FEDERAL REGISTER

Vol. 81 Friday,

No. 195 October 7, 2016

Pages 69659–69998

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.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 81 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

Contents

Federal Register

Vol. 81, No. 195

Friday, October 7, 2016

Separate Parts In This Issue

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:
9514.....69991

Administrative Orders:
Memorandums:
Memorandum of October 5, 2016.....69993

10 CFR
72.....69569

Proposed Rules:
72.....69719

11 CFR

Proposed Rules:
100.....69721
102.....69722
104.....69722
106 (2 documents).....69721, 69722
109 (2 documents).....69721, 69722
110.....69722
9008.....69722
9012.....69722

12 CFR
600.....69663
602.....69663
603.....69663
606.....69663

13 CFR

Proposed Rules:
121.....69723
134.....69723

14 CFR
23.....69663
39.....69666

Proposed Rules:
61.....69908
71.....69729
91.....69908
121.....69908
135.....69908

18 CFR

Proposed Rules:
35.....69731

21 CFR
216.....69668

Proposed Rules:
73.....69740

29 CFR

Proposed Rules:
1910.....69740

32 CFR
706.....69677

33 CFR
117.....69678

37 CFR
2.....69950

40 CFR
52 (4 documents).....69679, 69685, 69687, 69693
70.....69693

Proposed Rules:
52 (3 documents).....69752
70.....69752
1700.....69753

47 CFR
54.....69696
69.....69696

Proposed Rules:
54.....69722

50 CFR
32.....69716
300.....69717

Proposed Rules:
622.....69774

Rules and Regulations

Federal Register
Vol. 81, No. 195
Friday, October 7, 2016

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2016–0137]

RIN 3150–AJ77

List of Approved Spent Fuel Storage Casks: NAC International MAGNASTOR® Cask System; Certificate of Compliance No. 1031, Amendment No. 6

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the NAC International (NAC), MAGNASTOR® Cask System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 6 to Certificate of Compliance (CoC) No. 1031. Amendment No. 6 revises NAC–MAGNASTOR technical specifications (TSs) to align with the NAC Multi-Purpose Canister (MPC) and NAC Universal MPC System (UMS) TSs. The CoC No. 1031 TSs require that a program be established and maintained for loading, unloading, and preparing fuel for storage without any indication of duration for the program. Amendment No. 6 limits maintenance of this program until all spent fuel is removed from the spent fuel pool and transport operations are completed. Related training and radiation protection program requirements are modified accordingly. Additionally, Amendment No. 6 incorporates the change to Limiting Condition for Operation (LCO) 3.1.1 previously approved by the NRC in CoC No. 1031 Amendment No. 4.

DATES: The direct final rule is effective December 21, 2016, unless significant adverse comments are received by November 7, 2016. If the direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. 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. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

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–2016–0137. 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.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Keith McDaniel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5252 or email: *Keith.McDaniel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0137 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–2016–0137.
- *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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0137 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Procedural Background

This rule is limited to the changes contained in Amendment No. 6 to CoC No. 1031 and does not include other aspects of the NAC MAGNASTOR® Cask System design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on December 21, 2016. However, if the NRC receives significant adverse comments on this direct final rule by November 7, 2016, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rule section of this issue of the **Federal Register**.

Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TSs.

For detailed instructions on filing comments, please see the companion proposed rule published in the Proposed Rule section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that ''the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled, ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on November 21, 2008 (73 FR 70587), that approved the NAC MAGNASTOR® Cask System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1031.

IV. Discussion of Changes

By letter dated December 11, 2015, NAC submitted a request to the NRC to amend CoC No. 1031. As documented in the Preliminary Safety Evaluation Report (PSER) and described further below, the NRC staff performed a detailed safety evaluation of the proposed CoC Amendment 6 request. This direct final rule revises the NAC MAGNASTOR® Cask System listing in 10 CFR 72.214 by adding Amendment No. 6 to CoC No. 1031. The amendment consists of the changes described below, as set forth in the revised CoC and TSs. The revised TSs are identified in the PSER.

Amendment No. 6 revises NAC–MAGNASTOR TSs to align with the NAC–MPC and NAC–UMS TSs. The CoC No. 1031 TSs currently require that a program be established and maintained for loading, unloading, and preparing fuel for storage without any indication of duration for the program. Amendment No. 6 clarifies the applicability of TS requirements depending on the status of operations, limiting maintenance of certain programs until all spent fuel is removed from the spent fuel pool and transport operations are completed. Additionally, Amendment No. 6 incorporates the change to LCO 3.1.1 that was previously reviewed and approved by the NRC in Amendment No. 4. The NRC staff determined that Amendment No. 6 does not include changes to cask design requirements and does not reflect a change in design or fabrication of the cask. The NRC staff found that the TS and operating limit changes do not impact the casks ability to continue to safely store spent fuel in accordance with part 72 requirements.

The amended NAC MAGNASTOR® Cask System design, when used under the conditions specified in the CoC, the TSs, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, persons who hold a general license under 10 CFR 72.210 may load spent nuclear fuel into the NAC MAGNASTOR® Cask System casks that meet the criteria of Amendment No. 6 to CoC No. 1031 under 10 CFR 72.212.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the NAC MAGNASTOR® Cask System design listed in 10 CFR 72.214, ''List of approved spent fuel storage casks.'' This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

VII. Plain Writing

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

VIII. Environmental Assessment and Finding of No Significant Environmental Impact

A. The Action

The action is to amend 10 CFR 72.214 to revise the NAC MAGNASTOR® Cask System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 6 to CoC No. 1031. Under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

B. The Need for the Action

This direct final rule amends the CoC for the NAC MAGNASTOR® Cask System design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Specifically, Amendment No. 6 revises NAC–MAGNASTOR TSs to align with the NAC–MPC and NAC–UMS TSs. The CoC No. 1031 TSs require that a program be established and maintained for loading, unloading, and preparing fuel for storage without any indication of duration for the program. Amendment No. 6 limits maintenance of this program until all spent fuel is removed from the spent fuel pool and transport operations are completed. Related training and radiation protection program requirements are modified accordingly. Additionally, Amendment No. 6 incorporates the change to LCO 3.1.1 previously approved by the NRC in CoC No. 1031 Amendment No. 4.

C. Environmental Impacts of the Action

On July 18,1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was initially analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this Amendment No. 6 tiers off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act.

The NAC MAGNASTOR® Cask System is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an Independent Spent Fuel Storage Installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of confinement, shielding, and criticality control. If there is no loss of confinement, shielding, or criticality control, the environmental impacts would be insignificant. This amendment does not reflect a change in design or fabrication of the cask. There are no changes to cask design requirements in the proposed CoC amendment. In addition, because there are no design or significant process changes, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 6 would remain well within the 10 CFR part 20 limits. Therefore, the proposed CoC changes will not result in any radiological or non-radiological environmental impacts that differ significantly from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure and no significant increase in the potential for or consequences from radiological accidents. The NRC staff documented its safety findings in a PSER.

D. Alternative to the Action

The alternative to this action is to deny approval of Amendment No. 6 and end the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into the NAC MAGNASTOR® Cask System in accordance with the changes described in proposed Amendment No. 6 would have to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, an interested licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee. Therefore, the environmental impacts would be the same or less than the action.

E. Alternative Use of Resources

Approval of Amendment No. 6 to CoC No. 1031 would result in no irreversible commitments of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in 10 CFR part 51. Based on the foregoing environmental assessment, the NRC concludes that this direct final rule entitled, ''List of Approved Spent Fuel Storage Casks: NAC MAGNASTOR® Cask System, Amendment No. 6'' will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

IX. Paperwork Reduction Act Statement

This rule does not contain any information collection requirements, and is therefore not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and NAC. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XI. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On November 21, 2008 (73 FR 70587), the NRC issued an amendment to 10 CFR part 72 that approved the NAC MAGNASTOR® Cask System design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214.

By letter dated December 11, 2015, NAC submitted an application to amend the NAC MAGNASTOR® Cask System as described in Section IV, ''Discussion of Changes,'' of this document.

The alternative to this action is to withhold approval of Amendment No. 6 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into the NAC MAGNASTOR® Cask System under the changes described in Amendment No. 6 to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of the direct final rule is consistent with previous NRC actions. Further, as documented in the PSER and the environmental assessment, the direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and therefore, this action is recommended.

XII. Backfitting and Issue Finality

The NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule revises CoC No. 1031 for the NAC MAGNASTOR® Cask System, as currently listed in 10 CFR 72.214, ''List of approved spent fuel storage casks.'' Amendment No. 6 revises NAC–MAGNASTOR TSs to align with the NAC–MPC and NAC–UMS TSs. The CoC No. 1031 TSs require that a program be established and maintained for loading, unloading, and preparing fuel for storage without any indication of duration for the program. Amendment No. 6 limits maintenance of this program until all spent fuel is removed from the spent fuel pool and transport operations are completed. Related training and radiation protection program requirements are modified accordingly. Additionally, Amendment No. 6 incorporates the change to LCO 3.1.1 previously approved by the NRC in CoC No. 1031 Amendment No. 4.

Amendment No. 6 to CoC No. 1031 for the NAC MAGNASTOR® Cask System was initiated by NAC and was not submitted in response to new NRC requirements, or an NRC request for amendment. Amendment No. 6 applies only to new casks fabricated and used under Amendment No. 6. These changes do not affect existing users of the NAC MAGNASTOR® Cask System, and Amendment Nos. 1–3, Revisions 1, as well as Revision 1 of the Initial Certificate, and Amendments Nos. 4–5 continue to be effective for existing users. While current CoC users may comply with the new requirements in Amendment No. 6, this would be a voluntary decision on the part of current users. For these reasons, Amendment No. 6 to CoC No. 1031 does not constitute backfitting under 10 CFR 72.62, 10 CFR 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, no backfit analysis or additional documentation addressing the issue finality criteria in 10 CFR part 52 has been prepared by the NRC staff.

XIII. Congressional Review Act

The Office of Management and Budget has not found this to be a major rule as defined in the Congressional Review Act.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS Accession No.
NAC License Amendment Request, Letter Dated December 11, 2015	ML15349A941
Proposed CoC No. 1031, Amendment No. 6	ML16119A101
Proposed CoC No. 1031, Amendment No. 6—Technical Specifications, Appendix A	ML16119A110
Proposed CoC No. 1031, Amendment No. 6—Technical Specifications, Appendix B	ML16119A118
CoC No. 1031, Amendment No. 6—Preliminary Safety Evaluation Report	ML16119A123

The NRC may post materials related to this document, including public comments, on the Federal rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2016–0137. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2016–0137); (2) Click the ''Sign up for Email Alerts'' link; and (3) Enter your email address and select how

frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Hazardous waste, Indians, Intergovernmental relations, Manpower training programs, Nuclear energy, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance 1031 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1031.

Initial Certificate Effective Date: February 4, 2009, superseded by Initial Certificate, Revision 1, on February 1, 2016.

Initial Certificate, Revision 1, Effective Date: February 1, 2016.

Amendment Number 1 Effective Date: August 30, 2010, superseded by Amendment Number 1, Revision 1, on February 1, 2016.

Amendment Number 1, Revision 1, Effective Date: February 1, 2016.

Amendment Number 2 Effective Date: January 30, 2012, superseded by Amendment Number 2, Revision 1, on February 1, 2016.

Amendment Number 2, Revision 1, Effective Date: February 1, 2016.

Amendment Number 3 Effective Date: July 25, 2013, superseded by Amendment Number 3, Revision 1, on February 1, 2016.

Amendment Number 3, Revision 1, Effective Date: February 1, 2016.

Amendment Number 4 Effective Date: April 14, 2015.

Amendment Number 5 Effective Date: June 29, 2015.

Amendment Number 6 Effective Date: December 21, 2016.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the MAGNASTOR® System.

Docket Number: 72–1031.

Certificate Expiration Date: February 4, 2029.

Model Number: MAGNASTOR®.

* * * * *

Dated at Rockville, Maryland, this 23rd day of September, 2016.

For the Nuclear Regulatory Commission.

Glenn M. Tracy,

Acting Executive Director for Operations.

[FR Doc. 2016–24317 Filed 10–6–16; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 600, 602, 603, and 606

RIN 3052–AD17

FCA Organization; Updates and Technical Corrections

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA, we, Agency or our) amended our regulations to reflect changes to the FCA's organizational structure and correct the zip code for the field office located in Irving, TX. In addition, references in our regulations to various FCA offices, which have changed, have been revised. We also re-ordered the list of FCA offices into a more logical progression that is consistent with FCA's organizational chart. In accordance with the law, the effective date of the rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session.

DATES: *Effective Date:* Under the authority of 12 U.S.C. 2252, the regulation amending 12 CFR parts 600, 602, 603, and 606 published on July 22, 2016 (81 FR 47691) is effective October 7, 2016.

FOR FURTHER INFORMATION CONTACT:

Michael T. Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4124, TTY (703) 883–4056,

or

Autumn Agans, Attorney-Advisor, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION: The Farm Credit Administration amended our regulations to reflect changes to the FCA's organizational structure and correct the zip code for the field office located in Irving, TX. In addition, references in our regulations to various FCA offices, which have changed, have been revised. We also re-ordered the list of FCA offices into a more logical progression that is consistent with FCA's organizational chart. In accordance with 12 U.S.C. 2252, the effective date of the final rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is October 7, 2016.

(12 U.S.C. 2252(a)(9) and (10))

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2016–24313 Filed 10–6–16; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2016–9224; Special Conditions No. 23–277–SC]

Special Conditions: Beechcraft, Model A36, Bonanza Airplanes; as Modified by Avionics Design Services, Ltd.; Installation of Rechargeable Lithium Battery

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Beechcraft, Model A36, Bonanza airplane. This airplane, as modified by Avionics Design Services, Ltd., will have a novel or unusual

design feature associated with the use of a replacement option of a lithium battery instead of nickel-cadmium and lead-acid rechargeable batteries. 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: The effective date of these special conditions is October 7, 2016.

We must receive your comments by November 21, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–9224 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 of 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://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 the 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: Quentin Coon, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–112, 901 Locust, Room 301, Kansas City, MO; telephone (816) 329–4168; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the FAA has determined, in accordance with 5 U.S. C. 553(b)(3)(B) and 553(d)(3), that notice and opportunity for prior public comment hereon are unnecessary 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 issuance.

Special conditions No.	Company/airplane model
23–15–01–SC [1].	Kestrel Aircraft Company/ Model K–350.
23–09–02SC [2]	Cessna Aircraft Company/ Model 525C (CJ4).
23–08–05–SC [3].	Spectrum Aeronautical, LLC/ Model 40.

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 ask that you send us two copies of written comments.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

Background

On September 17, 2015, Avionics Design Services, Ltd., (Avionics) applied for a supplemental type certificate (STC) to install a rechargeable lithium battery on the Model A36 Bonanza airplane. The Model A36 airplane is a normal category airplane, powered by a single-piston engine that drives an aircraft propeller, with passenger seating up to six (6) and a maximum takeoff weight of 3600 pounds.

The current regulatory requirements for part 23 airplanes do not contain adequate requirements for the application of rechargeable lithium batteries in airborne applications. This type of battery possesses certain failure and operational characteristics with maintenance requirements that differ significantly from that of the nickel-cadmium (Ni-Cd) and lead-acid rechargeable batteries currently approved in other normal, utility, acrobatic, and commuter category airplanes. Therefore, the FAA is proposing this special condition to address (1) all characteristics of the rechargeable lithium batteries and their installation that could affect safe operation of the modified Model A36 airplane, and (2) appropriate Instructions for Continued Airworthiness (ICAW) that include maintenance requirements to ensure the availability of electrical power from the batteries when needed.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (CFR) 21.101, Avionics must show that the Model A36 airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet No. 3A15 [4] or the applicable regulations in effect on the date of application for the change.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 23) do not contain adequate or appropriate safety standards for the Model A36 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 A36 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 § 11.19, under § 11.38 and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the models for which they

[1] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSC.nsf/0/39B156C006EB842E86257EF3004BB13C?OpenDocument&Highlight=installation%20of%20rechargeable%20lithium%20battery.*

[2] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSC.nsf/0/902232309C19F0D4862575CB0045AC0D?OpenDocument&Highlight=installation%20of%20rechargeable%20lithium%20battery.*

[3] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSC.nsf/0/28E630294DCC27B986257513005968A3?OpenDocument&Highlight=installation%20of%20rechargeable%20lithium%20battery.*

[4] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgMakeModel.nsf/0/360C62B668F4C1878625801B0069FB5F?OpenDocument.*

are issued. Should the applicant apply for an STC 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.

Novel or Unusual Design Features

The Beechcraft Model A36 airplane will incorporate the following novel or unusual design features:

The installation of a rechargeable lithium battery as a main or engine start aircraft battery.

Discussion

The applicable part 23 airworthiness regulations governing the installation of batteries in general aviation airplanes, including § 23.1353, were derived from Civil Air Regulations (CAR) 3 as part of the recodification that established 14 CFR part 23. The battery requirements, which are identified in § 23.1353, were a rewording of the CAR requirements that did not add any substantive technical requirements. An increase in incidents involving battery fires and failures that accompanied the increased use of Ni-Cd batteries in aircraft resulted in rulemaking activities on the battery requirements for small airplanes. These regulations were incorporated into § 23.1353(f) and (g), which apply only to Ni-Cd battery installations.

The introduction of lithium batteries into aircraft raises some concern about associated battery or cell monitoring systems and the impact to the electrical system when monitoring components fail. Associated battery or cell monitoring systems (*e.g.,* temperature, state of charge, etc.) should be evaluated with respect the expected extremes in the aircraft operating environment.

Lithium batteries typically have different electrical impedance characteristics than Ni-Cd or lead-acid batteries. Avionics needs to evaluate other components of the aircraft electrical system with respect to these characteristics.

Presently, there is limited experience with use of rechargeable lithium batteries and rechargeable lithium battery systems in applications involving commercial aviation. However, other users of this technology, ranging from personal computers, wireless telephone manufacturers to the electric vehicle industry, have noted safety problems with rechargeable lithium batteries. These problems include overcharging, over-discharging, flammability of cell components, cell internal defects, and during exposure to extreme temperatures that are described in the following paragraphs.

1. *Overcharging:* In general, rechargeable lithium batteries are significantly more susceptible than their Ni-Cd or lead-acid counterparts to thermal runway, which is an internal failure that can result in self-sustaining increases in temperature and pressure. This is especially true for overcharging which causes heating and destabilization of the components of the cell, leading to the formation (by plating) of highly unstable metallic lithium. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion. Finally, the severity of thermal runaway due to overcharging increases with increasing battery capacity due to the higher amount of electrolyte in large batteries.

2. *Over-discharging:* Discharge of some types of rechargeable lithium battery cells beyond the manufacturer's recommended specification can cause corrosion of the electrodes of the cell, resulting in loss of battery capacity that cannot be reversed by recharging. This loss of capacity may not be detected by the simple voltage measurements commonly available to flight crews as a means of checking battery status—a problem shared with Ni-Cd batteries. In addition, over-discharging has the potential to lead to an unsafe condition (creation of dendrites that could result in internal short circuit during the recharging cycle).

3. *Flammability of Cell Components:* Unlike Ni-Cd and lead-acid batteries, some types of rechargeable lithium batteries use liquid electrolytes that are flammable. The electrolyte can serve as a source of fuel for an external fire, if there is a breach of the battery container.

4. *Cell Internal Defects:* The rechargeable lithium batteries and rechargeable battery systems have a history of undetected cell internal defects. These defects may or may not be detected during normal operational evaluation, test and validation. This may lead to an unsafe condition during in service operation.

5. *Extreme Temperatures:* Exposure to an extreme temperature environment has the potential to create major hazards. Care must be taken to ensure that the lithium battery remains within the manufacturer's recommended specification.

These problems experienced by users of lithium batteries raise concern about the use of lithium batteries in aviation. The intent of the proposed special condition is to establish appropriate airworthiness standards for lithium battery installations in the Model A36 airplanes and to ensure, as required by §§ 23.1309 and 23.601, that these battery installations are not hazardous or unreliable.

Applicability

The special conditions are applicable to the Model A36 airplane. Should Avionics apply at a later date for an STC to modify any other model included on Type Certificate No. 3A15, 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 the Model A36 airplane. 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 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 subject contained herein. Therefore, notice and opportunity for prior public comment hereon are unnecessary and the FAA finds good cause, in accordance with 5 U.S. Code §§ 553(b)(3)(B) and 553(d)(3), making these special conditions effective 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 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Beechcraft, Model A36 airplanes modified by Avionics Design Services, Ltd.

1. Installation of Lithium Battery

The FAA adopts that the following special conditions be applied to lithium battery installations on the Model A36 airplanes in lieu of the requirements § 23.1353(a)(b)(c)(d)(e), amendment 49.

Lithium battery installations on the Model A36 airplanes must be designed and installed as follows:

a. Safe cell temperatures and pressures must be maintained during any probable charging or discharging condition, or during any failure of the charging or battery monitoring system not shown to be extremely remote. The lithium battery installation must be designed to preclude explosion or fire in the event of those failures.

b. Lithium batteries must be designed to preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

c. No explosive or toxic gasses emitted by any lithium battery in normal operation or as the result of any failure of the battery charging or monitoring system, or battery installation not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

d. Lithium batteries that contain flammable fluids must comply with the flammable fluid fire protection requirements of 14 CFR 23.863(a) through (d).

e. No corrosive fluids or gases that may escape from any lithium battery may damage airplane structure or essential equipment.

f. Each lithium battery installation must have provisions to prevent any hazardous effect on structure or essential systems that may be caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

g. Lithium battery installations must have—

(1) A system to control the charging rate of the battery automatically to prevent battery overheating or overcharging, or

(2) A battery temperature sensing and over-temperature warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition or,

(3) A battery failure sensing and warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

h. Any lithium battery installation functionally required for safe operation of the airplane, must incorporate a monitoring and warning feature that will provide an indication to the appropriate flight crewmembers, whenever the capacity and state of charge of the batteries have fallen below levels considered acceptable for dispatch of the airplane.

i. The ICAW must contain recommended manufacturer's maintenance and inspection requirements to ensure that batteries, including single cells, meet a functionally safe level essential to the aircraft's continued airworthiness.

(1) The ICAW must contain operating instructions and equipment limitations in an installation maintenance manual.

(2) The ICAW must contain installation procedures and limitations in a maintenance manual, sufficient to ensure that cells or batteries, when installed according to the installation procedures, still meet safety functional levels essential to the aircraft's continued airworthiness. The limitations must identify any unique aspects of the installation.

(3) The ICAW must contain corrective maintenance procedures to check battery capacity at manufacturer's recommended inspection intervals.

(4) The ICAW must contain scheduled servicing information to replace batteries at manufacturer's recommended replacement time.

(5) The ICAW must contain maintenance and inspection requirements how to check visually for battery and charger degradation.

j. Batteries in a rotating stock (spares) that have degraded charge retention capability or other damage due to prolonged storage must be checked at manufacturer's recommended inspection intervals.

k. If the lithium battery application contains software and/or complex hardware, in accordance with AC 20–115 [5] and AC 20–152,[6] they should be developed to the standards of DO–178 for software and DO–254 for complex hardware.

Compliance with the requirements of this Special Condition must be shown by test or analysis, with the concurrence of the New York Aircraft Certification Office.

Issued in Kansas City, Missouri on September 28, 2016.

William Schinstock,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–24343 Filed 10–6–16; 8:45 am]

BILLING CODE 4910–13–P

[5] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/E35FBC0060E2159186257BBE00719FB3?OpenDocument&Highlight=ac%2020–115b.*

[6] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/6D4AE0BF1BDE3579862570360055D119?OpenDocument&Highlight=ac%2020–152.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–3986; Directorate Identifier 2015–NM–147–AD; Amendment 39–18661; AD 2016–19–12]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–400, 747–400D, and 747–400F series airplanes. This AD was prompted by a determination that a certain fastener type in the fuel tank walls has insufficient bond to the structure, and an electrical wiring short could cause arcing to occur at the ends of fasteners in the fuel tanks. This AD requires the installation of new clamps and polytetrafluoroethylene (TFE) sleeves on the wire bundles of the front spars and rear spars of the wings. This AD also requires inspecting the existing TFE sleeves under the wire bundle clamps for correct installation, and replacement if necessary. We are issuing this AD to prevent potential ignition sources in the fuel tank in the event of a lightning strike or high-powered short circuit, and consequent fire or explosion.

DATES: This AD is effective November 14, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 14, 2016.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.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–2016–3986.

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–2016–3986; 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: Tung Tran, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6505; fax: 425–917–6590; email: *Tung.Tran@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 747–400, 747–400D, and 747–400F series airplanes. The NPRM published in the **Federal Register** on March 1, 2016 (81 FR 10537) (''the NPRM''). The NPRM was prompted by a determination that a certain fastener type in the fuel tank walls has insufficient bond to the structure, and an electrical wiring short could cause arcing to occur at the ends of fasteners in the fuel tanks. The NPRM proposed to require the installation of new clamps and TFE sleeves on the wire bundles of the front spars and rear spars of the wings. The NPRM also proposed to require inspecting the existing TFE sleeves under the wire bundle clamps for correct installation, and replacement if necessary. We are issuing this AD to prevent potential ignition sources in the fuel tank in the event of a lightning strike or high-powered short circuit, and consequent fire or explosion.

Comments

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

Support for the NPRM

Boeing supported the content of the NPRM. United Airlines had no objection to the NPRM.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Special Attention Service Bulletin 747–28–2324, Revision 1, dated July 27, 2015. The service information describes procedures for installing new clamps and TFE sleeves on the wire bundles of the front spars and rear spars of the wings. The service information also describes procedures for inspecting TFE sleeves under the wire bundle clamps that were installed using the procedures specified in Boeing Special Attention Service Bulletin 747–28–2324, dated November 3, 2014, for correct installation, and replacing them if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 135 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation of wire bundle clamps.	Up to 7 work-hours × $85 per hour = $595	$138	Up to $733	Up to $98,955.
Inspection	Up to 5 work-hours × $85 per hour = $425	0	Up to $425	Up to $57,375.

We have received no definitive data that enables us to provide cost estimates for the on-condition actions specified in this 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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–19–12 The Boeing Company: Amendment 39–18661; Docket No. FAA–2016–3986; Directorate Identifier 2015–NM–147–AD.

(a) Effective Date

This AD is effective November 14, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400, 747–400D, and 747–400F series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 747–28–2324, Revision 1, dated July 27, 2015.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a determination that a certain fastener type in the fuel tank walls has insufficient bond to the structure, and an electrical wiring short could cause arcing to occur at the ends of fasteners in the fuel tanks. We are issuing this AD to prevent potential ignition sources in the fuel tank in the event of a lightning strike or high-powered short circuit, and consequent fire or explosion.

(f) Compliance

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

(g) Installation/Inspection

Within 60 months after the effective date of this AD, do the actions specified in paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For airplanes on which the modification specified in Boeing Special Attention Service Bulletin 747–28–2324, dated November 3, 2014, has not been done as of the effective date of this AD: Install new clamps and polytetrafluoroethylene (TFE) sleeves on the wire bundles of the front spars and rear spars of the wings, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–28–2324, Revision 1, dated July 27, 2015.

(2) For airplanes on which the modification specified in Boeing Special Attention Service Bulletin 747–28–2324, dated November 3, 2014, has been done as of the effective date of this AD: Do a detailed inspection of the TFE sleeves under the wire bundle clamps for correct installation, and replace the sleeves if not correctly installed, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–28–2324, Revision 1, dated July 27, 2015.

(h) Alternative Methods of Compliance (AMOCs)

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

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

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

(i) Related Information

For more information about this AD, contact Tung Tran, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6505; fax: 425–917–6590; email: *Tung.Tran@faa.gov.*

(j) Material Incorporated by Reference

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

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

(i) Boeing Special Attention Service Bulletin 747–28–2324, Revision 1, dated July 27, 2015.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.*

(4) 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.

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

Issued in Renton, Washington, on September 13, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–22707 Filed 10–6–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 216

[Docket No. FDA–1999–N–0194 (Formerly 99N–4490)]

RIN 0910–AH08

Additions and Modifications to the List of Drug Products That Have Been Withdrawn or Removed From the Market for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is amending its regulations to revise the list of drug products that have been withdrawn or removed from the market because the drug products or components of such drug products have been found to be unsafe or not effective. Drugs appearing on this list may not be compounded under the exemptions provided by sections 503A and 503B of the Federal Food, Drug, and Cosmetic Act (the FD&C Act). Specifically, the rule adds 24 entries to this list of drug products, modifies the description of one entry on this list, and revises the list's title and introductory language. These revisions are necessary because information has come to the Agency's attention since March 8, 1999, when FDA published the original list as a final rule.

DATES: This rule is effective November 7, 2016.

FOR FURTHER INFORMATION CONTACT: Edisa Gozun, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5199, Silver Spring, MD 20993–0002, 301–796–3110.

SUPPLEMENTARY INFORMATION:

Table of Contents

Executive Summary

Purpose of the Regulatory Action

FDA is amending its regulations to revise the list of drug products that have been withdrawn or removed from the market because the drug products or components of such drug products have been found to be unsafe or not effective (referred to as ''the withdrawn or removed list'' or ''the list'') (§ 216.24 (21 CFR 216.24)). Drugs appearing on the withdrawn or removed list may not be compounded under the exemptions provided by sections 503A and 503B of the FD&C Act. In this final rulemaking, the Agency is finalizing in part the proposed amendments to § 216.24 set forth in the proposed rule published in the **Federal Register** of July 2, 2014 (79 FR 37687).

Section 503A of the FD&C Act (21 U.S.C. 353a) refers to a list published by the Secretary of Health and Human Services in the **Federal Register** of drug products that have been withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective. Furthermore, section 503A(c)(1) of the FD&C Act states that the Secretary shall issue regulations to implement section 503A and that before issuing regulations to implement section 503A(b)(1)(C) pertaining to the withdrawn or removed list, among other sections, the Secretary shall convene and consult an advisory committee on compounding unless the Secretary determines that the issuance of such regulations before consultation is necessary to protect the public health.

In addition, section 503B of the FD&C Act (21 U.S.C. 353b) refers to a list published by the Secretary of drugs that have been withdrawn or removed from the market because such drugs or components of such drugs have been found to be unsafe or not effective.

After soliciting public comments and consulting with the Pharmacy Compounding Advisory Committee (Advisory Committee), FDA is issuing this final rule revising and updating the list in § 216.24 for purposes of both sections 503A and 503B of the FD&C Act. FDA may update this list in the future as necessary when information comes to the Agency's attention indicating that changes to the list are needed.

Summary of the Major Provisions of the Regulatory Action in Question

The final rule: (1) Adds 24 entries to the list of drug products in § 216.24 that cannot be compounded for human use under the exemptions provided by either section 503A or 503B of the FD&C Act because they have been withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective, (2) modifies one entry already on the list to add an exception that allows a drug product to be compounded under certain circumstances, and (3) modifies the title of part 216 and the introductory text of § 216.24.

Costs and Benefits

The Agency is not aware of any routine compounding for human use of the drug products that are the subject of this rule, and therefore does not estimate any compliance costs or loss of sales as a result of finalizing regulations making these drugs ineligible for exemptions under sections 503A and 503B of the FD&C Act. The Agency has determined that this rule is not a significant regulatory action as defined by Executive Order 12866.

I. Background: The Provisions of 503A and 503B Pertaining to the Withdrawn or Removed List

Section 503A of the FD&C Act describes the conditions that must be satisfied for human drug products compounded by a licensed pharmacist or licensed physician to be exempt from the following three sections of the FD&C Act: (1) Section 501(a)(2)(B) (21 U.S.C. 351(a)(2)(B)) (concerning current good manufacturing practice); (2) section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use); and (3) section 505 (21 U.S.C. 355) (concerning the approval of drugs under new drug applications (NDAs) or abbreviated new drug applications (ANDAs)).

Section 503B of the FD&C Act created a new category of ''outsourcing facilities.'' Outsourcing facilities, as defined in section 503B of the FD&C Act, are facilities that meet certain conditions described in section 503B, including registering with FDA as an outsourcing facility. If these conditions are satisfied, a drug compounded for human use by or under the direct supervision of a licensed pharmacist in an outsourcing facility is exempt from three sections of the FD&C Act: (1) Section 502(f)(1), (2) section 505, and (3) section 582 (21 U.S.C. 360eee–1) (concerning drug supply chain security), but not from section 501(a)(2)(B).

One of the conditions that must be satisfied to qualify for the exemptions under both sections 503A and 503B of the FD&C Act is that the compounder does not compound a drug product that appears on a list published by the Secretary of drug products that have been withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective (withdrawn or removed list) (see sections 503A(b)(1)(C) and 503B(a)(4) of the FD&C Act).

II. Proposed Rule and Final Rule

A. The Proposed Rule

In the **Federal Register** of July 2, 2014, FDA proposed to revise the list of drug products that have been withdrawn or removed from the market because the drug products or components of such drug products have been found to be unsafe or not effective (the July 2014 proposed rule). Drugs appearing on this list may not be compounded under the exemptions provided by sections 503A and 503B of the FD&C Act. Specifically, FDA proposed to add 25 entries to this list of drug products and to modify the description of one entry on this list to add an exception for products compounded under certain circumstances. The preamble of the proposed rule explained that these revisions are necessary to ensure the list of drug products in § 216.24 reflects information that has come to the Agency's attention since FDA published the original list in the 1999 final rule. Given that nearly identical criteria apply for a drug product to be included on the list referred to in section 503A(b)(1)(C) and the list referred to in section 503B(a)(4) of the FD&C Act, FDA proposed revising and updating the list at § 216.24 for purposes of both sections 503A and 503B.

As with the original list, the primary focus of the July 2014 proposed rule and this final rule is on drug products that have been withdrawn or removed from the market because they have been found to be unsafe. FDA may propose at a later date to add other drug products to the list that have been withdrawn or removed from the market because they have been found to be not effective, or to update the list as information becomes available to the Agency regarding products that were withdrawn or removed from the market because they have been found to be unsafe.

In the preamble of the July 2014 proposed rule, FDA also invited comments on the appropriate procedure to update the list in the future. FDA described the provisions of sections 503A and 503B of the FD&C Act regarding how the Agency is to create and update the list, and noted the differences between the procedures set forth in sections 503A and 503B. The Agency explained that it believes that the timely sharing of information about safety concerns relating to compounding drugs for human use is essential to the protection of public health. FDA also explained that it is concerned that consulting with the Advisory Committee and completing the rulemaking process are likely to contribute to substantial delay in updating the list to reflect current safety information. FDA therefore announced that the Agency was seeking an alternative procedure to update the withdrawn or removed list in the future and solicited public comment. FDA also stated that it would specify in the final rule the procedure it will use to update the list in the future.

B. Presentation to the Advisory Committee

At a meeting held on February 23 and 24, 2015 (see the **Federal Register** of January 26, 2015 (80 FR 3967)), FDA presented to the Advisory Committee the 25 entries it proposed to include on the list and the proposed modification to the listing for one entry. The Advisory Committee voted in favor of including each drug product entry on the list as proposed by FDA. In addition, because FDA had received a comment on the July 2014 proposed rule requesting that FDA clarify the entry for adenosine phosphate, FDA presented a potential modification to the Advisory Committee and the Committee voted in favor of the modification.

C. The Final Rule

1. List of Drug Products

The Agency has considered the record of the February 2015 Advisory Committee deliberations, that Advisory Committee's votes, and the comments submitted on the July 2014 proposed rule (see section III). Based on the information before FDA and its own knowledge and expertise, FDA is:

- Adding 24 entries to the withdrawn or removed list in § 216.24 as written in the proposed rule; and
- Modifying the description of one drug product entry already on this list, bromfenac sodium, to add an exception when the product is compounded under certain circumstances as written in the proposed rule.

At this time, FDA is not finalizing the entry in the proposed rule for all extended-release drug products containing oxycodone hydrochloride that have not been determined by FDA to have abuse-deterrent properties. The addition of an entry to the withdrawn or removed list for oxycodone hydrochloride remains under consideration by FDA.

2. A Single Withdrawn or Removed List Will Apply for the Purposes of Both Sections 503A and 503B

Given that nearly identical criteria apply for a drug to be included on the list referred to in section 503A(b)(1)(C) and the list referred to in section 503B(a)(4) of the FD&C Act, FDA is revising and updating the list at § 216.24 for purposes of both sections 503A and 503B. The list in § 216.24 applies to compounders seeking to qualify for the exemptions under section 503A and outsourcing facilities seeking to qualify for the exemptions under section 503B. Drug products that appear on this list have been withdrawn or removed from the market because they have been found to be unsafe or not effective and may not be compounded for human use under the exemptions provided by either section 503A or 503B of the FD&C Act.

3. Procedure for Updating the List Going Forward

After consideration of the comments submitted on the July 2014 proposed rule (see section III of this document), at this time FDA intends to continue updating the list through notice and comment rulemaking, and we are therefore not proposing or adopting an alternative process with the publication of this final rule. We recognize that adding drug products to the list may limit their availability, and the notice and comment process informs interested members of the public of how the Agency proposes to revise the list and gives them an opportunity to contribute to the process. Additionally, we intend to create a Web page, described in more detail in the paragraphs that follow, that contains information about any drugs that we are considering proposing or that we have proposed for addition to the withdrawn or removed list. We believe that the Web page will be a valuable source of timely information for patients, prescribers, and compounders.

In the following paragraphs, FDA discusses its current thinking about the procedures we intend to use to revise the withdrawn or removed list as needed. This discussion does not create rights or impose binding obligations on the Agency. In section III, we respond further to specific comments about whether the Agency should adopt alternative procedures.

We intend to propose regulations to revise the withdrawn or removed list periodically, as appropriate, as we identify drugs that we tentatively determine should be listed. We would also propose regulations when we tentatively determine that changes to the status of drug products already on the list should result in a revision to their listing, for example, if some version of a drug on the list has been approved for marketing. As FDA identifies drugs that it is considering for a future rule proposal, we intend to collect and post together on a single page of the Agency's Web site relevant information about those drugs. The information may include, for example, **Federal Register** notices announcing withdrawal of approval of a drug application and accompanying safety communications or information, **Federal Register** notices announcing an Agency determination that a drug product was removed from sale for reasons of safety or effectiveness, or other relevant FDA Alerts, FDA Drug Safety Communications, FDA News Releases, Public Health Advisories, Dear Healthcare Practitioner Letters, Citizen Petitions, and Sponsor Letters.

If FDA determines that issuing proposed and then final regulations to add a drug product to the withdrawn or removed list before consulting the Advisory Committee is necessary to protect the public health, then it will do so as permitted under section 503A(c)(1) of the FD&C Act. Based on the Agency's experience to date, we expect that this will rarely be necessary, and that we will instead generally consult the Advisory Committee before adding a drug product to the withdrawn or removed list.

When FDA consults the Advisory Committee in the ordinary course, FDA may issue a proposed rule announcing proposed updates to the list prior to convening the Advisory Committee, or it may convene the Advisory Committee first to discuss potential updates and then publish a proposed rule. The order will depend on the timing of the Advisory Committee meetings, the priority of matters that may be brought before the Advisory Committee, and the status of other compounding-related rulemakings. There are numerous steps that must be completed before holding an FDA advisory committee meeting, which make it difficult to schedule a meeting on short notice. For instance: (1) Meeting participants must be contacted to determine their availability, and travel and lodging arrangements must be made; (2) conflict of interest screening and review must be completed before an advisory committee member can participate in a particular matter; (3) a **Federal Register** notice must be published for each meeting to announce to the public that a meeting will be held, and it must generally be published no later than 15 days prior to the meeting; (4) a meeting location must be secured; (5) meeting materials for the committee must be compiled for committee members, and a redacted version must be created for posting on the FDA Web site; numerous other logistical steps must be completed.

Regardless of the order in which FDA holds the Advisory Committee meeting and issues a proposed rule, and with the exception noted previously of the likely to be rare instances where FDA determines that it is necessary to revise the list in § 216.24 prior to consultation with the Advisory Committee to protect the public health, FDA will only finalize any additions or modifications to the list after consulting the Advisory Committee about the relevant drug or drugs, and after FDA has provided an opportunity for public comments to be submitted on the proposed rule. In addition to having an opportunity to submit comments on any specific proposals to the docket of the proposed rule, members of the public will also have an opportunity to comment on any potential updates to the list at the Advisory Committee meetings as well. An open public hearing session will be scheduled at each of these meetings, during which interested persons will have an opportunity to submit their views.

In instances where FDA first consults the Advisory Committee about a drug product and subsequently proposes regulations to update the list with a new or modified entry for the drug product, FDA generally does not expect to convene the Advisory Committee a second time before deciding whether to finalize the entry. The Agency may bring the entry back to the Advisory Committee if that is warranted. We do not expect this will occur very often given the opportunity to submit views to the Advisory Committee before the rule is proposed and as evidenced by the fact that we received no comments on 25 of the 26 entries that were proposed for addition or modification to the list in the July 2014 proposed rule.

III. Comments on the Proposed Rule and FDA's Responses

Seven comments were submitted on the July 2014 proposed rule. Comments were received from two pharmacists; two health professionals; an organization representing health care practitioners, as well as food and dietary supplement companies and consumer advocates; and two organizations representing pharmacists. FDA has summarized and responded to these comments in the following paragraphs.

To make it easier to identify the comments and FDA's responses, the word ''Comment,'' in parentheses, appears before the comment's description, and the word ''Response,'' in parentheses, appears before the Agency's response. We have numbered each comment to help distinguish between different comments. Similar comments are grouped together under the same number, and, in some cases, different subjects discussed in the same comment are separated and designated as distinct comments for purposes of FDA's response. The number assigned to each comment or comment topic is purely for organizational purposes and does not signify the comment's value or importance or the order in which the comments were received.

A. Comments on Proposed Entries for Inclusion on the List

1. General

(Comment 1) One comment supported the list in the proposed rule and recommended that FDA finalize the list as soon as possible.

