and
 - (12) Appendixes, if appropriate.
- (b) FSA will prepare a Supplemental EA, and place the supplements in the administrative record of the original EA, if:
- (1) Substantial changes occur in the proposed action that are relevant to environmental concerns previously presented, or

(2) Significant new circumstances or information arise that are relevant to environmental concerns and to the proposed action or its impacts.

(c) FSA may request that a program participant prepare or provide information for FSA to use in the EA and may use the program participant's information in the EA or Supplemental EA, provided that FSA also:

- (1) Independently evaluates the environmental issues;
- (2) Takes responsibility for the scope and content of the EA and the process utilized, including any required public involvement; and
- (3) Prepares the FONSI or NOI to prepare an EIS.

§ 799.43 Tiering.

(a) As specified in 40 CFR 1508.28, tiering is a process of covering general environmental review in a broad PEA, followed by subsequent narrower scope analysis to address specific proposed actions, action stages, or sites. FSA will use tiering when FSA prepares a broad PEA and subsequently prepares a site-specific ESW, EA, or PEA for a proposed action included within the program addressed in the original, broad PEA.

(b) When FSA uses tiering in a broad PEA, the subsequent ESW, EA, or PEA will:

- (1) Summarize the issues discussed in the broader statement;
- (2) Incorporate by reference the discussions from the broader statement and the conclusions carried forward into the subsequent tiered analysis and documentation; and
- (3) State where the PEA document is available.

§ 799.44 Adoption of an EA prepared by another entity.

(a) FSA may adopt an EA prepared by another Federal agency, State, or Tribal government if the EA meets the requirements of this subpart.

(b) If FSA adopts another agency's EA and issues a FONSI, FSA will follow the procedures specified in § 799.44.

§ 799.45 Finding of No Significant Impact (FONSI).

(a) If after completing the EA, FSA determines that the proposed action will not have a significant effect on the quality of the human environment, FSA will issue a FONSI.

(b) The FONSI will include the reasons FSA determined that the proposed action will have no significant environmental impacts.

(c) If the decision to issue the FONSI is conditioned upon the implementation of measures (mitigation actions) to ensure that impacts will be held to a

nonsignificant level, the FONSI must include an enforceable commitment to implement such measures on the part of FSA, and any applicant or other party responsible for implementing the measures will be responsible for the commitments outlined in the FONSI.

Subpart E—Environmental Impact Statements

§ 799.50 Purpose of an Environmental Impact Statement (EIS).

(a) FSA will prepare an EIS for proposed actions that are expected to have a significant effect on the human environment. The purpose of the EIS is to ensure that all significant environmental impacts and reasonable alternatives are fully considered in connection with the proposed action.

(b) FSA will prepare a PEIS for proposed actions that are broad in scope or similar in nature and may cumulatively have significant environmental impacts, although the impact of the individual proposed actions may be insignificant.

§ 799.51 When an EIS is required.

(a) The following FSA proposed actions normally require preparation of an EIS:

- (1) Legislative proposals, not including appropriations requests, with the potential for significant environmental impact that are drafted and submitted to Congress by FSA;
- (2) Broad Federal assistance programs administered by FSA, involving significant financial assistance or payments to program participants, that may have significant cumulative impacts on the human environment; and
- (3) Ongoing programs that have been found through previous environmental analyses to have major environmental concerns.

(b) [Reserved]

§ 799.52 Notice of intent to prepare an EIS.

(a) FSA will publish a Notice of Intent to prepare an EIS in the **Federal Register** and, depending on the scope of the proposed action, may publish a notice in other media.

(b) The notice will include the following:

- (1) A description of the proposed action and possible alternatives;
- (2) A description of FSA's proposed scoping process, including information about any public meetings; and
- (3) The name of an FSA point of contact who can receive input and answer questions about the proposed action and the preparation of the EIS.

§ 799.53 Contents of an EIS.