(Response) FDA agrees with the comment.

2. Specific Drug Entries for Inclusion on the List

a. *Oral Chloramphenicol* (Comment 2). FDA received one comment on the proposal to include all oral drug products containing chloramphenicol on the withdrawn or removed list. The comment requested that FDA ''reconsider and reclassify Chloramphenicol 250 mg tablets labeling for tropical [sic] medical use and packaging changes; rather than withdraw from the marketplace for developing nations [World Health Organization,] WHO list of drug use.'' The comment stated that chloramphenicol 250 milligrams (mg) is used to control hemorrhagic fever-like illnesses (*e.g.,* Lassa Fever, Ebola) and also stated that control and survival benefits outweigh the risks of thrombocytopenia and aplastic anemia in the already anemic patient when used in the short term appropriately.

(Response) FDA disagrees with the suggested revisions. For the reasons that follow, FDA will add all oral drug products containing chloramphenicol to the list in § 216.24.

In the **Federal Register** of February 11, 2009 (74 FR 6896), FDA announced that it was withdrawing approval of ANDA 60–591 for Chloromycetin (chloramphenicol) Capsules 50 mg, 100 mg, and 250 mg, effective March 13, 2009. Armenpharm, Ltd., submitted a citizen petition dated February 7, 2011 (Docket No. FDA–2011–P–0081), under § 10.30 (21 CFR 10.30), requesting that the Agency determine whether Chloromycetin (chloramphenicol) Capsules, 250 mg, were withdrawn from sale for reasons of safety or effectiveness. After considering the citizen petition, FDA determined that the drug product was withdrawn for reasons of safety or effectiveness. With the approval of additional therapies with less severe adverse drug effects, FDA determined that the risks associated with Chloromycetin (chloramphenicol) Capsules, 250 mg, as then labeled, outweighed the benefits. Furthermore, Chloromycetin (chloramphenicol) Capsules, 250 mg, may cause a number of adverse reactions, the most serious being bone marrow depression (anemia, thrombocytopenia, and granulocytopenia temporally associated with treatment). Additionally, prior to the removal of the capsule drug product from the market, a boxed warning in the prescribing information for both chloramphenicol sodium succinate injection and chloramphenicol capsules stated that serious hypoplastic anemia, thrombocytopenia, and granulocytopenia are known to occur after administration of chloramphenicol. The boxed warning also described fatal aplastic anemia associated with administration of the drug and aplastic anemia attributed to chloramphenicol that later terminated in leukemia. There is published literature that suggests that the risk of fatal aplastic anemia associated with the oral formulation of

chloramphenicol may be higher than the risk associated with the intravenous formulation (see the **Federal Register** of July 13, 2012 (77 FR 41412)).

In December 2015, FDA initiated the process to suspend chloramphenicol ANDA 60–851, which was held by Armenpharm. FDA sent a letter to Armenpharm notifying the company of the Agency's initial determination that Chloromycetin (chloramphenicol) Capsules, 250 mg were withdrawn for reasons of safety or effectiveness and of the Agency's initial decision to suspend approval of ANDA 60–851 (See Docket No. FDA–2011–P–0081). Under § 314.153(b)(2) (21 CFR 314.153(b)(2)), Armenpharm had 30 days from that notification in which to present written comments or information bearing on the initial decision. On December 17, 2016, Armenpharm submitted comments requesting an oral hearing under § 314.153(b)(4). On March 17, 2016, however, Armenpharm withdrew its oral hearing request.

FDA issued a notice in the **Federal Register** announcing the suspension of ANDA 60–851 (see 81 FR 64914, September 21, 2016). In the same notice, FDA announced the following drug products were withdrawn from sale for reasons of safety or effectiveness: Chloromycetin (chloramphenicol) Capsules, 50 mg and 100 mg; Amphicol (chloramphenicol) Capsules, 100 mg; and Chloromycetin Palmitate (chloramphenicol palmitate), oral suspension 150 mg/5 mL as currently labeled.

After reviewing the comment regarding the proposed oral chloramphenicol entry, FDA reassessed whether to include oral chloramphenicol on the list, and if so, how to describe the entry. FDA's January 2015 review on oral chloramphenicol (available as Tab 8 of Ref. 1 of the briefing document for the February 2015 Advisory Committee meeting) determined that oral chloramphenicol formulations, regardless of the specific oral forms and strengths, are expected to have a safety profile similar to that of chloramphenicol capsules, 250 mg. Furthermore, FDA's January 2015 review on oral chloramphenicol noted that the Agency was not aware of any evidence that chloramphenicol has antiviral activity against causative agents of viral hemorrhagic fever, including Ebola. Chloramphenicol's mechanism of antibacterial action is by binding to the 50S subunit of the bacterial ribosome, a structure not found in viruses. Therefore, there is no putative mechanism to expect antiviral activity.

This FDA review on oral chloramphenicol was presented to the Advisory Committee on February 23, 2015, and the Advisory Committee voted in favor of the Agency's proposal to include all oral drug products containing chloramphenicol on the list.

b. *Adenosine Phosphate* (Comment 3). FDA received one comment asking that FDA clarify whether the entry for adenosine phosphate that was part of the original list finalized in 1999 is intended to include all three forms of adenosine phosphate (mono-, di-, and triphosphate).

(Response) For the reasons that follow, FDA declines to modify the entry for adenosine phosphate on the list in § 216.24 at this time.

The preamble of the 1998 proposed rule to establish the original list (see 63 FR 54082, October 8, 1998) stated that adenosine phosphate, formerly marketed as a component of Adeno for injection, Adco for injection, and other drug products, was determined to be neither safe nor effective for its intended uses as a vasodilator and an anti-inflammatory. FDA directed the removal of these drug products from the market in 1973.

After reviewing the comment to the docket of the July 2014 proposed rule regarding the adenosine phosphate entry, FDA began to assess whether to modify the adenosine phosphate entry and, if so, how.

FDA prepared a review on adenosine phosphate (available as Tab 7 of Ref. 1 of the briefing document for the February 2015 Advisory Committee meeting) and consulted with the Advisory Committee on February 23, 2015 on the comment, as discussed in section II.B.

Ultimately, FDA determined that it is unnecessary to modify the entry for adenosine phosphate on the list in § 216.24 at this time. None of the substances raised in the comment (adenosine 5′-monophosphate (AMP), adenosine 5′-diphosphate (ADP), and adenosine 5′-triphosphate (ATP)) satisfy the requirements for a bulk drug substance that may be used in compounding under either section 503A or section 503B.[1] Consequently, at this time, a drug product compounded with AMP, ADP, or ATP would be ineligible for the exemptions provided under either section 503A or section 503B.

c. *Propoxyphene.* No comments were submitted regarding propoxyphene. Since the time the proposed rule was published, however, FDA announced in the **Federal Register** of September 12, 2014 (79 FR 54729) that it was withdrawing approval of three propoxyphene products. The holders of the applications for the three products had been given notice of opportunity for a hearing in the **Federal Register** of March 10, 2014 (79 FR 13308) (the March 10, 2014, notice), and no timely request for a hearing on the matter was received. In addition, FDA announced in the **Federal Register** of April 15, 2016 (81 FR 22283), that it was correcting a notice that appeared in the **Federal Register** of March 10, 2014 (79 FR 13308). The March 10, 2014, notice announced the withdrawal of approval of 54 propoxyphene products with agreement from holders of the affected applications. The April 15, 2016, notice added one additional propoxyphene product, NDA 017507, held by Xanodyne Pharmaceuticals, to the table of products for which approval was withdrawn with agreement from the holders of the affected applications.

B. Comments on Other Issues

1. Ripeness of Proposed Rule

(Comment 4) FDA received two comments suggesting that the issuance of the July 2014 proposed rule was premature. The comments expressed concern that FDA had proposed adding drug products to the previously existing list of drug products withdrawn from the market for safety and efficacy reasons without first obtaining input from the Advisory Committee. One of the comments further suggested that the proposed rule be withdrawn until such time as the drug products, proposed to be added, could be reviewed by the Advisory Committee.

(Response) FDA notes that the July 2014 **Federal Register** notice was a notice of proposed rulemaking, not a final rule. Section 503A(c)(1) of the FD&C Act states that before issuing regulations to implement section 503A(b)(1)(C) pertaining to the withdrawn or removed rule (among other sections), the Secretary shall convene and consult an advisory committee on compounding unless the Secretary determines that the issuance of such regulations before consultation is necessary to protect the public health. The changes in a proposed rule are not effective or implemented unless and until a proposed rule is finalized. Because the Agency convened and

[1] These substances are not the subject of an applicable United States Pharmacopeia or National Formulary monograph, a component of an FDA-approved drug, on a list of bulk drug substances established by FDA that may be used in compounding, or on a drug shortage list in effect under section 506E of the FD&C Act (21 U.S.C. 356e). See section 503A(b)(A)(i) and section 503B(a)(2)(A) of the FD&C Act.

consulted the Advisory Committee on February 23, 2015, regarding each of the amendments to the list we are finalizing in the present rule, the Agency has satisfied the statutory requirements of section 503A(c)(1) of the FD&C Act.

2. Single List

(Comment 5) One comment suggested that the Agency should finalize its proposal to publish one list for both section 503A and section 503B of the FD&C Act.

(Response) FDA agrees with this comment.

C. Comments on Updating the List

FDA received comments from five different submitters on the procedure for updating the list.

(Comment 6) FDA received two comments regarding a specific alternative approach to the current process of issuing first a proposed rule followed by a final rule before adopting any additions or modifications to the list. One comment recommended use of an interim final rule or final rule with comment to allow for the flexibility to review public input, yet incorporate the latest safety information into the practice of compounding. Another comment recommended that in instances where public health may be of significant concern, the Agency convene an emergency meeting of the Advisory Committee within 5 business days to obtain specific input and recommendations to the Secretary for immediate inclusion of a drug product on the list.

(Response) As noted previously in section II.C.3, there are numerous steps that must be completed before holding an FDA advisory committee meeting, which make it difficult to schedule a meeting on short notice. In the likely to be rare instances where FDA determines that it is necessary to revise the list in § 216.24 prior to consultation with the Advisory Committee to protect the public health, FDA will add the drug to the list prior to consultation with the Advisory Committee under section 503A(c)(1) of the FD&C Act.

With respect to issuing interim final rules or final rules with comment, the Agency's current thinking is that the process described in section II.C.3 will allow the Agency to provide timely public notice of emerging safety information and appropriate opportunity for interested persons to comment before FDA revises the withdrawn or removed list.

(Comment 7) FDA received a comment suggesting that upon receipt of a notice to withdraw a product from the market for safety and efficacy reasons by the NDA or ANDA holder, FDA inform the Advisory Committee and include a review of that request on the Committee's next scheduled meeting agenda.

(Response) FDA does not agree that it should inform the Advisory Committee when it is advised by an NDA or ANDA holder that the NDA or ANDA holder has removed a drug from the market for safety or efficacy reasons, or that such a drug should necessarily be included on the Advisory Committee's next scheduled meeting agenda. FDA considers but does not rely solely on an NDA or ANDA holder's assertions or representations to determine whether a drug has been withdrawn or removed from the market because it has been found to be unsafe or not effective. Rather, the Agency considers a range of information before the Agency, such as information provided by the NDA or ANDA holder, information contained in the Agency's files, and the Agency's independent evaluation of relevant literature and data on possible postmarketing adverse events. When the Agency decides to propose a change, it will proceed as described previously in section II.C. The timing of any consultation with the Advisory Committee will also depend on, among other things, the timing of the Advisory Committee meetings and the relative priority of matters that may be brought before the Advisory Committee.

(Comment 8) Another comment recommended soliciting public input specifically on how to incorporate the ''do not compound'' list when publishing intent to withdraw a drug.

(Response) FDA does not believe it is necessary or that it would be efficient to separately solicit public input every time the Agency publishes a notice in the **Federal Register** of its intent to withdraw approval of a drug.

When the Agency publishes a notice in the **Federal Register** of its intent to withdraw approval of a drug, it does so to give a particular party or parties notice and an opportunity for a hearing on the proposed withdrawal. This process may or may not result in a withdrawal of approval of the application, and even if the application is withdrawn the reasons may not relate to the safety or efficacy of the drug. Whether or how a drug should be included on the withdrawn or removed list under sections 503A and 503B of the FD&C Act is a separate question. In general, as discussed previously in this document in section II.C.3, interested members of the public will have the opportunity to review and comment on any proposals to add a drug to or revise an entry for a drug already on the withdrawn or removed list.

(Comment 9) FDA received several comments opposing any approach to updating the withdrawn or removed list that would eliminate public review from the process. One comment stated that FDA already has the ability to remove from the market any drug that is dangerous and claimed that this does not justify completely eliminating public involvement in the process of making additions to the withdrawn or removed list. Another suggested that additions and changes to the withdrawn or removed list be made through notice and comment rulemaking, observing that such a notice and comment period will allow stakeholders to review FDA's safety and efficacy concerns for a particular drug product prior to addition to the withdrawn or removed list. One comment recommended incorporating public discussion about how to address a drug on the list when convening a drug advisory committee. One suggested all additions to the list go through an advisory committee that is open to public comment. One suggested that no revisions to the list occur without the input and review of the Advisory Committee.

(Response) We appreciate these comments, and as explained in section II.C.3., at this time we have decided not to adopt or propose an alternative process to notice and comment rulemaking for revising the withdrawn or removed list. Additionally, FDA intends to consult the Advisory Committee prior to placing a drug on the withdrawn or removed list unless we determine that the issuance of such regulations before consultation is necessary to protect the public health. These procedures provide ample opportunity for public input regarding additions or modifications to the list, including: (1) An opportunity to present relevant information at an open public hearing held when the Advisory Committee meets to consider proposed revisions to the list and (2) an opportunity to submit comments on each proposed rule before it is finalized.

(Comment 10) One comment recommended that all drug products currently on the list be reviewed by the Advisory Committee on an annual basis to determine whether any change in therapy or use of those drugs necessitates either removal or the clarification of certain salts, dosage forms, or other clinical application to assure accessibility of medications for patients.

(Response) FDA has considered this comment and does not believe it is necessary to require an annual review

by the Advisory Committee of all drug products on the list. Such a review is not necessary, practical, or feasible. Once a drug has been added to the list, FDA does not expect that there will frequently be a need to revise the entry for that drug. FDA intends to monitor future approvals, withdrawals, or removals of listed drugs, to consult other relevant information that may suggest a need for revisions to the list, and to propose modifications as appropriate. In addition, members of the public can submit a citizen petition at any time under § 10.30 requesting that FDA modify or remove an entry on the list (with adequate data to support their request), and FDA will consider and respond to the petition.

(Comment 11) One comment recommended that FDA issue an annual request in the **Federal Register** for submissions by the public of drug products to be reviewed and considered for inclusion on the list, inform the Advisory Committee of any submitted drug products, and include a review of those submissions on the Advisory Committee's next scheduled meeting agenda.

(Response) FDA disagrees with the suggestion to issue an annual request in the **Federal Register** for submissions by the public of drug products to be reviewed and considered for inclusion on the list. We welcome suggestions by the public of drug products to consider and review for inclusion on the list, or of a modification to an entry in the list, at any time through the citizen petition process (see response to comment 10). We do not wish to restrict the submissions of such suggestions to just once a year. FDA does intend to consult with Advisory Committee as described in section II.C.3.

D. Miscellaneous Comments

(Comment 12) One comment stated that nowhere within the proposed rule is there a formal process for reviewing, updating, and informing the compounding community of changes or updates to the list of drugs withdrawn or removed from the market for safety and efficacy reasons. The comment contends this is of grave concern to the pharmacy community and one which must be addressed.

(Response) FDA agrees that the compounding community should be informed of and have an opportunity to review and comment on proposed revisions to the list of drugs at § 216.24, that have been withdrawn or removed from the market because they have been found to be unsafe or not effective. The process outlined in section II.C.3 provides notice and an opportunity to comment to the compounding community and to the general public. Further, as noted elsewhere, members of the compounding community and other members of the public can submit a citizen petition at any time under § 10.30, requesting that FDA modify or remove an entry on the list (with adequate data to support their request), and FDA will consider and respond to the petition.

(Comment 13) One comment suggested that the Secretary establish minimum criteria that must be met before any drug product may be added to the withdrawn or removed list.

(Response) FDA disagrees with this comment. The criteria that must be met to place a drug on the withdrawn or removed list are laid out in the statute. Under sections 503A and 503B of the FD&C Act, drug products on the withdrawn or removed list are those that have been withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective. At this time, FDA does not believe it would be helpful to issue guidance or regulations to further define or interpret this standard. Instead, FDA intends to discuss in any rulemaking the basis for the Agency's proposal to add a drug product to the list or to modify an entry on the list.

(Comment 14) One comment observed that under both sections 503A and 503B of the FD&C Act, drugs may be added to the list if they have been found to be not effective. The comment went on to note that without the crucial check in the rulemaking process afforded by public review, FDA would be able to ban from compounding any drug on the pretext of it being ''not effective.''

(Response) As described in section II.C.3, FDA intends to revise the list by using notice-and-comment rulemaking and, generally, to consult the Advisory Committee. Interested members of the public will have the opportunity to submit their views through this process. In addition, in the preamble to the July 2014 proposed rule, FDA observed that as with the original list, the primary focus of the July 2014 proposed rule was on drug products that have been withdrawn or removed from the market because they have been found to be unsafe. FDA further stated that FDA may propose at a later date to add to the list other drug products that have been withdrawn or removed from the market because they have been found to be not effective, or to update the list as information becomes available to the Agency regarding products that have been removed from the market because they have been found to be unsafe.

(Comment 15) One comment suggested that when updating the list, a process be considered by which FDA will consider exemptions (for example, when a drug or drug component may be compounded for a specific formulation, strength, or route of administration).

(Response) FDA agrees that sometimes it may be appropriate to except a specific formulation (including strength), dosage form, or route of administration of a drug on the list. Indeed, as discussed further in FDA's response to the following comment, FDA has already engaged in this practice when it deems such exceptions appropriate. Going forward, when FDA is considering an addition or modification to the list, FDA will continue to consider the appropriateness of such exceptions on a case-by-case basis.

(Comment 16) One comment advised that ingredients should be banned completely and absolutely with great caution.

(Response) With respect to whether drugs on the withdrawn or removed list may be used in compounding, as FDA indicated in the preamble to the July 2014 proposed rule, most drugs on the list may not be compounded in any form. There are, however, two categories of exceptions. In the first category, a particular formulation, indication, dosage form, or route of administration of a drug is explicitly excluded from an entry on the list because an approved drug containing the same active ingredient(s) has not been withdrawn or removed from the market because it has been found to be unsafe or not effective. For such drugs, the formulation, indication, dosage form, or route of administration expressly excluded from the list may be eligible for the exemptions provided in sections 503A and 503B of the FD&C Act. In the second category, some drugs are listed only with regard to certain formulations, concentrations, indications, routes of administration, or dosage forms because they have been found to be unsafe or not effective in those particular formulations, concentrations, indications, routes of administration, or dosage forms.

In addition, FDA notes that just because a drug is on the withdrawn or removed list does not mean it is banned completely and absolutely from compounding. In certain circumstances, if warranted, drugs that have been withdrawn or removed from the market could be made available for use under FDA regulations on expanded access at 21 CFR part 312, subpart I. If conditions in the regulations are met, expanded access programs allow the use of a drug

in a clinical setting to treat patients with a serious or immediately life-threatening disease or a condition that has no comparable or satisfactory alternative therapies to diagnose, monitor, or treat the patient's disease or condition (see Guidance for Industry, Expanded Access to Investigational Drugs for Treatment Use—Questions and Answers (June 2016), available at: *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM351261.pdf*).

FDA will apply the statutory standard for placing drugs on the withdrawn or removed list, and intends to follow the process described in section II.C.3 to consult with the Advisory Committee and provide the public with notice and opportunity for comment.

IV. Legal Authority

Sections 503A and 503B of the FD&C Act provide the principal legal authority for this final rule. As described in section I of this document, section 503A of the FD&C Act describes the conditions that must be satisfied for human drug products compounded by a licensed pharmacist or licensed physician to be exempt from three sections of the FD&C Act (sections 501(a)(2)(B), 502(f)(1), and 505). One of the conditions that must be satisfied to qualify for the exemptions under section 503A of the FD&C Act is that the licensed pharmacist or licensed physician does not compound a drug product that appears on a list published by the Secretary in the **Federal Register** of drug products that have been withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective (see section 503A(b)(1)(C) of the FD&C Act). Section 503A(c)(1) of the FD&C Act also states that the Secretary shall issue regulations to implement section 503A, and that before issuing regulations to implement section 503A(b)(1)(C) pertaining to the withdrawn or removed rule, among other sections, the Secretary shall convene and consult an advisory committee on compounding unless the Secretary determines that the issuance of such regulations before consultation is necessary to protect the public health.

Section 503B of the FD&C Act describes the conditions that must be satisfied for a drug compounded for human use by or under the direct supervision of a licensed pharmacist in an outsourcing facility to be exempt from three sections of the FD&C Act (sections 502(f)(1), 505, and 582). One of the conditions in section 503B of the FD&C Act that must be satisfied to qualify for the exemptions is that the drug does not appear on a list published by the Secretary of drugs that have been withdrawn or removed from the market because such drugs or components of such drugs have been found to be unsafe or not effective (see section 503B(a)(4)). To be eligible for the exemptions in section 503B, a drug must be compounded in an outsourcing facility in which the compounding of drugs occurs only in accordance with section 503B, including as provided in section 503B(a)(4).

Therefore, sections 503A and 503B of the FD&C Act and our general rulemaking authority in section 701(a) of the FD&C Act (21 U.S.C. 371(a)) together serve as our principal legal authority for this final rule revising FDA's regulations on drug products withdrawn or removed from the market because the drug product or a component of the drug product have been found to be unsafe or not effective in § 216.24.

V. Analysis of Environmental Impact

FDA has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Economic Analysis of Impacts

FDA has examined the impacts of the rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because small businesses are not expected to incur any compliance costs or loss of sales due to this regulation, we certify that this rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $146 million, using the most current (2015) Implicit Price Deflator for the Gross Domestic Product. We do not expect this rule to result in any 1-year expenditure that would meet or exceed this amount.

This rule amends § 216.24 concerning human drug compounding. Specifically, the rule adds to and modifies the list of drug products that may not be compounded under the exemptions provided by sections 503A and 503B of the FD&C Act because the drug products have been withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective (see section II). The rule adds 24 entries to the list and modifies the description of one drug entry on the list. The Agency is not aware of any routine compounding of these drug products and, therefore, does not estimate any compliance costs or loss of sales as a result of the prohibition against compounding these drugs for human use.

Unless an Agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires Agencies to analyze regulatory options to minimize any significant economic impact of a regulation on small entities. Most pharmacies meet the Small Business Administration definition of a small entity, which is defined as having annual sales less than $25.5 million for this industry. The Agency is not aware of any routine compounding of these drug products and does not estimate any compliance costs or loss of sales to small businesses as a result of the prohibition against compounding these drugs. Therefore, the Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VII. Paperwork Reduction Act of 1995

The submission of comments on this rule were submissions in response to a **Federal Register** notice, in the form of comments, which are excluded from the definition of ''information'' under 5 CFR

1320.3(h)(4) of Office of Management and Budget regulations on the Paperwork Reduction Act (*i.e.,* facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the Agency's full consideration of the comment). The rule contains no other collection of information.

VIII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that this final rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency concludes that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. References

In addition to the references placed on display in the Division of Dockets Management for the proposed rule under Docket No. FDA–1999–N–0194 (formerly 99N–4490), the following reference is on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852 under Docket No. FDA–1999–N–0194 (formerly 99N–4490) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *http://www.regulations.gov.* (FDA has verified the Web site address in this reference section as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.)

1. Briefing Information for the February 23–24, 2015, Meeting of the Pharmacy Compounding Advisory Committee (available at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/PharmacyCompoundingAdvisoryCommittee/ucm433803.htm*).

For the convenience of the reader, the regulatory text of § 216.24 provided with this final rule includes the drug products described in this final rule and the drug products codified by the 1999 final rule.

List of Subjects in 21 CFR Part 216

Drugs, Prescription drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 216 is amended as follows:

PART 216—HUMAN DRUG COMPOUNDING

■ 1. The authority citation for part 216 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 353a, 353b, 355, and 371.

■ 2. The heading for part 216 is revised to read as set forth above.

■ 3. Section 216.24 is revised to read as follows:

§ 216.24 Drug products withdrawn or removed from the market for reasons of safety or effectiveness.

The following drug products were withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective. The following drug products may not be compounded under the exemptions provided by section 503A(a) or section 503B(a) of the Federal Food, Drug, and Cosmetic Act:

Adenosine phosphate: All drug products containing adenosine phosphate.

Adrenal cortex: All drug products containing adrenal cortex.

Alatrofloxacin mesylate: All drug products containing alatrofloxacin mesylate.

Aminopyrine: All drug products containing aminopyrine.

Astemizole: All drug products containing astemizole.

Azaribine: All drug products containing azaribine.

Benoxaprofen: All drug products containing benoxaprofen.

Bithionol: All drug products containing bithionol.

Bromfenac sodium: All drug products containing bromfenac sodium (except ophthalmic solutions).

Butamben: All parenteral drug products containing butamben.

Camphorated oil: All drug products containing camphorated oil.

Carbetapentane citrate: All oral gel drug products containing carbetapentane citrate.

Casein, iodinated: All drug products containing iodinated casein.

Cerivastatin sodium: All drug products containing cerivastatin sodium.

Chloramphenicol: All oral drug products containing chloramphenicol.

Chlorhexidine gluconate: All tinctures of chlorhexidine gluconate formulated for use as a patient preoperative skin preparation.

Chlormadinone acetate: All drug products containing chlormadinone acetate.

Chloroform: All drug products containing chloroform.

Cisapride: All drug products containing cisapride.

Cobalt: All drug products containing cobalt salts (except radioactive forms of cobalt and its salts and cobalamin and its derivatives).

Dexfenfluramine hydrochloride: All drug products containing dexfenfluramine hydrochloride.

Diamthazole dihydrochloride: All drug products containing diamthazole dihydrochloride.

Dibromsalan: All drug products containing dibromsalan.

Diethylstilbestrol: All oral and parenteral drug products containing 25 milligrams or more of diethylstilbestrol per unit dose.

Dihydrostreptomycin sulfate: All drug products containing dihydrostreptomycin sulfate.

Dipyrone: All drug products containing dipyrone.

Encainide hydrochloride: All drug products containing encainide hydrochloride.

Esmolol hydrochloride: All parenteral dosage form drug products containing esmolol hydrochloride that supply 250 milligrams/milliliter of concentrated esmolol per 10-milliliter ampule.

Etretinate: All drug products containing etretinate.

Fenfluramine hydrochloride: All drug products containing fenfluramine hydrochloride.

Flosequinan: All drug products containing flosequinan.

Gatifloxacin: All drug products containing gatifloxacin (except ophthalmic solutions).

Gelatin: All intravenous drug products containing gelatin.

Glycerol, iodinated: All drug products containing iodinated glycerol.

Gonadotropin, chorionic: All drug products containing chorionic gonadotropins of animal origin.

Grepafloxacin: All drug products containing grepafloxacin.

Mepazine: All drug products containing mepazine hydrochloride or mepazine acetate.

Metabromsalan: All drug products containing metabromsalan.

Methamphetamine hydrochloride: All parenteral drug products containing methamphetamine hydrochloride.

Methapyrilene: All drug products containing methapyrilene.

Methopholine: All drug products containing methopholine.

Methoxyflurane: All drug products containing methoxyflurane.

Mibefradil dihydrochloride: All drug products containing mibefradil dihydrochloride.

Nitrofurazone: All drug products containing nitrofurazone (except topical drug products formulated for dermatologic application).

Nomifensine maleate: All drug products containing nomifensine maleate.

Novobiocin sodium: All drug products containing novobiocin sodium.

Oxyphenisatin: All drug products containing oxyphenisatin.

Oxyphenisatin acetate: All drug products containing oxyphenisatin acetate.

Pemoline: All drug products containing pemoline.

Pergolide mesylate: All drug products containing pergolide mesylate.

Phenacetin: All drug products containing phenacetin.

Phenformin hydrochloride: All drug products containing phenformin hydrochloride.

Phenylpropanolamine: All drug products containing phenylpropanolamine.

Pipamazine: All drug products containing pipamazine.

Polyethylene glycol 3350, sodium chloride, sodium bicarbonate, potassium chloride, and bisacodyl: All drug products containing polyethylene glycol 3350, sodium chloride, sodium bicarbonate, and potassium chloride for oral solution, and 10 milligrams or more of bisacodyl delayed-release tablets.

Potassium arsenite: All drug products containing potassium arsenite.

Potassium chloride: All solid oral dosage form drug products containing potassium chloride that supply 100 milligrams or more of potassium per dosage unit (except for controlled-release dosage forms and those products formulated for preparation of solution prior to ingestion).

Povidone: All intravenous drug products containing povidone.

Propoxyphene: All drug products containing propoxyphene.

Rapacuronium bromide: All drug products containing rapacuronium bromide.

Reserpine: All oral dosage form drug products containing more than 1 milligram of reserpine.

Rofecoxib: All drug products containing rofecoxib.

Sibutramine hydrochloride: All drug products containing sibutramine hydrochloride.

Sparteine sulfate: All drug products containing sparteine sulfate.

Sulfadimethoxine: All drug products containing sulfadimethoxine.

Sulfathiazole: All drug products containing sulfathiazole (except for those formulated for vaginal use).

Suprofen: All drug products containing suprofen (except ophthalmic solutions).

Sweet spirits of nitre: All drug products containing sweet spirits of nitre.

Tegaserod maleate: All drug products containing tegaserod maleate.

Temafloxacin hydrochloride: All drug products containing temafloxacin hydrochloride.

Terfenadine: All drug products containing terfenadine.

3,3′,4′,5-tetrachlorosalicylanilide: All drug products containing 3,3′,4′,5-tetrachlorosalicylanilide.

Tetracycline: All liquid oral drug products formulated for pediatric use containing tetracycline in a concentration greater than 25 milligrams/milliliter.

Ticrynafen: All drug products containing ticrynafen.

Tribromsalan: All drug products containing tribromsalan.

Trichloroethane: All aerosol drug products intended for inhalation containing trichloroethane.

Troglitazone: All drug products containing troglitazone.

Trovafloxacin mesylate: All drug products containing trovafloxacin mesylate.

Urethane: All drug products containing urethane.

Valdecoxib: All drug products containing valdecoxib.

Vinyl chloride: All aerosol drug products containing vinyl chloride.

Zirconium: All aerosol drug products containing zirconium.

Zomepirac sodium: All drug products containing zomepirac sodium.

Dated: October 3, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–24333 Filed 10–6–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS SIOUX CITY (LCS 11) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective October 7, 2016 and is applicable beginning September 23, 2016.

FOR FURTHER INFORMATION CONTACT: Commander Theron R. Korsak, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number: 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS SIOUX CITY (LCS 11) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I paragraph 2 (a)(i), pertaining to the location of the forward masthead light; Annex I, paragraph 3(a), pertaining to the location of the forward masthead light, and the horizontal distance between the forward and after masthead light. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, the DoN amends part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended by:

■ a. In Table One, adding, in alpha numerical order, by vessel number, an entry for USS SIOUX CITY (LCS 11); and

■ b. In Table Five, adding, in alpha numerical order, by vessel number, an entry for USS SIOUX CITY (LCS 11).

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE ONE

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i) Annex I
* * * * *	*	*
USS SIOUX CITY	LCS 11	5.98
* * * * *	*	*

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* * *	*	*	*	*	*
USS SIOUX CITY	LCS 11		X	X	23
* * *	*	*	*	*	*

Approved: September 23, 2016.

A.S. Janin,

Captain, USN, JAGC, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

Dated: October 3, 2016.

C. Mora,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–24327 Filed 10–6–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0920]

Drawbridge Operation Regulation; Inner Harbor Navigation Canal, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Leon C. Simon Blvd. (Seabrook) (aka Senator Ted Hickey) bascule bridge across the Inner Harbor Navigation Canal, mile 4.6, at New Orleans, Orleans Parish, Louisiana. The deviation is necessary to accommodate The USA Triathlon National Championships, a New Orleans event. This deviation allows the bridge to remain closed-to-navigation for ten hours on Saturday and eight hours on Sunday.

DATES: This deviation is effective from 7 a.m. on November 5, 2016 through 3 p.m. on November 6, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0920] is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Donna Gagliano, Bridge Administration Branch, Coast Guard, telephone (504) 671–2128, email *Donna.Gagliano@uscg.mil.*

SUPPLEMENTARY INFORMATION: Premier Event Management, through the Louisiana Department of Transportation and Development (LDOTD), requested a temporary deviation from the operating schedule of the Leon C. Simon Blvd. (Seabrook) (aka Senator Ted Hickey) bascule bridge across the Inner Harbor Navigation Canal, mile 4.6, at New

Orleans, Orleans Parish, Louisiana. The deviation was requested to accommodate The USA Triathlon National Championships, a New Orleans two-day event. The vertical clearance of the Leon C. Simon Blvd. (Seabrook) (aka Senator Ted Hickey) bascule bridge is 46 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. The bridge is governed by 33 CFR 117.458(c).

This deviation is effective on November 5, 2016 through November 6, 2016. The bridge over the Inner Harbor Navigation Canal will be closed to marine traffic from 7 a.m. through 5 p.m. on Saturday and from 7 a.m. through 3 p.m. on Sunday. This deviation allows the bridge to remain closed-to-navigation for the duration of the event on each day.

Navigation on the waterway consists of small tugs with and without tows, commercial vessels, and recreational craft, including sailboats.

Vessels able to pass through the bridge in the closed-to-navigation position may do so at any time. The bridge will be able to open for emergencies, and there is no immediate alternate route. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge to minimize any impact caused by the temporary deviation.

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

David M. Frank,

Bridge Administrator, Eighth Coast Guard District.

[FR Doc. 2016–24290 Filed 10–6–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2015–0425; FRL–9952–27–Region 6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Control of Air Pollution From Motor Vehicles, Vehicle Inspection and Maintenance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Texas State Implementation Plan (SIP). The revisions to the SIP were submitted in 2015. These revisions are related to the implementation of the state's motor vehicle emissions Inspection and Maintenance (I/M) Program. The EPA is approving these revisions pursuant to the Clean Air Act (CAA).

DATES: This rule will be effective on December 6, 2016 without further notice unless EPA receives relevant adverse comments by November 7, 2016. If EPA receives such comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2015–0425, at *http://www.regulations.gov* or via email to *walser.john@epa.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, please contact John Walser, 214–665–7128, *walser.john@epa.gov.* For 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: All documents in the docket are listed in the *www.regulations.gov* index and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

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

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

I. Background

A. What is a SIP?

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

The Texas SIP includes a variety of control strategies, including the regulations that outline requirements for the motor vehicle I/M program for applicable areas of the state.

B. What is vehicle inspection and maintenance?

The 1990 CAA required ozone nonattainment areas classified moderate and higher to have vehicle inspection and maintenance programs to ensure that emission controls on vehicles are properly maintained. CAA sections 182 (b)(4); (c)(3). The Texas motor vehicle I/M program, which is referred to as the Texas Motorist Choice (TMC) Program, was approved by EPA in the **Federal Register** on November 14, 2001 (66 FR 57261).[1]

The State's TMC Program requires that gasoline powered light-duty vehicles, and light and heavy-duty trucks between two and twenty-four years old, that are registered or required to be registered in the I/M program area, including fleets, are subject to annual

[1] Previous actions taken toward full approval of the TMC Program include: a proposed conditional interim approval on October 3, 1996 (61 FR 51651); an interim final conditional approval on July 11, 1997 (62 FR 37138); a direct final action on April 23, 1999 (64 FR 19910) to remove the conditions; and a final action to approve various revisions on July 25, 2014 (79 FR 43264).

inspection and testing. Vehicles in Dallas, Tarrant, Collin, Denton, Ellis, Johnson, Kaufman, Parker, and Rockwall counties in the DFW area, and Harris, Galveston, Brazoria, Fort Bend, and Montgomery in the HGB nonattainment area that are 1995 and older are subject to an ASM–2 tailpipe test. Vehicles in those counties that are 1996 and newer receive the On-Board Diagnostic (OBD) test in place of the tailpipe test.

El Paso, Travis and Williamson County I/M programs are similar and require, in conjunction with the annual safety inspection, for all I/M program vehicles (gasoline powered vehicles from 2 through 24 years old) the administration of the two-speed idle tailpipe test if they are model year 1995 or older, or an OBD test if they are model year 1996 or newer.[2] Vehicles in all program areas are also currently subject to a gas cap pressure check and an anti-tampering inspection as part of the statewide annual safety inspection.

C. What is the low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program (LIRAP)?

The LIRAP is a voluntary program that any county participating in the Texas I/M program may elect to implement to enhance the objectives of the Texas I/M program. The Texas Commission on Environmental Quality (TCEQ) adopted the LIRAP rules on March 27, 2002 at 27 Tex. Reg. 3194. The LIRAP provides funding to assist eligible vehicle owners with emissions-related repairs, retrofits, or the option to retire the vehicle. The LIRAP is funded through a portion of the emissions inspection fee. Vehicle owners who have failed a recent emissions test and who meet the low-income criteria may be eligible. The LIRAP also provides funding for local projects targeted at improving air quality in the counties implementing the LIRAP.

Although the LIRAP is not required by the CAA, certain provisions relating to the program fees have been approved into the Texas SIP to allow for full implementation of the State's I/M program.[3] These provisions strengthen the SIP.

[2] Travis and Williamson counties were added as part of an Early Action Compact (EAC) for the Austin area. The EAC was a program to encourage permanent proactive measures to prevent nonattainment area designations under the 1997 ozone standard.

[3] Please see 70 FR 45542, dated August 8, 2005.

II. Overview of the June 9 and 11, 2015 State Submittals

A. June 9, 2015 Submittal

On June 9, 2015, the TCEQ submitted SIP revisions to EPA that amended rules related to the implementation of the state's motor vehicle emission I/M program. These revisions are related to replacing the duel windshield sticker system for vehicle inspection and registration with a single vehicle registration insignia sticker and modifying the method used to collect the state portion of the vehicle safety and emissions inspection fee, in addition to minor non-programmatic updates to rule language to correct outdated references and for general clarity.[4]

DPS implemented the changes on March 1, 2015 in all program areas. At present the program areas are: Dallas-Fort Worth area (DFW), Houston-Galveston-Brazoria area (HGB), El Paso area, and the Austin area.

B. June 11, 2015 Submittal

On June 11, 2015, the TCEQ submitted SIP revisions to EPA that amended rules related to the LIRAP. TCEQ amended the state regulations to incorporate a new procedure for counties to opt out of LIRAP and to be released from program obligations, including remittance of the fee to fund the LIRAP. At the time the LIRAP was established, the rules did not specify such a procedure. The revisions define counties participating in, in the process of opting out, and not participating in the LIRAP, and details the fees associated with each county category. It also makes other minor non-programmatic updates to rule language for clarity.

The June 11, 2015 revisions to the SIP change the fee and definitions sections of the LIRAP portion of the I/M rules. These revisions are approvable into the SIP as components of the State's fee structure to implement it's I/M program.

III. Plan Requirements and Our Evaluation

The revisions we are approving address 30 TAC 114, Control of Air Pollution from Motor Vehicles, Subchapter A: Definitions; and Subchapter C, Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program, Division 1: Vehicle Inspection and Maintenance; and Division 3: Early Action Compact Counties. We have prepared a Technical Support Document (TSD) for this action which details our evaluation. Our TSD may be accessed on-line at *http://www.regulations.gov,* Docket No. EPA–R06–OAR–2015–0425.

To determine the approvability of these I/M revisions, we must determine whether these revisions comply with our Federal I/M requirements at 40 CFR part 51, subpart S, and 40 CFR 85.2222 (Federal I/M Rules) and CAA section182 regarding I/M program requirements.

A. The June 9, 2015 Submittal

The June 9, 2015 SIP narrative discusses how the Program meets the above requirements, and we agree with the State's analysis. See 38 Tex. Reg. 7068; 7074–75. Further explanation of our analysis of the adequacy of this submission with respect to I/M requirements can be found in the TSD for this action.

On June 9, 2015, the State adopted revisions to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter A, Definitions, Sections 114.1 and 114.2; and Subchapter B: Motor Vehicle Anti-Tampering Requirements, Section 114.21,[5] and Subchapter C, Division 1: Vehicle Inspection and Maintenance, Sections 114.50–114.53, and Subchapter C, Division 3: Early Action Compact Counties, Sections 114.82–114.84, and 114.87, and corresponding revisions to the SIP. The SIP revisions contain a revised narrative, rules, and supporting documentation as outlined in the requirements of the Federal I/M rules. The SIP revisions will modify the administrative aspects of the existing Texas I/M program in order to implement Texas House Bill 2305, which replaces the current dual inspection and registration sticker system with a single sticker registration sticker and modifies the method used to collect the state's portion of the vehicle emissions inspections fee. Registrations for non-compliant vehicles would be denied under the single sticker system as under the dual sticker system. 38 Tex. Reg. 7068. We find that the single sticker system is approvable because this change to Texas's I/M program does not affect the program's compliance with any federal requirements for I/M.

The I/M rules require the TCEQ to implement the I/M program in conjunction with the Texas DPS. The I/M rules also authorize the collection of the state's portion of the vehicle emissions inspection fee by the DPS at

[4] House Bill (HB) 2305 was passed during the 83rd legislative session (2013). This bill eliminated the inspection sticker resulting in a single-sticker system and makes vehicle registration dependent on obtaining a passing vehicle inspection.

[5] Please see the discussion later in this rulemaking regarding Section 114.21.

the time that vehicle emissions inspection station owners purchase safety and emissions inspection windshield stickers.

30 TAC Chapter 114 Sections 114.1 and 114.2 identify and define the terms used in the State's I/M regulations. Section 114.1(4) is revised to add the phrase ''Beginning on the single sticker transition date as defined in this section, the safety inspection certificates will no longer be used'' for clarity regarding the single-sticker program. Section 114.1(5) is added to define first vehicle registration. There is no federal definition of the term ''first vehicle registration''; but this definition does not conflict with any federal requirement. Sections 114.1(6)—(21) are renumbered to account for the new subsections and contain other non-substantive changes.

Section 114.1(15), is modified to add new text as follows: ''Single sticker transition date—The transition date of the single sticker system is the later of March 1, 2015 or the date that the Texas Department of Motor Vehicles (DMV) and the Texas DPS concurrently implement the single sticker system required by the Texas Transportation Code, Section 502.047.'' [6] This text ensures that the terminology ''Single sticker transition date'' is well-defined and consistent with the Texas Transportation Code and with federal requirements, as applicable. Additionally, Section 114.1(19) and (20) are modified to add new text that define vehicle registration and vehicle registration insignia sticker terminology.

Section 114.2(1)(A) and (B) are modified to clarify the definitions of accelerated simulation mode (ASM–2) phases, specifically the 50/15 and 25/25 modes. For example, the 25/25 mode tests the vehicle at 25 mile per hour (mph) using 25 percent of the vehicle available horsepower. Section 114.2(12)—Testing Cycle is revised to define the annual testing cycle under the single-sticker program and add the phrase ''or beginning on the single sticker transition date, the annual cycle commencing with the first vehicle registration expiration date for which a motor vehicle is subject to a vehicle emissions inspection''. Also, revisions to 114.2(14)—Uncommon Part and addition of 114.2(14)(A)–(C) add additional clarity exceeding remaining time prior to expiration of the safety inspection certificate and the vehicle registration.

These revisions to Sections 114.1 and 114.2 modify the I/M definitions as needed to implement the single-sticker program or are ministerial and add clarification. We therefore find that they are approvable.

Section 114.21—Anti-tampering Exemptions is also revised. However, at the request of TCEQ,[7] we are not taking action on Section 114.21, Anti-tampering Exemptions at this time.[8] We do not need to act on this section to approve the remaining revisions to the I/M program in the June 9 and June 11, 2015 submittals because the Anti-tampering program is not part of the currently approved SIP. Therefore, the revisions to Section 114.21 are separable, meaning that the action we are taking will not result in the approved SIP being more stringent than the State anticipated. *See Bethlehem Steel Corp.* v. *Gorsuch,* 742 F. 2d 1028 (7th Cir. 1984); *Indiana and Michigan Elec. Co.,* v. *EPA,* 733 F. 2d 489 (7th Cir. 1984).

The SIP submittal contains revisions to Subchapter C, Division 1: Vehicle Inspection and Maintenance. Specifically, Section 114.50—Vehicle Emissions Inspection Requirements, includes numerous revisions to Section 114.50(a)(1)–(4), (b)(1)–(6), (c) and (d)(1)–(6) [9] and makes non-substantive changes to other provisions in this section. The revisions implement the single-sticker program, and add rule clarity. Revisions to Section 114.50(d)(2) add the following text: ''Beginning on the single sticker transition date, no person may allow or participate in the preparation, duplication, sale, distribution, or false, counterfeit, or stolen vehicle registration insignia stickers, VIRs, VRFs,[10] vehicle emissions repair documentation, or other documents that may be used to circumvent applicable vehicle emissions I/M requirements and to commit an offense specified in Texas Transportation Code, § 548.603.'' These revisions define rule prohibitions, including activities that are fraudulent. As a result, these revisions strengthen the rule and are approvable.

The submittal contains revisions to Section114.53 (a), (a)(1)–(3), (b)–(d), and (d)(1)–(3) that would exempt emission inspection stations from being required to remit the state's portion of the vehicle emissions inspection fees to the DPS effective March 1, 2015. The revisions also would lower the maximum inspection fee collected by the emissions inspection stations in the DFW, HGB, El Paso and Austin I/M program areas. Effective March 1, 2015, the maximum inspection fee would be lowered by the amount of the state's portion of the vehicle emissions inspection fee that would be collected by the DMV or county tax assessor-collector at the time of registration. Specifically, revisions to Section 114.53—Inspection and Maintenance Fees clarify the fees that must be paid, and timing for an emissions inspection of a vehicle at an inspection station. For example, Section 114.53(a)(2) clarifies the timing of when an emission inspection station required to conduct an emission test may collect fees and the amount. Beginning on the single sticker transition date in the DFW and extended DFW program areas, any emissions inspection station required to conduct an emissions test in accordance with Section 114.50(a)(1)(A) or (B) and (2)(A) or (B) of this title must collect a fee not to exceed $24.50 for each ASM–2 test and $18.50 for each OBD test. Section 114.53 also further defines the timing and fees for each program area in Texas (*i.e.,* El Paso County and the HGB areas) subject to emissions inspection. New Section 114.53(d)(1)–(3) defines the process, beginning on the single-sticker transition date, for vehicle owners to remit the vehicle emissions inspection fee as part of the annual vehicle registration fee collected by the Texas DMV. These changes to the rule add clarity and further refine the single-sticker program requirements. The revisions are approvable and consistent with federal law.

Revisions to Section 114.82—Control Requirements include renumbering and the addition of the following text in Section 114.82(a)(2): ''Beginning on the single sticker transition date, all applicable air pollution emission control-related requirements included in the annual vehicle safety inspection requirements administered by DPS as evidenced by a current valid registration insignia sticker affixed to the vehicle windshield or a current valid VIR [vehicle inspection report], or other form of proof authorized by the DPS.'' Also, Section 114.84—Prohibitions includes revisions prohibiting the circumvention of the vehicle emissions I/M requirements and procedures contained in the Austin Area Early Action Compact Ozone SIP. These revisions strengthen the rule, are consistent with the Texas SIP, and are approvable.

[6] DPS implemented the revisions on March 1, 2015.

[7] Email from TCEQ dated July 18, 2016 requesting EPA postpone review of Section 114.21 at this time. This document is contained in the docket for this rulemaking.

[8] Section 110(k)(3) of the CAA provides the EPA the authority to approve a SIP submittal in part.

[9] Please see our TSD for a more detailed listing/discussion of these revisions.

[10] VIRs—Vehicle Inspection Reports; VRFs—Vehicle Repair Forms.

Section 114.87—Inspection and Maintenance Fees, Subsection (a), is revised to include text that states: ''In Travis and Williamson counties beginning on the single sticker transition date, any emissions inspection station required to conduct an emissions test in accordance with Section 114.80 of this title must collect a fee not to exceed $11.50 for each on-board diagnostic and two-speed idle test.'' Section 114.87(d) is revised as follows: ''Effective on the single sticker transition date as defined in Section 114.1 of this title in Travis and Williamson counties, vehicle owners shall remit $4.50 for motor vehicles subject to vehicle emissions inspections to the Texas Department of Motor Vehicles or county tax assessor-collector at the time of the annual vehicle registration as part of the vehicle emission inspection fee.'' These revisions define the fees applicable in the Austin Area Early Action Compact area under the single-sticker program, are consistent with the Texas SIP, and are approvable.

B. The June 11, 2015 Submittal

The June 11, 2015 SIP narrative discusses how the LIRAP meets the above requirements, and we agree with the State's analysis. Further explanation of our analysis of the adequacy of this submission with respect to I/M requirements can be found in the TSD for this action. The TCEQ had already finalized the revisions in the June 9, 2015 SIP submittal to EPA described in Section III.A of this document, prior to finalizing the revisions in the June 11, 2015 SIP submittal to EPA. Thus, the revisions in the June 11, 2015 submittal to EPA already included the changes that we described in Section III.A, and use that language as a starting point.

On June 11, 2015, the State adopted revisions to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter A, Definitions, Section 114.2; Subchapter C, Division 1: Vehicle Inspection and Maintenance, Section 114.53; and Subchapter C, Division 3: Early Action Compact Counties, Sections 114.87, and corresponding revisions to the SIP. The SIP revisions contain a revised narrative, rules, and supporting documentation as outlined in the requirements of the Federal I/M rules.[11]

Section 114.2 identifies and defines the terms used in Subchapter A for the I/M program. In Section 114.2, LIRAP, the acronym for the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program, is replaced with the full program title to be consistent with the title of the referenced subchapter and Texas Register requirements. In Section 114.2 (12) ''Related'' is changed to ''Relating.'' The revisions to Section 114.2 are ministerial, and/or add clarification and are approvable.

Section 114.53 details Inspection and Maintenance Fees in nonattainment areas. In Section 114.53(d) ''as specified by the following requirements:'' is deleted and a period is added after ''state''; and in Section 114.53(d)(1) ''the following requirements apply'' is added after ''El Paso County,'' and the rest of the paragraph is deleted. These changes are ministerial, add clarification, are necessary for the additions to Section 114.53 described below, and are therefore approvable.

The submittal contains additional substantive changes to Section 114.53, Inspection and Maintenance Fees, that are later mirrored in Section 114.87. Section 114.53(d)(1), (2), and (3) are amended to more fully describe the LIRAP fee as it relates to the vehicle I/M programs in El Paso County and the DFW and HGB area counties. Subparagraphs are added to these subsections to explain remittance of I/M fees, including the LIRAP fee, for the following categories of counties: A county participating in the LIRAP, a participating county that is in the process of opting out of the LIRAP, and a county that is not participating in the LIRAP and is not subject to the LIRAP fee.

The submittal deletes language from Section 114.53(d)(1) regarding the I/M fees for El Paso County in the event that it passed a resolution to participate in the LIRAP, and replaced it with ''(1) In El Paso County, the following requirements apply.'', and added new Sections 114.53(d)(1)(A), (B), and (C) which detail the I/M fees for El Paso County for the three LIRAP county categories outlined above.

The submittal deletes language from Section 114.53(d)(2) regarding the I/M fees for DFW and the extended DFW program areas and replaced it with ''(2) In the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, the following requirements apply.'' and added new Sections 114.53(d)(2)(A), (B), and (C) which detail the I/M fees for the DFW and the extended DFW program areas for the three county categories outlined above.

The submittal deletes language from Section 114.53(d)(3) regarding the I/M fees for the HGB program area and replaced it with ''(2) In the Houston-Galveston-Brazoria program area, the following requirements apply.'' and added new sections 114.53(d)(3)(A), (B), and (C) which detail the I/M fees for HGB program area for the three county categories outlined above.

Section 114.87 details I/M fees in Early Action Compact (EAC) areas. The submittal amends Section 114.87 to apply the same changes for nonattainment counties adopted in Section 114.53 to early action compact counties. Section 114.87(d)(1)(2) and (3) explains remittance of I/M fees, including the LIRAP fee, in a county participating in the LIRAP, a participating county that is in the process of opting out of the LIRAP, and a county that is not participating in the LIRAP and not subject to the LIRAP fee.

Section 114.87(d)(1) includes the description of state LIRAP fees vehicle owners pay during vehicle registration in participating EAC counties. Section 114.87(d)(2) describes the state fees vehicle owners pay during vehicle registration in participating EAC counties that are in the process of opting out of the LIRAP, and includes the LIRAP fee until the effective LIRAP fee termination date, after which state fees do not include the LIRAP fee. Section 114.87(d)(3) describes the state fees vehicle owners pay during vehicle registration in non-participating EAC counties, which does not include the LIRAP fee.

As stated previously, the LIRAP is not required by the CAA, but certain provisions relating to the program and program fees have been approved into the Texas SIP to allow for full implementation of the State's I/M program and strengthen the SIP. The changes in the submittal to Sections 114.53 and 114.87 provide further delineation and clarification regarding which parts of the fees are for LIRAP. We find the more detailed breakdown of the LIRAP fees in counties participating, in the process of opting out, and not participating in the LIRAP, approvable because they do not conflict with any federal requirement, and the LIRAP is voluntary.

C. Section 110(l)

Section 110(l) of the Act provides that a SIP revision must be adopted by a State after reasonable notice and public hearing. Additionally, section 110(l) states that the EPA cannot approve a SIP revision if that revision would interfere with any applicable requirement regarding attainment, reasonable further

[11] The TCEQ published the notice of the proposed revisions to the SIP for the June 11, 2015 submittal on December 5, 2014 (39 Tex. Reg. 9468) and published the final revision on May 15, 2015 (40 Tex. Reg. 2670), finalizing the proposal without revision. In that rulemaking, Texas adopted amendments to other sections that are not submitted as revisions to the SIP.

progress (RFP) or any other applicable requirement established in the CAA. Our evaluation of the submittals found that the SIP revisions were adopted by the State after reasonable notice and public hearing, and that approval of the revisions would not interfere with any CAA requirement. The revisions related to the single vehicle registration insignia sticker implement legislative changes that may improve the enforcement and compliance aspects of the vehicle emissions inspection and maintenance program. These changes replace the sticker-based enforcement strategy with the preferred registration denial enforcement strategy, which improves the overall effectiveness of the program. This denial enforcement strategy has been in effect for more than one year now. These revisions do not interfere with applicable requirements concerning attainment and reasonable further progress or any other applicable requirement in the CAA.

The revisions that create the new opt-out process for the LIRAP do not interfere with any applicable requirement in the CAA, because the LIRAP is not relied upon to meet any required component of the current SIP. Those counties that continue to participate in the LIRAP contribute to air quality improvements with the related LIRAP emission reductions. Even though fewer counties may be participating in the LIRAP due to the opt-out process, the revisions do enhance the current SIP by providing for additional rule clarification.

IV. Final Action

Pursuant to Sections 110 and 182 of the Act, EPA is approving, through a direct final action, revisions to the Texas SIP that were submitted on June 9, 2015 and June 11, 2015. We are approving revisions to the following sections within Chapter 114 of 30 TAC: 114.1, 114.2, 114.50, 114.53, 114.82–84, and 114.87. We evaluated the state's submittals and determined that they meet the applicable requirements of the CAA. Also, in accordance with CAA section 110(l), the revisions will not interfere with attainment of the NAAQS, reasonable further progress, or any other applicable requirement of the CAA.

EPA is publishing this rule without prior proposal because we view these as non-controversial amendments and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on December 6, 2016 without further notice unless we receive relevant adverse comments by November 7, 2016. If we receive relevant adverse comments, we will publish a timely withdrawal of this direct final rulemaking in the **Federal Register** informing the public that the direct final rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comments on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the Texas regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

VI. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

Samuel Coleman was designated the Acting Regional Administrator on September 30, 2016, through the order of succession outlined in Regional Order R6–1110.1, a copy of which is included in the docket for this action.

List of Subjects in 40 CFR Part 52

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

Dated: September 30, 2016.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

■ 2. In § 52.2270:

■ a. In paragraph (c), the table entitled ''EPA Approved Regulations in the Texas SIP'' is amended by revising entries for Sections 114.1, 114.2, 114.50, 114.53, 114.82, 114.83, 114.84, and 114.87.

■ b. In paragraph (e), the second table entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by revising the entry for ''Vehicle Inspection and Maintenance'' and adding an entry at the end of the table for the ''Austin Early Action Compact area Vehicle Inspection and Maintenance.''

The revisions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
* *	*	*	* *	*
Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles				
Subchapter A—Definitions				
Section 114.1	Definitions	2/12/2014	10/7/2016, [Insert **Federal Register** citation]	
Section 114.2	Inspection and Maintenance Definitions.	4/29/2015	10/7/2016, [Insert **Federal Register** citation]	
* *	*	*	* *	*
Subchapter C—Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties				
Division 1: Vehicle Inspection and Maintenance				
114.50	Vehicle Emissions Inspection Requirements.	2/12/2014	10/7/2016, [Insert **Federal Register** citation]	
* *	*	*	* *	*
114.53	Inspection and Maintenance Fees.	4/29/2015	10/7/2016, [Insert **Federal Register** citation]	
Division 3: Early Action Compact Counties				
* *	*	*	* *	*
114.82	Control Requirements	2/12/2014	10/7/2016, [Insert **Federal Register** citation]	
114.83	Waivers and Extensions	2/12/2014	10/7/2016, [Insert **Federal Register** citation]	
114.84	Prohibitions	2/12/2014	10/7/2016, [Insert **Federal Register** citation]	
* *	*	*	* *	*
114.87	Inspection and Maintenance Fees.	4/29/2015	10/7/2016, [Insert **Federal Register** citation]	
* *	*	*	* *	*

* * * * * (e) * * *

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

Name of SIP provision	Applicable geographic or non-attainment area	State submittal/effective date	EPA approval date	Comments
* *	* *	*	* *	*
Vehicle Inspection and Maintenance.	Dallas-Fort Worth, El Paso County and Houston-Galveston-Brazoria.	6/11/2015	10/7/2016, [Insert **Federal Register** citation]	
* *	* *	*	* *	*
Austin Early Action Compact area Vehicle Inspection and Maintenance.	Travis and Williamson Counties	6/11/2015	10/7/2016, [Insert **Federal Register** citation]	

* * * * *

[FR Doc. 2016–24205 Filed 10–6–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2012–0953; FRL–9952–76–Region 6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Infrastructure Requirements for Consultation With Government Officials, Public Notification and Prevention of Significant Deterioration and Visibility Protection for the 2008 Ozone and 2010 Nitrogen Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of State Implementation Plan (SIP) submittals from the State of Texas pertaining to Clean Air Act (CAA) section 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration and Visibility Protection for the 2008 Ozone (O_3) and 2010 Nitrogen Dioxide (NO_2) National Ambient Air Quality Standards (NAAQS). These submittals address how the existing SIP provides for implementation, maintenance, and enforcement of the 2008 O_3 and 2010 NO_2 NAAQS (infrastructure SIPs or i-SIPs). These i-SIPs ensure that the SIP is adequate to meet the State's responsibilities under the CAA. This direct final rule and the accompanying proposal will complete the rulemaking process started in our February 8, 2016, proposal, approve Section 110(a)(2)(J), and confirm that the SIP has adequate infrastructure to implement, maintain and enforce this section of the CAA with regard to the 2008 O_3 and 2010 NO_2 NAAQS.

DATES: This rule is effective on December 6, 2016 without further notice, unless the EPA receives relevant adverse comment by November 7, 2016. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2012–0953, at *http://www.regulations.gov* or via email to *fuerst.sherry@epa.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. 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. 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, please contact Sherry Fuerst, (214) 665–6454, *fuerst.sherry@epa.gov*. For 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 index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Sherry Fuerst, 214–665–6454, *fuerst.sherry@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Ms. Fuerst or Bill Deese at 214–665–7253.

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

I. Background

On March 12, 2008, EPA revised the levels of the ozone (hereafter the 2008 O_3) NAAQS (73 FR 16436, March 27, 2008). Likewise, on January 22, 2010, we revised the nitrogen dioxide NAAQS (hereafter the 2010 NO_2) (75 FR 6474, February 9, 2010). The CAA requires states to submit, within three years after promulgation of a new or revised standard, SIPs meeting the applicable ''infrastructure'' elements of sections 110(a)(1) and (2). We issued guidance addressing the i-SIP elements for NAAQS.[1] One of these applicable infrastructure elements, CAA section 110(a)(2)(J), requires the SIP must meet the following three CAA requirements: (1) Section 121, relating to interagency consultation regarding certain CAA requirements; (2) section 127, relating to public notification of NAAQS exceedances and related issues; and (3) prevention of significant deterioration of air quality and visibility protection.

The Texas Commission on Environmental Quality submitted i-SIP demonstrations of how the existing Texas SIP meets the requirements of the 2010 NO_2 NAAQS on December 7, 2012, and for the 2008 O_3 NAAQS on

[1] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

December 13, 2012. A detailed discussion of our evaluation of how the Texas submittals meet 110(a)(2)(J) is provided in our February 8, 2016 proposal (81 FR 6483 at 6486)) and in the Technical Support Document (TSD) for that action. The TSD can be accessed through *www.regulations.gov* (Document EPA–R06–OAR–2012–0953–002). We proposed to approve elements of the i-SIP submittals from the State of Texas for the O_3 and NO_2 NAAQS but for element (J) and subsequently, we took final action to approve all but element (J) on September 9, 2016 (81 FR 62375). However, through inadvertent errors, we neglected to complete the rulemaking process for CAA section 110(a)(2)(J) for both O_3 and NO_2 NAAQS in the proposal and final documents.

II. EPA's Evaluation

In the proposal, we discussed how the requirements of section 110(a)(2)(J) for both NO_2 and O_3 NAAQS were met. However, we neglected to explicitly propose approval of the specific provisions of Section 110(a)(2)(J) anywhere in the Preamble and definitely not in our ''Proposed Action'' section at 81 FR 6487. The public had the opportunity to review and comment on our evaluation of this provision in the Preamble but we never formally proposed this provision for approval. As such, we could not finalize approval of section 110(a)(2)(J) for the 2008 O_3 and 2010 NO_2 NAAQS at 81 FR 62375.

Please see EPA's proposed approval at 81 FR 6483 for our technical evaluation. The evaluation of all subsections of CAA section 110(a)(2)(J) can be found at 81 FR 6483, page 6486. The TSD for 81 FR 6483 is available in the docket, provides additional details to support our determination that this element meets the federal requirements and is fully approvable. We incorporate our previous evaluation of this element into this action. EPA did receive and respond to comments on the proposed action, but none of the comments received were specific to element (J) of CAA section 110(a)(2). *See 81 FR 62375 September 9, 2016.* Our evaluation and preliminary determination of approvability did not change as a result of these comments.

This final action is merely correcting our previous error in failing to propose approval of this element on the basis of our previous technical evaluation and preliminary determination. EPA has not changed its rationale. We therefore are approving the portions of the December 13, 2012, and December 7, 2012, i-SIP submissions from Texas as meeting the infrastructure element (J) for the 2008 ozone NAAQS and the 2010 NO2 NAAQS. We continue to assert that Texas' existing SIP provides for implementation, maintenance, and enforcement of the 2008 O_3 and 2010 NO_2 NAAQS.

III. Final Action

We are approving portions of the following SIP submittals pertaining to CAA section 110(a)(2)(J): (1) December 13, 2012, SIP submittal for the State of Texas pertaining to the implementation, maintenance and enforcement of the 2008 ozone NAAQS, and; (2) December 7, 2012, SIP submittal pertaining to the implementation, maintenance and enforcement of the 2010 nitrogen dioxide NAAQS as outlined in our February 8, 2016, proposal.

EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on December 6, 2016 without further notice unless we receive relevant adverse comment by November 7, 2016. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

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

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Samuel Coleman was designated the Acting Regional Administrator on September 30, 2016, through the order of succession outlined in Regional Order R6–1110.1, a copy of which is included in the docket for this action.

List of Subjects in 40 CFR Part 52

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

Dated: September 30, 2016.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

■ 2. In § 52.2270(e), the table titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by revising the entries for ''Infrastructure and Transport SIP Revisions for the 2010 Nitrogen Dioxide Standard'' and ''Infrastructure and Transport SIP Revisions for the 2008 Ozone Standard'' to read as follows.

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Comments
*	*	*	*	*
Infrastructure and Transport SIP Revisions for the 2010 Nitrogen Dioxide Standard.	Statewide	12/7/2012	9/9/2016, 81 FR 62375.	Approval for 110(a)(2)(A), (B), (C), (D)(i) (portions pertaining to nonattainment and interference with maintenance), D(ii), (E), (F), (G), (H), (K), (L) and (M). Approval for 110(a)(2)(J) on 10/7/2016, [Insert **Federal Register** citation].
Infrastructure and Transport SIP Revisions for the 2008 Ozone Standard.	Statewide	12/13/2012	9/9/2016, 81 FR 62375.	Approval for 110(a)(2)(A), (B), (C), (D)(i) (portion pertaining to PSD), D(ii), (E), (F), (G), (H), (K), (L) and (M). Approval for 110(a)(2)(J) 10/7/2016, [Insert **Federal Register** citation].

[FR Doc. 2016–24115 Filed 10–6–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0603; FRL–9953–52–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Philadelphia County Reasonably Available Control Technology Under the 1997 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving state implementation plan (SIP) revisions submitted by the Commonwealth of Pennsylvania (Pennsylvania). The revisions pertain to a demonstration that Philadelphia County (Philadelphia) meets the requirements for reasonably available control technology (RACT) of the Clean Air Act (CAA) for nitrogen oxides (NO_X) and volatile organic compounds (VOC) as ozone precursors for the 1997 8-hour ozone national ambient air quality standards (NAAQS). In this rulemaking action, EPA is approving three separate SIP revisions addressing RACT under the 1997 8-hour ozone NAAQS for Philadelphia; approving portions of two previously submitted RACT SIP revisions, which EPA had found deficient and conditionally approved; and converting the prior conditional approval of the Philadelphia RACT demonstration for the 1997 8-hour ozone NAAQS to full approval. EPA is approving these revisions to the Pennsylvania SIP addressing 1997 8-hour ozone RACT for Philadelphia in accordance with the requirements of the CAA.

DATES: This final rule is effective on November 7, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2008–0603. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov* or please contact the person identified in the **FOR FURTHER**

INFORMATION CONTACT section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 15, 2016 (81 FR 38992), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. In the NPR, EPA proposed approval of five revisions to the Pennsylvania SIP to satisfy the RACT requirements for the 1997 8-hour ozone NAAQS for Philadelphia. The formal SIP revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP), on behalf of Philadelphia Air Management Services (AMS), on September 29, 2006, June 22, 2010, June 27, 2014, February 18, 2015, and April 26, 2016.

Pursuant to section 110(k)(4) of the CAA, on December 13, 2013 (78 FR 75902), EPA conditionally approved the Philadelphia 1997 8-hour ozone RACT demonstration, as provided in the 2006 and 2010 SIP revisions, with the condition that PADEP, on behalf of AMS, submitted additional SIP revisions addressing the source-specific RACT requirements for major sources of NO_X and/or VOC in Philadelphia under the 1997 8-hour ozone NAAQS. EPA had identified two deficiencies in the 1997 8-hour ozone Philadelphia RACT demonstration, as provided in the 2006 SIP revision and the 2010 SIP revision, which precluded EPA's approval. These deficiencies relied on Pennsylvania's NO_X SIP Call SIP provisions to address RACT for electric generating units (EGUs),[1] [2] which cannot meet RACT based on a 2009 decision from the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit); [3] and not sufficiently addressing source-specific RACT requirements for certain major sources of NO_X and VOC under the Pennsylvania SIP approved regulation in 25 Pa Code sections 129.91–92. Altogether, the RACT SIP revisions submitted to EPA on June 27, 2014, February 18, 2015, and April 26, 2016 are intended to fulfill the conditions in EPA's December 13, 2013 conditional approval. This rulemaking action addresses all five SIP revisions concerning Philadelphia RACT requirements under the 1997 8-hour ozone NAAQS.[4]

II. Summary of SIP Revisions

On September 29, 2006, PADEP submitted, on behalf of AMS, a SIP revision purporting to address the RACT requirements for Philadelphia under the 1997 8-hour ozone NAAQS. The 2006 SIP revision consisted of a RACT demonstration for Philadelphia, including a certification that previously adopted RACT regulations approved by EPA in Pennsylvania's SIP under the 1-hour ozone NAAQS continue to represent RACT for the 1997 8-hour ozone NAAQS implementation purposes; and a negative declaration that certain VOC source categories that would be covered by Control Technique Guideline (CTG) documents [5] do not exist in Philadelphia. The 2006 SIP revision also included federally enforceable permits that represented RACT control for four major VOC sources, but these particular requirements were later addressed by the 2010 SIP revision, thus superseding this portion of the 2006 SIP revision.[6]

Another SIP revision addressing RACT requirements for certain VOC source categories covered by CTGs in Philadelphia was submitted by PADEP, on behalf of AMS, on June 22, 2010. The 2010 SIP revision consisted of two new CTG regulations, Air Management Regulation (AMR) V section XV (''Control of Volatile Organic Compounds (VOC) from Marine Vessel Coating Operations'') and AMR V section XVI (''Synthetic Organic Manufacturing Industry (SOCMI) Air Oxidation, Distillation, and Reactor Processes''), and related amendments to AMR V Section I (''Definitions''), as adopted by AMS on April 26, 2010, effective upon adoption. The 2010 SIP revision also included a negative declaration for the CTG source category of natural gas and gasoline processing plants.

On June 27, 2014, February 18, 2015, and April 26, 2016, PADEP submitted to EPA, on behalf of AMS, three separate SIP revisions pertaining to the Philadelphia 1997 8-hour ozone RACT demonstration to fulfill the conditions in EPA's December 13, 2013 conditional approval. The three latest RACT SIP revisions include a RACT evaluation for each major source of NO_X and/or VOC in Philadelphia.

AMS evaluated a total of 25 major NO_X and/or VOC sources in Philadelphia for 1997 8-hour ozone RACT, from which 16 major sources were subject to Pennsylvania's source-specific RACT requirements in 25 Pa Code 129.91–92. The new or additional controls or the revised existing controls resulting from the source-specific RACT determinations were specified as requirements in new or revised federally enforceable permits (RACT permits) issued by AMS for each source. These RACT permits are included as part of the Philadelphia RACT SIP revisions for EPA's approval in the Pennsylvania SIP under 40 CFR 52.2020(d)(1), and are specified in Table 1.

TABLE 1—NEW OR REVISED SOURCE-SPECIFIC RACT DETERMINATIONS FOR MAJOR NO_X AND/OR VOC SOURCES IN PHILADELPHIA UNDER THE 1997 8-HOUR OZONE NAAQS

Source	Major source pollutant	New or revised RACT permit (effective date)
Exelon Generating Company—Richmond Station	NO_X	PA–51–4903 (02/09/16).
Honeywell International—Frankford Plant [formerly, Sunoco Chemical—Frankford Plant].	NO_X and VOC	PA–51–1151 (02/09/16).
Kinder Morgan Liquids Terminals, LLC [formerly, GATX Terminals Corp.]	VOC	PA–51–5003 (02/09/16).

[1] In October 1998, EPA finalized the ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone''—commonly called the NO_X SIP Call. *See* 63 FR 57356 (October 27, 1998).

[2] The Philadelphia 2006 RACT SIP revision certified the following NO_X SIP Call related provisions, as previously approved by EPA into the Pennsylvania SIP: 25 Pa Code sections 145.1–145.100 (66 FR 43795, August 21, 2001), 25 Pa Code sections 145.111–145.113 (71 FR 40048, July, 14, 2006), and 25 Pa Code sections 145.141–144 (71 FR 40048, July, 14, 2006.

[3] *See NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009).

[4] The five SIP submittals include the submissions on September 29, 2006, June 22, 2010, June 27, 2014, February 18, 2015, and April 26, 2016.

[5] Section 182(b)(2) of the CAA requires states with moderate, or worse, ozone nonattainment areas to implement RACT controls on each VOC stationary source category covered by a CTG document issued by EPA.

[6] EPA determined that the provisions in the 2006 and 2010 SIP revisions were related in addressing Philadelphia's 1997 8-hour ozone NAAQS RACT obligation and were not separable for approval purposes as each SIP submittal contained provisions addressing RACT obligations.

TABLE 1—NEW OR REVISED SOURCE-SPECIFIC RACT DETERMINATIONS FOR MAJOR NO_X AND/OR VOC SOURCES IN PHILADELPHIA UNDER THE 1997 8-HOUR OZONE NAAQS—Continued

Source	Major source pollutant	New or revised RACT permit (effective date)
Naval Surface Warfare Center, Carderock Division, Ship Systems Engineering Station (NSWCCD–SSES).	NO_X	PA–51–9724 (02/09/16).
Paperworks Industries, Inc. [formerly, Jefferson Smurfit, Corp./Container Corp. of America].	NO_X	PA–51–1566 (01/09/15).
Philadelphia Energy Solutions—Refining and Marketing, LLC [formerly, Sunoco Inc. (R&M)—Philadelphia].	NO_X and VOC	PA–51–01501 and PA–51–01517 (02/09/16).
Philadelphia Gas Works—Richmond Plant	NO_X	PA–51–4922 (01/09/15).
Philadelphia Prison System	NO_X	PA–51–9519 (02/09/16).
Plain Products Terminals, LLC [formerly, Maritank Philadelphia, Inc. and Exxon Company, USA].	VOC	PA–51–05013 (02/09/16).
Temple University—Health Sciences Campus	NO_X	PA–51–8906 (01/09/15).
Temple University—Main Campus	NO_X	PA–51–8905 (01/09/15).
Veolia Energy Philadelphia—Edison Station [formerly TRIGEN—Edison Station]	NO_X	PA–51–4902 (01/09/15).
Veolia Energy Philadelphia—Schuylkill Station [TRIGEN—Schuylkill Station]/Grays Ferry Cogeneration Partnership—Schuylkill Station/Veolia Energy Efficiency, LLC [a].	NO_X	PA–51–4942 (02/09/16)/PA–51–4944 (01/09/15)/PA–51–10459 (01/09/15).

[a] Grays Ferry Cogeneration, Veolia Schuylkill, and Veolia Energy Efficiency are treated as a single major source after the 1-hour RACT determination was issued. AMS submitted RACT documentation for each facility separately, although considering RACT applicability as a single major source of NO_X.

As part of the source-specific RACT determinations, AMS also certified for certain emissions units at major sources subject to previously approved source-specific RACT determinations, that the existing RACT controls approved under the 1-hour ozone NAAQS continued to represent RACT for the 1997 8-hour ozone NAAQS. Furthermore, AMS addressed another 27 NO_X and/or VOC sources in Philadelphia that were previously subject to source-specific RACT determinations for the 1-hour ozone NAAQS in the Pennsylvania SIP, by certifying that these sources are no longer subject to RACT for purposes of the 1997 8-hour ozone NAAQS because they are either no longer major sources of NO_X and/or VOC or have shutdown. AMS requested to remove from the SIP source-specific RACT determinations approved under the 1-hour ozone NAAQS, as codified in 40 CFR 52.2020(d)(1), for 18 sources that have shutdown, as listed in Table 2.

TABLE 2—SHUTDOWN MAJOR SOURCES OF NO_X AND/OR VOC IN PHILADELPHIA SUBJECT TO PREVIOUS SOURCE-SPECIFIC RACT DETERMINATIONS

Source	SIP approved RACT permit (effective date)	EPA's approval date
Aldan Rubber Company	PA–51–1561 (07/21/00)	10/30/01, 66 FR 54691.
Amoco Oil Company	PA–51–5011 (05/29/15)	10/31/01, 66 FR 54936.
Arbill Industries, Inc	PA–51–3811 (07/27/99)	10/30/01, 66 FR 54691.
Braceland Brothers, Inc	PA–51–3679 (07/14/00)	10/30/01, 66 FR 54691.
Budd Company	PA–51–1564 (12/28/95)	12/15/00, 65 FR 78418.
Eastman Chemical [formerly, McWhorter Technologies, Inc.]	PA–51–3542 (07/27/99)	10/30/01, 66 FR 54691.
Graphic Arts, Incorporated	PA–51–2260 (07/14/00)	10/30/01, 66 FR 54691.
Interstate Brands Corporation	PA–51–5811 (04/10/95)	12/15/00, 65 FR 78418.
Kurz Hastings, Inc	PA–51–1585 (05/29/95)	10/31/01, 66 FR 54936.
Lawrence McFadden, Inc	PA–51–2074 (06/11/97)	10/31/01, 66 FR 54936.
O'Brien (Philadelphia) Cogeneration, Inc.—Northeast Water Pollution Control Plant	PA–51–1533 (07/21/00)	10/30/01, 66 FR 54691.
O'Brien (Philadelphia) Cogeneration, Inc.—Southwest Water Pollution Control Plant	PA–51–1534 (07/21/00)	10/30/01, 66 FR 54691.
Pearl Pressman Liberty	PA–51–7721 (07/24/00)	10/30/01, 66 FR 54691.
Philadelphia Baking Company	PA–51–3048 (04/10/95)	10/31/01, 66 FR 54936.
Rohm and Haas Company—Philadelphia	PA–51–1531 (07/27/99)	10/31/01, 66 FR 54942.
Tasty Baking Co	PA–51–2054 (04/04/95)	10/31/01, 66 FR 54942.
Transit America, Inc	PA–51–1563 (06/11/97)	11/5/01, 66 FR 55880.
SBF Communications	PA–51–2197 (07/21/00)	10/31/01, 66 FR 54942.

On April 26, 2016, PADEP submitted a letter, on behalf of AMS, withdrawing from the 2006 SIP revision the certification of the Pennsylvania rules related to the NO_X SIP Call as 1997 8-hour ozone RACT, specifically 25 Pa Code sections 145.1–145.100, 25 Pa Code sections 145.111–145.113, and 25 Pa Code sections 145.141–144. In the letter, PADEP reaffirms that AMS is no longer relying on the SIP approved provisions related to the NO_X SIP Call as 1997 8-hour ozone RACT for any sources in Philadelphia.

III. EPA's Rationale for Final Action

After review and evaluation, EPA determined that AMS provided adequate documentation in the September 29, 2006, June 22, 2010, June 27, 2014, February 18, 2015 and April 26, 2016 Philadelphia RACT SIP revisions to support that RACT has been met for all major sources of NO_X and/or VOC in Philadelphia, including sources subject to source-specific RACT determinations, in accordance with the

Phase 2 Ozone Implementation Rule and latest available information.[7] EPA finds that the June 27, 2014, February 18, 2015, and April 26, 2016 SIP revisions satisfy the December 15, 2013 conditional approval, and thus adequately correct the deficiencies in the Philadelphia RACT demonstration EPA identified from reviewing the 2006 and 2010 SIP revisions. EPA also determined that the certified and recently adopted NO_X and VOC regulations and the negative declarations included in the September 29, 2006 and June 22, 2010 SIP revisions, with exception of the withdrawn portions of the 2006 SIP revision, meet all other remaining CAA RACT requirements under the 1997 8-hour ozone NAAQS for Philadelphia. For further discussion on EPA's rationale for its final rulemaking action are explained in the NPR and in the technical support document (TSD), both available in the docket for this rulemaking action, and thus will not be restated here. No public comments were received on the NPR.

IV. Final Action

In this final rulemaking action, EPA determines that the Philadelphia 1997 8-hour ozone NAAQS RACT demonstration, included within the September 29, 2006, June 22, 2010, June 27, 2014, February 18, 2015, and April 26, 2016 SIP revisions, satisfies all applicable RACT requirements under the CAA for Philadelphia for the 1997 8-hour ozone NAAQS. EPA is taking various actions on the revisions to the Pennsylvania SIP addressing Philadelphia 1997 8-hour ozone RACT. EPA is approving as RACT under the 1997 8-hour ozone NAAQS for Philadelphia the certified and recently adopted NO_X and VOC regulations and CTG negative declarations included in the September 29, 2006 and June 22, 2010 SIP revisions, with exception of the portions of the 2006 SIP submittal that were withdrawn by PADEP on April 26, 2016. Specifically, EPA is finalizing approval of the CTG RACT requirements in AMR V sections I, XV, and XVI, as amended or adopted in April 26, 2010 and effective upon adoption. EPA is approving as RACT under the 1997 8-hour ozone NAAQS for Philadelphia the source-specific RACT determinations provided in the June 27, 2014, February 18, 2015, and April 26, 2016 SIP revisions. EPA is also removing the conditional nature of the December 13, 2013 conditional approval and granting full approval to the Philadelphia 1997 8-hour ozone NAAQS RACT demonstration, based on EPA's determination that the June 27, 2014, February 18, 2015, and April 26, 2016 RACT SIP revisions satisfy the conditions established in its conditional approval.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of source-specific RACT determinations under the 1997 8-hour ozone NAAQS for certain major sources of NO_X and VOC emissions and Philadelphia CTG RACT regulations of AMR V sections I, XV, and XVI, as amended or adopted in April 26, 2010 and effective upon adoption. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation. 62 FR 27968 (May 22, 1997). EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and/or at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

A. General Requirements

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

[7] ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2,'' 70 FR 71612–71705 (November 29, 2005).

In addition, section 804 exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because a portion of this rule is a rule of particular applicability, EPA is not required to submit a rule report regarding the portion of this action which is of particular applicability under section 801, but will submit the remainder of the rule.

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Philadelphia RACT requirements under the 1997 8-hour ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: September 21, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020:

■ a. In the table in paragraph (c)(3), under ''Regulation V—Control of Emissions of Organic Substances From Stationary Sources'':

■ i. Revise the first entry ''Section I (Except for definitions related to paragraphs V.C. & V.D.)''.

■ ii. Remove the second entry ''Section I''.

■ iii. Add entries ''Section XV'' and ''Section XVI'' in numerical order.

■ b. In the table in paragraph (d)(1):

■ i. Remove the following entries: ''Aldan Rubber Company''; ''Amoco Oil Company''; ''Arbill Industries, Inc''; ''Braceland Brothers, Inc''; ''Budd Company''; ''Exelon Generation Company—(PECO)—Richmond Generating Station''; ''Exxon Company, USA''; ''GATX Terminals Corporation''; ''Graphic Arts, Incorporated''; ''Interstate Brands Corporation''; ''Jefferson Smurfit Corp./Container Corp. of America''; ''Kurz Hastings, Inc''; ''Lawrence McFadden, Inc''; ''Maritank Philadelphia, Inc''; ''McWhorter Technologies, Inc''; ''Naval Surface Warfare Center, Caderock Division Ship Systems Engineering Station''; ''O'Brien (Philadelphia) Cogeneration, Inc.—Northeast Water Pollution Control Plant''; ''O'Brien (Philadelphia) Cogeneration, Inc.—Southwest Water Pollution Control Plant''; ''Pearl Pressman Liberty''; ''Philadelphia Baking Company''; ''Philadelphia Gas Works—Richmond Plant''; ''Rohm and Haas Company—Philadelphia Plant''; ''SBF Communications''; ''Sunoco Chemical, Frankford Plant''; ''Sunoco Inc. (R&M)—Philadelphia''; ''Tasty Baking Co''; ''Temple University, Health Sciences Center''; ''Transit America, Inc''; ''TRIGEN—Edison Station''; ''TRIGEN—Schuylkill Station''; and ''U.S. Navy, Naval Surface Warfare Center—Carderock Division''.