(a) FSA will prepare the EIS as specified in 40 CFR part 1502 and in section 102 of NEPA (42 U.S.C. 4332).

(b) The EIS should include at least the following:

- (1) An FSA cover sheet;
- (2) An executive summary explaining the major conclusions, areas of controversy, and the issues to be resolved;
- (3) A table of contents;
- (4) List of acronyms and abbreviations;
- (5) A brief statement explaining the purpose and need of the proposed action;
- (6) A detailed discussion of the environmental impacts of the proposed action and reasonable alternatives to the proposed action, a description and brief analysis of the alternatives considered but eliminated from further consideration, the no-action alternative, FSA's preferred alternative(s), and discussion of appropriate mitigation measures;
- (7) A discussion of the affected environment;
- (8) A detailed discussion of:
 - (i) The direct and indirect environmental consequences, including any cumulative impacts, of the proposed action and of the alternatives;
 - (ii) Unavoidable adverse environmental effects;
 - (iii) The relationship between local short-term uses of the environment and long-term ecosystem productivity;
 - (iv) Any irreversible and irretrievable commitments of resources;
 - (v) Possible conflicts with the objectives of Federal, regional, State, local, regional, and Tribal land use plans, policies, and controls for the area concerned;
 - (vi) Energy and natural depletable resource requirements, including, but not limited to natural gas and oil, and conservation potential of the alternatives and mitigation measures; and
 - (viii) Urban quality, historic, and cultural resources and the design of the built environment, including the reuse and conservation potential of the alternatives and mitigation measures;
- (9) In the draft EIS, a list of all Federal permits, licenses, and other entitlements that must be obtained for implementation of the proposed action;
- (10) A list of preparers;
- (11) Persons and agencies contacted;
- (12) References, if appropriate;
- (13) Glossary, if appropriate;
- (14) Index;
- (15) Appendixes, if any;
- (16) A list of agencies, organizations, and persons to whom copies of the EIS are sent; and

(17) In the final EIS, a response to substantive comments on environmental issues.

(c) FSA may have a contractor prepare an EIS as specified in 40 CFR 1506.5(c). If FSA has a contractor prepare an EIS, FSA will:

- (1) Require the contractor to sign a disclosure statement specifying it has no financial or other interest in the outcome of the proposed action, which will be included in the administrative record; and
- (2) Furnish guidance and participate in the preparation of the EIS, and independently evaluate the EIS before its approval.

§ 799.54 Draft EIS.

(a) FSA will prepare the draft EIS addressing the information specified in § 799.53.

(b) FSA will circulate the draft EIS as specified in 40 CFR 1502.19.

(c) In addition to the requirements of 40 CFR 1502.19, FSA will request comments on the draft EIS from:

- (1) Appropriate State and local agencies authorized to develop and enforce environmental standards relevant to the scope of the EIS;
- (2) Tribal governments that have interests that could be impacted; and
- (3) If the proposed action affects historic properties, the appropriate SHPO, THPO, and the Advisory Council on Historic Preservation.

(d) FSA will file the draft EIS with the U.S. Environmental Protection Agency as specified in 40 CFR 1506.9 and in accordance with U.S. Environmental Protection Agency filing requirements (available at <http://www.epa.gov/compliance/nepa/submiteis/index.html>).

(e) The draft EIS will include a cover sheet with the information specified in 40 CFR 1502.11.

(f) FSA will provide for a minimum 45-day comment period calculated from the date the U.S. Environmental Protection Agency publishes the NOA of the draft EIS.

§ 799.55 Final EIS.

(a) FSA will prepare the final EIS addressing the information specified in § 799.53.

(b) FSA will evaluate the comments received on the draft EIS and respond in the final EIS as specified in 40 CFR 1503.4. FSA will discuss in the final EIS any issues raised by commenters that were not discussed in the draft EIS and provide a response to those comments.

(c) FSA will attach substantive comments, or summaries of lengthy comments, to the final EIS and will include all comments in the administrative record.