■ ii. Add the following entries at the end of the table: ''Exelon Generating Company—Richmond Generating Station''; ''Grays Ferry Cogeneration Partnership—Schuylkill Station''; ''Honeywell International—Frankford Plant''; ''Kinder Morgan Liquids Terminals, LLC''; ''Naval Surface Warfare Center—Carderock Division, Ship Systems Engineering Station (NSWCCD–SSES)''; ''Paperworks Industries, Inc.''; ''Philadelphia Energy Solutions—Refining and Marketing, LLC''; ''Philadelphia Gas Works—Richmond Plant''; ''Philadelphia Prison System''; ''Plains Products Terminals, LLC''; ''Temple University—Health Sciences Campus''; ''Temple University—Main Campus''; ''Veolia Energy Efficiency, LLC''; ''Veolia Energy Philadelphia—Edison Station''; and ''Veolia Energy Philadelphia—Schuylkill Station''.

c. In the table in paragraph (e)(1), add the entry ''Philadelphia 1997 8-Hour Ozone RACT Demonstration'' at the end of the table.

The revisions and additions read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(3) * * *

Rule citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
*	*	*	*	*
Regulation V—Control of Emissions of Organic Substances From Stationary Sources				
Section I (Except for definitions related to section V, paragraphs C and D).	Definitions	4/26/2010	10/7/2016, [Insert **Federal Register** citation].	Amended to include definitions related to AMR V Sections XV and XVI. Exempted definitions were addressed in a previous approval. *See* 58 FR 33200 (June 16, 1993).
*	*	*	*	*
Section XV	Control of Volatile Organic Compounds (VOC) from Marine Vessel Coating Operations.	4/26/2010	10/7/2016, [Insert **Federal Register** citation].	Addresses RACT requirements for the ozone NAAQS under EPA's CTGs.
Section XVI	Synthetic Organic Manufacturing Industry (SOCMI) Air Oxidation, Distillation, and Reactor Processes.	4/26/2010	10/7/2016, [Insert **Federal Register** citation].	Addresses RACT requirements for the ozone NAAQS under EPA's CTGs.

Rule citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
*	*	*	*	*

* * * * * (1) * * *

(d) * * *

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
*	*	*	*	*	*
Exelon Generation Company—Richmond Generating Station.	PA–51–4903	Philadelphia	02/09/16	10/07/2016, [Insert **Federal Register** citation].	Supersedes previously approved RACT permit.
Grays Ferry Cogeneration Partnership—Schuylkill Station.	PA–51–4944	Philadelphia	01/09/15	10/07/2016, [Insert **Federal Register** citation].	Source is aggregated with Veolia Energy Efficiency, LLC and Veolia Energy—Schuylkill Station.
Honeywell International—Frankford Plant.	PA–51–1151	Philadelphia	02/09/16	10/07/2016, [Insert **Federal Register** citation].	Supersedes previously approved RACT permit. Source was formerly Sunoco Chemicals, Frankford Plant.
Kinder Morgan Liquid Terminals, LLC.	PA–51–5003	Philadelphia	02/09/16	10/07/2016, [Insert **Federal Register** citation].	Supersedes previously approved RACT permit. Source was formerly GATX Terminal Corporation.
Naval Surface Warfare Center—Carderock Division, Ship Systems Engineering Station (NSWCCD–SSES).	PA–51–9724	Philadelphia	02/09/16	10/07/2016, [Insert **Federal Register** citation].	Supersedes previously approved RACT permits. Source was formerly U.S. Navy, Naval Surface Warfare Center, Carderock Division (NSWCCD).
Paperworks Industries, Inc.	PA–51–1566	Philadelphia	01/09/15	10/07/2016, [Insert **Federal Register** citation].	Supersedes previously approved RACT permit. Source was formerly Jefferson Smurfit, Corp./Container Corp. of America.
Philadelphia Energy Solutions—Refining and Marketing, LLC.	PA–51–01501; PA–51–01517.	Philadelphia	02/09/16	10/07/2016, [Insert **Federal Register** citation].	Supersedes previously approved RACT permit. Source was formerly Sunoco Inc. (R&M)—Philadelphia.
Philadelphia Gas Works—Richmond Plant.	PA–51–4922	Philadelphia	01/09/15	10/07/2016, [Insert **Federal Register** citation].	Supersedes previously approved RACT permit.
Philadelphia Prison System.	PA–51–9519	Philadelphia	02/09/16	10/07/2016, [Insert **Federal Register** citation].	
Plains Products Terminals, LLC.	PA–51–05013 ...	Philadelphia	02/09/16	10/07/2016, [Insert **Federal Register** citation].	Supersedes previously approved RACT permit. Source was formerly Maritank Philadelphia, Inc. and Exxon Company, USA.
Temple University—Health Sciences Campus.	PA–51–8906	Philadelphia	01/09/15	10/07/2016, [Insert **Federal Register** citation].	Supersedes previously approved RACT permit.
Temple University—Main Campus.	PA–51–8905	Philadelphia	01/09/15	10/07/2016, [Insert **Federal Register** citation].	
Veolia Energy Efficiency, LLC.	PA–51–10459 ...	Philadelphia	01/09/15	10/07/2016, [Insert **Federal Register** citation].	Source is aggregated with Grays Ferry Cogeneration Partnership and Veolia Energy—Schuylkill Station.

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
Veolia Energy Philadelphia—Edison Station.	PA–51–4902	Philadelphia	01/09/15	10/07/2016, [Insert **Federal Register** citation].	Supersedes previously approved RACT permit. Source was formerly TRIGEN—Edison Station.
Veolia Energy Philadelphia—Schuylkill Station.	PA–51–4942	Philadelphia	02/09/16	10/07/2016, [Insert **Federal Register** citation].	Supersedes previously approved RACT permit. Source was formerly TRIGEN—Schuylkill Station. Source is aggregated with Grays Ferry Cogeneration Partnership and Veolia Energy Efficiency, LLC.

* * * * * (1) * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Philadelphia 1997 8-Hour Ozone RACT Demonstration.	Philadelphia County	9/29/2006, 6/22/2010, 6/27/2014, 7/18/2015, 4/26/2016	10/7/2016, [Insert **Federal Register** citation].	Addressing all applicable RACT requirements for Philadelphia under the 1997 8-hour ozone standards. This rulemaking action converts the prior conditional approval of RACT demonstration to full approval.

* * * * *

§ 52.2023 [Amended]

■ 3. In § 52.2023, remove paragraph (l).

[FR Doc. 2016–23840 Filed 10–6–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2016–0555; FRL–9953–59–Region 7]

Approval of Nebraska's Air Quality Implementation Plans; Nebraska Air Quality Regulations and State Operating Permit Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State Implementation Plan (SIP) for the State of Nebraska. This action will amend the SIP to include revisions to title 129 of the Nebraska Air Quality Regulations, chapter 5, ''Operating Permits—When Required''; chapter 9, ''General Operating Permits for Class I and Class II Sources''; chapter 22, ''Incinerators; Emission Standards''; chapter 30, ''Open Fires''; and chapter 34 ''Emission Sources; Testing; Monitoring. These revisions were requested by the Nebraska Department of Environmental Quality (NDEQ) in three submittals, submitted on May 1, 2003, November 8, 2011, and July 14, 2014. The May 1, 2003, submittal revised chapters 5 and 9, to address changes in regard to the permits-by-rule provisions of Title 129. The November 8, 2011, submittal allows for the issuance of multiple operating permits to major sources through revisions to chapter 5. In addition, revisions to chapters 22 and 30 encourage the use of air curtain incinerators over open burning; and changes to chapter 34 clarify the authority of NDEQ to order emission sources to do testing when NDEQ deems it necessary. The July 14, 2014, submittal further revises chapter 34, by updating the reference to allowable test methods for evaluating solid waste, changing the amount of time allowed to submit test results, and allowing the Department to approve a request for testing with less than 30 days notification.

DATES: This direct final rule will be effective December 6, 2016, without further notice, unless EPA receives adverse comment by November 7, 2016. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2016–0555, to *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. 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. 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.

FOR FURTHER INFORMATION CONTACT: Greg Crable, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7391, or by email at *crable.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?

EPA is approving revisions into the SIP to include amendments to title 129 of the Nebraska Air Quality Regulations, chapters 5, 22, 30 and 34, as submitted on November 8, 2011. The EPA is also approving additional revisions to chapter 34, as submitted on July 14, 2014, and to chapters 5 and 9, as submitted on May 1, 2003. Revisions to chapter 5 allows for the issuance of multiple operating permits to major sources. The revisions to chapters 22 and 30 encourage the use of air curtain incinerators over open burning and the revisions to chapter 34 as submitted on November 8, 2011, clarify NDEQ's authority to require emission sources to test for contaminant emissions. The revisions to chapter 34 requested in the July 14, 2014, submittal updates the reference to allowable test methods for evaluating solid waste; makes changes to the amount of time allowed to submit test results; and allows NDEQ to approve a request to test with less than 30 days notification.

The revisions to chapter 5 submitted on May 1, 2003, allows a source otherwise subject to the Class II operating permit program to be covered instead by the permits-by-rule provisions, provided the source qualifies. The May 1, 2003 submittal, also revised chapter 9 to allow a source covered for some activities under a general permit be covered for other facilities or activities by a permits-by-rule. Revisions to chapter 5 ''Operating Permits—When Required'', submitted on November 8, 2011, clarifies the process for issuing operating permits to major sources comprised of different regulated entities or ''persons''. The changes allow each regulated entity more options in applying for operating permits and NDEQ more flexibility in issuing the permits. The revisions to chapter 5 are worded such that sources permitted under the changed language will not avoid other major source obligations. The revisions to chapter 22, ''Incinerators; Emission Standards'', establish requirements regarding opacity for air curtain incinerators while revisions to chapter 30, ''Open Fires'', allow burning in an air curtain incinerator with a general or community open fire permit issued by NDEQ. Title 129, chapter 34, ''Emission Sources; Testing; Monitoring'', as submitted on November 8, 2011, is being revised to clarify NDEQ's authority to order emission sources to make or have tests made to determine the rate of contaminant emissions from the source. The July 14, 2014, submittal further revises chapter 34, by updating the reference to allowable test methods for evaluating solid waste, changes the amount of time allowed to submit test results, and allows NDEQ to approve a request for testing with less than 30 days notification. For additional information on the revisions to chapter 5, 9, 22, 30 and 34 see the detail discussion table in the docket.

II. Have the requirements for approval of a SIP revision been met?

The state submittals have met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittals also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is EPA taking?

EPA is approving the state's request to revise the SIP to include amendments to title 129, of the Nebraska Air Quality Regulations, chapter 5, ''Operating Permits—When Required''; chapter 22, ''Incinerators; Emission Standards''; chapter 30, ''Open Fires''; and chapter 34, ''Emission Sources; Testing; Monitoring'', as submitted by NDEQ on November 8, 2011. Also, EPA is approving NDEQ's July 14, 2014, submittal involving additional revisions to chapter 34 and revisions to chapters 5 and 9, ''General Operating Permits for Class I and II Sources'', as submitted on May 1, 2003.

We are publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. EPA does not anticipate adverse comment because the revisions to the existing rules are routine and consistent with the Federal regulations, thereby, strengthening the SIP. However, in the ''Proposed Rules'' section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to revise title 129 of the Nebraska Air Quality Regulations, chapter 5, ''Operating Permits—When Required''; chapter 9, ''General Operating Permits for Class I and II Sources''; chapter 22, ''Incinerators; Emission Standards''; chapter 30, ''Open Fires''; and chapter 34, ''Emission Sources; Testing; Monitoring'' if adverse comments are received on this direct final rule. 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 EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Nebraska regulations described in the direct final amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[1] EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

Statutory and Executive Order Reviews

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

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

beyond those imposed by state law. For that reason, this action:

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 27, 2016.

Mike Brincks,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 70 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart CC—Nebraska

■ 2. Section 52.1420(c) is amended by revising the entries for 129–5, 129–9, 129–22, 129–30, and 129–34 to read as follows:

§ 52.1420 Identification of Plan.

* * * * *

(c) * * *

EPA-APPROVED NEBRASKA REGULATIONS

Nebraska citation	Title	State effective date	EPA approval date	Explanation
State of Nebraska				
Department of Environmental Quality				
Title 129—Nebraska Air Quality Regulations				
* *	* *	*	* *	*
129–5	Operating Permits—When Required.	2/16/08	10/7/16 [Insert **Federal Register** citation].	
* *	* *	*	* *	*
129–9	General Operating Permits for Class I and II Sources.	11/20/02	10/7/16 [Insert **Federal Register** citation].	
* *	* *	*	* *	*
129–22	Incinerators; Emission Standards	7/3/10	10/7/16 [Insert **Federal Register** citation].	

EPA-APPROVED NEBRASKA REGULATIONS—Continued

Nebraska citation	Title	State effective date	EPA approval date	Explanation
* *	* *	*	* *	*
129–30	Open Fires	7/3/10	10/7/16 [Insert **Federal Register** citation].	
* *	* *	*	* *	*
129–34	Emission Sources; Testing; Monitoring.	5/13/14	10/7/16 [Insert **Federal Register** citation].	
* *	* *	*	* *	*

* * * * *

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 3. The authority citation for part 70 continues to read as follows:

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

■ 4. Amend appendix A to part 70 by adding paragraphs (m) and (n) under ''Nebraska; City of Omaha; Lincoln-Lancaster County Health Department'' to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Nebraska; City of Omaha; Lincoln-Lancaster County Health Department

* * * * *

(m) The Nebraska Department of Environmental Quality approved revisions to Nebraska Air Quality Regulations, Title 129, Chapter 5, ''Operating Permits—When Required'', and Chapter 9, ''General Operating Permits for Class I and II Sources'', on September 5, 2002. The State's effective date is November 20, 2002. The revisions were submitted to EPA on May 1, 2003. This revision is effective on December 6, 2016.

(n) The Nebraska Department of Environmental Quality approved revisions to Nebraska Air Quality Regulations, Title 129, Chapter 5, ''Operating Permits—When Required'', on December 7, 2007. The State's effective date is February 16, 2008. The revisions were submitted to EPA on November 8, 2011. This revision is effective on December 6, 2016.

* * * * *

[FR Doc. 2016–24088 Filed 10–6–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54 and 69

[WC Docket Nos. 10–90, 16–271; WT Docket No. 10–208; FCC 16–115]

Connect America Fund, Connect America Fund—Alaska Plan, Universal Service Reform—Mobility Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts an integrated plan to address both fixed and mobile voice and broadband service in high-cost areas of the state of Alaska, building on a proposal submitted by the Alaska Telephone Association.

DATES: Effective November 7, 2016, except for §§ 54.313(f)(1)(i), 54.313(f)(3), 54.313(l), 54.316(a)(1), 54.316(a)(5) and (6), 54.316(b)(6), 54.320(d), and 54.321 which contain new or modified information collection requirements that will not be effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484, Matthew Warner of the Wireless Telecommunications Bureau, (202) 418–2419, or Audra Hale-Maddox of the Wireless Telecommunications Bureau, (202) 418–0794.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in WC Docket Nos. 10–90, 16–271, WT Docket No. 10–208; FCC 16–115, adopted on August 23, 2016 and released on August 31, 2016. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554, or at the following Internet address: *https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-115A1.docx.*

The Further Notice of Proposed Rulemaking (FNPRM) that was adopted concurrently with the Report and Order is published elsewhere in this issue of the **Federal Register**.

I. Introduction

1. In this Order, the Commission adopts an integrated plan to address both fixed and mobile voice and broadband service in high-cost areas of the state of Alaska, building on a proposal submitted by the Alaska Telephone Association. In February 2015, the Alaska Telephone Association (ATA) proposed a consensus plan designed to maintain, extend, and upgrade broadband service across all areas of Alaska served by rate-of-return carriers and their wireless affiliates. Given the unique climate and geographic conditions of Alaska, the Commission finds that it is in the public interest to provide Alaskan carriers with the option of receiving fixed amounts of support over the next ten years to deploy and maintain their fixed and mobile networks. If each of the Alaska carriers elects this option, the Commission expects this plan to bring broadband to as many as 111,302 fixed locations and 133,788 mobile consumers at the end of this 10-year term.

II. Alaska Plan for Rate-of-Return Carriers

2. Today the Commission adopts ATA's proposed consensus plan for rate-of-return carriers serving Alaska, subject to the minor modifications described herein. Alaskan rate-of-return carriers face unique circumstances including Alaska's large size, varied terrain, harsh climate, isolated populations, shortened construction

season, and lack of access to infrastructure that make it challenging to deploy voice and broadband-capable networks. Not only do Alaskan rate-of-return carriers face conditions that are unique to the state, unlike challenges in the Lower 48, the circumstances and challenges can also vary widely from carrier to carrier depending on where their service areas are located within Alaska.

3. Accordingly, the Commission adopts the Alaska Plan to provide Alaskan rate-of-return carriers with the option to obtain a fixed level of funding for a defined term in exchange for committing to deployment obligations that are tailored to each Alaska rate-of-return carrier's circumstances. Specifically, the Commission will provide a one-time opportunity for Alaskan rate-of-return carriers to elect to receive support frozen at adjusted 2011 levels for a 10-year term in exchange for meeting individualized performance obligations to offer voice and broadband services meeting the service obligations the Commission adopts in this Order at specified minimum speeds by five-year and 10-year service milestones to a specified number of locations. As proposed by ATA, the Commission delegates to the Wireline Competition Bureau authority to approve such plans if consistent with the public interest and in compliance with the requirements adopted in this Order.

4. As a result of today's action, Alaska rate-of-return carriers have the option of receiving support pursuant to the Alaska Plan, electing to receive support calculated by A–CAM, or remaining on the reformed legacy rate-of-return support mechanisms. Like all other Connect America programs, Alaska Plan participants will report on their progress in meeting their deployment obligations throughout the 10-year term, allowing the Commission, the Regulatory Commission of Alaska, and other interested stakeholders to monitor their progress.

5. ATA represents that collectively, as of year-end 2015, the Alaska rate-of-return carriers served 124,166 remote locations, with 49,062 of those locations lacking broadband at speeds of 10/1 Mbps or above. If all Alaska rate-of-return carriers that have submitted proposed performance plans participate in the Alaska Plan, and those performance plans are approved as submitted, over 36,000 locations will become newly served with broadband at speeds of 10/1 Mbps or above, and the number of locations with 25/3 Mbps service will increase from 8,823 to 77,516 locations. Moreover, under ATA's proposed plan, the 24,138 locations that were unserved by any benchmark at the end of 2015 would be reduced from 24,138 locations to only 758 locations over the term of the Plan.

6. As proposed by ATA, each carrier with an approved performance plan in the Alaska Plan will receive annually an amount of support equal to its HCLS and ICLS frozen at 2011 levels, subject to certain adjustments, as was determined by the Universal Service Administrative Company (USAC) on January 31, 2012. This support will be provided in monthly installments over the 10-year term that the Commission adopts below. The frozen support that participants receive will be adjusted downward to account for the $3,000 per line annual support cap and for the corporate operations expense limits on ICLS.

7. Our decision to freeze support at 2011 levels for Alaska Plan participants is consistent with our decision in 2014 to permit price cap carriers serving non-contiguous areas, such as Alaska Communications Systems (ACS), to elect to receive support that has been frozen at 2011 levels, recognizing the unique circumstances and challenges such carriers face. The Commission is persuaded by the Alaska rate-of-return carriers that making available the adjusted 2011 support levels will provide carriers participating in the Alaska Plan the certainty they need to commit to investing in maintaining and deploying voice and broadband-capable networks in Alaska. The Commission also notes that the average annual support amounts for locations that would be covered under the Alaska Plan is $449, which is within the range of the model-based support offers to the price cap carriers for Phase II.

8. Recognizing the unique, individualized challenges faced by each rate-of return carrier serving Alaska, the Commission addresses here the general public interest obligations that would apply to individual carriers electing to participate in the Alaska Plan. The Commission also adopts general parameters for deployment obligations in this Order. As initially proposed by ATA, rate-of-return carriers wishing to participate in the Alaska Plan must submit a performance plan, and the Wireline Competition Bureau will have delegated authority to review and approve each carrier's performance plan. Since submitting the initial filing regarding the Alaska Plan, ATA has submitted proposed performance plans for its individual members. The Commission authorizes the Wireline Competition Bureau to approve performance plans that adhere to the requirements the Commission has adopted in this Order and that serve the public interest.

9. To merit approval by the Wireline Competition Bureau, these plans shall commit, to the extent possible, to offer at least one voice service and one broadband service that meets these minimum service requirements to a specified number of locations served by the submitting carrier. Carriers must make a binding commitment to serve a specific number of locations in their service area with such minimum speed(s) by the five-year and 10-year service milestones the Commission adopts below. This approach will advance our statutory mandate of using Connect America support to maintain and advance the deployment of voice and broadband services that are reasonably comparable to those offered in urban areas, while at the same time providing individualized flexibility for the distinctive geographic, climate, and infrastructure challenges of deploying and maintaining voice and broadband services in Alaska.

10. Below the Commission provides more specific descriptions of our expectations for the general parameters with respect to speed, latency, data usage, and reasonably comparable prices.

11. *Speed.* The Commission recognizes that there is a significant disparity today among the Alaska carriers in terms of the different speed of services that they can offer and propose to offer in the future. The Commission seeks to advance to the extent possible the number of locations in Alaska that have access to at least 10/1 Mbps service. The Commission also recognizes that some carriers may be able to upgrade service to provide speeds greater than 10/1 Mbps. Therefore, the Commission requires carriers to report the number of locations in their service areas that will receive broadband at speeds of 25/3 Mbps or higher, as well as 10/1 Mbps, as a result of their deployment. The Commission also grants the flexibility for participants in the Alaska plan to relax the speed requirements to a specified number of locations to account for limitations due to geography, climate, and access to infrastructure, as discussed below.

12. The Commission has adopted a minimum speed standard of 10/1 Mbps for price cap carriers receiving Phase II model-based support, winning bidders in the Phase II auction, and rate-of-return carriers receiving A–CAM and legacy support. At the same time, the Commission also is requiring recipients of A–CAM support to offer 25 Mbps/3 Mbps service in more dense areas and

have established a baseline speed for the Phase II auction of 25/3 Mbps. The Commission sees nothing in the record to suggest that a fundamentally different approach should be followed here, and accordingly they find it reasonable for Alaska carriers to commit to offer service at these speeds where feasible. But the Commission recognizes that not all carriers in Alaska will be able to offer service meeting these speeds due to the unique limitations they face in access to backhaul. While the Commission has noted that their minimum requirements for such carriers is likely to evolve over the next decade and that our policies should take into account evolving standards in the future, they have also recognized that it is difficult to plan network deployment not knowing the performance obligations that might apply by the end of the 10-year term.

13. Given that the Commission also adopts a 10-year support term for rate-of-return carriers electing to participate in the Alaska Plan, they conclude that the same principles described above apply here, subject to modifications that account for the unique circumstances and challenges faced by each Alaskan carrier. Accordingly, the Commission authorizes the Wireline Competition Bureau to approve performance plans submitted by carriers that maximize the number of locations that receive broadband at speeds of at least 10/1 Mbps and that also identify a set number of locations that will receive broadband at speeds at a minimum 25/3 Mbps as a result of the carrier's deployment, to the extent feasible based on each carrier's individual circumstances. Consistent with the Commission's goal of ensuring access to reasonably comparable broadband service to as many unserved consumers as possible, the Commission expects that Alaska Plan recipients will prioritize their deployment of broadband at speeds of 10/1 Mbps before upgrading speeds for locations that are already served with 10/1 Mbps, to the extent feasible.

14. At the same time, the Commission recognizes that due to limitations in access to middle mile infrastructure and the variable terrain, Alaskan carriers may not be able to serve all of their locations at the current minimum speeds for Connect America Fund recipients of 10/1 Mbps speeds with the support they are provided through the Alaska Plan. Accordingly, the Commission authorizes the Wireline Competition Bureau to approve performance plans that propose to offer Internet service at relaxed speeds to a set number of locations to the extent carriers face such limitations. The Commission concludes it will serve the public interest to balance our goal of deploying reasonably comparable voice and broadband services with our goals of maintaining existing voice service and of ensuring that universal service support is used efficiently and remains within the budgeted amount for each carrier. This approach is also consistent with the approach the Commission has taken for other Connect America funding mechanisms. For example, for rate-of-return carriers that elect to receive A–CAM support, the Commission requires that such carriers offer Internet access at speeds of at least 4/1 Mbps to locations that are not fully funded, to the extent they are unable to do better. And as discussed below, for areas that lack terrestrial backhaul, the Commission has permitted ETCs serving such areas to certify that they are providing speeds of at least 1 Mbps downstream and 256 kbps upstream.

15. Finally, as the Commission discusses in more detail below, they acknowledge that in some limited cases Alaska Plan recipients may face circumstances such that at the beginning of their support terms they can only commit to maintaining Internet service at then-existing speeds below 10/1 Mbps. In such circumstances, carriers will be required to explain why they are unable to commit to upgrade their existing services or deploy service to new locations and the status of these limitations will be revisited throughout the support term.

16. *Latency.* The Commission adopts a roundtrip provider network latency requirement of 100 milliseconds or less for participants in the Alaska Plan. This is consistent with the latency standard the Commission adopted for price cap carriers accepting Phase II model-based support, rate-of-return carriers electing A–CAM support, and for purposes of identifying competitive overlap in rate-of-return served areas. Based on the record before us, the Commission does not see any reason to apply a different standard to Alaska Plan participants.

17. Accordingly, Alaska Plan carriers will be required to certify that 95 percent or more of all peak period measurements of network round-trip latency are at or below 100 milliseconds. Consistent with the standards the Wireline Competition Bureau adopted for price cap carriers serving non-contiguous areas, Alaska Plan participants should conduct their latency network testing from the customer location to a point at which traffic is consolidated for transport to an Internet exchange point in the continental United States. The measurements should be conducted over a minimum of two consecutive weeks during peak hours for at least 50 randomly selected customer locations within the census blocks for which the provider is receiving frozen support using existing network management systems, ping tests, or other commonly available network measurement tools.

18. *Data Usage.* Participants in the Alaska Plan will be required to provide a usage allowance that evolves over time to remain reasonably comparable to usage by subscribers in urban areas, similar to the approach adopted for price cap carriers and other rate-of-return carriers.

19. In the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, the Commission adopted the requirement that to the extent an eligible telecommunications carrier (ETC) imposes a usage limit on its Connect America-supported broadband offering, that usage limit must be reasonably comparable to usage limits for comparable broadband offerings in urban areas. Today, rate-of-return carriers must offer a minimum usage allowance of 150 GB per month, or a usage allowance that reflects the average usage of a majority of consumers, using Measuring Broadband America data or a similar data source, whichever is higher.

20. The Commission sees nothing in the record that suggests that participants in the Alaska Plan should not be held to the same standards. Accordingly, such carriers will be required to certify that they offer a minimum usage allowance of 150 GB per month, or a usage allowance that reflects the average usage of a majority of consumers, using Measuring Broadband America data or a similar data source, whichever is higher. As is the case for other ETCs subject to broadband performance obligations, the Wireline Competition Bureau will announce annually the relevant minimum usage allowance.

21. *Satellite Backhaul Exception.* Consistent with the *USF/ICC Transformation Order,* the Commission will exempt from the speed, latency, and data usage standards they adopt above those areas where the carriers rely exclusively on the use of performance-limiting satellite backhaul to deliver service because they lack the ability to obtain terrestrial backhaul or satellite backhaul service providing middle mile service with technical characteristics comparable to at least microwave backhaul. This exception will be implemented via an annual certification by such carriers. The Commission has recognized that satellite backhaul ''may limit the performance of broadband networks as compared to terrestrial backhaul'' and noted that the Regulatory

Commission of Alaska had reported ''for many areas of Alaska, satellite links may be the only viable option to deploy broadband.'' Some Alaska Plan recipients have proposed to offer Internet access service speeds of at least 1 Mbps downstream and 256 kbps upstream to some or all locations within the areas served by exclusively satellite middle mile facilities. As noted below, the Wireline Competition Bureau is authorized to approve performance plans where a carrier does not even commit to offer speeds of at minimum 1 Mbps/256 kbps to locations that are served exclusively by performance-limiting satellite backhaul, but where it does commit to upgrade or newly deploy service at higher minimum speeds to areas served by terrestrial or microwave backhaul. The data usage allowance and latency standards will not apply to those locations that are served exclusively by performance-limiting satellite backhaul.

22. Under our existing rules, to the extent that new terrestrial backhaul facilities are constructed, or existing facilities improve sufficiently to meet the public interest obligations, ETCs are generally required to satisfy the public interest obligations in full within 12 months of the new backhaul facilities becoming commercially available. The Commission similarly expects Alaska Plan recipients to meet latency and data usage requirements for these locations within 12 months. But given that other limiting factors, such as cost or transport limits, in addition to the lack of access to infrastructure, may make it challenging for Alaska carriers to offer a minimum of 10/1 Mbps speeds once they gain access to new backhaul, the Commission does not require carriers participating in the Alaska Plan to meet the 10/1 Mbps speed minimum within the usual 12-month timeframe. The Commission instead directs the Wireline Competition Bureau to consider adopting revised minimum speeds for these carriers when it reassesses their performance plans half way through the 10-year term. The Commission concludes that adjusting speed obligations at that time will alleviate the administrative burden of re-examining performance plans every time backhaul becomes commercially available. The Commission directs the Bureau to work with carriers that seek to participate in the Alaska Plan to include objective metrics for determining when backhaul is available at a price point that would enable the carrier to offer 10/1 Mbps service. The Commission also anticipates that they will consider any additional backhaul that becomes available in determining next steps after the 10-year support term.

23. *Reasonably Comparable Rates.* Participants in the Alaska Plan will be subject to the same obligations as all other recipients of high-cost universal service support to provide voice and broadband service at rates that are reasonably comparable to those offered in urban areas.

24. For voice service, ETCs are required to make an annual certification that the rates for their voice service are in compliance with the reasonable comparability benchmark. For broadband, an ETC has two options for demonstrating that its rates comply with this statutory requirement: certifying compliance with reasonable comparability benchmarks or certifying that it offers the same or lower rates in rural areas as it does in urban areas.

25. Consistent with our other Connect America programs, the Commission adopts this approach for the Alaska Plan. However, due to the unique challenges in deploying voice and broadband-capable networks in Alaska, those carriers that elect to receive Alaska Plan support will be subject to an Alaska-specific reasonable comparability benchmark to be established by the Wireline Competition Bureau. The Commission directs the Wireline Competition Bureau to establish a benchmark using data from its urban rate survey or other sources, as appropriate.

26. The Commission concludes that the public interest obligations the Commission adopts strike the appropriate balance of ensuring that as many Alaska consumers as feasible receive reasonably comparable voice and broadband service while also allowing Alaska Plan participants, who are most familiar with the limitations in access to infrastructure and the climate and geographies they serve, the flexibility to provide service in a way that is logical, maximizes the reach of their network, and is reasonable considering the unique circumstances of each individual carrier's service territory. For price cap carriers serving non-contiguous areas, the Commission determined that due to the circumstances and challenges faced by such carriers that were unique to the areas they serve, a ''one-size-fits-all'' approach would leave some of those carriers potentially unable to fulfill their deployment obligations. Accordingly, the Commission concluded that ''tailoring specific service obligations to the individual circumstances'' of each of these carriers ''will best ensure that Connect America funding is put to the best possible use.'' The Commission concludes that the same principles apply here where the potential recipients within the state of Alaska face their own unique challenges and circumstances due to the variable terrain and their varying levels of access to infrastructure.

27. *Intermediate Milestones.* Consistent with the framework proposed by ATA members, participants in the Alaska Plan will commit to upgrade or deploy new voice and broadband service to a specified number of locations by the end of the fifth year of their support term and complete their deployment to the required number of locations as specified in their approved performance plan by the end of the 10th year of their support term. This is similar to the approach adopted for rate-of-return carriers that remain on legacy support mechanisms.

28. Based on the shortened construction season for Alaska and the limited availability of personnel to construct networks, the Commission concludes that ATA's proposal to have one service milestone at the mid-point of the term and one service milestone at the end of the support term is reasonable. This will give carriers the flexibility to build out their networks based on the unique conditions and challenges they face and give the Commission an objective measure halfway through the term to monitor the carrier's progress. This data will also be useful for the Bureau to consider when reassessing Alaska Plan recipients' individual deployment obligations halfway through the term of support. The Commission finds that because they give participants the flexibility to propose in their performance plans the number of locations that they commit to offering specified speeds by the five- and 10-year milestones, they will be able to set achievable milestones for themselves based on their individual circumstances. The Commission also notes that while carriers are required to meet these service milestones at a minimum, they anticipate that some carriers will complete their deployment in a shorter timeframe. Carriers will still be required to report their progress on an annual basis, as described below.

29. Consistent with the framework proposed by ATA, the Commission adopts a support term of 10 years for carriers that are authorized to receive support through the Alaska Plan. In the *2016 Rate-of-Return Reform Order,* 81 FR 24282, April 25, 2016, the Commission adopted a 10-year term for carriers that elected to receive A–CAM support. The Commission concludes that a 10-year support term for the

Alaska carriers that elect to participate in this plan is in the public interest. The Commission acknowledges ATA's position that 10 years of frozen support ''will create stability which will assure continued service in remote Alaska and allow deployment to underserved and unserved areas.''

30. Before the 10-year support term has ended, the Commission expects that the Commission will conduct a rulemaking to decide how support will be determined after the end of the 10-year support term for Alaska Plan participants. As the Commission noted in the *2016 Rate-of-Return Reform Order,* they expect that prior to the end of the 10-year term, the Commission will have adjusted its minimum broadband performance standards for all ETCs, and other changes may well be necessary then to reflect marketplace realities at that time.

31. Like rate-of-return carriers electing A–CAM support, Alaska Plan recipients will be permitted to use their Alaska Plan support for both operating expenses and capital expenses for new deployment, upgrades, and maintenance of voice and broadband-capable networks. Like recipients of model-based support, they may use that support anywhere in their network to upgrade their ability to offer improved service; they are not limited to using the support only for last mile facilities that traditionally have been supported through the HCLS and ICLS support mechanisms. They no longer will be required to submit line counts; support will be provided for the entire network. An Alaska Plan recipient will be deemed to be offering service if it is willing and able to provide qualifying service to a requesting customer within 10 business days.

32. Alaska Plan participants—like all other ETCs—remain subject to limitations on the appropriate use of universal service support. The Commission recently released a public notice in which it reminded ETCs of their obligation to use high-cost support only for its intended purpose of maintaining and extending communications services to rural, high-cost areas. The public notice listed a number of expenses ETCs are not permitted to recover through high-cost support. These restrictions apply to recipients of frozen support, not just to those who receive support based on traditional cost-of-service rate-of-return principles. In addition, to the extent the Commission revises its expectations for appropriate expenditures in the future, carriers participating in the Alaska Plan will of course be subject to those new rules.

33. *Focusing Deployment on Unserved Areas.* Like our other Connect America programs, the Commission will not dictate the specific locations Alaska Plan participants must serve, but Alaska Plan recipients will generally not be permitted to use Alaska Plan support to upgrade or deploy new broadband service to locations that are located in census blocks that are served by a qualifying unsubsidized competitor. To determine which census blocks are competitively served, the Commission directs the Wireline Competition Bureau to conduct a challenge process similar to the challenge process they adopted for rate-of-return carriers receiving Connect America Fund Broadband Loop Support (CAF BLS) support. The Commission will allow them, however, to count towards their deployment obligation unserved locations in partially served census blocks in specific circumstances, as explained more fully below.

34. In the *USF/ICC Transformation Order,* the Commission adopted reforms to eliminate inefficiencies and instances in which ''universal service support provides more support than necessary to achieve our goals,'' by eliminating certain support in areas that are served by a qualifying unsubsidized competitor. In the *2016 Rate-of-Return Reform Order,* the Commission adopted a rule to eliminate CAF BLS in competitive areas, finding that ''[p]roviding support to a rate-of-return carrier to compete against an unsubsidized provider distorts the marketplace, is not necessary to advance the principles in section 254(b), and is not the best use of our finite resources.'' Specifically, under the new rule, a census block is deemed to be served by a qualifying unsubsidized competitor if the competitor holds itself out to the public as offering ''qualifying voice and broadband service'' to at least 85 percent of the residential locations in a given census block. The Commission established a robust challenge process to determine which census blocks are competitively served.

35. The Commission adopt the same general approach for determining the presence of a qualifying unsubsidized competitor for the Alaska Plan that they adopted for purposes of determining competitive overlap for CAF BLS. Specifically, a census block will be deemed to be served by an unsubsidized competitor if that competitor offers a qualifying voice and broadband service to at least 85 percent of the residential locations within a given census block. To qualify, the unsubsidized competitor must be a facilities-based provider of residential fixed voice service with the ability to port numbers in the relevant census block, and must offer a broadband service at speeds of at least 10/1 Mbps, at a latency of 100 milliseconds or less, with a usage allowance of at least 150 GB at reasonably comparable rates, utilizing the Alaska-specific benchmark. For purposes of implementing this requirement, the Commission notes that there are certain areas where GCI currently is receiving support for its wireline competitive ETC, but has committed to relinquishing that support as part of the overall Alaska Plan. In implementing this requirement, therefore, the Commission will treat GCI as an unsubsidized competitor in those study areas where it has committed to relinquish its support, to the extent it meets all of the requisite requirements. Like with our other Connect America programs, the Commission finds that it would be an inefficient use of Alaska Plan support to permit recipients to use that support to upgrade or deploy new voice and broadband services where unsubsidized competitors already offer services that meet our standards.

36. Accordingly, the Commission adopts a challenge process for identifying which census blocks that are in Alaska rate-of-return carriers' service areas are served by qualifying unsubsidized competitors and delegate authority to the Wireline Competition Bureau to take any necessary steps to conduct the challenge process. The challenge process shall be conducted using the same general format and rules adopted by the Commission for the challenge process for CAF–BLS recipients. In summary, the Wireline Competition Bureau will publish a public notice with a link to the preliminary list of unsubsidized competitors serving the relevant census blocks according to the most recent publicly available Form 477 data. There will then be a comment period in which unsubsidized competitors, which carry the burden of persuasion, must certify that they offer qualifying voice and broadband services to 85 percent of locations in the relevant census blocks, accompanied by supporting evidence. The Wireline Competition Bureau will then accept submissions from the incumbent or other interested parties seeking to contest the showing made by the competitor. After the conclusion of the comment cycle, the Wireline Competition Bureau will make a final determination of which census blocks are competitively served, weighing all of the evidence in the record.

37. Once the challenge process results have been announced, Alaska Plan participants may petition the Wireline

Competition Bureau if they believe adjustments to their approved performance plans are warranted. That is, to the extent an Alaska Plan recipient committed to upgrade or deploy new service to locations that are located in census blocks that are determined to be served as a result of the challenge process, they may need to identify other locations that they can serve in eligible census blocks in order to offer service to the requisite number of locations that they have committed to serve at the specified minimum speeds. In those circumstances, the Commission concludes it would serve the public interest to allow Alaska Plan participants to deploy service to unserved locations in partially served census blocks. In particular, if a carrier seeks to adjust its deployment obligations in its approved performance plan because certain census blocks are deemed competitively served at the conclusion of the challenge process, the Bureau has delegated authority to work with such carriers to determine whether there are unserved locations in partially served blocks that could count towards their deployment obligations. To the extent they are unable to identify additional locations, the Wireline Competition Bureau has delegated authority to modify the obligations in their performance plans consistent with the approach the Commission adopts today.

38. In addition, the Commission directs the Wireline Competition Bureau to reassess the competitive landscape prior to the beginning of the Alaska Plan recipients' fifth year of support. This will provide refreshed competitive coverage data to consider when the Wireline Competition Bureau reassesses whether any adjustments in the Alaska Plan recipients' performance plans should be made for the second half of the 10-year term.

39. Alaskan rate-of-return carriers will have a one-time opportunity to elect to participate in the Alaska Plan. Those carriers that choose not to participate have the option of electing to receive A–CAM support by the applicable deadline or remaining on the reformed legacy support mechanisms.

40. Consistent with the Commission's other programs that provide a fixed support amount for a set term, they will require rate-of-return carriers choosing to participate in the Alaska Plan to do so on a state-level basis rather than at the study area level. The Commission has required price cap carriers and rate-of-return carriers electing model-based support to do so at the state-level to prevent carriers from cherry-picking the study areas that would receive more money from the relevant model and to allow carriers to make business decisions about managing different operating companies on a more consolidated basis. Given Alaska's large size and variable terrain, the Commission recognizes that there may be major differences in the geographic conditions and infrastructure availability for a carrier's various study areas. However, carriers will have the flexibility to take these factors into account when they specify how many locations they will be able to serve and at what broadband speeds in their performance plans at the state-level. Given that this extra flexibility is already provided to carriers electing to participate in the Alaska Plan, the Commission is not convinced that carriers serving Alaska should be given even more flexibility than other rate-of-return carriers by having the ability to choose different funding mechanisms for each of their study areas.

41. The Commission notes that 18 Alaska rate-of-return carriers have already submitted 17 proposed performance plans to the Wireline Competition Bureau. Given that this Order is consistent with ATA's proposal, subject to minor modifications, the Commission presumptively considers these plan commitments to constitute an election to participate in the plan. Alaskan rate-of-return carriers that have already submitted proposed performance plans that choose to update their proposed performance commitments or not participate in the plan in light of this Order should file such updates or provide such notice no later than 30 days from the effective date of this Order. Carriers that have already submitted proposed performance plans should submit any such updated performance plans or provide such notice in WC Docket No. 16–271. Also in light of this Order, the Commission directs the Wireline Competition Bureau to further review the proposed performance commitments on file (or any timely update). While review of their performance plan is pending, carriers will remain on the revised legacy support mechanisms.

42. If the Wireline Competition Bureau concludes that a proposed performance plan meets the applicable requirements and will serve the public interest, it will release a public notice approving the performance plan. The public notice will authorize the carrier to begin receiving support and directing USAC to obligate and disburse Alaska Plan support once certain conditions are met. Support will be conditioned on an officer of the company submitting a letter in WC Docket No. 16–271 certifying that the carrier will comply with the public interest obligations adopted in this Order and the deployment obligations set forth in the adopted performance plan within five days of the release of the public notice or such longer period of time, not to exceed fifteen days, as the Bureau's public notice specifies.

43. Because carriers that are authorized to begin receiving Alaska Plan support will be receiving a frozen support amount for a specified term, like carriers that elected A–CAM support, they must refile their special access tariffs removing the costs of consumer broadband-only loops from the Special Access category, consistent with the *2016 Rate-of-Return Reform Order*. The costs that would be included in the revenue requirement for the Common Line category will be removed from rate-of-return regulation. The carriers are permitted—but not required—to assess a wholesale consumer broadband-only loop charge that does not exceed $42 per line per month. Alternatively, they may detariff such a charge. Alaska Plan recipients must also exit the National Exchange Carrier Association (NECA) common line pool, and they have the option of continuing to use NECA to tariff their end-user charges. Once USAC confirms that these steps have been taken, support under the Alaska Plan may be disbursed.

44. If all 19 Alaskan rate-of-return carriers were to participate in the Alaska Plan, this would result in approximately $55.7 million being disbursed annually. This represents an increase over their current support levels, in the aggregate. As described below, to the extent that Alaska Plan recipients' adjusted 2011 frozen support exceeds their 2015 support levels, the excess will be funded using funds that are saved through the phasing down of the competitive ETC support that is currently used to provide service in non-Remote Alaska.

45. Because carriers participating in the Alaska Plan will be receiving a set amount of support over a defined support term in exchange for defined performance obligations over that term, their support will not be subject to the budget controls that the Commission has adopted for HCLS and CAF BLS. This is consistent with our approach for rate-of-return carriers electing A–CAM support. For the purpose of determining the budget amount available for rate-of-return carriers not electing A–CAM support or participating in the Alaska plan, USAC shall treat Alaska Plan

support in the same manner as A–CAM support.

46. Consistent with the action taken when price cap carriers' support was frozen at 2011 levels and the recent decision with respect to rate-of-return carriers that elect A–CAM support, the Commission also directs NECA to rebase the cap on HCLS once Alaska Plan support is authorized for electing rate-of-return carriers that formerly received HCLS. In the first annual HCLS filing following the initial disbursement of Alaska Plan support, NECA shall calculate the amount of HCLS that those carriers would have received in absence of their election, subtract that amount from the HCLS cap, and then recalculate HCLS for the remaining carriers using the rebased amount.

47. ATA proposes that participants be subject to the recordkeeping and compliance requirements set forth in section 54.320(d) of the Commission's rules. The Commission builds on that proposal and require participants in the Alaska Plan to comply with our existing high-cost reporting and oversight mechanisms, unless otherwise modified as described below.

48. *Annual Reporting Requirements.* Pursuant to section 54.313 of the Commission's rules, Alaska Plan participants must continue to file their FCC Form 481 on July 1 each year. Further, consistent with the relief granted to other rate-of-return carriers in the *2016 Rate-of-Return Reform Order,* the Commission eliminates the requirement that Alaska Plan participants file annual updates to their five-year service quality improvement plans once they receive Paperwork Reduction Act approval for the geocoded location reporting requirement the Commission adopts below.

49. The Commission adds a reporting requirement to the Form 481 for Alaska Plan recipients to help the Commission monitor the availability of infrastructure for these carriers. For Alaska Plan recipients that have identified in their adopted performance plans that they rely exclusively on performance-limiting satellite backhaul for certain number of locations, the Commission will require that they certify whether any terrestrial backhaul, or any new generation satellite backhaul service providing middle mile service with technical characteristics comparable to at least microwave backhaul, became commercially available in the previous calendar year in areas that were previously served exclusively by performance-limiting satellite backhaul If a recipient certifies that such new backhaul has become available, it must provide a description of the backhaul technology, the date on which that backhaul was made commercially available to the carrier and the number of locations that are newly served by such new backhaul. Within twelve months of the new backhaul facilities becoming commercially available, funding recipients must certify that they are offering broadband service with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas at reasonably comparable rates (using the Alaska-specific reasonable comparability benchmark). Given that the Commission will be adopting tailored deployment obligations for Alaska Plan providers, they exempt them for the requirement that ETCs certify they are offering Internet service at speeds of at least 1 Mbps downstream and 256 kbps upstream to areas served exclusively by performance-limiting satellite backhaul.

50. The Wireline Competition Bureau will be able to consider this data at the mid-point in the 10-year term when it reviews carriers' minimum speed commitments in light of the current marketplace. This data will also be useful for the Commission in determining what steps to take after the 10-year support term for Alaska Plan participants. The Commission concludes that the benefits to the public interest of this oversight will outweigh any potential burdens on Alaska Plan participants, particularly given that they expect Alaska Plan carriers will be monitoring available backhaul to ensure they are maximizing their Alaska Plan support in deploying voice and broadband services.

51. Additionally, consistent with the requirements that apply to all ETCs subject to broadband public interest obligations, the Commission will require each Alaska Plan recipient to certify on an annual basis that it is commercially offering voice and broadband services that meet the public interest obligations they have adopted in this Order at the speeds committed to in its own performance plan, to the locations they reported as required below. This requirement will ensure that the Commission is able to monitor that Alaska Plan recipients are continuing to use their Alaska Plan support for its intended use throughout their support term, and they are continuing to offer service meeting the relevant minimum requirements.

52. For Alaska Plan recipients that propose to maintain their existing networks throughout the 10-year support term without newly deploying or upgrading service to locations within their service areas, the Commission requires that such carriers retain documentation on how much of their Alaska Plan support was spent on capital expenses and operating expenses and be prepared to produce such documentation upon request. Given that these recipients will not be able to demonstrate that they are meeting new service milestones, the Commission concludes that it is reasonable to require them to be prepared to produce documentation to demonstrate how they are using Alaska Plan support. The Commission expects that this requirement will not impose an undue burden on these recipients because they track their capital and operating expenditures in the regular course of business.

53. Finally, the Regulatory Commission of Alaska will submit the annual section 54.314 intended use certification on behalf of Alaska Plan participants, like all ETCs subject to the jurisdiction of a state commission.

54. *Location Reporting Requirements.* In the *2016 Rate-of-Return Reform Order,* the Commission adopted geocoded location reporting requirements that they now extend to Alaska Plan participants. Specifically, starting on March 1, 2018, and on a recurring basis thereafter, the Commission will require all Alaska Plan participants to submit to USAC the geocoded locations for which they have newly deployed or upgraded broadband meeting the minimum speeds in their approved performance plans and their associated speeds. The geocoded location information should reflect those locations that are broadband-enabled where the company is prepared to offer voice and broadband service meeting the speeds committed to in the deployment plan and the relevant public interest obligations, within 10 business days.

55. Alaska Plan participants will be required to submit geocoded location information for their newly offered and upgraded broadband locations starting March 1, 2018 and then by March 1 following each support year. However, like other ETCs subject to this reporting obligation, the Commission expects that Alaska Plan participants will report the information on a rolling basis. A best practice would be to submit the information no later than 30 days after service is initially offered to locations in satisfaction of their deployment obligations.

56. Like other high-cost recipients that are required to meet service milestones for broadband public interest

obligations, Alaska Plan participants will also be required to file certifications with their location submission to ensure their compliance with their public interest obligations. Each participant must certify that it has met its five-year service milestone by March 1 following its fifth year of support and certify that it has met its 10-year service milestone by March 1 following its 10th year of support. Participants that fail to file their geolocation data and associated deployment certifications on time will be subject to the penalties described in section 54.316(c) of our rules.

57. The Commission also adopts a reporting requirement for newly deployed backhaul. The Commission will require Alaska Plan participants to submit fiber network maps or microwave network maps in a format specified by the Bureaus covering eligible areas and to update such maps if they have deployed middle-mile facilities in the prior calendar year that are or will be used to support their service in eligible areas.

58. *Reassessment.* The Commission directs the Wireline Competition Bureau to reassess the deployment obligations in the approved performance plans before the end of the fifth year of support. The Commission therefore requires that participating carriers update their end-of-term commitments no later than the end of the fourth year of support, and they delegate to the Wireline Competition Bureau the authority to review and approve modifications that serve the public interest. This will be an opportunity to assess whether local conditions have changed, and any adjustments to the performance plan might be appropriate. A number of Alaska rate-of-return carriers have represented that they cannot offer broadband services at 10/1 Mbps speeds at the present time due to limitations in access to middle mile infrastructure. To the extent such conditions have improved, the Commission delegates authority to the Wireline Competition Bureau to adopt modifications to approved performance plans to ensure that Alaska Plan support is being maximized to offer reasonably comparable services to the carrier's service area.

59. The Commission acknowledges that certain Alaska rate-of-return carriers may only be able to commit at this point to maintaining existing Internet access at speeds below 10/1 Mbps due to limitations in their access to infrastructure. To the extent that a carrier faces such limitations, it should specify in its performance plan the number of locations where it commits to maintain its existing voice and Internet access service and provide a justification for why it cannot commit to upgrading Internet access to faster speeds within in its service area. The Commission directs the Wireline Competition to monitor these carriers more closely to determine when it is feasible to implement specific deployment obligations. The Commission expects that to the extent such limiting conditions have changed, the Wireline Competition Bureau will revise the carrier's deployment obligations to require that they upgrade their existing service or deploy service to new locations. The Commission concludes that reviewing such carrier's performance plans on a biennial basis rather than at the mid-point of the term will serve the public interest. The Wireline Competition Bureau will be able to monitor that such carriers are effectively utilizing their Alaska Plan support instead of only maintaining the status quo throughout the support term, rather than at a point when they have already received half of their support.

60. *Monitoring.* To ensure that Connect America support is used as effectively as possible, the Commission must be able to measure and monitor the service commitments in each Alaska Plan recipient's performance plan. The Commission expects to monitor the progress of all rate-of-return carriers in meeting their respective deployment obligations, including those participating in the Alaska Plan, and are willing to make future adjustments where warranted. In addition to the reassessment, the Commission delegates to the Wireline Competition Bureau the authority to approve changes to the deployment obligations in the adopted performance plans during the support term if such changes are due to circumstances that did not exist at the time the performance plans were adopted and are consistent with the public interest and the requirements adopted in this Order.

61. *Reductions in support.* The Commission has generally adopted a five-year and 10-year service milestone for the Alaska Plan that will be more specifically defined based on each participant's approved performance plan. Based on the record before the Commission, they find no reason to relax our compliance standards for Alaska Plan participants, and indeed, they note that ATA proposes that participants in the plan be subject to the existing rule. Thus, Alaska Plan participants that fail to meet these milestones will be subject to the same potential reductions in support as any other carrier subject to defined obligations. If, by the end of the 10-year term an Alaska Plan participant is unable to meet its final service milestone, it will be required to repay 1.89 times the average amount of support per location received over the 10-year term for the relevant number of locations that the carrier has failed to deploy to, plus 10 percent of its total Alaska Plan support received over the 10-year term.

62. *Audits.* Like all ETCs, Alaska carriers will be subject to ongoing oversight to ensure program integrity and to deter and detect waste, fraud and abuse. All ETCs that receive high-cost support are subject to compliance audits and other investigations to ensure compliance with program rules and orders. Our decision today to provide frozen support based on past support amounts does not limit the Commission's ability to recover funds or take other steps in the event of waste, fraud or abuse.

III. Alaska Plan for Mobile Carriers

63. In this section, the Commission adopts that part of ATA's integrated plan that addresses high-cost support for competitive ETCs providing mobile service in remote areas of Alaska, subject to the minor modifications described herein. The Commission has previously recognized that competitive ETCs in Alaska's remote regions face conditions unique to the state, and much of Alaska's remote areas remain unserved or underserved by mobile carriers. The Alaska Plan includes a consensus plan among the mobile providers in remote areas of Alaska that provides predictable, stable support to those providers, frozen at 2014 levels for a term of 10 years. As in the Alaska Plan for rate-of-return carriers, the Commission will provide a one-time opportunity for Alaskan competitive ETCs to elect to participate in the Alaska Plan for mobile carriers. Eligible competitive ETCs who elect not to participate in the Alaska Plan will have their support phased out over a period of three years, as proposed by ATA.

64. The Commission requires that participating competitive ETCs submit individual performance plans with deployment commitments at the end of year five and year 10 meeting the requirements adopted in this Order, discussed below. The Commission delegates to the Wireless Telecommunications Bureau authority to approve proposed performance plans if they are consistent with the public interest and comply with the requirements the Commission adopts in this Order. The Commission will require progress reports of the Alaska Plan participants throughout the 10-year

term, and they will establish specific measures to help ensure verifiability and compliance. In addition, the Commission delegates authority to the Wireless Telecommunications Bureau to approve minor revisions in each carrier's commitments throughout the plan term when in the public interest and to effectuate plan implementation and administration as detailed below. The Commission also requires that each carrier revisit its 10-year deployment commitments no later than the end of year four, as described in detail below.

65. The Commission adopts the Alaska Plan for mobile carriers, subject to certain conditions and modifications herein, for the provision of high cost support to competitive ETCs offering mobile service to consumers in remote Alaska. In the course of eliminating the identical support rule, the Commission observed that carriers in remote Alaska had unique concerns and recognized that Mobility Funds needed to be flexible enough to accommodate special conditions in places like Alaska, to account for ''its remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season.'' These challenges can drive up costs while the low population bases in these areas strain revenue. The Commission expressed particular concern that ''[o]ver 50 communities in Alaska have no access to mobile voice service today, and many remote Alaskan communities have access to only 2G services.'' The Commission finds that, given these unique concerns, the Alaska Plan, as modified, is a reasonable approach to promote the provision of mobile voice and broadband service in Alaska. The plan will freeze at current levels the funds that are currently going to mobile providers in remote Alaska in return for specified network deployment commitments. The plan will also create a separate fund that will reallocate a majority of the annual funding currently dedicated to mobile providers in non-remote areas of Alaska and create a reverse auction to expand service in unserved areas of remote Alaska. The Commission finds that the plan they adopt will enable competitive ETCs offering service in remote Alaska to continue operating their current services and to extend and upgrade their existing networks.

66. ATA represents that as of December 31, 2014, the competitive ETCs serving remote Alaska served a population of 143,991 in the areas eligible for frozen support, with only 13,452 of that population receiving 4G LTE service and 66,025 receiving only 2G/voice service. The remaining 64,514 of the population received only 3G service as of that date. If all eight of the competitive ETCs serving remote Alaska that have submitted proposed performance plans participate in the Alaska Plan, by the end of the 10-year term the population receiving 4G LTE service in eligible areas will increase from 9 percent as of December 2014 to 85 percent, or 122,119. Alaskans receiving only 2G/voice will decrease from 46 to 7 percent of the population, or 10,202, while those receiving 3G service only will drop from 45 to 8 percent or 11,669. Moreover, additional support of up to approximately $22 million will be redirected to a reverse auction in which competitive ETCs may bid to receive annual support for 10 years to extend service to areas that do not have any commercial mobile radio service.

67. In adopting the Alaska Plan, the Commission declines to instead adopt ACS's proposed alternative plan involving the creation of a State or non-profit provider of middle mile. As an initial matter, the ACS proposal would require changes to several different universal service mechanisms outside the scope of this proceeding, such as the rural health care and E-Rate mechanisms. The Commission also finds that the alternative plan would involve significant implementation and operational issues regarding the proposed middle mile provider that, at a minimum, would lead to substantial delay and may well not be practical. In addition, the Commission takes into account that the Alaska Plan was developed and presented as a part of an integrated plan for competitive ETCs serving remote Alaska and their affiliated rate-of-return carriers, and that it represents a consensus approach supported by all mobile carriers providing subsidized service in remote Alaska, whereas the ACS alternative appears to have the support of only ACS itself, which does not provide any mobile service in Alaska. Further, while the ACS plan seeks to address the critical need in remote Alaska for new terrestrial middle-mile deployment, it does not provide any specific plan for the high cost support of retail mobile voice and broadband services to consumers—which is the ultimate goal of this proceeding. The Commission also notes that service providers are entitled to use support to construct the facilities required for them to meet their deployment obligations, including using support for improved backhaul and middle mile. Accordingly, the Commission rejects ACS's proposed alternative plan. For the reasons discussed below, the Commission declines to adopt the conditions proposed by ACS, but do provide that the phase down of competitive ETC support of mobile carriers who were not signatories of the Alaska Plan will begin no earlier than 12 months after release of this Order.

68. Each qualifying mobile carrier that elects to participate in the Alaska Plan will receive annually an amount of support equal to their competitive ETC support frozen at December 2014 levels, and participating carriers shall no longer be required to file line counts. This support will be frozen at these levels for 10 years and replaces the identical support phase down schedule for participating competitive ETCs. Our decision to freeze support at December 31, 2014 levels for mobile carriers participating in the Alaska Plan is consistent with our determination that certain areas require ongoing support in order for mobile service to continue to be offered and our goal to ensure universal availability of voice and broadband to homes in rural, insular, and high-cost areas. If the eight eligible competitive ETCs participate in the Alaska Plan, this would result in approximately $74 million being dispersed annually for each of the 10 years that the plan is in effect.

69. The Commission adopts certain public interest obligations for the mobile services that are supported by the Alaska Plan.

70. *Provision of Service.* At a minimum, the Commission finds that mobile carriers in remote Alaska must provide a stand-alone voice service and, at a minimum, offer to maintain the level of data service they were providing as of the respective dates their individual plans are adopted by the Wireless Telecommunications Bureau and to improve service consistent with their approved performance plans.

71. *Reasonably Comparable Rates.* Section 254(b)(3) provides the universal service principle that consumers in all regions in the nation, including ''rural, insular, and high cost areas,'' should have access to advanced communications that are reasonably comparable to those services and rates available in urban areas. The Commission requires participating carriers to certify their compliance with this obligation in their annual compliance filings described below, and to demonstrate compliance at the end of the five-year milestone and 10-year milestone, also described below. Further, consistent with the conclusions

in Tribal Mobility Fund Phase I, the Commission provides that a carrier may demonstrate compliance by showing that its required stand-alone voice plan, and one service plan that offers broadband data services, if it offers such plans, are (1) substantially similar to a service plan offered by at least one mobile wireless service provider in the cellular market area (CMA) for Anchorage, Alaska, and (2) offered for the same or a lower rate than the matching plan in the CMA for Anchorage. Because of the unique conditions in remote Alaska, however, and the variety of circumstances and costs of the affected carriers, the Commission authorizes the Wireless Telecommunications Bureau to employ alternative benchmarks appropriate for specific competitive ETCs under the Alaska Plan in assessing carrier offerings.

72. The Commission reject ACS's request that they require recipients to ensure reasonably comparable rates in their middle mile offerings. While recipients of the plan are free to invest in middle mile to bolster their last-mile mobile offerings, this support is not directly for improving middle-mile offerings to other carriers. As noted above, our overarching goal is to preserve and enhance the provision of broadband service to consumers.

73. The Commission adopts a support term of 10 years for recipients of the Alaska Plan. Given the conditions faced by carriers specifically in remote Alaska, including the vast distance, the extreme weather, and the very short construction seasons, the Commission concludes that a 10-year term of support will serve the public interest. The provision of predictable support over this timeframe will enable providers to undertake long-term plans to invest in and upgrade their mobile network services, while the requirement to file updated proposed deployment obligations during the 10-year term, as discussed below, will ensure that participating competitive ETCs are using their support in a manner that furthers universal service goals.

74. Alaska Plan recipients will be permitted to use their Alaska Plan support for both operating expenses and capital expenses for new deployment, upgrades, and maintenance of mobile voice and broadband-capable networks, including middle-mile improvements needed to those ends. As long as an Alaska Plan participant is offering service in an eligible area, as defined below, and consistent with the public interest obligations delineated in this Order, service in that area will be eligible for support.

75. The Commission reject ACS's request that the Commission condition support under the plan by requiring recipients ''to spend at least 70% of their support to deploy and operate terrestrial middle-mile facilities on routes where such facilities do not exist with sufficient capacity to meet demand based on speed and usage benchmarks the Commission has adopted across its universal service mechanisms.'' The Commission is not persuaded that requiring that each recipient dedicate 70% of its support to this specific task would best serve the interest of Alaskan consumers. For instance, the Quintillion Subsea Cable System could provide high speed broadband access to mobile providers along the west coast of Alaska, such as for ASTAC and OTZ Wireless, without those carriers having to spend 70% of their support to invest in separate middle-mile buildout. The Commission finds that allowing recipients to invest in middle-mile facilities as needed based on their respective situations would allow these carriers to better target the support that they receive in accordance with their circumstances to meet their deployment obligations.

76. Moreover, the Commission determine that it is not in the public interest to regulate carriers that choose to build middle-mile facilities using support from the plan under dominant carrier regulations. ACS requests that ''[c]arriers constructing and operating middle mile facilities where there is no unaffiliated competitive terrestrial service provider . . . be regulated as dominant telecommunications carriers on those routes.'' It is not clear what ACS intends to be the consequences of such a condition, or that such a condition is either necessary or in the public interest. The Commission notes that GCI has already indicated that its provision of middle-mile service on the TERRA network is a Title II service provided subject to the common carriage requirements of sections 201 and 202 of the Act.

77. Finally, the Commission declines to adopt ACS's proposed condition to deny transfer of support received by a competitive ETC participating in the Alaska Plan in all instances of transfer of customers or other affiliation or acquisition of one participating carrier by another. The Commission instead delegates to the Wireless Telecommunications Bureau to determine in the context of a particular proposed transaction involving a competitive ETC that is an Alaska Plan participant the extent to which a transfer of a proportionate amount of the transferring carrier's Alaska Plan support, along with what specific performance obligations, would serve the public interest.

78. *Performance Plans.* The Commission appreciates the particular challenges that providing mobile service in Alaska presents to wireless carriers, and at this time they choose to adopt general, rather than specific, deployment parameters. The Commission adopts ATA's proposal that remote competitive ETCs that choose to participate in the Alaska Plan must submit a performance plan consistent with the requirements found in this Order. Each competitive ETC that would like to participate in the Alaska Plan must identify in its performance plan: (1) the types of middle mile used on that carrier's network; (2) the level of technology (2G, 3G, 4G LTE, etc.) that carrier provides service at for each type of middle mile used; (3) the delineated eligible populations served, as described below, at each technology level by each type of middle mile as they stand currently and at years five and 10 of the support term; and (4) the minimum download and upload speeds at each technology level by each type of middle mile as they stand currently and at years five and 10 of the support term. Accordingly, each performance plan must specify the population covered by the five-year and 10-year milestones the Commission adopts below, broken down for each type of middle mile, and within each type of middle mile, for each level of data service offered. The proposed performance plans must reflect any improvements to service, through improved middle mile, improved technology, or both. The Commission expects participants in the Alaska Plan for mobile carriers to offer service meeting the deployment standard described below. Alaska Plan participants must offer service meeting the milestones they commit to in their adopted service plans. The Commission delegates to the Wireless Telecommunications Bureau authority to require additional information, including during the Bureau's review of the proposed performance plans, from individual participants that it deems necessary to establish clear standards for determining whether or not they meet their five- and 10-year commitments, which may include geographic location of delineated-eligible populations, as well as specific requirements for demonstrating that they have met their commitments regarding broadband speeds. This approach allows Alaska Plan participants the ability to deploy service and technology achievable and tailored

to the challenges faced by the carriers. The Commission also requires, however, that participating carriers update their end-of-term commitments no later than the end of year four, and they delegate authority to the Wireless Telecommunications Bureau to review these updates in light of any new developments, including newly available infrastructure, and require revised commitments if it serves the public interest.

79. *Deployment Standard.* The Commission expects that Alaska Plan participants will work to extend 4G LTE service to populations who are currently served by 2G or 3G. However, the Commission recognizes that there are unique limitations to extending 4G LTE—and in certain locations 3G—in remote Alaska due to infrastructure and the cost of upgraded middle mile. Participants may also be permitted in particular circumstances to maintain lower levels of technology to a subset of locations due to such limitations as difficult terrain or lack of access to either terrestrial middle mile infrastructure or satellite backhaul providing middle-mile service with technical characteristics comparable to at least microwave backhaul. The Commission therefore authorizes the Wireless Telecommunications Bureau to approve plans in particular circumstances that may propose not to provide 4G LTE service, but only to maintain service at 2G or 3G or to upgrade to service from 2G to 3G. The Commission has determined that it will serve the public interest to balance our goal of deploying reasonably comparable voice and broadband service with our goal of ensuring that universal service support is used efficiently and remains within the amounts budgeted to each participating competitive ETC. This approach is also consistent with our stated goal of ensuring that funding is ''focused on preserving service that otherwise would not exist and expanding access to 4G LTE in those areas that the market otherwise would not serve,'' while accounting for the special challenges faced by mobile carriers in remote Alaska.

80. *Coverage.* The Commission provides that frozen support provided to mobile carriers pursuant to the Alaska Plan may only be used to provide mobile voice and broadband service in those census blocks in remote Alaska where, as of December 31, 2014, less than 85% of the population was covered by the 4G LTE service of providers that are either unsubsidized or not eligible for frozen support in Alaska and accordingly subject to a phase down of all current support. Thus, mobile carriers receiving frozen support may only satisfy their performance commitments through service coverage in the eligible areas.

81. The Commission finds that the ATA plan's refocus of competitive ETC support in Alaska to the remote areas is reasonable and in the public interest. First, the vast majority of the population of non-remote Alaska is already receiving 4G LTE from a nationwide CMRS provider. Further, while a very small number of people within non-remote Alaska are covered by only subsidized 4G LTE service from a nationwide CMRS provider—AT&T—the Commission is persuaded that AT&T does not need the support that it receives for this small area to continue providing service, given the success of both Verizon and AT&T in providing unsubsidized 4G LTE throughout the majority of non-remote Alaska and the willingness of GCI to forgo future support for its 4G LTE service in that area as well. The Commission notes also that AT&T makes no claim to needing support for this small area and that its own proposed standard of ineligibility would terminate support throughout non-remote Alaska. In addition, while non-remote Alaska is already extensively covered by LTE, numerous small communities in remote Alaska lack adequate or even the most basic mobile service. Under the plan the Commission adopted, funds will be allocated to help improve service and extend deployment to these remote areas, which they find will better serve the goals of universal service than further investment in the significant level of service already enjoyed by consumers living in non-remote Alaska.

82. For this purpose, the Commission will treat a carrier's service in remote areas of Alaska as equivalent to service provided in non-remote areas (and accordingly subject to a three-year phase down in support) if in connection with this service, the carrier did not previously claim the ''covered locations'' exception to the interim cap on competitive ETC support that the Commission established in 2008. In so doing, the Commission is guided by their approach to high cost support in remote Alaska in the 2011 *USF/ICC Transformation Order,* which provided remote Alaskan carriers with a two-year delay in the phase down of legacy support applicable to carriers elsewhere, but only if the Alaskan carriers had previously claimed the covered locations exception. As a result, a carrier serving remote areas that had been eligible for the covered locations exception (which would have included any competitive ETC in remote Alaska) but that chose not to claim it was treated the same as providers in non-remote areas, for whom the Commission found ''no evidence . . . that any accommodation is necessary to preserve service or protect consumers. . . .'' Consistent with the eligibility for the remote Alaska delayed phase down established in the *USF/ICC Transformation Order,* the Commission restricts competitive ETC eligibility for frozen support in remote Alaska to those competitive ETCs that both serve remote Alaska and claimed the covered locations exception, and the Commission provides that support going to carriers in remote Alaska who did not claim the covered locations exception will, like support in non-remote areas, be phased out and reallocated.

83. The Commission further provides that, in remote Alaska, eligible areas will include only those census blocks where, as of December 31, 2014, less than 85% of the population was covered by the 4G LTE service of providers that are either currently unsubsidized under the high cost mechanism or subject to a phase down of all current mobile support in the relevant census block. The Commission finds that excluding blocks where there is 4G LTE service being provided that is either unsubsidized or subject to a phase down of support will further our goal of targeting universal service support to areas that will not be served by the market without such support. The Commission also finds the proposed 85% coverage threshold reasonable for remote Alaska. As GCI notes, the use of an 85% threshold is analogous to the threshold used to determine competitive census blocks for rate-of-return carriers in the *2016 Rate-of-Return Reform Order.* Further, because census blocks in Alaska are quite large, it would not be surprising that a part of the census block would need further support even when another part of the block does not.

84. The Commission declines to adopt AT&T's proposal that all areas covered by 4G LTE service, including remote areas receiving only subsidized 4G LTE service, should be ineligible for support absent a case-by-case waiver. The Commission finds, on the current record, including the unique costs and challenges of service in remote Alaska, the specific cost evidence submitted in the Brattle Group study, the limited extent of 4G LTE deployment in remote Alaska, and the consensus support for the ATA plan, that the approach the Commission adopts will better advance universal service in that region. In sum, the Commission concludes that it is in the public interest to allow competitive

ETCs participating in the Alaska Plan to use support provided by the Alaska Plan to provide service in remote census blocks where, as of December 31, 2014, less than 85% of the population received 4G LTE service from providers that are either unsubsidized or not eligible for frozen support in Alaska and accordingly subject to a phase down of all current support.

85. *Duplicative funding.* As a general policy, since the reforms of the Commission's high cost support mechanisms adopted in 2011, the Commission has sought to eliminate the provision of high-cost support to more than one competitive ETC in the same area. The Alaska Plan as proposed by ATA makes no provisions, however, for addressing the potential for high-cost funds to support overlapping networks in remote Alaska at any time over the plan's 10-year term. The Commission is particularly concerned that it does not address the potential that high-cost funds could be used to support more than one 4G LTE deployment in the same area. The analysis of overlap submitted by the ATA signatories and independent staff analysis of the parties' Form 477 submissions indicates that there is no current overlap of 4G LTE service provided by the eligible carriers. The same data suggest, however, that there is a potential for such overlap as eligible carriers upgrade their networks to 4G LTE to meet their performance commitments. At this time, however, the Commission cannot know with certainty whether such overlap will occur and, if so, in which locations and to what extent.

86. Today, the Commission concludes that support provided to overlapped areas in the future should be redistributed to eliminate any instances of duplicate support for 4G LTE service in the manner to be determined once 4G LTE overlap is reevaluated during the fifth year of the plan. As discussed below and in the concurrently adopted FNPRM, the Commission therefore adopts a process for revisiting whether and to what extent there is duplicative funding for 4G LTE service during the first part of the 10-year term, and seek comment on mechanisms for eliminating any such duplicative funding, and for determining how to redistribute any such funds.

87. The Commission will maintain the support levels they adopt today for the first five years of the term to spur 4G LTE deployment in remote Alaska, consistent with the carriers' performance commitments, in order to further our goal of promoting mobile broadband deployment in areas where such deployment has seriously lagged behind the rest of the Nation. To address the potential for duplicative support over time, however, the Commission will evaluate whether there is any overlap in subsidized 4G LTE coverage areas in the fifth year, with the expectation of eliminating any such duplicative support during the second half of the Plan's 10-year term. To do so, the Commission will assess 4G LTE deployment and any overlap in subsidized areas as of December 31, 2020, as reflected in the March 2021 Form 477 filing. Thereafter, based on that assessment as well as additional information in the record in response to the concurrently adopted FNPRM and in the resulting Order, the Commission will implement a process, at the beginning of the sixth year, to eliminate duplicative support to areas where there is more than one provider offering subsidized 4G LTE service. The Commission finds that this approach strikes the appropriate balance in promoting the deployment of 4G LTE services in remote Alaska, where such service has lagged significantly, while providing a mechanism to eliminate any duplicative support that may arise, consistent with our principles of fiscal responsibility and maximizing the impact of limited universal service funds.

88. *Timeline.* The Commission will require competitive ETCs participating in the Alaska Plan to meet one interim milestone by the end of their fifth year of their support term and complete their deployment to the required population in their eligible service areas by the end of the tenth year of their support term.

89. The Alaska Plan is limited to support of remote areas of Alaska, given the unique challenges faced by providers in those areas. A competitive ETC will be eligible for frozen support pursuant to the Alaska Plan if it serves remote areas in Alaska, and it certified that it served covered locations anywhere in remote areas in Alaska in its September 30, 2011 filing of line counts with the USAC. Competitive ETCs eligible for frozen support under the Alaska Plan will have a one-time opportunity to elect to participate in the Plan.

90. The Commission notes that eight Alaskan mobile carriers have submitted proposed performance plans to the Wireless Telecommunications Bureau. Given that this Order is consistent with ATA's proposal, subject to minor modifications, the Commission presumptively considers these plan commitments to constitute an election to participate in the plan. Alaskan carriers that choose to update their proposed performance commitments or not participate in the plan in light of this Order should file such updates or provide such notice no later than 30 days from the effective date of this Order. Competitive ETCs should submit any such updated performance plans or provide such notice in WC Docket No. 16–271. Also in light of this Order, the Commission directs the Wireless Telecommunications Bureau to further review the proposed performance plans on file (or any timely filed update). While review of their performance plan is pending, carriers will remain on the revised legacy support mechanism. If the Wireless Telecommunications Bureau concludes that a proposed performance plan meets the applicable requirements the Commission adopts in this Order and will serve the public interest, it will release a public notice approving the relevant performance plan. The public notice will authorize the carrier to begin receiving support and direct USAC to obligate and disburse Alaska Plan support once the conditions are met. Support will be conditioned on an officer of the company submitting a letter in WC Docket No. 16–271 certifying that the carrier will comply with the public interest obligations adopted in this Order and the deployment obligations set forth in the adopted performance plan within five days of the release of the Bureau's public notice or such longer period of time, not to exceed fifteen days, as the Bureau's public notice specifies.

91. Competitive ETCs that are eligible but choose not to participate in the Alaska Plan, will have their current support phased down over a three-year period, as proposed in the Alaska Plan, beginning January 1, 2017. Competitive ETCs who are participants in the proposed Alaska Plan and who receive support in non-remote areas of Alaska will have such support phased down over the same period. Because the Commission adopts the Alaska Plan for mobile carriers as an Alaska-specific comprehensive substitute mechanism for mobile high-cost support, they further provide that there will be no support provided under Mobility Fund Phase II or Tribal Mobility Fund Phase II for mobile service within Alaska.

92. The Commission provides a 12-month period from the release date of the Report and Order before the commencement of the three-year phase down of competitive ETC support insofar as it applies to carriers that are not signatories to the Alaska Plan, *i.e.,* AT&T/Dobson. Specifically, the phase down will commence on the beginning of the month that immediately follows the expiration of the 12-month period.

The Commission finds this accommodation to be reasonable, as such a carrier may require additional transition time to reduce any disruptions.

93. ATA proposes that, like the rate-of-return participants, competitive ETC participants be subject to the reporting requirements set forth in 54.313 and the recordkeeping and compliance requirements set forth in section 54.320(d) of the Commission's rules. The Commission adopts and build on that proposal, as described below.

94. *Annual Reporting Requirements.* Pursuant to section 54.313 of the Commission's rules, competitive ETCs that participate in the Alaska Plan must continue to file FCC Form 481 on July 1 each year. Alaska Plan participants, like all ETCs subject to the jurisdiction of a State, are also required to have Alaska submit the section 54.314 intended use certification on their behalf. Alaska Plan participants will no longer be required to file line counts as required by section 54.307.

95. As with the reporting requirements of Alaskan rate-of-return carriers, the Commission also establishes certain additional reporting requirements for carriers receiving support under the Alaska Plan. First, the Commission adds a reporting requirement to the Form 481 for competitive ETCs that participate in the Alaska Plan to help the Commission monitor the availability of infrastructure for these carriers. For Alaska Plan recipients that have identified in their adopted performance plans that they rely exclusively on performance-limiting satellite backhaul for a certain portion of the population in their service area, the Commission will require that they certify whether any terrestrial backhaul, or any new-generation satellite backhaul service providing middle-mile service with technical characteristics comparable to at least microwave backhaul, became commercially available in the previous calendar year in areas that were previously served exclusively by performance-limiting satellite backhaul. If a recipient certifies that such new backhaul has become available, it must provide a description of the backhaul technology, the date on which that backhaul was made commercially available to the carrier, and the number of the population served by the new backhaul option. Further, the Commission requires those Alaska Plan providers that have not already committed to providing 4G LTE at 10/1 Mbps speeds to the population served by the newly available backhaul by the end of the plan term to submit revised performance commitments factoring in the availability of the new backhaul option no later than the due date of the Form 481 in which they have certified that such backhaul became commercially available. The Commission has not been persuaded to adopt ACS's first three proposed conditions and accordingly also decline to adopt reporting conditions related to these conditions. The Commission does find it appropriate, however, to impose a requirement that all competitive ETCs receiving support under the plan must retain documentation on how much of their Alaska Plan support was spent on capital expenses and operating expenses and be prepared to produce such documentation upon request, which will assist the Commission in enforcing the terms of the plan and ensuring funds are spent efficiently and in the public interest. The Commission expects that this requirement will not impose an undue burden on these recipients because they track their capital and operating expenditures in the regular course of business. Moreover, while the Commission rejects ACS's particular proposal that competitive ETCs should state by December 31, 2017 where they intend to deploy broadband and what middle-mile facilities they will build or lease, the Commission will require Alaska Plan participants to submit fiber network maps or microwave network maps in a format specified by the Bureaus covering eligible areas and to update such maps if they have deployed middle-mile facilities in the prior calendar year that are or will be used to support their service in eligible areas. The Commission finds it will be more helpful to our ongoing assessment of the performance commitments of the recipients to have information on middle mile actually deployed rather than information regarding planned middle-mile deployment.

96. *Milestone Reporting Requirements.* The Commission further determines that like other high-cost recipients that are required to meet milestones, each Alaska Plan participant will also be required to file certifications that it has met its milestones, including minimum download and upload speeds as stated in the approved performance plans. Each participant must certify that it has met its five-year milestone by the second month following its fifth year of support and certify that it has met its 10-year milestone by the second month following its tenth year of support. The Commission will rely on participating carriers' Form 477 submissions in determining whether each carrier's five-year and 10-year milestones have been met. Additionally, the Commission requires minimum upload and download speed certifications from carriers receiving more than $5 million annually in high cost funding to be supported by data from drive tests showing mobile transmissions to and from the network meeting or exceeding the speeds delineated in the approved performance plans. Based on the unique circumstances of remote Alaska, the Commission will not require drive-testing data from participating carriers receiving less than this amount. As with Tribal Mobility Fund Phase I, the Commission concludes that the required drive tests may be conducted by means other than in automobiles on roads, recognizing the unique terrain and lack of road networks in remote Alaska. Providers may demonstrate coverage of an area with a statistically significant number of tests in the vicinity of residences being covered. Equipment used to conduct the testing may be transported by off-road vehicles, such as snow-mobiles or other vehicles appropriate to local conditions.

97. *Reductions in support.* The Commission has generally adopted a five-year and 10-year build-out milestone for the Alaska Plan that will be more specifically defined based on each participant's approved performance plan. Once a carrier's performance plan is approved by the Wireless Telecommunications Bureau, the carrier is required to meet the performance benchmarks of the plan. Alaska Plan participants that fail to meet these milestones will be subject to the same potential reductions in support as any other carrier subject to defined obligations. If, by the end of the 10-year term an Alaska Plan participant is unable to meet its final build-out milestone, it will be required to repay 1.89 times the average amount of support per location received over the 10-year term for the relevant number of locations that the carrier has failed to deploy to, plus 10 percent of its total Alaska Plan support received over the 10-year term.

98. *Audits.* Like all ETCs, Alaska mobile carriers will be subject to ongoing oversight to ensure program integrity and to deter and detect waste, fraud and abuse. All ETCs that receive high-cost support are subject to compliance audits and other investigations to ensure compliance with program rules and orders. Our decision today to provide frozen support based on past support amounts does not limit the Commission's ability to recover funds or take other steps in the event of waste, fraud or abuse.

99. The Commission adopts ATA's proposal to reallocate that support subject to the phase down under the Alaska Plan to support the provision of mobile service in currently unserved Alaskan remote areas, less an amount that they reallocate to Alaska rate-of-return carriers to adjust their support levels, and the Commission provides that the new funding for unserved areas will be distributed through a reverse auction process. The Commission finds that allocating this additional support to fund the deployment of service to currently unserved areas will further the goal of ensuring ''universal availability of modern networks capable of providing mobile voice and broadband service where Americans live, work, and travel.'' As support to non-remote competitive ETCs phases down, up to approximately $22 million of support annually will be available to support mobile service in currently unserved remote areas, with such support to be awarded through a reverse auction. Any competitive ETC, including competitive ETCs that do not otherwise receive support for mobile service in remote Alaska, may bid in the auction to receive annual support through the remainder of the Plan term to extend service to areas that do not have commercial mobile radio service as of December 31, 2014. The Commission provides that, for the purposes of this support, ''unserved'' areas are those census blocks where less than 15% of the population within the census block was within any mobile carrier's coverage area. The Commission further provides that the reverse auction will be subject to the competitive bidding rules codified at Part 1 Subpart AA of the Commission's rules and delegate to the Wireless Telecommunications Bureau authority to otherwise determine the applicable procedures and performance requirements to implement the reverse auction as established today.