(d) FSA will circulate the final EIS as specified in 40 CFR 1502.19.

(e) FSA will file the final EIS with the U.S. Environmental Protection Agency as specified in 40 CFR 1506.9.

(f) The final EIS will include a cover sheet with the information specified in 40 CFR 1502.11.

§ 799.56 Supplemental EIS.

(a) FSA will prepare supplements to a draft or final EIS if:

(1) Substantial changes occur in the proposed action that are relevant to environmental concerns; or

(2) Significant new circumstances or information arise that are relevant to environmental concerns and bearing on the proposed action or its impacts.

(b) The requirements of this subpart for completing the original EIS apply to the supplemental EIS, with the exception of the scoping process, which is optional.

§ 799.57 Tiering.

(a) As specified in 40 CFR 1508.28, tiering is a process of covering general environmental review in a broad PEIS, followed by subsequent narrower scope analysis to address specific proposed actions, action stages, or sites. FSA will use tiering when FSA prepares a broad PEIS and subsequently prepares a site-specific ESW, EA, or PEA for a proposed action included within the program addressed in the original, broad PEIS.

(b) When FSA uses tiering in a broad PEIS, the subsequent ESW, EA, or PEA will:

(1) Summarize the issues discussed in the broader statement;

(2) Incorporate by reference the discussions from the broader statement and the conclusions carried forward into the subsequent tiered analysis and documentation; and

(3) State where the PEIS document is available.

§ 799.58 Adoption of an EIS prepared by another entity.

(a) FSA may elect to adopt an EIS prepared by another Federal agency, State, or Tribal government if:

(1) The NECM determines that the EIS and the analyses and procedures by which they were developed meet the requirements of this part; and

(2) The agency responsible for preparing the EIS concurs.

(b) For the adoption of another Federal agency EIS, FSA will follow the procedures specified in the CEQ regulations in 40 CFR 1506.3.

(c) For the adoption of an EIS from a state or tribe that has an established state or tribal procedural equivalent to the NEPA process (generally referred to as “mini-NEPA”), FSA will follow the procedures specified in the CEQ regulations in 40 CFR 1506.3.

§ 799.59 Record of Decision.

(a) FSA will issue a Record of Decision (ROD) within the time periods specified in 40 CFR 1506.10(b) but no sooner than 30 days after the U.S. Environmental Protection Agency’s publication of the NOA of the final EIS. The ROD will:

(1) State the decision reached;

(2) Identify all alternatives considered by FSA in reaching its decision, specifying the alternative or alternatives considered to be environmentally preferable;

(3) Identify and discuss all factors, including any essential considerations of national policy, which were considered by FSA in making its decision, and state how those considerations entered into its decision; and

(4) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted and, if not, explain why these mitigation measures were not adopted. A

monitoring and enforcement program will be adopted and summarized where applicable for any mitigation.

(b) FSA will distribute the ROD to all parties who request it.

(c) FSA will publish the ROD or a notice of availability of the ROD in the **Federal Register**.

7 CFR Chapter XIV—Commodity Credit Corporation

PART 1436—FARM STORAGE FACILITY LOAN PROGRAM REGULATIONS

■ 28. Revise the authority citation for part 1436 to read as follows:

Authority: 7 U.S.C. 7971 and 8789; and 15 U.S.C. 714 through 714p.

§ 1436.17 [Removed]

■ 29. Remove § 1436.17.

7 CFR Chapter XVIII—Rural Housing Service, Rural Business—Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture

PART 1940—GENERAL

■ 30. The authority citation for part 1940 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subpart G [Removed]

■ 31. Remove subpart G, consisting of §§ 1940.301 through 1940.350 and the appendices exhibits A through M.

Val Dolcini,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

Lisa Mensah,

Under Secretary, Rural Development.

[FR Doc. 2016–18075 Filed 8–2–16; 8:45 am]

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