IV. Procedural Matters

100. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), they previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission describes impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA) in Appendix B, *infra.*

101. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

102. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analyses (IRFA) was incorporated in the *Further Notice of Proposed Rulemaking* adopted in November 2011 (*USF/ICC Transformation FNPRM,* 76 FR 78384, December 16, 2011) and the *Further Notice of Proposed Rulemaking* adopted in April 2014 (April 2014 Connect America FNPRM, 79 FR 39196, July 9, 2016). The Commission sought written public comment on the proposals in the *USF/ICC Transformation FNPRM* and *April 2014 Connect America FNPRM,* including comment on the IRFAs. The Commission did not receive any relevant comments in response to these IRFAs. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

103. In the Report and Order, the Commission adopts the Alaska Plan for rate-of-return carriers and competitive eligible telecommunications carriers serving Alaska to support the deployment of voice and broadband-capable wireline and mobile networks in Alaska.

104. The Commission provides Alaskan rate-of-return carriers with the option to obtain a fixed level of funding for a defined term in exchange for committing to deployment obligations that are tailored to each Alaska rate-of-return carrier's unique circumstances. Specifically, the Commission will provide a one-time opportunity for Alaskan rate-of-return carriers to elect to receive support in an amount equal to adjusted 2011 levels for a 10-year term. The Commission directs the Wireline Competition Bureau to review proposed performance commitments. Alaskan rate-of-return carriers can elect to participate in the Alaska Plan, or can choose to receive support from the Alternative Connect America Cost Model (A–CAM) or remain on the reformed legacy mechanisms. Like all other Connect America programs, the Commission will monitor Alaska Plan participants' progress in meeting their deployment obligations throughout the 10-year term.

105. The Commission additionally provides competitive ETCs serving remote areas of Alaska the option to obtain a fixed level of funding for a defined term in exchange for committing to performance obligations that are tailored to each competitive ETC's unique circumstances. Specifically, the Commission will provide a one-time opportunity for competitive ETCs serving remote areas of Alaska to elect to receive support frozen, for a majority of the carriers, at the levels the carriers received as of December 2014, and for one carrier at its March 2015 level. The Commission requires mobile carriers that wish to elect to participate in the Alaska Plan to submit performance plans indicating the population in their service area to which they will offer mobile service, the type of technology for last mile and middle mile, and minimum upload and download speeds meeting the public interest obligations the Commission adopt in this Order at five-year and ten-year service milestones. The Commission delegates to the Wireless Telecommunications Bureau authority to approve such plans if the Wireless Telecommunications Bureau determines they are consistent with the public interest and comply with the requirements adopted in this Order. Competitive ETCs serving remote areas of Alaska that are not signatories to Alaska Plan and competitive ETCs that serve non-remote areas of Alaska will have their support phased down over a three-year period. Competitive ETC support insofar as it applies to carriers that are not signatories to the Alaska Plan will be subject to a 12 month period from the release date of the Report and Order before the commencement of the three-year phase down. Alaskan providers will not be eligible for any additional support for mobile services under our proposed Mobility Fund Phase II and Tribal Mobility Fund Phase II programs. Like all other high-cost programs, the Commission will monitor Alaska Plan participants' progress in meeting their deployment obligations throughout the 10-year term.

106. There were no comments raised that specifically addressed the proposed rules and policies presented in the *USF/ICC Transformation FNRPM* IRFA or *April 2014 Connect America FNPRM* IRFA. Nonetheless, the Commission considered the potential impact of the rules proposed in the IRFA on small entities and reduced the compliance burden for all small entities in order to

reduce the economic impact of the rules enacted herein on such entities.

107. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.

108. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

109. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

110. Total Small Entities. Our proposed action, if implemented, may, over time, affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA, which represents 99.7% of all businesses in the United States. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,215 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 89,327 entities may qualify as ''small governmental jurisdictions.'' Thus, the Commission estimates that most governmental jurisdictions are small.

111. In the Report and Order, for rate-of-return carriers, the Commission directs the Wireline Competition Bureau to review proposed performance plans from Alaskan rate-of-return carriers interested in participating in the Alaska Plan that specify the number of locations they commit to serve and the minimum speeds. The Wireline Competition Bureau will release a public notice approving the plan.

112. Alaska Plan rate-of-return participants will be given a 10-year term of support and will be required to offer voice and broadband service meeting certain latency, data usage, and reasonably comparable rate obligations. In their performance plans, Alaska Plan rate-of-return recipients will commit to offer such service to a certain number of locations in their service areas at specified minimum speeds by the end of the fifth year of their support term and by the end of the 10th year of their support term, or in the alternative maintain existing voice and broadband service meeting the relevant public interest obligations to a specified number of locations. Alaska Plan rate-of-return recipients that fail to meet their service milestones will be subject to certain non-compliance measures, including support reductions and reporting. No later than the end of the fourth year of support, Alaska Plan rate-of-return recipients must update their end-of-term commitments, which will be reviewed by the Wireline Competition Bureau, taking into account such factors as improved access to middle mile infrastructure and updated competitive coverage. The Wireline Competition Bureau will reassess the approved performance plans of carriers that commit to maintain existing service more frequently.

113. Carriers electing to participate will be required to submit a letter from an officer of the company certifying that they will comply with the required public interest obligations and performance obligations set forth in their approved performance plan. To monitor Alaska Plan rate-of-return recipients' use of support to ensure it is used for its intended purpose, the Commission has imposed several reporting requirements. Alaska Plan rate-of-return recipients must file annual FCC Form 481s and must also certify and report certain data regarding the availability of backhaul and certify compliance with the relevant public interest obligations and their adopted performance plan. They must also submit fiber network maps and microwave network maps.

114. Alaska Plan rate-of-return recipients are also required to submit certain geocoded location data for the locations where they deploy new service. The Commission expects such information will be submitted on a rolling basis, but must be submitted by no later than March 1, 2018 and then March 1 following each support year. Alaska Plan rate-of-return recipients must also certify that they have met their five-year and 10-year service milestones. Finally, Alaska Plan recipients are required to comply with all other existing high-cost reporting and oversight mechanisms, unless otherwise modified by the Order.

115. Alaska Plan rate-of-return recipients will only be able to count toward new deployment obligations locations in areas that are unserved by qualifying unsubsidized competitors. The Commission will rely on Form 477 data to preliminarily identify areas that are served by competitors. A challenge process will be held where competitors, which carry the burden of persuasion, must certify that they offer qualifying voice and broadband services to 85 percent of the locations in the relevant census blocks, accompanied by evidence. The incumbent and other interested parties will then be able to contest the showing made by the competitor. The Wireline Competition Bureau will make a final determination of which census blocks are competitively served, weighing all of the evidence in the record.

116. Each competitive ETC that participates in the Alaska Plan must identify in its performance plan: (1) the types of middle mile used on that carrier's network; (2) the level of technology (2G, 3G, 4G LTE, etc.) that carrier provides service at for each type of middle mile used; (3) the delineated eligible populations served at each technology level by each type of middle mile as they stand currently and at years five and 10 of the support term; and 4) the minimum download and upload speeds at each technology level by each type of middle mile as they stand currently and at years five and 10 of the support term. Accordingly, each performance plan must specify the level of data service by each type of middle mile on a per person basis that will be offered by the five-year and 10-year milestones the Commission adopted. The proposed performance plans must reflect any improvements to service, through improved middle mile, improved technology, or both. Alaska Plan participants must offer service meeting the milestones they commit to in their adopted service plans. The Wireless Telecommunications Bureau may require additional information, including during the Bureau's review of the proposed performance plans, from individual participants that it deems necessary to establish clear standards

for determining whether or not they meet their five- and 10-year commitments, which may include geographic location of delineated-eligible populations, as well as specific requirements for demonstrating that competitive ETCs have met their commitments regarding broadband speeds. Competitive ETC participants are also required to update their end-of-term commitments no later than the end of year four, and the Wireless Telecommunications Bureau will review these updates in light of any new developments, including newly available infrastructure, and require revised commitments if it serves the public interest.

117. Carriers electing to participate will be required to submit a letter from an officer of the company certifying that they will comply with the required public interest obligations and performance obligations set forth in their approved performance plan. Competitive ETCs participating in the Alaska Plan will be given a 10-year term of support and will be required to offer mobile service consistent with the public interest obligations set forth in this Order. Alaska Plan participants that fail to meet their service milestones will be subject to certain non-compliance measures, including support reductions and reporting. To monitor Alaska Plan recipients' use of support to ensure it is used for its intended purpose, the Commission has imposed several reporting requirements. Alaska Plan recipients must file annual FCC Form 481s and must also certify and report certain data regarding the availability of backhaul and certify compliance with the relevant public interest obligations and their adopted performance plans. Alaska Plan recipients must also submit fiber network maps and microwave network maps. Alaska Plan recipients must certify that they have met their five-year and ten-year service milestones, including any obligations pursuant to revised approved performance plans, and that they have met the requisite public interest obligations contained in this Order. Additionally, for mobile carriers receiving more than $5 million annually in support, these certifications must be accompanied by data received or used from drive tests analyzing network coverage for mobile service covering the population for which support was received and showing mobile transmissions to and from the carrier's network meeting or exceeding the minimum expected download and upload speeds delineated in the approved performance plans. The Commission expects such information will be submitted no later than March 1, 2022, and March 1, 2027.

118. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The Commission has considered all of these factors subsequent to receiving substantive comments from the public and potentially affected entities. The Commission has considered the economic impact on small entities, as identified in comments filed in response to the *USF/ICC Transformation NPRM and FNRPM* and their IRFAs, in reaching its final conclusions and taking action in this proceeding.

119. The Commission is providing small Alaskan rate-of-return carriers with the certainty they need to invest in voice and broadband-capable networks by offering 10 years of adjusted 2011 frozen support. Recognizing the unique conditions and challenges they face, the Commission is giving them the flexibility to submit performance plans where they set the number of locations that will be upgraded in their service area and the minimum speeds they commit to serve. If the Wireline Competition Bureau approves the plan, they have the opportunity to elect to receive Alaska Plan support or instead they can elect model-based support or choose to remain on the reformed legacy support mechanisms. The Commission also adopted two service milestones—one halfway through the support term and the other at the end of the support term—to give more flexibility to Alaska Plan recipients to account for the fact that they have a shortened construction season and face other challenges in building infrastructure that are unique to Alaska.

120. The Commission also takes steps to prohibit Alaska Plan rate-of-return recipients from using Alaska Plan support to upgrade or deploy new broadband in areas that are served by a qualifying unsubsidized competitor. However, the Commission removes from eligibility only those census blocks where an unsubsidized competitor offers service to at least 85 percent of their locations.

121. The Commission notes that the reporting requirements they adopt for Alaskan rate-of-return carriers are tailored to ensuring that Alaska Plan support is used for its intended purpose and so that the Commission can monitor the progress of recipients in meeting their service milestones. The Commission finds that the importance of monitoring the use of the public's funds outweighs the burden of filing the required information on Alaska Plan recipients, particularly because much of the information that the Commission requires they report is information they expect they will already be collecting to ensure they comply with the terms and conditions of Alaska Plan support and they will be able to submit their location data on a rolling basis to help minimize the burden of uploading a large number of locations at once.

122. The Commission is additionally providing small competitive ETCs serving remote Alaska with the certainty they need to invest in mobile service to remote areas by offering 10 years of adjusted December 2014 frozen support. Recognizing the unique conditions and challenges they face, the Commission is giving them the flexibility to submit performance plans where they set the number of the population that will be upgraded in their service area, the middle mile technology they commit to use, and minimum speeds at which they commit to offer service. If the Wireless Telecommunications Bureau approves the plan, they have the opportunity to elect to receive Alaska Plan support or have their support phase down over a three year term. The Commission also adopted two service milestones—one halfway through the support term and the other at the end of the support term—to give more flexibility to Alaska Plan recipients to account for the fact that they have a shortened construction season and face other challenges in building infrastructure that are unique to Alaska.

123. The Commission removes from eligibility for support those census blocks where there is 4G LTE service being provided that is either unsubsidized or subject to a phase down of support.

124. The Commission notes that the reporting requirements they adopt for competitive ETCs serving remote Alaska are tailored to ensuring that Alaska Plan support is used for its intended purpose and so that the Commission can monitor the progress of recipients in meeting their service milestones. The Commission finds that the importance of monitoring the use of the public's

funds outweighs the burden of filing the required information on Alaska Plan recipients, particularly because much of the information that the Commission requires they report is information the Commission expects they will already be collecting to ensure they comply with the terms and conditions of Alaska Plan support.

125. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

V. Ordering Clauses

126. Accordingly, *It is ordered*, pursuant to the authority contained in sections 1, 2, 4(i), 5, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 1302 that this Report and Order IS ADOPTED.

127. *It is further ordered* that Part 54 and Part 69, of the Commission's rules, 47 CFR parts 54 and 69, ARE AMENDED as set forth below.

128. *It is further ordered* that the rules adopted herein WILL BECOME EFFECTIVE November 7, 2016, except for §§ 54.313(f)(1)(i), 54.313(f)(3), 54.313(l), 54.316(a)(1), 54.316(a)(5) and(6), 54.316(b)(6), 54.320(d), and 54.321, which contain new or modified information collection requirements that require approval by the OMB. The Commission will publisha document in the **Federal Register** announcing such approval and the relevant effective date.

List of Subjects

47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 54 and 69 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

■ 2. Section 54.306 is added to read as follows:

§ 54.306 Alaska Plan for Rate-of-Return Carriers Serving Alaska.

(a) *Election of support.* For purposes of subparts A, B, C, D, H, I, J, K and M of this part, rate-of-return carriers (as that term is defined in § 54.5) serving Alaska have a one-time option to elect to participate in the Alaska Plan on a state-wide basis. Carriers exercising this option shall receive the lesser of;

(1) Support as described in paragraph (c) of this section or

(2) $3,000 annually for each line for which the carrier is receiving support as of the effective date of this rule.

(b) *Performance plans.* In order to receive support pursuant to this section, a rate-of-return carrier must be subject to a performance plan approved by the Wireline Competition Bureau. The performance plan must indicate specific deployment obligations and performance requirements sufficient to demonstrate that support is being used in the public interest and in accordance with the requirements adopted by the Commission for the Alaska Plan. Performance plans must commit to offer specified minimum speeds to a set number of locations by the end of the fifth year of support and by the end of the tenth year of support, or in the alternative commit to maintaining voice and Internet service at a specified minimum speeds for the 10-year term. The Bureau may reassess performance plans at the end of the fifth year of support. If the specific deployment obligations and performance requirements in the approved performance plan are not achieved, the carrier shall be subject to § 54.320(c) and (d).

(c) *Support amounts and support term.* For a period of 10 years beginning on or after January 1, 2017, at a date set by the Wireline Competition Bureau, each Alaska Plan participant shall receive monthly Alaska Plan support in an amount equal to:

(1) One-twelfth (1/12) of the amount of Interstate Common Line Support disbursed to that carrier for 2011, less any reduction made to that carrier's support in 2012 pursuant to the corporate operations expense limit in effect in 2012, and without regard to prior period adjustments related to years other than 2011 and as determined by USAC on January 31, 2012; plus

(2) One-twelfth (1/12) of the total expense adjustment (high cost loop support) disbursed to that carrier for 2011, without regard to prior period adjustments related to years other than 2011 and as determined by USAC on January 31, 2012.

(d) *Transfers.* Notwithstanding any provisions of § 54.305 or other sections in this part, to the extent an Alaska Plan participant (as defined in § 54.306 or § 54.317) transfers some or all of its customers in Alaska to another eligible telecommunications carrier, it may also transfer a proportionate amount of its Alaska Plan support and any associated performance obligations as determined by the Wireline Competition Bureau or Wireless Telecommunications Bureau if the acquiring eligible telecommunications carrier certifies it will meet the associated obligations agreed to in the approved performance plan.

■ 3. Section 54.308 is amended by adding paragraphs (c) and (d) to read as follows:

§ 54.308 Broadband public interest obligations for recipients of high-cost support.

* * * * *

(c) Alaskan rate-of-return carriers receiving support from the Alaska Plan pursuant to § 54.306 are exempt from paragraph (a) of this section and are instead required to offer voice and broadband service with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas, subject to any limitations in access to backhaul as described in § 54.313(g). Alaska Plan recipients' specific broadband deployment and speed obligations shall be governed by the terms of their approved performance plans as described in § 54.306(b). Alaska Plan recipients must also comply with paragraph (b) of this section.

(d) Mobile carriers that are receiving support from the Alaska Plan pursuant to § 54.317(e) shall certify in their annual compliance filings that their rates are reasonably comparable to rates for comparable offerings in urban areas. The mobile carrier must also demonstrate compliance at the end of the five-year milestone and 10-year milestone and may do this by showing that its required stand-alone voice plan, and one service plan that offers

broadband data services, if it offers such plans, are:

(1) Substantially similar to a service plan offered by at least one mobile wireless service provider in the cellular market area (CMA) for Anchorage, Alaska, and

(2) Offered for the same or a lower rate than the matching plan in the CMA for Anchorage.

■ 4. Section 54.313 is amended by revising paragraph (f)(1)(i), adding paragraph (f)(3), revising paragraph (g), and adding paragraph (l) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

* * * * *

(f) * * *

(1) * * *

(i) A certification that it is taking reasonable steps to provide upon reasonable request broadband service at actual speeds of at least 10 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas as determined in an annual survey, and that requests for such service are met within a reasonable amount of time; or if the rate-of-return carrier is receiving Alaska Plan support pursuant to § 54.306, a certification that it is offering broadband service with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, and at speeds committed to in its approved performance plan to the locations it has reported pursuant to § 54.316(a), subject to any limitations due to the availability of backhaul as specified in paragraph (g) of this section.

* * * * *

(3) For rate-of-return carriers participating in the Alaska Plan, funding recipients must certify as to whether any terrestrial backhaul or other satellite backhaul became commercially available in the previous calendar year in areas that were previously served exclusively by performance-limiting satellite backhaul. To the extent that such new terrestrial backhaul facilities are constructed, or other satellite backhaul become commercially available, or existing facilities improve sufficiently to meet the relevant speed, latency and capacity requirements then in effect for broadband service supported by the Alaska Plan, the funding recipient must provide a description of the backhaul technology, the date at which that backhaul was made commercially available to the carrier, and the number of locations that are newly served by the new terrestrial backhaul or other satellite backhaul. Within twelve months of the new backhaul facilities becoming commercially available, funding recipients must certify that they are offering broadband service with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas. Funding recipients' minimum speed deployment obligations will be reassessed as specified by the Commission.

* * * * *

(g) *Areas with no terrestrial backhaul.* Carriers without access to terrestrial backhaul that are compelled to rely exclusively on satellite backhaul in their study area must certify annually that no terrestrial backhaul options exist. Any such funding recipients must certify they offer broadband service at actual speeds of at least 1 Mbps downstream and 256 kbps upstream within the supported area served by satellite middle-mile facilities. To the extent that new terrestrial backhaul facilities are constructed, or existing facilities improve sufficiently to meet the relevant speed, latency and capacity requirements then in effect for broadband service supported by the Connect America Fund, within twelve months of the new backhaul facilities becoming commercially available, funding recipients must provide the certifications required in paragraphs (e) or (f) of this section in full. Carriers subject to this paragraph must comply with all other requirements set forth in the remaining paragraphs of this section. These obligations may be modified for carriers participating in the Alaska Plan.

* * * * *

(l) In addition to the information and certifications in paragraph (a) of this section, any competitive eligible telecommunications carrier participating in the Alaska Plan must provide the following:

(1) Funding recipients that have identified in their approved performance plans that they rely exclusively on satellite backhaul for a certain portion of the population in their service area must certify as to whether any terrestrial backhaul or other satellite backhaul became commercially available in the previous calendar year in areas that were previously served exclusively by satellite backhaul. To the extent that new terrestrial backhaul facilities are constructed or other satellite backhaul become commercially available, the funding recipient must:

(i) Provide a description of the backhaul technology;

(ii) Provide the date on which that backhaul was made commercially available to the carrier;

(iii) Provide the number of the population within their service area that are served by the newly available backhaul option; and

(iv) To the extent the funding recipient has not already committed to providing 4G LTE at 10/1 Mbps to the population served by the newly available backhaul by the end of the plan term, submit a revised performance commitment factoring in the availability of the new backhaul option no later than the due date of the Form 481 in which they have certified that such backhaul became commercially available.

(2) [Reserved]

■ 5. Section 54.316 is amended by revising paragraph (a)(1) and adding paragraphs (a)(5) and (6) and (b)(6) to read as follows:

§ 54.316 Broadband deployment reporting and certification requirements for high-cost recipients.

(a) * * *

(1) Recipients of high-cost support with defined broadband deployment obligations pursuant to § 54.308(a), 54.308(c), or § 54.310(c) shall provide to the Administrator on a recurring basis information regarding the locations to which the eligible telecommunications carrier is offering broadband service in satisfaction of its public interest obligations, as defined in either § 54.308 or § 54.309.

* * * * *

(5) Recipients subject to the requirements of § 54.308(c) shall report the number of newly deployed and upgraded locations and locational information, including geocodes, where they are offering service providing speeds they committed to in their adopted performance plans pursuant to § 54.306(b).

(6) Recipients subject to the requirements of § 54.308(c) or § 54.317(e) shall submit fiber network maps or microwave network maps covering eligible areas. At the end of any calendar year for which middle-mile facilities were deployed, these recipients shall also submit updated maps showing middle-mile facilities that are or will be used to support their services in eligible areas.

(b) * * *

(6) A rate-of-return carrier authorized to receive Alaska Plan support pursuant to § 54.306 shall provide:

(i) No later than March 1, 2022 a certification that it fulfilled the deployment obligations and is offering service meeting the requisite public interest obligations as specified in § 54.308(c) to the required number of locations as of December 31, 2021.

(ii) No later than March 1, 2027 a certification that it fulfilled the deployment obligations and is offering service meeting the requisite public interest obligations as specified in § 54.308(c) to the required number of locations as of December 31, 2026.

* * * * *

■ 6. Section 54.317 is added to read as follows:

§ 54.317 Alaska Plan for competitive eligible telecommunications carriers serving remote Alaska.

(a) *Election of support.* Subject to the requirements of this section, certain competitive eligible telecommunications carriers serving remote areas in Alaska, as defined in § 54.307(e)(3)(i), shall have a one-time option to elect to participate in the Alaska Plan. Carriers exercising this option with approved performance plans shall have their support frozen for a period of ten years beginning on or after January 1, 2017, at a date set by the Wireless Telecommunications Bureau, notwithstanding § 54.307.

(b) *Carriers eligible for support.* A competitive eligible telecommunications carrier shall be eligible for frozen support pursuant to the Alaska Plan if that carrier serves remote areas in Alaska as defined by § 54.307(e)(3)(i) and if that carrier certified that it served covered locations in Alaska in its September 30, 2011, filing of line counts with the Administrator and submitted a performance plan by August 23, 2016.

(c) *Interim support for remote areas in Alaska.* From January 1, 2012, until December 31, 2016, competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska pursuant to § 54.307(e)(3) shall receive support as calculated in § 54.307(e)(3)(v).

(d) *Support amounts and support term.* For a period of 10 years beginning on or after January 1, 2017, at a date set by the Wireless Telecommunications Bureau, notwithstanding § 54.307, each Alaska Plan participant shall receive monthly Alaska Plan support in an amount equal to the annualized monthly support amount it received for December 2014. Alaska Plan participants shall no longer be required to file line counts.

(e) *Use of frozen support.* Frozen support allocated through the Alaska Plan may only be used to provide mobile voice and mobile broadband service in those census blocks in remote areas of Alaska, as defined in § 54.307(e)(3)(i), that did not, as of December 31, 2014, receive 4G LTE service directly from providers that were either unsubsidized or ineligible to claim the delayed phase down under § 54.307(e)(3) and covering, in the aggregate, at least 85 percent of the population of the block. Nothing in this section shall be interpreted to limit the use of frozen support to build or upgrade middle-mile infrastructure outside such remote areas of Alaska if such middle mile infrastructure is necessary to the provision of mobile voice and mobile broadband service in such remote areas. Alaska Plan participants may use frozen support to provide mobile voice and mobile broadband service in remote areas of Alaska served by competitive eligible telecommunications carrier partners of ineligible carriers if those areas are served using the competitive eligible telecommunications carrier's infrastructure.

(f) *Performance plans.* In order to receive support pursuant to this section, a competitive eligible telecommunications carrier must be subject to a performance plan approved by the Wireless Telecommunications Bureau. The performance plan must indicate specific deployment obligations and performance requirements sufficient to demonstrate that support is being used in the public interest and in accordance with paragraph (e) of this section and the requirements adopted by the Commission for the Alaska Plan. For each level of wireless service offered (2G/Voice, 3G, and 4G LTE) and each type of middle mile used in connection with that level of service, the performance plan must specify minimum speeds that will be offered to a specified population by the end of the fifth year of support and by the end of the tenth year of support. Alaska Plan participants shall, no later than the end of the fourth year of the ten-year term, review and modify their end-of-term commitments in light of any new developments, including newly available infrastructure. The Wireless Telecommunications Bureau may require the filing of revised commitments at other times if justified by developments that occur after the approval of the initial performance commitments. If the specific performance obligations are not achieved in the time period identified in the approved performance plans the carrier shall be subject to § 54.320(c) and (d).

(g) *Phase down of non-participating competitive eligible telecommunications carrier high-cost support.* Notwithstanding § 54.307, and except as provided in paragraph (h) of this section, support distributed in Alaska on or after January 1, 2017 to competitive eligible telecommunications carriers that serve areas in Alaska other than remote areas of Alaska, that are ineligible for frozen support under paragraphs (b) or (e) of this section, or that do not elect to receive support under this section, shall be governed by this paragraph. Such support shall be subject to phase down in three years as provided in paragraph (g) of this section, except that carriers that are not signatories to the Alaska Plan will instead be subject to a three-year phase down commencing on September 1, 2017, and competitive eligible telecommunications carriers that are signatories to the Alaska Plan but did not submit a performance plan by August 23, 2016 shall not receive support in remote areas beginning January 1, 2017.

(1) From January 1, 2017, to December 31, 2017, each such competitive eligible telecommunications carrier shall receive two-thirds of the monthly support amount the carrier received for December 2014 for the relevant study area.

(2) From January 1, 2018, to December 31, 2018, each such competitive eligible telecommunications carrier shall receive one-third of the monthly support amount the carrier received for December 2014 for the relevant study area.

(3) Beginning January 1, 2019, no such competitive eligible telecommunications carrier shall receive universal service support for the relevant study area pursuant to this section or § 54.307.

(h) *Support for unserved remote areas of Alaska.* Beginning January 1, 2017, support that, but for paragraph (g) of this section, would be allocated to carriers subject to paragraph (g) of this section shall be allocated for a reverse auction, with performance obligations established at the time of such auction, for deployment of mobile service to remote areas of Alaska, as defined in § 54.307(e)(3)(i), that are without commercial mobile radio service as of December 31, 2014.

■ 7. Section 54.320 is amended by revising paragraphs (d)(1) through (3) to read as follows:

§ 54.320 Compliance and recordkeeping for the high-cost program.

* * * * *

(d) * * *

(1) *Interim build-out milestones.* Upon notification that an eligible telecommunications carrier has defaulted on an interim build-out milestone after it has begun receiving high-cost support, the Wireline Competition Bureau—or Wireless Telecommunications Bureau in the case of mobile carrier participants—will issue a letter evidencing the default. For purposes of determining whether a default has occurred, a carrier must be offering service meeting the requisite performance obligations. The issuance of this letter shall initiate reporting obligations and withholding of a percentage of the eligible telecommunication carrier's total monthly high-cost support, if applicable, starting the month following the issuance of the letter:

(i) *Tier 1.* If an eligible telecommunications carrier has a compliance gap of at least five percent but less than 15 percent of the number of locations that the eligible telecommunications carrier is required to have built out to or, in the case of Alaska Plan mobile-carrier participants, population covered by the specified technology, middle mile, and speed of service in the carrier's approved performance plan, by the interim milestone, the Wireline Competition Bureau or Wireless Telecommunications Bureau, will issue a letter to that effect. Starting three months after the issuance of this letter, the eligible telecommunications carrier will be required to file a report every three months identifying the geocoded locations to which the eligible telecommunications carrier has newly deployed facilities capable of delivering broadband meeting the requisite requirements with Connect America support in the previous quarter, or, in the case of Alaska Plan mobile-carrier participants, the populations to which the competitive eligible telecommunications carrier has extended or upgraded service meeting their approved performance plan and obligations. Eligible telecommunications carriers that do not file these quarterly reports on time will be subject to support reductions as specified in § 54.313(j). The eligible telecommunications carrier must continue to file quarterly reports until the eligible telecommunications carrier reports that it has reduced the compliance gap to less than five percent of the required number of locations (or population, if applicable) for that interim milestone and the Wireline Competition Bureau or Wireless Telecommunications Bureau issues a letter to that effect.

(ii) *Tier 2.* If an eligible telecommunications carrier has a compliance gap of at least 15 percent but less than 25 percent of the number of locations that the eligible telecommunications carrier is required to have built out to or, in the case of Alaska Plan mobile-carrier participants, population covered by the specified technology, middle mile, and speed of service in the carrier's approved performance plan, by the interim milestone, USAC will withhold 15 percent of the eligible telecommunications carrier's monthly support for that state and the eligible telecommunications carrier will be required to file quarterly reports. Once the eligible telecommunications carrier has reported that it has reduced the compliance gap to less than 15 percent of the required number of locations (or population, if applicable) for that interim milestone for that state, the Wireline Competition Bureau or Wireless Telecommunications Bureau will issue a letter to that effect, USAC will stop withholding support, and the eligible telecommunications carrier will receive all of the support that had been withheld. The eligible telecommunications carrier will then move to Tier 1 status.

(iii) *Tier 3.* If an eligible telecommunications carrier has a compliance gap of at least 25 percent but less than 50 percent of the number of locations that the eligible telecommunications carrier is required to have built out to by the interim milestone, or, in the case of Alaska Plan mobile-carrier participants, population covered by the specified technology, middle mile, and speed of service in the carrier's approved performance plan, USAC will withhold 25 percent of the eligible telecommunications carrier's monthly support for that state and the eligible telecommunications carrier will be required to file quarterly reports. Once the eligible telecommunications carrier has reported that it has reduced the compliance gap to less than 25 percent of the required number of locations (or population, if applicable) for that interim milestone for that state, the Wireline Competition Bureau or Wireless Telecommunications Bureau will issue a letter to that effect, the eligible telecommunications carrier will move to Tier 2 status.

(iv) *Tier 4.* If an eligible telecommunications carrier has a compliance gap of 50 percent or more of the number of locations that the eligible telecommunications carrier is required to have built out to or, in the case of Alaska Plan mobile-carrier participants, population covered by the specified technology, middle mile, and speed of service in the carrier's approved performance plan, by the interim milestone:

(A) USAC will withhold 50 percent of the eligible telecommunications carrier's monthly support for that state, and the eligible telecommunications carrier will be required to file quarterly reports. As with the other tiers, as the eligible telecommunications carrier reports that it has lessened the extent of its non-compliance, and the Wireline Competition Bureau or Wireless Telecommunications Bureau issues a letter to that effect, it will move down the tiers until it reaches Tier 1 (or no longer is out of compliance with the relevant interim milestone).

(B) If after having 50 percent of its support withheld for six months the eligible telecommunications carrier has not reported that it is eligible for Tier 3 status (or one of the other lower tiers), USAC will withhold 100 percent of the eligible telecommunications carrier's monthly support and will commence a recovery action for a percentage of support that is equal to the eligible telecommunications carrier's compliance gap plus 10 percent of the ETC's support that has been disbursed to that date.

(v) If at any point during the support term, the eligible telecommunications carrier reports that it is eligible for Tier 1 status, it will have its support fully restored, USAC will repay any funds that were recovered or withheld, and it will move to Tier 1 status.

(2) *Final milestone.* Upon notification that the eligible telecommunications carrier has not met a final milestone, the eligible telecommunications carrier will have twelve months from the date of the final milestone deadline to come into full compliance with this milestone. If the eligible telecommunications carrier does not report that it has come into full compliance with this milestone within twelve months, the Wireline Competition Bureau—or Wireless Telecommunications Bureau in the case of mobile carrier participants—will issue a letter to this effect. In the case of Alaska Plan mobile carrier participants, USAC will then recover the percentage of support that is equal to 1.89 times the average amount of support per location received by that carrier over the 10-year term for the relevant percentage of population. For other recipients of high-cost support, USAC will then recover the percentage of support that is equal to 1.89 times the

average amount of support per location received in the state for that carrier over the term of support for the relevant number of locations plus 10 percent of the eligible telecommunications carrier's total relevant high-cost support over the support term for that state.

(3) *Compliance reviews.* If subsequent to the eligible telecommunications carrier's support term, USAC determines in the course of a compliance review that the eligible telecommunications carrier does not have sufficient evidence to demonstrate that it is offering service to all of the locations required by the final milestone or, in the case of Alaska Plan participants, did not provide service consistent with the carrier's approved performance plan, USAC shall recover a percentage of support from the eligible telecommunications carrier as specified in paragraph (d)(2) of this section.

■ 8. Section 54.321 is added to subpart D to read as follows:

§ 54.321 Reporting and certification requirements for Alaska Plan participants.

Any competitive eligible telecommunications carrier authorized to receive Alaska Plan support pursuant to § 54.317 shall provide:

(a) No later than 60 days after the end of each participating carrier's first five-year term of support, a certification that it has met the obligations contained in the performance plan approved by the Wireless Telecommunications Bureau, including any obligations pursuant to a revised approved performance plan and that it has met the requisite public interest obligations contained in the Alaska Plan Order. For Alaska Plan participants receiving more than $5 million annually in support, this certification shall be accompanied by data received or used from drive tests analyzing network coverage for mobile service covering the population for which support was received and showing mobile transmissions to and from the carrier's network meeting or exceeding the minimum expected download and upload speeds delineated in the approved performance plan.

(b) No later than 60 days after the end of each participating carrier's second five-year term of support, a certification that it has met the obligations contained in the performance plan approved by the Wireless Telecommunications Bureau, including any obligations pursuant to a revised approved performance plan, and that it has met the requisite public interest obligations contained in the Alaska Plan Order. For Alaska Plan participants receiving more than $5 million annually in support, this certification shall be accompanied by data received or used from drive tests analyzing network coverage for mobile service covering the population for which support was received and showing mobile transmissions to and from the carrier's network meeting or exceeding the minimum expected download and upload speeds delineated in the approved performance plan.

PART 69—ACCESS CHARGES

■ 9. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

■ 10. Section 69.104 is amended by revising paragraph (s) to read as follows:

§ 69.104 End user common line for non-price cap incumbent local exchange carriers.

* * * * *

(s) End User Common Line Charges for incumbent local exchange carriers not subject to price cap regulation that elect model-based support pursuant to § 54.311 of this chapter or Alaska Plan support pursuant to § 54.306 of this chapter are limited as follows:

(1) The maximum charge a non-price cap local exchange carrier that elects model-based support pursuant to § 54.311 of this chapter or Alaska Plan support pursuant to § 54.306 of this chapter may assess for each residential or single-line business local exchange service subscriber line is the rate in effect on the last day of the month preceding the month for which model-based support or Alaska Plan support, as applicable, is first provided.

(2) The maximum charge a non-price cap local exchange carrier that elects model-based support pursuant to § 54.311 of this chapter or Alaska Plan support pursuant to § 54.306 of this chapter may assess for each multi-line business local exchange service subscriber line is the rate in effect on the last day of the month preceding the month for which model-based support or Alaska Plan support, as applicable, is first provided.

■ 11. Section 69.115 is amended by revising paragraph (f) to read as follows:

§ 69.115 Special access surcharges.

* * * * *

(f) The maximum special access surcharge a non-price cap local exchange carrier that elects model-based support pursuant to § 54.311 of this chapter or Alaska Plan support pursuant to § 54.306 of this chapter may assess is the rate in effect on the last day of the month preceding the month for which model-based support or Alaska Plan support, as applicable, is first provided.

■ 12. Section 69.130 is amended by revising paragraph (b) to read as follows:

§ 69.130 Line port costs in excess of basic analog service.

* * * * *

(b) The maximum charge a non-price cap local exchange carrier that elects model-based support pursuant to § 54.311 of this chapter or Alaska Plan support pursuant to § 54.306 of this chapter may assess is the rate in effect on the last day of the month preceding the month for which model-based support or Alaska Plan support, as applicable, is first provided.

■ 13. Section 69.132 is amended by revising paragraphs (c) and (d) to read as follows:

§ 69.132 End user Consumer Broadband-Only Loop charge for non-price cap incumbent local exchange carriers.

* * * * *

(c) For carriers not electing model-based support pursuant to § 54.311 of this chapter or Alaska Plan support pursuant to § 54.306 of this chapter, the single-line rate or charge shall be computed by dividing one-twelfth of the projected annual revenue requirement for the Consumer Broadband-Only Loop category (net of the projected annual Connect America Fund Broadband Loop Support attributable to consumer broadband-only loops) by the projected average number of consumer broadband-only service lines in use during such annual period.

(d) The maximum monthly per line charge for each Consumer Broadband-Only Loop provided by a non-price cap local exchange carrier that elects model-based support pursuant to § 54.311 of this chapter or Alaska Plan support pursuant to § 54.306 of this chapter shall be $42.

[FR Doc. 2016–23918 Filed 10–6–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

[Docket No. FWS–HQ–NWRS–2016–0007; FXRS12650900000–167–FF09R26000]

RIN 1018–BB31

2016–2017 Refuge-Specific Hunting and Sport Fishing Regulations

Correction

In rule document 2016–23190 appearing on pages 68874–68921 in the issue of Tuesday, October 4, 2016, make the following correction:

§ 32.25 [Corrected]

On page 68893, beginning in the first column, in the ninth line, amendatory instruction 7. should read as follows.

7. Amend § 32.25 by:

a. Revising paragraphs A, B, and C under the entry Alamosa National Wildlife Refuge;

b. Adding, in alphabetical order, an entry for Baca National Wildlife Refuge; and

c. Revising paragraphs A, B, and C under the entry Monte Vista National Refuge.

The addition and revisions read as follows:

§ 32.25 Colorado.

* * * * *

Alamosa National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of geese, ducks, coots, snipe, Eurasian collared-doves, and mourning doves on designated areas of the refuge in accordance with State and Federal regulations, and subject to the following conditions:

1. We allow Eurasian collared-dove hunting only during the mourning dove season.

2. You may possess only approved nontoxic shot for hunting (see § 32.2(k)).

3. The only acceptable methods of take are shotguns, hand-held bows, and hawking/falconry.

4. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in this part 32).

B. Upland Game Hunting. We allow hunting of cottontail rabbit, and black-tailed and whitetailed jackrabbit, on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. Conditions A2, A3 and A4 apply.

C. Big Game Hunting. We allow hunting of elk on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. Condition A4 applies.

2. You must possess a valid State license and a refuge-specific permit from the State, or a valid State license issued specifically for the refuge, to hunt elk. State license selection will be made via the Colorado Parks and Wildlife hunt selection process.

* * * * *

Baca National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of Eurasian collared-doves and mourning doves only in designated areas of the refuge in accordance with State and Federal regulations, and subject to the following conditions:

1. We allow Eurasian collared-dove hunting only during the mourning dove season.

2. You may possess only approved nontoxic shot for hunting (see § 32.2(k)).

3. The only acceptable methods of take are shotguns, hand-held bows, and hawking/falconry.

4. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in this part 32).

B. Upland Game Hunting. We allow hunting of cottontail rabbit, and black-tailed and whitetailed jackrabbit, on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. Conditions A2 and A4 apply.

2. We prohibit handguns for hunting.

3. Shotguns, rifles firing rim-fire cartridges less than .23 caliber, hand-held bows, pellet guns, slingshots, and hawking/falconry are the only acceptable methods of take.

C. Big Game Hunting. We allow hunting of elk on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. Condition A4 applies.

2. You must possess a valid State license and a refuge-specific permit from the State, or a valid State license issued specifically for the refuge, to hunt elk. State license selection will be made via the Colorado Parks and Wildlife hunt selection process.

D. Sport Fishing. [Reserved]

* * * * *

Monte Vista National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of geese, ducks, coots, snipe, Eurasian collared-doves, and mourning doves on designated areas of the refuge in accordance with State and Federal regulations, and subject to the following conditions:

1. We allow Eurasian collared-dove hunting only during the mourning dove season.

2. You may possess only approved nontoxic shot for hunting (see § 32.2(k)).

3. The only acceptable methods of take are shotguns, hand-held bows, and hawking/falconry.

4. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in this part 32).

B. Upland Game Hunting. We allow hunting of cottontail rabbit, and black-tailed and whitetailed jackrabbit, on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. Conditions A2, A3, and A4 apply.

C. Big Game Hunting. We allow hunting of elk on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. Condition A4 applies.

2. You must possess a valid State license and a refuge-specific permit from the State, or a valid State license issued specifically for the refuge, to hunt elk. State license selection will be made via the Colorado Parks and Wildlife hunt selection process.

3. During firearms elk seasons, hunters must follow State law for use of hunter orange.

* * * * *

[FR Doc. C1–2016–23190 Filed 10–6–16; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 130717632–4285–02]

RIN 0648–XE902

International Fisheries; Pacific Tuna Fisheries; 2016 Bigeye Tuna Longline Fishery Reopening in the Eastern Pacific Ocean

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

ACTION: Temporary rule; fishery reopening.

SUMMARY: NMFS is temporarily reopening the U.S. pelagic longline fishery for bigeye tuna for vessels over 24 meters in overall length in the eastern Pacific Ocean (EPO) because part of the 500 metric ton (mt) catch limit remains available after NMFS closed the fishery on July 25, 2016. This action will allow U.S. vessels to access the remainder of the catch limit, which was established by the Inter-American Tropical Tuna Commission (IATTC) in Resolution C–13–01.

DATES: The reopening is effective October 4, 2016 until the effective date

of a notice of closure which will be published in the **Federal Register**, or through 11:59 p.m. local time December 31, 2016, whichever comes first.

FOR FURTHER INFORMATION CONTACT: Taylor Debevec, NMFS West Coast Region, 562–980–4066.

SUPPLEMENTARY INFORMATION: The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949 (Convention). The Convention provides an international agreement to ensure the effective international conservation and management of highly migratory species of fish in the IATTC Convention Area. The IATTC Convention Area, as amended by the Antigua Convention, includes the waters of the EPO bounded by the coast of the Americas, the 50° N. and 50° S. parallels, and the 150° W. meridian.

Pelagic longline fishing in the EPO is managed, in part, under the Tuna Conventions Act as amended (Act), 16 U.S.C. 951–962. Under the Act, NMFS must publish regulations to carry out recommendations of the IATTC that have been approved by the Department of State (DOS). In 2013, the IATTC adopted Resolution C–13–01, which establishes an annual catch limit of bigeye tuna for longline vessels over 24 meters. For calendar years 2014, 2015, and 2016, the catch of bigeye tuna by longline gear in the IATTC Convention Area by fishing vessels of the United States that are over 24 meters in overall length is limited to 500 mt per year. With the approval of the DOS, NMFS implemented this catch limit by notice-and-comment rulemaking under the Act (79 FR 19487, April 9, 2014, and codified at 50 CFR 300.25).

NMFS, through monitoring retained catches of bigeye tuna noted in logbook data submitted by vessel captains and other available information from the longline fisheries in the IATTC Convention Area, determined that the 2016 catch limit would be reached by July 25, 2016, and published a notice in the **Federal Register** announcing the closure of the fishery (81 FR 46614, July 18, 2016). However, after reviewing the catch data, NMFS determined that approximately 250 mt of the catch limit remains available. Therefore, NMFS is publishing this notice to reopen the fishery so that the remainder of the catch limit may be caught. All fishing for the remaining catch limit must be done in accordance with regulations at 50 CFR 300.25. NMFS will continue to monitor bigeye tuna catch and publish a notice of closure if the catch limit will be reached before the catch limit regulations expire on December 31, 2016. Notice of a fishery closure will be published 7 calendar days in advance of the effective date.

Classification

NMFS has determined there is good cause to waive prior notice and opportunity for public comment pursuant to 5 U.S.C. 553(b)(B). Compliance with the notice and comment requirement would be impracticable and contrary to the public interest because this action is simply a correction to a premature closure and is of benefit to fishermen since they cannot currently access the fishery. Moreover, NMFS previously solicited and considered public comments on the rule that established the catch limit (79 FR 19487, April 9, 2014). For the same reasons, NMFS has also determined there is good cause to waive the requirement for a 30-day delay in effectiveness under 5 U.S.C. 553(d)(3).

This action is required by § 300.25(b) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 951 *et seq.*

Dated: October 4, 2016

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–24347 Filed 10–4–16; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 195
Friday, October 7, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2016–0137]

RIN 3150–AJ77

List of Approved Spent Fuel Storage Casks: NAC International MAGNASTOR® Cask System; Certificate of Compliance No. 1031, Amendment No. 6

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage regulations by revising the NAC International (NAC), MAGNASTOR® Cask System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 6 to Certificate of Compliance (CoC) No. 1031. Amendment No. 6 revises NAC–MAGNASTOR technical specifications (TSs) to align with the NAC Multi-Purpose Canister (MPC) and NAC Universal MPC System TSs. The CoC No. 1031 TSs require that a program be established and maintained for loading, unloading, and preparing fuel for storage without any indication of duration for the program. Amendment No. 6 limits maintenance of this program until all spent fuel is removed from the spent fuel pool and transport operations are completed. Related training and radiation protection program requirements are modified accordingly. Additionally, Amendment No. 6 incorporates the change to Limiting Condition for Operation 3.1.1 previously approved by the NRC in CoC No. 1031 Amendment No. 4.

DATES: Submit comments by November 7, 2016. Comments received after this date will be considered if it is practical to do so, but the NRC staff 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–2016–0137. 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.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Keith McDaniel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5252 or email: *Keith.McDaniel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0137 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–2016–0137.
- *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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0137 in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Procedural Background

This proposed rule is limited to the changes contained in Amendment No. 6 to CoC No. 1031 and does not include other aspects of the NAC MAGNASTOR® Cask System design. Because the NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on December 21, 2016. However, if the NRC receives significant adverse comments on this

proposed rule by November 7, 2016, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to these proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TSs.

For additional procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that ''the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled, ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on November 21, 2008 (73 FR 70587), that approved the NAC MAGNASTOR® Cask System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1031.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS Accession No.
NAC License Amendment Request, Letter Dated December 11, 2015	ML15349A941.
Proposed CoC No. 1031, Amendment No. 6	ML16119A101.
Proposed CoC No. 1031, Amendment No. 6—Technical Specifications, Appendix A	ML16119A110.
Proposed CoC No. 1031, Amendment No. 6—Technical Specifications, Appendix B	ML16119A118.
CoC No. 1031, Amendment No. 6—Preliminary Safety Evaluation Report	ML16119A123.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2016–0137. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2016–0137); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Hazardous waste, Indians, Intergovernmental relations, Manpower training programs, Nuclear energy, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182,

183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance 1031 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1031.

Initial Certificate Effective Date: February 4, 2009, superseded by Initial Certificate, Revision 1, on February 1, 2016.

Initial Certificate, Revision 1, Effective Date: February 1, 2016.

Amendment Number 1 Effective Date: August 30, 2010, superseded by Amendment Number 1, Revision 1, on February 1, 2016.

Amendment Number 1, Revision 1, Effective Date: February 1, 2016.

Amendment Number 2 Effective Date: January 30, 2012, superseded by Amendment Number 2, Revision 1, on February 1, 2016.

Amendment Number 2, Revision 1, Effective Date: February 1, 2016.

Amendment Number 3 Effective Date: July 25, 2013, superseded by Amendment Number 3, Revision 1, on February 1, 2016.

Amendment Number 3, Revision 1, Effective Date: February 1, 2016.

Amendment Number 4 Effective Date: April 14, 2015.

Amendment Number 5 Effective Date: June 29, 2015.

Amendment Number 6 Effective Date: December 21, 2016.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the MAGNASTOR® System.

Docket Number: 72–1031.

Certificate Expiration Date: February 4, 2029.

Model Number: MAGNASTOR®.

* * * * *

Dated at Rockville, Maryland, this 23rd day of September, 2016.

For the Nuclear Regulatory Commission.

Glenn M. Tracy,

Acting Executive Director for Operations.

[FR Doc. 2016–24316 Filed 10–6–16; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 106, and 109

[Notice 2016–11]

Rulemaking Petition: Political Party Rules

AGENCY: Federal Election Commission.

ACTION: Rulemaking Petition: Notice of availability.

SUMMARY: On June 15, 2016, the Federal Election Commission received a Petition for Rulemaking asking the Commission to revise existing rules regarding the use of federal funds to pay for certain activities of state, district, or local committees of a political party. The Commission seeks comments on this petition.

DATES: Comments must be submitted on or before January 30, 2017.

ADDRESSES: All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission's Web site at *http://www.fec.gov/fosers,* reference REG 2016–03, or by email to *PoliticalPartyRules@fec.gov.* Alternatively, commenters may submit comments in paper form, addressed to the Federal Election Commission, Attn.: Mr. Neven F. Stipanovic, Acting Assistant General Counsel, 999 E Street NW., Washington, DC 20463.

Each commenter must provide, at a minimum, his or her first name, last name, city, state, and zip code. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's Web site and in the Commission's Public Records room. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Mr. Neven F. Stipanovic, Acting Assistant General Counsel, or Mr. Joseph P. Wenzinger, Attorney, Office of General Counsel, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On June 15, 2016, the Federal Election Commission received a Petition for Rulemaking from the Minnesota Democratic-Farmer-Labor Party and its Chair, Ken Martin, requesting that the Commission amend several regulations applicable to political parties.

First, the Federal Election Campaign Act, 52 U.S.C. 30101–46 (the ''Act''), as amended by the Bipartisan Campaign Reform Act (''BCRA''), and Commission regulations provide that a state, district, or local committee of a political party must pay for ''Federal election activity'' with either entirely federal funds or, in other instances, a mix of federal funds and ''Levin funds.'' *See* 52 U.S.C. 30125(b); 11 CFR 300.32. Under Commission regulations, ''Federal election activity'' includes certain activities that urge, encourage, or assist people to register to vote or to vote. *See* 11 CFR 100.24; Definition of Federal Election Activity, 75 FR 55257, 55260 (Sept. 10, 2010). The petitioners request that the Commission narrow this definition.

Second, Commission regulations provide that political parties must use a federal account to pay the salary, wages, and fringe benefits of an employee who spends more than 25 percent of that individual's time on ''Federal election activities'' or on conduct ''in connection with a Federal election.'' *See* 11 CFR 106.7(d)(1)(i)–(ii). The petitioners ask the Commission to amend this rule to omit ''Federal election activities'' from the calculation, covering only activities ''in connection with a Federal election.''

Finally, the petitioners ask the Commission to consider additional regulatory modifications listed in Commission Agenda Document No. 15–54–A, a proposed resolution that recommended amending several rules to (1) allow political parties ''to discuss issue advertisements with candidates,'' ''republish parts of candidate materials in party materials,'' and ''distribute volunteer campaign materials without triggering coordination limits,'' *see* 11 CFR 109.37; (2) ''[e]xpand political party freedom to engage in volunteer activities such as volunteer mail drives, phone banks, and literature distribution,'' *see id.* 100.87, 100.147; and (3) modify the definition of ''Federal election activity'' to permit ''political parties to register voters and urge citizens to vote on behalf of state and local candidates free from FEC regulation'' and to ''employ people to engage in state and local get-out-the-vote activities with state funds,'' *see id.* 100.24.

The Commission seeks comments on the petition. The public may inspect the Petition for Rulemaking on the Commission's Web site at *http://www.fec.gov/fosers,* or in the Commission's Public Records Office,

999 E Street NW., Washington, DC 20463, Monday through Friday, from 9 a.m. to 5 p.m. Interested persons may also obtain a copy of the petition by dialing the Commission's Faxline service at (202) 501–3413 and following its instructions. Request document #283.

The Commission will not consider the petition's merits until after the comment period closes. If the Commission decides that the petition has merit, it may begin a rulemaking proceeding. The Commission will announce any action that it takes in the **Federal Register**.

On behalf of the Commission,

Dated: September 29, 2016.

Matthew S. Petersen,

Chairman, Federal Election Commission.

[FR Doc. 2016–24310 Filed 10–6–16; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 102, 104, 106, 109, 110, 9008, and 9012

[Notice 2016–10]

Rulemaking Petition: Implementing the Consolidated and Further Continuing Appropriations Act, 2015

AGENCY: Federal Election Commission.

ACTION: Rulemaking Petition: Notice of availability.

SUMMARY: The Federal Election Commission has received a Petition for Rulemaking that asks the Commission to amend its regulations to implement amendments to the Federal Election Campaign Act made by the Consolidated and Further Continuing Appropriations Act, 2015, which established certain new accounts for national party committees. The petition also asks the Commission to amend its regulations regarding convention committees. The Commission seeks comments on this petition.

DATES: Comments must be submitted on or before January 30, 2017.

ADDRESSES: All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission's Web site at *http://www.fec.gov/fosers,* reference REG 2014–10, or by email to *NationalPartyAccounts@fec.gov.* Alternatively, commenters may submit comments in paper form, addressed to the Federal Election Commission, Attn.: Neven F. Stipanovic, Acting Assistant General Counsel, 999 E Street NW., Washington, DC 20463.

Each commenter must provide, at a minimum, his or her first name, last name, city, state, and zip code. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's Web site and in the Commission's Public Records room. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Mr. Neven F. Stipanovic, Acting Assistant General Counsel, or Mr. Tony Buckley or Ms. Esther D. Gyory, Attorneys, Office of General Counsel, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On January 8, 2016, the Federal Election Commission received a Petition for Rulemaking from the Perkins Coie LLP Political Law Group. The petition asks the Commission to adopt new regulations, and to revise its current regulations, to implement amendments to the Federal Election Campaign Act, 52 U.S.C. 30101–46 (''FECA''), made by the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113–235, 128 Stat. 2130, 2772 (2014) (the ''Appropriations Act''). The petition also asks the Commission to adopt new regulations, and to amend its current regulations, regarding convention committees.

The Appropriations Act amended FECA by establishing separate limits on contributions to three types of segregated accounts of national party committees (collectively ''party segregated accounts''). The party segregated accounts are for expenses incurred with respect to (1) presidential nominating conventions; (2) party headquarters buildings; and (3) election recounts or contests and other legal proceedings. 52 U.S.C. 30116(a)(9). The Appropriations Act permits a national party committee to maintain the party segregated accounts in addition to any other federal accounts that the committee may lawfully maintain.

Under the Appropriations Act, a national party committee may use its presidential nominating convention account ''solely to defray expenses incurred with respect to a presidential nominating convention (including the payment of deposits) or to repay loans the proceeds of which were used to defray such expenses, except that the aggregate amount of expenditures the national committee of a political party may make from such account may not exceed $20,000,000 with respect to any single convention.'' 52 U.S.C. 30116(a)(9)(A). A committee may use its party headquarters building account ''solely to defray expenses incurred with respect to the construction, purchase, renovation, operation, and furnishing of one or more headquarters buildings of the party or to repay loans the proceeds of which were used to defray such expenses, or otherwise to restore funds used to defray such expenses.'' 52 U.S.C. 30116(a)(9)(B). Finally, a national party committee may use its election recounts or contests and other legal proceedings account to ''defray expenses incurred with respect to the preparation for and the conduct of election recounts and contests and other legal proceedings.'' 52 U.S.C. 30116(a)(9)(C). The petition asks the Commission to adopt a ''new regulatory framework'' for each type of party segregated account and to amend current regulations, or adopt new regulations, that would apply to all such accounts.

The petition also addresses convention committees. Until recently, national party committees were entitled to receive public funds to defray the costs of their presidential nominating conventions. *See* 26 U.S.C. 9001–9013 (2012); 11 CFR part 9008. Commission regulations therefore established convention committees ''as a necessary requirement in order to enable the Commission to know who has initial responsibility for handling public funds and incurring expenditures.'' Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions, 44 FR 63036, 63038 (Nov. 1, 1979). In 2014, however, Congress terminated the public funding of presidential nominating conventions, while leaving in place most of the statutory framework that had implemented that funding system. *See* Gabriella Miller Kids First Research Act, Pub. L. 113–94, 128 Stat. 1085 (2014) (the ''Research Act''). Shortly after the Research Act was passed, in response to a request filed by two national party committees, the Commission issued an advisory opinion concluding that the requestors could establish convention committees to ''us[e] privately-raised funds solely to pay for the same types of convention expenses for which public funds were previously used.''

Advisory Opinion 2014–12 (Democratic National Committee *et al.*) at 5 (internal quotation marks omitted). The petition asks the Commission to adopt new regulations, and amend its current regulations, to address convention committees, as well as to remove related regulations that are now ''obsolete.''

The Commission seeks comments on the petition. The public may inspect the petition on the Commission's Web site at *http://www.fec.gov/fosers,* or in the Commission's Public Records Office, 999 E Street NW., Washington, DC 20463, Monday through Friday, from 9 a.m. to 5 p.m. Interested persons may also obtain a copy of the petition by dialing the Commission's Faxline service at (202) 501–3413 and following its instructions. Request document #282.

The Commission will not consider the petition's merits until after the comment period closes. If the Commission decides that the petition has merit, it may begin a rulemaking proceeding. The Commission will announce any action that it takes in the **Federal Register**.

Dated: September 29, 2016.

On behalf of the Commission.

Matthew S. Petersen,

Chairman, Federal Election Commission.

[FR Doc. 2016–24309 Filed 10–6–16; 8:45 am]

BILLING CODE 6715–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 134

RIN 3245–AG82

Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) is proposing to amend the rules of practice of its Office of Hearings and Appeals (OHA) to implement Section 869 of the National Defense Authorization Act for Fiscal Year 2016. This legislation authorizes OHA to decide Petitions for Reconsideration of Size Standards. This rule also proposes to revise the rules of practice for OHA appeals of agency employee grievances.

DATES: Comments must be received on or before December 6, 2016.

ADDRESSES: You may submit comments, identified by RIN: 3245–AG82 by any of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail, Hand Delivery/Courier*: Delorice Price Ford, Assistant Administrator for Hearings and Appeals, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please submit the information to Linda (Lin) DiGiandomenico, Attorney Advisor, Office of Hearings and Appeals, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, or send an email to *OHA@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Linda (Lin) DiGiandomenico, Attorney Advisor, at (202) 401–8206 or *OHA@sba.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule would amend the rules of practice for the SBA's Office of Hearings and Appeals (OHA) in order to implement section 869(b) of the National Defense Authorization Act for Fiscal Year 2016, Public Law 114–92, 129 Stat. 726, November 25, 2015 (NDAA 2016). This legislation added a provision to section 3(a) of the Small Business Act to authorize OHA to hear and decide Petitions for Reconsideration of Size Standards (Size Standard Petitions or Petitions). A Size Standard Petition may be filed at OHA after SBA publishes a final rule in the **Federal Register** to revise, modify, or establish a size standard. This proposed rule would create a new subpart I in OHA's regulations (13 CFR part 134) to set out detailed rules of practice for Size Standard Petitions, revise OHA's general rules of practice in subparts A and B of part 134 as required by the new legislation, and amend SBA's small business size regulations (13 CFR part 121) to include Size Standard Petitions as part of SBA's process for establishing size standards.

This proposed rule also would revise the rules of practice for OHA appeals of agency employee grievances, in concert with SBA's revisions of its Standard Operating Procedure (SOP) 37 71, The Employee Dispute Resolution Process.

Section-by-Section Analysis

A. Part 121

SBA proposes to amend § 121.102, the rules for establishing size standards, to provide for Petitions for Reconsideration of Size Standards (Size Standard Petitions or Petitions), pursuant to 15 U.S.C. 632(a)(9). New paragraph (e) would require SBA to include instructions for filing a Size Standard Petition in any final rule revising, modifying, or establishing a size standard. The rule would inform the public that, as stated in the NDAA 2016, any Petition for reconsideration of a size standard must be filed no later than 30 days after the final rule is published. New paragraph (f) would require SBA to publish a notice in the **Federal Register** within 14 calendar days after a Size Standard Petition is filed. Among other things, the notice would let interested parties know that they may intervene in the dispute. New paragraph (g) would require SBA to publish notice in the **Federal Register** where SBA grants a petition for reconsideration of a size standard that had been revised or modified.

B. Part 134, Subpart A

In § 134.101, SBA proposes to revise the definition for ''AA/OHA'' to include the new statutory title ''Chief Hearing Officer''. SBA also proposes to add definitions for ''Administrative Judge'' (including the new statutory title ''Hearing Officer''), ''Petitioner'' (as the party who initially files a petition), and ''Size Standard Petition'' (citing 15 U.S.C. 632(a)(9) and subpart I of part 134).

Section 134.102 lists the cases in which OHA has authority to conduct proceedings. In paragraph (r), on Employee Disputes, SBA proposes to remove the reference to ''Appropriate Management Official'' (AMO), a term being eliminated from the EDRP. Paragraph (t) permits the Administrator to refer matters to OHA through a SOP, Directive, Procedural Notice, or individual request. Section 869(a)(3) of the NDAA 2016, repealed this regulatory provision. As a result, SBA proposes to amend paragraph (t) by removing the current text and adding in its place, the authority for OHA to accept Size Standard Petitions.

Part 134, Subpart B

Section 134.201 would be amended to redesignate paragraph (7) as paragraph (8) and to add a new paragraph (7), which would state that the rules of practice governing Size Standard Petitions cases are at new subpart I of part 134.

Section 134.227 would be amended to list Size Standard Petitions as a type of case in which OHA would issue a final decision. To effect this change, the rule proposes to redesignate paragraph (b)(4) as paragraph (b)(5) and adding a new paragraph (b)(4).

C. Part 134, Subpart H

The rules of practice governing Employee Dispute appeals would be revised to correspond to revisions being made to Standard Operating Procedure (SOP) 37 71.

Section 134.801 lists the rules in subparts A and B that also apply to Employee Dispute appeals. SBA proposes to remove paragraph (b)(11) from the list because this rule proposes to include all rules of practice governing the review of initial decisions in § 134.809.

Section 134.803 governs the commencement of appeals. SBA proposes to revise the section heading and paragraphs (a) and (b) to reflect the elimination of the term ''AMO'' from the EDRP, and to shorten the Employee's deadline for filing the appeal in the event the Agency declines to issue an appealable ''Step Two'' decision. The current rule requires the employee to file an appeal ''no sooner than 16 days and no later than 55 days from the date on which the Employee filed the original Statement of Dispute.'' The proposed rule would revise that time to ''no later than 15 calendar days from the date the Step Two decision was due.'' This change would simplify the Employee's deadline for filing an appeal.

SBA proposes to revise § 134.804, which sets out the requirements for filing an appeal petition, including the contents of the petition, the supporting information to be submitted with it, as well as the requirements for service of the petition. The rule proposes to amend paragraphs (a)(1) through (a)(3) and paragraph (b) to conform the descriptions of the required information to the terms used in the EDRP. Specifically, the term ''Statement of Dispute'' would be replaced with ''SBA Dispute Form 2457''; and references to ''AMO's decision'' and ''AMO Official'' would be replaced with ''Step One decision'' and/or ''Step Two decision'' or ''Step Two Official'' as applicable. The rule would also remove paragraph (a)(6), which currently requires the Employee to provide fax numbers, home mailing addresses and other contact information. In addition, because SBA Form 2457 contains a certificate of service, the rule proposes to remove paragraph (c), which requires employees to file a separate certificate of service. Revised § 134.805(d) would provide that email, rather than U.S. Mail, is the default method by which OHA serves orders and the decision.

Section 134.807(a) currently requires SBA to file the ''Dispute File.'' In place of that, the proposed rule would require SBA to file ''any documentation, not already filed by the Employee, that it wishes OHA to consider,'' thus reducing wasteful duplication of paper. In paragraph (b), SBA proposes to shorten the deadline for filing the response to an Employee's appeal from ''no later than 15 days from the conclusion of mediation or 45 days from the filing of the appeal petition, whichever is later'' to ''15 calendar days'' in place of ''15 days'' and ''45 days.'' This change would simplify the deadline for filing a response to an Employee's appeal. Revised paragraph (c) would eliminate the reference to the ''Dispute File.''

Section 134.808(a), on the decision, would be revised to update terminology.

Section 134.809 concerns review of OHA's initial decision. The revised rule would allow only certain SBA officials to request a review of OHA's initial decision. The official would be required to request the OHA file within five calendar days after receiving the decision. OHA would have five days to provide copies to both the official and to the Employee, and the official would have 15 calendar days from receipt of the file to state his or her objections to the OHA decision. As before, the Employee does not have the right to request a review of OHA's initial decision.

D. Part 134, Subpart I

SBA proposes to add Subpart I setting forth the rules of practice before OHA for Petitions for Reconsideration of Size Standards pursuant to 15 U.S.C. 632(a)(9).

Proposed § 134.901 states that the provisions of subparts A and B also apply to Size Standard Petitions, except where inconsistent with rules set out in subpart I.

As proposed in Section 134.902(a), any person ''adversely affected'' by a new, revised, or modified size standard would have standing to file a Petition within 30 days from the date of publication of the final rule promulgating that size standard. Paragraph (b) would provide that a business entity is not ''adversely affected'' unless it conducts business in the industry associated with the size standard being challenged and either it qualified as a small business concern before the size standard was revised or modified, or it would be qualified as a small business concern under the size standard as revised or modified.

Section 134.903(a) would reiterate the statutory deadline for filing a Petition, which is ''not later than 30 days after'' the final rule is published in the **Federal Register** that revises, modifies, or establishes a new size standard; would clarify that the days counted are calendar days; and would authorize OHA to dismiss an untimely Petition. Paragraph (b) would require OHA to dismiss as premature a Petition filed in response to a notice of proposed rulemaking. The retention of an existing size standard is not considered to be the revision, modification, or establishment of a standard and is not subject to these procedures. Paragraph (c) would require OHA to dismiss challenges to the retention of an existing size standard.

Section 134.904(a) would require a Petition to identify the challenged size standard or standards and include the following: A copy of the final rule being challenged or an electronic link to the rule; a statement as to why the process used by SBA to revise, modify, or establish the size standard is alleged to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, together with supporting argument; a copy of any comments on the challenged size standard(s) that Petitioner had submitted in response to notice of proposal rulemaking on the size standard being petitioned (or a statement that none were submitted); and basic contact information for Petitioner or its attorney. Section 134.904(b) would permit multiple size standards from the same final rule to be challenged in a single Petition, but the Petitioner must demonstrate standing for each challenged size standard. Section 134.904(c) would require the same formatting standards as are required for size appeals under Section 134.305. Section 134.904(d) would require the Petitioner to serve a copy of the Petition on SBA's Office of Size standards as well as the Office of General Counsel. Section 134.904(e) would require a signed certificate of service similar to that required by 134.204(d) for size appeals.

Section 134.905 would set out OHA's procedures on receipt of a Petition. These include assignment to a Judge, initial review, and issuance of a notice and order setting the deadline for SBA to send the administrative record (typically seven calendar days after issuance of the notice and order) and setting the close of record (typically 45 calendar days from filing).

Section 134.906 would permit interested persons with a direct stake in

the outcome of the case to intervene and obtain a copy of the Petition. Where a Petition contains confidential information, the intervener's attorney may obtain a complete copy under the terms of a protective order, similar to the procedures used in size appeals.

Section 134.907 would establish the same filing and service rules as apply to other OHA proceedings.

Section 134.908 would require SBA to submit to OHA a copy of the documentation and analysis supporting the revision, modification, or establishment of the challenged size standard, and would permit the Petitioner and any intervener, on request, to review this information.

Section 134.909 would provide the standard of review, which is whether the process employed by SBA to arrive at the size standard ''was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'' Also, the Petitioner would bear the burden of proof, and OHA would not adjudicate arguments for a different size standard.

Section 134.910 would require OHA to dismiss a Petition if: (i) It does not allege facts that, if proven true, would warrant remand of the size standard; (ii) the Petitioner is not adversely affected by the challenged size standard; (iii) the Petition is untimely, premature, or is not otherwise filed according to the requirements; or (iv) the matter has been decided by or is currently before a court of competent jurisdiction.

Section 134.911 would allow an intervener to file a response to the Petition, presenting argument, before the close of record. SBA also may intervene.

Section 134.912 would not permit discovery, and would permit oral hearings only if the Judge determines that the case cannot be resolved without live testimony and the confrontation of witnesses. These rules are similar to the rules in size appeals.

Under § 134.913, cases would be decided based on the pleadings and the administrative record. The Judge may admit new evidence on motion establishing good cause.

Section 134.914 would require OHA to issue a decision within 45 calendar days after close of record, as practicable. The rule would also establish that the decision is final and will not be reconsidered.

Under § 134.915, if OHA grants a Size Standard Petition, OHA would not assign a size standard to the industry in question. Rather, the case would be remanded to the Office of Size Standards for further analysis. Once remanded, OHA no longer has jurisdiction over the case unless a new Petition is filed as a result of a new final rule.

Section 134.916 would require SBA to rescind the challenged size standard if OHA grants a Petition. The size standard in effect prior to the final rule would be restored until a new final rule is issued. If OHA denied a Petition, the size standard in the final rule would remain.

Section 134.917 would state that because Size Standard Petition proceedings are not required to be conducted by an Administrative Law Judge, attorney's fees are not available under the Equal Access to Justice Act.

Section 134.918 would reiterate the statutory provision in NDAA 2016 that, for purposes of seeking judicial review of a new size standard, the publication of a final rule in the **Federal Register** to revise, modify, or establish size standards is considered the final agency action. This section would also make it clear that the filing of a Size Standard Petition would not be required before seeking judicial review.

Compliance With Executive Orders 12866, 12988, 13175 and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

OMB has determined that this rule does not constitute a ''significant regulatory action'' under Executive Order 12866. This rule is also not a major rule under the Congressional Review Act, 5 U.S.C. 800. This rule establishes the procedures for Petitions for Reconsideration of Size Standards at SBA's Office of Hearings and Appeals (OHA) and revises procedural rules at OHA for agency employee grievances. As such, the rule has no effect on the amount or dollar value of any Federal contract requirements or of any financial assistance provided through SBA. Therefore, the rule is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy. In addition, this rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of entitlements, grants, user fees, loan programs or the rights and obligations of such recipients, nor raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Executive Order 12988

This action meets applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13175

For the purposes of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, SBA has determined that this proposed rule will not 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. Therefore, SBA determines that this proposed rule does not require consultations with tribal officials or warrant the publication of a Tribal Summary Impact Statement.

Executive Order 13132

This rule does not have Federalism implications as defined in Executive Order 13132. 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, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The SBA has determined that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. Small entities include small businesses, small not-for-profit organizations, and small governmental jurisdictions. 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.

This proposed rule would revise the regulations governing cases before SBA's Office of Hearings and Appeals (OHA), SBA's administrative tribunal. These regulations are procedural by nature. Specifically, the proposed rule would establish rules of practice for

Petitions for Reconsideration of Size Standards (Size Standard Petitions), a new type of administrative litigation mandated by § 869(b) of the National Defense Authorization Act for Fiscal Year 2016. This legislation provides a new statutory right to challenge a size standard revised, modified, or established by the SBA through a final rule. Further, this legislation requires OHA to hear any Size Standard Petitions that are filed. This proposed rule merely provides the rules of practice for the orderly hearing and disposition of Size Standard Petitions at OHA. While SBA does not anticipate that this proposed rule would have a significant economic impact on any small business, we do welcome comments from any small business setting out how and to what degree this proposed rule would affect it economically.

The Small Business Size Regulations provide that persons requesting to change existing size standards or to establish new size standards may address these requests to SBA's Office of Size Standards. 13 CFR 121.102(d). Over the past five years, fewer than ten letters concerning size standards have been submitted per year, supporting SBA's belief that this proposed rule will not affect a substantial number of small entities. Further, a business adversely affected by a final rule revising a size standard has always had (and would continue to have) the option of judicial review in Federal court, yet the SBA knows of no such lawsuit ever having been filed.

In addition to establishing rules of practice for Size Standard Petitions, this proposed rule would revise OHA's rules of practice for SBA Employee Disputes. This rulemaking is procedural, would impose no significant additional requirements on small entities, and would have minimal, if any, effect on small entities.

Therefore, the Administrator of SBA certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

13 CFR Part 134

Administrative practice and procedure, Claims, Equal access to justice, Lawyers, Organization and functions (Government agencies).

For the reasons stated in the preamble, SBA proposes to amend 13 CFR parts 121 and 134 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

■ 2. Amend § 121.102 by adding paragraphs (e), (f), and (g) to read as follows:

§ 121.102 How does SBA establish size standards?

* * * * *

(e) When SBA publishes a final rule in the **Federal Register** revising, modifying, or establishing a size standard, SBA will include in the final rule, an instruction that interested persons may file a petition for reconsideration of a revised, modified, or established size standard at SBA's Office of Hearings and Appeals (OHA) within 30 calendar days after publication of the final rule in accordance with 15 U.S.C. 632(a)(9) and part 134, subpart I of this chapter. The instruction will provide the mailing address, facsimile number, and email address of OHA.

(f) Within 14 calendar days after a petition for reconsideration of a size standard is filed, unless it appears OHA will dismiss the petition for reconsideration, SBA will publish a notice in the **Federal Register** announcing a size standard or standards that have been challenged, the **Federal Register** citation of the final rule, the assigned OHA docket number, and the date of the close of record. The notice will further state that interested parties may contact OHA to intervene in the dispute pursuant to § 134.906 of this chapter.

(g) Where OHA grants a petition for reconsideration of a size standard that had been revised or modified, SBA will publish a notice in the **Federal Register** meeting the requirements of § 134.916(a) of this chapter.

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

■ 3. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 634(i), 637(a), 648(l), 656(i), and 687(c); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

■ 4. Amend § 134.101 by revising the definitions of ''AA/OHA'' and ''Judge''; and by adding definitions for ''Administrative Judge'', ''Petitioner'', and ''Size Standard Petition'' in alphabetical order, to read as follows:

§ 134.101 Definitions.

* * * * *

AA/OHA means the Assistant Administrator for OHA, who is also the Chief Hearing Officer.

* * * * *

Administrative Judge means a Hearing Officer, as described at 15 U.S.C. 634(i), appointed by OHA to adjudicate cases.

* * * * *

Judge means the Administrative Judge or Administrative Law Judge who decides an appeal or petition brought before OHA, or the AA/OHA when he or she acts as an Administrative Judge.

* * * * *

Petitioner means the person who initially files a petition before OHA.

* * * * *

Size Standard Petition means a petition for reconsideration of a revised, modified, or established size standard filed with OHA pursuant to 15 U.S.C. 632(a)(9) and subpart I of this part.

■ 5. Amend § 134.102 by revising paragraphs (r) and (t) to read as follows:

§ 134.102 Jurisdiction of OHA.

* * * * *

(r) Appeals from SBA Employee Dispute Resolution Process cases (Employee Disputes) under Standard Operating Procedure (SOP) 37 71 (available at *http://www.sba.gov/tools/resourcelibrary/sops/index.html* or through OHA's Web site *http://www.sba.gov/oha*) and subpart H of this part;

* * * * *

(t) Petitions for reconsideration of revised, modified, or established size standards pursuant to 15 U.S.C. 632(a)(9).

■ 6. Amend § 134.201 by:

■ a. Removing the word ''and'' in paragraph (b)(6);

■ b. Redesignating paragraph (b)(7) as paragraph (b)(8); and

■ c. Adding a new paragraph (b)(7).

The addition to read as follows:

§ 134.201 Scope of the rules in this subpart B.

* * * * *

(b) * * *

(7) For Size Standard Petitions, in subpart I of this part (§ 134.901 *et seq.*); and

* * * * *

■ 7. Amend § 134.227 by:

■ a. Removing the word ''and'' in paragraph (b)(3);

■ b. Redesignating paragraph (b)(4) as paragraph (b)(5); and
■ c. Adding a new paragraph (b)(4).
The addition to read as follows:

§ 134.227 Finality of decisions.

* * * * *
(b) * * *
(4) Size Standard Petitions; and
* * * * *

§ 134.801 [Amended]

■ 8. Amend § 134.801 by adding the word ''and'' at the end of paragraph (b)(9); by removing the word ''and'' at the end of paragraph (b)(10) and adding a period in its place; and by removing paragraph (b)(11).
■ 9. Amend § 134.803 by:
■ a. Revising the section heading; and
■ b. Revising paragraphs (a) and (b).
The revisions to read as follows:

§ 134.803 Commencement of appeals from SBA Employee Dispute Resolution Process cases (Employee Disputes).

(a) An appeal from a Step Two decision must be commenced by filing an appeal petition within 15 calendar days from the date the Employee receives the Step Two decision.

(b) If the Step Two Official does not issue a decision within 15 calendar days of receiving the SBA Dispute Form from the Employee, the Employee must file his/her appeal petition at OHA no later than 15 calendar days from the date the Step Two decision was due.

* * * * *

■ 10. Amend § 134.804 by
■ a. Revising paragraphs (a)(1), (a)(2), and (a)(3),
■ b. Adding the word ''and'' after the semicolon in paragraph (a)(5);
■ b. Removing paragraph (a)(6);
■ c. Redesignating paragraph (a)(7) as paragraph (a)(6);
■ d. Revising paragraph (b)(1);
■ e. Removing paragraph (c); and
■ f. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d).
The revisions to read as follows:

§ 134.804 The appeal petition.

(a) * * *
(1) The completed SBA Dispute Form;
(2) A copy of the Step One and Step Two decisions, if any;
(3) Statement of why the Step Two decision (or Step One decision, if no Step Two decision was received), is alleged to be in error;
* * * * *
(b) * * *
(1) The Step Two Official;
* * * * *

§ 134.805 [Amended]

■ 11. Amend § 134.805 by removing from paragraph (d) the term ''U.S. Mail'' and adding in its place the term ''email''.

§ 134.807 [Amended]

■ 12. Amend 134.807 as follows:
■ a. By removing from paragraph (a), the words ''a copy of the Dispute File'' and adding, in their place, the words ''any documentation, not already filed by the Employee, that it wishes OHA to consider'';
■ b. By removing from paragraph (b), the words ''15 days'' and ''45 days'' and adding, in both their places, the words ''15 calendar days''; and
■ c. By removing from paragraph (c), the words ''and the Dispute File are normally the last submissions'' and by adding, in their place, the words ''is normally the last submission''.

§ 134.808 [Amended]

■ 13. Amend § 134.808(a) by removing the word ''AMO's'' and adding in its place the words ''Step One or Step Two''.
■ 14. Revise § 134.809 to read as follows:

§ 134.809 Review of initial decision.

(a) If the Chief Human Capital Officer, General Counsel for SBA, or General Counsel for the IG believes OHA's decision is contrary to law, rule, regulation, or SBA policy, that official may file a Petition for Review (PFR) of the decision with the Deputy Administrator (or IG for disputes by OIG employees) for a final SBA Decision. Only the Chief Human Capital Officer, General Counsel, or IG may file a PFR of an OHA decision; the Employee may not.

(b) To file a PFR, the official must request a complete copy of the dispute file from the Assistant Administrator for OHA (AA/OHA) within five calendar days of receiving the decision. The AA/OHA will provide a copy of the dispute file to the official, the Employee, and the Employee's representative within five calendar days of the official's request. The official's PFR is due no later than 15 calendar days from the date the official receives the dispute file. The PFR must specify the objections to OHA's decision.
■ 15. Add subpart I to read as follows:

Subpart I—Rules of Practice for Petitions for Reconsideration of Size Standards

Sec.
134.901 Scope of the rules in this subpart I.
134.902 Standing.
134.903 Commencement of cases.
134.904 Requirements for the Size Standard Petition.
134.905 Notice and order.
134.906 Intervention.
134.907 Filing and service.
134.908 The administrative record.
134.909 Standard of review.
134.910 Dismissal.
134.911 Response to the Size Standard Petition.
134.912 Discovery and oral hearings.
134.913 New evidence.
134.914 The decision.
134.915 Remand.
134.916 Effects of OHA's decision.
134.917 Equal Access to Justice Act.
134.918 Judicial review.

Subpart I—Rules of Practice for Petitions for Reconsideration of Size Standards

§ 134.901 Scope of the rules in this subpart I.

(a) The rules of practice in this subpart I apply to Size Standard Petitions.

(b) Except where inconsistent with this subpart, the provisions of subparts A and B of this part apply to Size Standard Petitions listed in paragraph (a) of this section.

§ 134.902 Standing.

(a) A Size Standard Petition may be filed with OHA by any person that is adversely affected by the Administrator's decision to revise, modify, or establish a size standard.

(b) A business entity is not adversely affected unless it conducts business in the industry associated with the size standard that is being challenged and:

(1) The business entity qualified as a small business concern before the size standard was revised or modified; or

(2) The business entity qualifies as a small business under the size standard as revised or modified.

§ 134.903 Commencement of cases.

(a) A Size Standard Petition must be filed at OHA not later than 30 calendar days after the publication in the **Federal Register** of the final rule that revises, modifies, or establishes the challenged size standard. An untimely Size Standard Petition will be dismissed.

(b) A Size Standard Petition filed in response to a notice of proposed rulemaking is premature and will be dismissed.

(c) A Size Standard Petition challenging a size standard that has not been revised, modified, or established through publication in the **Federal Register** will be dismissed.

§ 134.904 Requirements for the Size Standard Petition.

(a) *Form.* There is no required form for a Size Standard Petition. However, it must include the following information:

(1) A copy of the final rule published in the **Federal Register** to revise, modify, or establish a size standard, or an electronic link to the final rule;

(2) A full and specific statement as to which size standard(s) in the final rule the Petitioner is challenging and why the process that was used to revise, modify, or establish each challenged size standard is alleged to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, together with argument supporting such allegation;

(3) A copy of any comments the Petitioner submitted in response to the proposed notice of rulemaking that pertained to the size standard(s) in question, or a statement that no such comments were submitted; and

(4) The name, mailing address, telephone number, facsimile number, email address, and signature of the Petitioner or its attorney.

(b) *Multiple size standards.* A Petitioner may challenge multiple size standards that were revised, modified, or established in the same final rule in a single Size Standard Petition, provided that the Petitioner demonstrates standing for each of the challenged size standards.

(c) *Format.* The formatting provisions of § 134.203(d) apply to Size Standard Petitions.

(d) *Service.* In addition to filing the Size Standard Petition at OHA, the Petitioner must serve a copy of the Size Standard Petition upon each of the following:

(1) SBA's Office of Size Standards, U.S. Small Business Administration, 409 3rd Street SW., Mail Code 6530, Washington, DC 20416, facsimile number (202) 205–6390; or *sizestandards@sba.gov;* and

(2) SBA's Office of General Counsel, Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416; facsimile number (202) 205–6873; or *OPLService@sba.gov.*

(e) *Certificate of Service.* The Petitioner must attach to the Size Standard Petition a signed certificate of service meeting the requirements of § 134.204(d).

§ 134.905 Notice and order.

Upon receipt of a Size Standard Petition, OHA will assign the matter to a Judge in accordance with § 134.218. Unless it appears that the Size Standard Petition will be dismissed under § 134.910, the presiding Judge will issue a notice and order initiating the publication required by § 121.102(f) of this chapter; specifying a date for the Office of Size Standards to transmit to OHA a copy of the administrative record supporting the revision, modification, or establishment of the challenged size standard(s); and establishing a date for the close of record. Typically, the administrative record will be due seven calendar days after issuance of the notice and order, and the record will close 45 calendar days from the date of OHA's receipt of the Size Standard Petition.

§ 134.906 Intervention.

In accordance with § 134.210(b), interested persons with a direct stake in the outcome of the case may contact OHA to intervene in the proceeding and obtain a copy of the Size Standard Petition. In the event that the Size Standard Petition contains confidential information and the intervener is not a governmental entity, the Judge may require that the intervener's attorney be admitted to a protective order before obtaining a complete copy of the Size Standard Petition.

§ 134.907 Filing and service.

The provisions of § 134.204 apply to the filing and service of all pleadings and other submissions permitted under this subpart unless otherwise indicated in this subpart.

§ 134.908 The administrative record.

The Office of Size Standards will transmit to OHA a copy of the documentation and analysis supporting the revision, modification, or establishment of the challenged size standard by the date specified in the notice and order. The Chief, Office of Size Standards, will certify and authenticate that the administrative record, to the best of his or her knowledge, is complete and correct. The Petitioner and any interveners may, upon request, review the administrative record submitted to OHA. The administrative record will include the documentation and analysis supporting the revision, modification, or establishment of the challenged size standard.

§ 134.909 Standard of review.

The standard of review for deciding a Size Standard Petition is whether the process employed by the Administrator to revise, modify, or establish the size standard was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. OHA will not adjudicate arguments that a different size standard should have been selected. The Petitioner bears the burden of proof.

§ 134.910 Dismissal.

The Judge must dismiss the Size Standard Petition if:

(a) The Size Standard Petition does not, on its face, allege specific facts that if proven to be true, warrant remand of the size standard;

(b) The Petitioner is not adversely affected by the final rule revising, modifying, or establishing a size standard;

(c) The Size Standard Petition is untimely or premature pursuant to § 134.903 or is not otherwise filed in accordance with the requirements in subparts A and B of this part; or

(d) The matter has been decided or is the subject of adjudication before a court of competent jurisdiction over such matters.

§ 134.911 Response to the Size Standard Petition.

Although not required, any intervener may file and serve a response supporting or opposing the Size Standard Petition at any time prior to the close of record. SBA may intervene as of right at any time in any case until 15 days after the close of record, or the issuance of a decision, whichever comes first. The response must present argument.

§ 134.912 Discovery and oral hearings.

Discovery will not be permitted. Oral hearings will not be held unless the Judge determines that the dispute cannot be resolved except by the taking of live testimony and the confrontation of witnesses.

§ 134.913 New evidence.

Disputes under this subpart ordinarily will be decided based on the pleadings and the administrative record. The Judge may admit additional evidence upon a motion establishing good cause.

§ 134.914 The decision.

The Judge will issue his or her decision within 45 calendar days after close of the record, as practicable. The Judge's decision is final and will not be reconsidered.

§ 134.915 Remand.

If OHA grants a Size Standard Petition, OHA will remand the matter to the Office of Size Standards for further analysis. Once remanded, OHA no longer has jurisdiction over the matter unless a new Size Standard Petition is filed as a result of a new final rule published in the **Federal Register**.

§ 134.916 Effects of OHA's decision.

(a) If OHA grants a Size Standard Petition of a modified or revised size standard, the Administrator will promptly publish a **Federal Register** notice to suspend the size standard in question and restore the size standard that was in effect before being challenged in the Size Standard

Petition, until such time as a new final rule is published in the **Federal Register**. The OHA decision does not affect the validity of actions issued under the modified or revised size standard prior to the effective date of the notice suspending the size standard. If the size standard in question was newly established, the Administrator keeps the challenged size standard in effect while conducting further analysis on remand.

(b) If OHA denies a Size Standard Petition, the size standard remains as published in the **Federal Register**.

§ 134.917 Equal Access to Justice Act.

A prevailing Petitioner is not entitled to recover attorney's fees. Size Standard Petitions are not proceedings that are required to be conducted by an Administrative Law Judge under § 134.603.

§ 134.918 Judicial review.

The publication of a final rule in the **Federal Register** is considered the final agency action for purposes of seeking judicial review.

Dated: September 29, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–24231 Filed 10–6–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–9086; Airspace Docket No. 15–AEA–7]

RIN 2120–AA66

Proposed Amendment of Air Traffic Service (ATS) Routes; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify area navigation (RNAV) routes Q–39 and Q–67, in the eastern United States. The modifications would provide a more efficient airway design within a portion of the airspace assigned to the Indianapolis Air Route Traffic Control Center (ARTCC).

DATES: Comments must be received on or before November 21, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1 (800) 647–5527 or (202) 366–9826. You must identify FAA Docket No. FAA–2016–9086 and Airspace Docket No. 15–AEA–7 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone: 1 (800) 647–5527), is on the ground floor of the building at the above address.

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the air traffic service route Q–39 and Q–67 in the eastern United States to maintain the efficient flow of air traffic.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers (FAA Docket No. FAA–2016–9086 and Airspace Docket No. 15–AEA–7) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2016–9086 and Airspace Docket No. 15–AEA–7.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also accessed through the FAA's Web page at *http://www.faa.gov/air_Traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during

normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to modify the alignment of RNAV routes Q–39 and Q–67 in the eastern United States. The proposed modifications would expand the availability of area navigation routes and provide a more efficient airway design within Indianapolis ARTCC's airspace. The proposed route changes are outlined below.

Q–39 RNAV route Q–39 extends between the CLAWD, NC waypoint (WP) and the WISTA, WV, WP. The FAA proposes to shift the alignment of the route slightly to the east bypassing the WISTA WP to cross the TARCI, WV, WP (located at lat. 38°16′36.08 N., long. 081°18′34.08 W.); then the route would continue northward to a new ASERY, WV, WP (located at lat. 38°28′35.97 N., long. 081°17′34.14″ W.).

Q–67 RNAV route Q–67 extends between the SMTTH, TN, WP to the COLTZ, OH, fix. In its current alignment, the route proceeds from the JONEN, KY, WP northward to the COLTZ, OH, fix. The FAA proposes to eliminate the segment between the JONEN WP and the CLOTZ fix and replace it with a segment from the JONEN WP to the DARYN, WV, WP (located at lat. 38°46′07.80″ N., long. 082°00′57.92″ W.). The DARYN WP is located near the Henderson, WV VORTAC.

These route modifications are being proposed to enhance the efficiency of the route structure.

RNAV routes are published in paragraph 2006 of FAA Order 7400.11A dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document will be subsequently published in the Order.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–39 CLAWD, NC to ASERY, WV [Amended]		
CLAWD, NC	WP	(Lat. 36°25′08.98″ N., long. 081°08′49.75″ W.)
TARCI, WV	WP	(Lat. 38°16′36.08″ N., long. 081°18′34.08″ W.)
ASERY, WV	WP	(Lat. 38°28′35.97″ N., long. 081°17′34.14″ W.)
Q–67 SMTTH, TN to DARYN, WV [Amended]		
SMTTH, TN	WP	(Lat. 35°54′41.57″ N., long. 084°00′19.74″ W.)
CEMEX, KY	WP	(Lat. 36°45′44.94″ N., long. 083°23′33.58″ W.)
IBATE, KY	WP	(Lat. 36°59′12.36″ N., long. 083°13′40.36″ W.)
TONIO, KY	FIX	(Lat. 37°15′15.20″ N., long. 083°01′47.53″ W.)
JONEN, KY	WP	(Lat. 37°59′08.91″ N., long. 082°32′46.19″ W.)
DARYN, WV	WP	(Lat. 38°46′07.80″ N., long. 082°00′57.92″ W.)

* * * * *

Issued in Washington, DC, on September 29, 2016.

M. Randy Willis,

Acting Manager, Airspace Policy Group.

[FR Doc. 2016–24209 Filed 10–6–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM01–8–000, RM10–12–000, RM12–3–000, ER02–2001–000]

Filing Requirements for Electric Utility Service Agreements; Electricity Market Transparency; Revisions to Electric Quarterly Report Filing Process; Electric Quarterly Reports

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Proposed revisions to electric quarterly report reporting requirements.

SUMMARY: In this document, pursuant to sections 205 and 220 of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (Commission) seeks comments on proposed revisions and clarifications of Electric Quarterly Report (EQR) reporting requirements and corresponding updates to the EQR Data Dictionary. In particular, this document proposes to: Require transmission providers to report ancillary services transaction data, to require filers to submit in the EQR certain tariff-related information that they submit in the e-Tariff system, and to require filers to submit time zone information in connection with transmission capacity reassignment transactions. This document also proposes to clarify how filers should report booked out transactions and seeks comments on issues relating to booked out transactions.

DATES: Comments on this proposal are due December 6, 2016.

FOR FURTHER INFORMATION CONTACT:

Donald Callow (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8838.

Maria Vouras (Legal Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8062.

SUPPLEMENTARY INFORMATION:

1. In this document, pursuant to sections 205 and 220 of the Federal Power Act,[1] the Commission requests comments on proposed revisions and clarifications of certain Electric Quarterly Report (EQR) reporting requirements and corresponding updates to the EQR Data Dictionary. Specifically, the Commission seeks comments on whether to: (1) Require transmission providers to report ancillary services transaction data; (2) require filers to submit into the FERC Tariff Reference fields in the EQR certain tariff-related information that they currently submit in the e-Tariff system; and (3) require filers to submit time zone information in connection with transmission capacity reassignment transactions. The Commission also proposes to clarify how booked out transactions should be reported in the EQR.

I. Background

2. In Order No. 2001,[2] the Commission amended its filing requirements to require companies subject to Commission regulations under FPA section 205 to electronically file EQRs summarizing the contractual terms and conditions in their agreements for all jurisdictional services, including cost-based sales, market-based rate sales, and transmission service, as well as transaction information for short-term and long-term market-based power sales and cost-based power sales. In Order No. 768,[3] the Commission, among other things, revised the EQR filing requirement to include non-public utilities[4] with more than a *de minimis* market presence.

3. On June 16, 2016, the Commission issued an order implementing certain clarifications to the EQR reporting requirements and updating the EQR Data Dictionary.[5] Specifically, the June 16 Order clarified reporting requirements related to ''Increment Name'' and ''Commencement Date of Contract Terms;'' affirmed the requirement that transmission providers must report transmission-related data in their EQRs; made certain updates to the EQR Data Dictionary; and clarified that future minor or non-material changes to EQR reporting requirements and the EQR Data Dictionary, such as those outlined in the June 16 Order, will be posted directly to the Commission's Web site and EQR users will be alerted via email of these changes. The June 16 Order further clarified that ''significant changes to the EQR reporting requirements and the EQR Data Dictionary will be proposed in a Commission order or rulemaking, which would provide an opportunity for comment.'' [6]

4. The Commission proposes to make further revisions and clarifications to the existing EQR reporting requirements based on a review of existing EQR data and reporting practices. Unlike the minor or non-material changes implemented in the June 16 Order, the revisions and clarifications proposed in this document may be more significant for EQR filers to implement. Accordingly, the Commission seeks comments on the revisions and clarifications proposed in this document.

II. Discussion

A. Ancillary Services Transaction Data

5. In Order No. 888, the Commission adopted six ancillary services to be included in the Open Access Transmission Tariff (OATT).[7] The six ancillary services established in Order No. 888 are now offered under the Order No. 890 *pro forma* OATT. In Order No. 890, the Commission also adopted ''generator imbalance'' as a new ancillary service.[8]

[1] 16 U.S.C. 824d, 824t.

[2] *Revised Public Utility Filing Requirements,* Order No. 2001, FERC Stats. & Regs.¶ 31,127, *reh'g denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *reh'g denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filing,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002), *order directing filing,* Order No. 2001–D, 102 FERC ¶ 61,334, *order refining filing requirements,* Order No. 2001–E, 105 FERC ¶ 61,352 (2003), *order on clarification,* Order No. 2001–F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements,* Order No. 2001–G, 120 FERC ¶ 61,270, *order on reh'g and clarification,* Order No. 2001–H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements,* Order No. 2001–I, FERC Stats. & Regs. ¶ 31,282 (2008).

[3] *Electricity Market Transparency Provisions of Section 220 of the Federal Power Act,* Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g,* Order No. 768–A, 143 FERC ¶ 61,054 (2013), *order on reh'g,* Order No. 768–B, 150 FERC ¶ 61,075 (2015).

[4] Order No. 768, FERC Stats. & Regs. ¶ 31,336 at P 19. *See also* 16 U.S.C. 824(f).

[5] *Filing Requirements for Electric Utility Service Agreements,* 155 FERC ¶ 61,280 (2016) (June 16 Order).

[6] *Id.* P 5.

[7] *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g,* Order No. 888–B, 81 FERC 61,248, *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002). The ancillary services available under the Order No. 888 OATT were Scheduling, System Control and Dispatch (Schedule 1), Reactive Supply and Voltage Control (Schedule 2), Regulation and Frequency Response (Schedule 3), Energy Imbalance (Schedule 4), Operating Reserve–Spinning Reserve (Schedule 5), Operating Reserve–Supplemental Reserve (Schedule 6).

[8] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241, at PP 667–68, *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228, *order on clarification,* Order No. 890–D, 129 FERC ¶ 61,126 (2009).

6. In Order No. 697,[9] the Commission revised its standards for market-based rate authority for sales of electric energy, capacity, and ancillary services. Among other things, Order No. 697 addressed the posting and reporting requirements for third-party sellers of ancillary services at market-based rates. In particular, the Commission required third-party sellers of ancillary services at market-based rates to provide information about their ancillary services transactions in the EQR.[10] The Commission concluded that the EQR filing requirement for third-party sellers of ancillary services at market-based rates provides an adequate means to monitor ancillary services sales by third parties.[11]

7. Following the issuance of Order No. 697, in Order No. 2001–I, the Commission clarified that third-party providers of ancillary services must submit information about their ancillary services associated with unbundled sales of transmission services in the Transaction Data section of the EQR, and that information about ancillary services reported by transmission providers should only be reported in the Contract Data section of the EQR.[12] The Commission based its clarifications on Order No. 2001, in which the Commission determined that ancillary services transaction data associated with transmission need not be reported when the transmission services are provided on an unbundled basis whereas ancillary services transaction data associated with power sales would need to be reported.[13] Accordingly, the Commission revised the EQR Data Dictionary definitions for ancillary services-related product names in Appendix A [14] to state: ''For Contracts, reported if the contract provides for sale of the product. For Transactions, sales by third-party providers (*i.e.,* non-transmission function) are reported.'' [15]

8. As stated above, unlike third-party providers of ancillary services, which must report information about their ancillary services in both the Contract Data and Transaction Data sections of the EQR, the Commission has required transmission providers to report only information about their ancillary services agreements in the Contract Data section if the contract provides for the sale of the ancillary services product. We propose to require transmission providers to report information about transactions made under their ancillary services agreements in the Transaction Data section of the EQR. Although transmission providers currently report information about their ancillary services agreements, without information about the transactions taking place under those agreements, there is inadequate visibility into the actual sales and rates being charged for ancillary services, especially where transmission providers have increased their reliance on markets to meet their ancillary services obligations. Therefore, we propose to obtain additional information about ancillary services from transmission providers to help the Commission, the public, and the industry determine the actual rates being charged for service under these agreements and to increase price transparency into the wholesale ancillary services markets. In addition, this information would enable the Commission to better evaluate the competitiveness of these markets and strengthen its ability to monitor them.

9. We seek comments on this proposal and on our proposal to revise the definitions of ancillary services-related product names in Appendix A to delete: ''For Transactions, sales by third-party providers (*i.e.,* non-transmission function) are reported.''

B. FERC Tariff Reference (Field Numbers 19 and 48)

10. The ''FERC Tariff Reference'' in Field Numbers 19 and 48 must be reported in both the Contract Data and Transaction Data sections of the EQR. Based on a review of EQR data, the tariff-related information submitted in these fields can be inconsistent or inaccurate. As a result, we propose that sellers input in Field Numbers 19 and 48 a subset of the tariff information that sellers currently use to report their tariff-related data in the e-Tariff system. In particular, we propose to require sellers to submit, in Field Numbers 19 and 48, four of the Business Names associated with their tariff (*i.e.,* Tariff Identifier, Filing Identifier, Tariff Record Identifier, and Option Code) in the same format that they currently provide this data in the e-Tariff system. This approach would allow greater consistency between the tariff designations used by sellers in the EQR and e-Tariff system. We seek comments on this proposal and on our proposal to revise the definitions in Field Numbers 19 and 48 to add: ''The FERC tariff reference must include four of the Business Names currently submitted in the e-Tariff system: Tariff Identifier, Filing Identifier, Tariff Record Identifier, and Option Code.''

C. Time Zone Field in Contract Data Section

11. In Order No. 768, the Commission eliminated ''Time Zone'' (previously listed as Field Number 45) from the Contract Data Section of the EQR.[16] However, since the issuance of Order No. 768, the Commission has determined that, while time zone information may not be necessary with respect to the contract-related information captured in the Contract Data Section of the EQR, it may be necessary for accurately reporting transmission capacity reassignment transactions, which are reported in the Contract Data Section of the EQR. As a result, the Commission proposes to add options related to time zone information in Field Number 30 in the Contract Data Section of the EQR, and seeks comments on this proposal.

D. Booked Out Transactions

12. ''Booked Out Power'' is a product currently defined in Appendix A of the EQR Data Dictionary as ''[e]nergy or capacity contractually committed bilaterally for delivery but not delivered due to some offsetting or countervailing trade (Transaction only).'' As stated in Order No. 2001, the power sales that make up book out transactions are typically for the sale for resale of electric energy in interstate commerce.[17] The Commission noted that the price, quantity and other agreement details in such agreements are indistinguishable from those in any other power sale agreement and that the agreements obligate the seller to provide power and obligate the buyer to pay the agreed-on prices.[18] Furthermore, the Commission noted that such book out transactions plainly affect or relate to those

[9] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified,* 121 FERC ¶ 61,260 (2007), *order on reh'g,* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268, *clarified,* 124 FERC ¶ 61,055, *order on reh'g,* Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g,* Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g,* Order No. 697–D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel* v. *FERC,* 659 F.3d 910 (9th Cir. 2011), *cert. denied,* 133 S. Ct. 26 (2012).

[10] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 1057–58.

[11] *Id.* P 1058.

[12] Order No. 2001–I, FERC Stats. & Regs. ¶ 31,282 at PP 29–30.

[13] *Id.* P 29 (citing Order No. 2001, FERC Stats. & Regs. 31,127 at P 271).

[14] These product names include ''Energy Imbalance,'' ''Generator Imbalance,'' ''Regulation & Frequency Response,'' ''Spinning Reserve,'' and ''Supplemental Reserve.''

[15] Order No. 2001–I, FERC Stats. & Regs. ¶ 31,282.

[16] *See* Order No. 768, FERC Stats. & Regs. ¶ 31,336 at P 121.

[17] Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 282.

[18] *Id.*

transactions and prices paid for power sales that go to delivery.[19]

13. Based on a review of EQR data, it appears that submissions related to ''Booked Out Power'' frequently contain inconsistent or inaccurate information. Without accurate reporting of booked out transactions, it is difficult to determine how much power is being traded compared to how much power is actually being delivered. Moreover, such inconsistencies or inaccuracies in reporting booked out transactions can distort the price and volume information related to power sales that is reported in the EQR. As a result, the Commission proposes to further clarify below what should be considered booked out transactions and provides several examples of how to properly report this information.

14. In addition, we find that, based on the current EQR database configuration, it is not possible to differentiate book outs of energy or capacity because EQR filers do not have the option to distinguish between the two products. As a result, we propose to replace the existing product name ''Booked Out Power'' in Appendix A of the EQR Data Dictionary with the product names ''Booked Out Energy'' and ''Booked Out Capacity.'' Accordingly, if the booked out transaction involves a book out of energy, the EQR filer should report it under the product name ''Booked Out Energy,'' and if the booked out transaction involves a book out of capacity, the EQR filer should report it under the product name ''Booked Out Capacity.'' ''Booked Out Energy'' will be defined in Appendix A as: ''Energy contractually committed for delivery but not actually delivered due to some offsetting or countervailing trade (Transaction only).'' ''Booked Out Capacity'' will be defined in Appendix A as: ''Capacity contractually committed for delivery but not actually delivered due to some offsetting or countervailing trade (Transaction only).'' We seek comments on the burden and impact of these proposals.

15. With respect to our proposed clarifications on how EQR filers should report booked out transactions, we note that, in Order No. 2001, the Commission explained that booked out transactions occur ''when the cumulative effect of a number of separate sales between *two parties* is such that they mutually agree to exchange their obligations to physically deliver power to each other, while maintaining all their other obligations, including payment.'' [20] In Order No. 2001–A, the Commission also explained that book outs are the offsetting of opposing buy-sell transactions at the same time and place and gave examples of how to report booked out transactions, which involved Company A and Company B.[21]

16. Some of the inaccuracies or inconsistencies in reporting booked out transactions may stem from filers' confusion as to whether booked out transactions need only be reported when they involve the same two counterparties rather than multiple parties. The Commission hereby proposes to clarify that booked out transactions must be reported in the EQRs regardless of the number of parties involved in these transactions. In an effort to further clarify which booked out transactions should be reported, we provide the following examples and seek comment on whether they are sufficiently clear. First, we note that a booked out transaction can be set forth as a direct countervailing transaction that occurs when two companies, both of whom are selling physical energy to each other for the same delivery period, mutually agree to exchange their physical delivery obligations to each other, but maintain all of their other obligations, including payment. In practice, this would look like the following: Company A is contractually committed to sell 100 megawatt hours (MWh) to Company B on 5/5/15 from 10:00 a.m. to 11:00 a.m. for $50/MWh. When scheduling and tagging, the scheduler notices that Company B is contractually committed to sell 50 MWh to Company A on 5/5/15 from 10:00 a.m. to 11:00 a.m. for $40/MWh. Because there is no need to pay for transmission of both complete transactions (*i.e.,* 100 MWh from Company A to Company B and 50 MWh from Company B to Company A), Company A and Company B agree to book the overlapping sale out and settle that portion financially.

17. Company A and Company B should report this booked out transaction in the EQR as shown in the table below:

Company A

TR ID	Begin Date	End Date	Product	Price	Quantity	Unit	Standardized Price	Standardized Quantity	Transaction Total
T1	5/5/2015 10:00:00	5/5/2015 11:00:00	Energy	$50	50 MWh	$/MWh	$50	50 MWh	$2,500
T2	5/5/2015 10:00:00	5/5/2015 11:00:00	Booked Out Energy	$50	50 MWh	$/MWh	$50	50 MWh	$2,500

Company B

TR ID	Begin Date	End Date	Product	Price	Quantity	Unit	Standardized Price	Standardized Quantity	Transaction Total
T1	5/5/2015 10:00:00	5/5/2015 11:00:00	Booked Out Energy	$40	50 MWh	$/MWh	$40	50 MWh	$2,000

18. Second, a booked out transaction as a curtailment occurs when one company is selling energy to another company and, in real time, the company buying the energy signals the seller to reduce the amount of energy it is providing to the buyer, in exchange for a curtailment payment commensurate with the reduced production. In practice, this would look like the following: Company C is contractually committed to sell 100 MWh to Company D on 5/5/15 from 11:00 a.m. to 12:00 p.m. for $30/MWh. On 5/5/15, just prior to 11:00 a.m., Company C is signaled to curtail its transmission of energy from 11:00 a.m. to 12:00 p.m. from 100 MWh to 50 MWh. Company C will receive a curtailment payment based on its contract with Company D equal to $35/MWh times the difference between Company C's curtailed level of production (*i.e.,* 50 MWh) and the level of production it would have otherwise had (100 MWh). Because Company C received payment for 50 MWh of physically scheduled energy which was not delivered, Company C would book out that amount at the contractually set rate of $35/MWh and Company D would not report the transaction in the EQR.

19. Company C should report this transaction as shown in the table below:

[19] *Id.* P 285.

[20] *Id.* P 8 n.9 (emphasis added).

[21] Order No. 2001–A, 100 FERC ¶ 61,074 at P 22.

Company C									
TR ID	Begin Date	End Date	Product	Price	Quantity	Unit	Standardized Price	Standardized Quantity	Transaction Total
T1	5/5/2015 11:00:00	5/5/2015 12:00:00	Energy	$30	50 MWh	$/MWh	$30	50 MWh	$1,500
T2	5/5/2015 11:00:00	5/5/2015 12:00:00	Booked Out Energy	$35	50 MWh	$/MWh	$35	50 MWh	$1,750

20. Finally, a booked out transaction known as a daisy chain occurs when there are at least three companies in a chain of energy sales and at least one company appears twice in that chain (*e.g.,* as a seller and as a buyer). It could be considered as an ''indirect countervailing transaction'' if compared to the direct countervailing transaction. In practice, this would look like the following: Company E is contractually committed to sell 100 MWh to Company F on 5/5/15 from 12:00 p.m. to 1:00 p.m. for $30/MWh. Company F is contractually committed to sell 50 MWh to Company G on 5/5/15 from 12:00 p.m. to 1:00 p.m. for $30/MWh. Company G is contractually committed to sell 20 MWh to Company E on 5/5/15 from 12:00 p.m. to 1:00 p.m. for $30/MWh. Because there is no need to pay for transmission of each complete transaction (*i.e.,* 100 MWh from Company E to Company F, 50 MWh from Company F to Company G, and 20 MWh from Company G to Company E), they agree to book out and settle the overlapping portion financially.

21. Company E, Company F, and Company G should report this booked out transaction in the EQR as shown in the table below:

Company E									
TR ID	Begin Date	End Date	Product	Price	Quantity	Unit	Standardized Price	Standardized Quantity	Transaction Total
T1	5/5/2015 12:00:00	5/5/2015 13:00:00	Energy	$30	80 MWh	$/MWh	$30	80 MWh	$2,400
T2	5/5/2015 12:00:00	5/5/2015 13:00:00	Booked Out Energy	$30	20 MWh	$/MWh	$30	20 MWh	$600

Company F									
TR ID	Begin Date	End Date	Product	Price	Quantity	Unit	Standardized Price	Standardized Quantity	Transaction Total
T1	5/5/2015 12:00:00	5/5/2015 13:00:00	Energy	$30	30 MWh	$/MWh	$30	30 MWh	$900
T2	5/5/2015 12:00:00	5/5/2015 13:00:00	Booked Out Energy	$30	20 MWh	$/MWh	$30	20 MWh	$600

Company G									
TR ID	Begin Date	End Date	Product	Price	Quantity	Unit	Standardized Price	Standardized Quantity	Transaction Total
T1	5/5/2015 12:00:00	5/5/2015 13:00:00	Booked Out Energy	$30	20 MWh	$/MWh	$30	20 MWh	$600

22. We also seek comments on whether there are other aspects of booked out transactions that have caused filers confusion and that the Commission should clarify.

III. Information Collection Statement

23. The Paperwork Reduction Act (PRA) [22] requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons or contained in a rule of general applicability. OMB regulations [23] require approval of certain information collection requirements imposed by agency rules. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of these proposals will not be penalized for failing to respond to this collection of information unless the collection of information displays a valid OMB control number.

24. We solicit comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

25. The proposals in this document will affect public utilities and certain non-public utilities. The proposals would require transmission providers to report ancillary services transaction data; require filers to submit into the FERC Tariff Reference fields in the EQR certain tariff-related information that they currently submit in the e-Tariff system; and require EQR filers to submit time zone information in connection with transmission capacity reassignment transactions. The proposals in this document also clarify how booked out transactions should be reported in the EQR.

26. There are approximately 2,196 public utilities and about 40 non-public utilities that currently file EQRs. About 405 of the 2,196 public utilities only submit data in the ID Data section of the EQR [24] because they have no data to report in the Contract or Transaction Data sections of the EQR. We estimate there are about 266 public utilities and 14 non-public utilities that would be impacted by the proposal to report ancillary service transaction data, based on the number of public utility and non-public utility transmission providers that are currently reporting ancillary services in the Contract Data section of the EQR. Of the total 2,196 public utilities, approximately 1,791 have e-Tariffs on file and submit data in the Contract and/or Transaction Data sections of the EQR and would, therefore, be impacted by the proposal to submit additional tariff-related information in their EQRs. Similarly, about 14 non-public utilities have e-Tariffs on file and submit data in the Contract and/or Transaction Data sections of the EQR and would, therefore, be impacted. We also estimate that approximately 29 public utilities

[22] 44 U.S.C. 3501–3520.

[23] 5 CFR 1320.

[24] The ID Data section generally captures contact information identifying the seller company and the agent who prepared the company's filing, along with the applicable filing quarter.

and 3 non-public utilities are currently reporting transmission capacity reassignment transactions and would be affected by the proposal to include the time zone information in connection with these transactions. Finally, we estimate that about 20 public utilities and 5 non-public utilities would need to distinguish between booked out energy and booked out capacity and, therefore, would be impacted by the proposal to separately identify and report these transactions.

27. Burden Estimate: The estimated burden and cost [25] for the requirements proposed in this document follow. With respect to the burden and cost estimate associated with booked out transactions, our estimate is limited to the proposal to require EQR filers to distinguish between and separately report booked out energy and booked out capacity. The Commission previously provided burden and cost estimates for complying with the requirement to report booked out transactions when the requirement was initially set forth in Order No. 2001.[26]

Burden Changes as Proposed in Notice Seeking Comment on Electric Quarterly Report FERC-920 Reporting Requirements

	Annual No. of Respondents	Annual No. of Responses	Annual Total Responses	Average No. Hours per Response	Average Hourly Burden Cost	Annual Total Burden Hours	Annual Total Burden Cost
	(1)	(2)	(1) * (2) = (3)	(4)	(5)	(3) * (4) = (6)	(3) * (4) * (5) = (7)
Initial One Time Costs							
Public Utilities							
Reporting Ancillary Service Transactions	266	1	266	24.0	$71	6,384	$454,573
Reporting eTariff Data Fields	1791	1	1791	24.0	$71	42,984	$3,060,676
Reinstating "Time Zone" Field in Contracts	29	1	29	13.0	$71	377	$26,844
Distinguishing Booked Out Transactions	20	1	20	7.0	$80	140	$11,190
Non-Public Utilities							
Reporting Ancillary Service Transactions	14	1	14	24.0	$71	336	$23,925
Reporting eTariff Data Fields	14	1	14	24.0	$71	336	$23,925
Reinstating "Time Zone" Field in Contracts	3	1	3	13.0	$71	39	$2,777
Distinguishing Booked Out Transactions	5	1	5	7.0	$80	35	$2,798
Ongoing Annual Costs							
Public Utilities							
Reporting Ancillary Service Transactions	266	4	1064	2.0	$53	2,128	$111,725
Reporting eTariff Data Fields	1791	4	7164	2.0	$53	14,328	$752,256
Reinstating "Time Zone" Field in Contracts	29	4	116	0.5	$61	58	$3,511
Distinguishing Booked Out Transactions	20	4	80	0.0	$0	0	$0
Non-Public Utilities							
Reporting Ancillary Service Transactions	14	4	56	2.0	$53	112	$5,880
Reporting eTariff Data Fields	14	4	56	2.0	$53	112	$5,880
Reinstating "Time Zone" Field in Contracts	3	4	12	0.5	$61	6	$363
Distinguishing Booked Out Transactions	5	4	20	0.0	$0	0	$0
					Initial Hours/Costs Public Utilities	49,885	$3,553,283
					Initial Hours/Costs Non-Public Utilities	746	$53,424
					Total Initial Hours/Costs	**50,631**	**$3,606,707**
					Ongoing Hours/Costs Public Utilities	16,514	$867,492
					Ongoing Hours/Costs Non-Public Utilities	230	$12,124
					Total Ongoing Hours/Costs	**16,744**	**$879,616**

For public and non-public utilities, the hourly cost (rounded, for salary plus benefits) for one-time implementation are computed as follows:

- For ''Reporting Ancillary Service Transactions,'' ''Reporting e-Tariff Data Fields,'' and ''Reinstating 'Time Zone' Field in Contracts,'' the estimated cost is $71/hour.[27]
- For ''Distinguishing Booked Out Transactions,'' the estimated cost is $80/hour.[28]

For public and non-public utilities, the ongoing hourly costs (rounded, for salary plus benefits) are computed as follows.

- For the ''Reporting Ancillary Service Transactions'' and ''Submitting Four Unique Data Fields Associated with Tariff in e-Tariff,'' the estimated cost is $53/hour.[29]
- For ''Reinstating 'Time Zone' Field in Contracts,'' the estimated cost is $61/hour.[30]
- For ''Distinguishing Booked Out Transactions,'' there is no additional ongoing cost.

Title: FERC–920, Electric Quarterly Report (EQR).

Action: Revision of currently approved collection of information.

OMB Control No.: 1902–0255.

Respondents: Public Utilities and Certain Non-Public Utilities.

Frequency of Information: Initial implementation and quarterly updates.

28. *Necessity of Information:* The Commission's EQR reporting requirements must keep pace with market developments and technological advancements. Collecting and formatting data as discussed in this document will provide the Commission with the necessary information to identify and address potential exercises of market power and better inform Commission policies and regulations.

29. *Internal Review:* The Commission has made a preliminary determination that the proposed revisions are necessary in light of technological advances in data collection processes. The Commission has assured itself, by means of its internal review, that there

[25] The estimated hourly cost (salary plus benefits) are based on the figures for May 2015 posted by the Bureau of Labor Statistics for the Utilities sector (available at *http://www.bls.gov/oes/current/naics2_22.htm*) and updated March 2016 for benefits information (at *http://www.bls.gov/news.release/ecec.nr0.htm*). The hourly estimates for salary plus benefits are: (a) Legal (code 23–0000), $128.94; (b) Computer and mathematical (code 15–0000), $60.54; (c) Information systems manager (code 11–3021), $91.63; (d) IT security analyst (code 15–1122), $58.00; (e) Auditing and accounting (code 13–2011), $53.78; and (f) Information and record clerk (code 43–4199), $37.69.

[26] *See* Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at PP 368–378.

[27] This estimate is based on the following percentages (rounded) of time spent: (a) Legal, 12.5%; (b) Computer and mathematical, 37.5%; (c) Information systems manager, 16.7%; (d) IT security analyst, 12.5%; (e) Auditing and accounting, 12.5%; and (f) Information and record clerk, 8.3%.

[28] This estimate is based on the following percentages of time spent: (a) Legal, 28.6%; (b) Computer and mathematical, 14.3%; (c) Information systems manager, 14.3%; (d) IT security analyst, 14.3%; (e) Auditing and accounting, 14.3%; and (f) Information and record clerk, 14.3%.

[29] This estimate is based on the following percentages (rounded) of time spent: (a) Computer and mathematical, 25%; (b) IT security analyst, 25%; (c) Auditing and accounting, 25%; and (d) Information and record clerk, 25%.

[30] This estimate is based on the following percentage of time spent: Computer and mathematical, 100%.

is specific, objective support for the burden estimate associated with the information requirements.

30. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

31. Comments concerning the information collections proposed in this document, and the associated burden estimates, should be sent to the Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Office for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: *oira_submission@omb.eop.gov.* Please reference FERC–920 and OMB Control No. 1902–0255 (FERC–920) in your submission.

IV. Environmental Analysis

32. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[31] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[32] The actions proposed here fall within a categorical exclusion in the Commission's regulations, *i.e.,* they involve information gathering, analysis, and dissemination.[33] Therefore, environmental analysis is unnecessary and has not been performed.

V. Comment Procedures

33. The Commission invites interested persons to submit comments on the matters and issues posted in this document, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due December 6, 2016. Comments must refer to Docket Nos. RM01–8, RM10–12, RM12–3, or ER02–2001 and must include the commenter's name, the organization they represent, if applicable, and their address. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

34. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

35. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VI. Document Availability

36. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

37. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

38. User assistance is available for eLibrary and the Commission's Web site during the Commission's normal business hours from Commission's Online Support services at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission.

Issued September 22, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Attachment—Proposed Revisions to Electric Quarterly Report Data Dictionary

BILLING CODE 6717–01–P

[31] *Regulations Implementing National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[32] *Id.*

[33] 18 CFR 380.4 (2016).

EQR Data Dictionary

Contract Data

Field #	Field	Required	Value	Definition
19	FERC Tariff Reference	✓	~~Unrestricted text (60 characters)~~ If e-Tariff Holder, enter: tariff_id:*n*, filing_id:*n*, record_id:*n*, option_code:*C*, (where *n* is an integer up to 10 digits and *C* is a character from A-Z) If Non-Public Utility, enter NPUIf Non-Public Utility,	The FERC tariff reference cites the document that specifies the terms and conditions under which a Seller is authorized to make transmission sales, power sales or sales of related jurisdictional services at cost-based rates or market-based rates. The FERC tariff reference must include four of the Business Names submitted in the e-Tariff system: Tariff Identifier, Filing Identifier, Tariff Record Identifier, and Option Code. If the sales are market-based, the tariff that is specified in the FERC order granting the Seller Market Based Rate Authority must be listed. If a non-public utility does not have a FERC Tariff Reference, it should enter "NPU" for the FERC Tariff Reference. If e-Tariff Holder, enter values as e-Tariff Element Name:e-Tariff Element Value Example: tariff_id:1, filing_id:235, record_id:5000, option_code:A
~~30~~	~~Product Type Name~~	~~✓~~	~~CR - Capacity Reassignment~~	~~An agreement under which a transmission provider sells, assigns or transfers all or portion of its rights to an eligible customer.~~
30	Product Type Name	✓	CR - AD - Capacity Reassignment	An agreement under which a transmission provider sells, assigns or transfers all or portion of its rights to an eligible customer, reported in Atlantic Daylight time.
30	Product Type Name	✓	CR - AP - Capacity Reassignment	An agreement under which a transmission provider sells, assigns or transfers all or portion of its rights to an eligible customer, reported in Atlantic Prevailing time.
30	Product Type Name	✓	CR - AS - Capacity Reassignment	An agreement under which a transmission provider sells, assigns or transfers all or portion of its rights to an eligible customer, reported in Atlantic Standard time.
30	Product Type Name	✓	CR - CD - Capacity Reassignment	An agreement under which a transmission provider sells, assigns or transfers all or portion of its rights to an eligible customer, reported in Central Daylight time.
30	Product Type Name	✓	CR - CP - Capacity Reassignment	An agreement under which a transmission provider sells, assigns or transfers all or portion of its rights to an eligible customer, reported in Central Prevailing time.
30	Product Type Name	✓	CR - CS - Capacity Reassignment	An agreement under which a transmission provider sells, assigns or transfers all or portion of its rights to an eligible customer, reported in Central Standard time.
30	Product Type Name	✓	CR - ED - Capacity Reassignment	An agreement under which a transmission provider sells, assigns or transfers all or portion of its rights to an eligible customer, reported in Eastern Daylight time.
30	Product Type Name	✓	CR - EP - Capacity Reassignment	An agreement under which a transmission provider sells, assigns or transfers all or portion of its rights to an eligible customer, reported in Eastern Prevailing time.

30	Product Type Name	✓	CR - ES - Capacity Reassignment	An agreement under which a transmission provider sells, assigns or transfers all or portion of its rights to an eligible customer, reported in Eastern Standard time.
30	Product Type Name	✓	CR - MD - Capacity Reassignment	An agreement under which a transmission provider sells, assigns or transfers all or portion of its rights to an eligible customer, reported in Mountain Daylight time.
30	Product Type Name	✓	CR - MP - Capacity Reassignment	An agreement under which a transmission provider sells, assigns or transfers all or portion of its rights to an eligible customer, reported in Mountain Prevailing time.
30	Product Type Name	✓	CR - MS - Capacity Reassignment	An agreement under which a transmission provider sells, assigns or transfers all or portion of its rights to an eligible customer, reported in Mountain Standard time.
30	Product Type Name	✓	CR - PD - Capacity Reassignment	An agreement under which a transmission provider sells, assigns or transfers all or portion of its rights to an eligible customer, reported in Pacific Daylight time.
30	Product Type Name	✓	CR - PP - Capacity Reassignment	An agreement under which a transmission provider sells, assigns or transfers all or portion of its rights to an eligible customer, reported in Pacific Prevailing time.
30	Product Type Name	✓	CR - PS - Capacity Reassignment	An agreement under which a transmission provider sells, assigns or transfers all or portion of its rights to an eligible customer, reported in Pacific Standard time.
48	FERC Tariff Reference	✓	~~Unrestricted text (60 characters)~~ If e-Tariff Holder, enter: tariff_id:*n*, filing_id:*n*, record_id:*n*, option_code:*C*, (where *n* is an integer up to 10 digits and *C* is a character from A-Z) If Non-Public Utility, enter NPU	The FERC tariff reference cites the document that specifies the terms and conditions under which a Seller is authorized to make transmission sales, power sales or sales of related jurisdictional services at cost-based rates or market-based rates. The FERC tariff reference must include four of the Business Names submitted in the e-Tariff system: Tariff Identifier, Filing Identifier, Tariff Record Identifier, and Option Code. If the sales are market-based, the tariff that is specified in the FERC order granting the Seller Market Based Rate Authority must be listed. If a non-public utility does not have a FERC Tariff Reference, it should enter "NPU" for the FERC Tariff Reference.

EQR Data Dictionary

Appendix A. Product Names

Product Name	Contract Product	Transaction Product	Definition
BOOKED OUT CAPACITY		✓	Capacity contractually committed for delivery but not actually delivered due to some offsetting or countervailing trade (Transaction only).
BOOKED OUT ENERGY		✓	Energy contractually committed for delivery but not actually delivered due to some offsetting or countervailing trade (Transaction only).
~~BOOKED OUT POWER~~		~~✓~~	~~Energy or capacity contractually committed bilaterally for delivery but not actually delivered due to some offsetting or countervailing trade (Transaction only).~~
ENERGY IMBALANCE	✓	✓	Service provided when a difference occurs between the scheduled and the actual delivery of energy to a load obligation (Ancillary Service). For Contracts, reported if the contract provides for sale of the product. ~~For Transactions, sales by third-party providers (i.e., non-transmission function) are reported.~~
GENERATOR IMBALANCE	✓	✓	Service provided when a difference occurs between the output of a generator located in the Transmission Provider's Control Area and a delivery schedule from that generator to (1) another Control Area or (2) a load within the Transmission Provider's Control Area over a single hour (Ancillary Service). For Contracts, reported if the contract provides for sale of the product. ~~For Transactions, sales by third-party providers (i.e., non-transmission function) are reported.~~
REGULATION & FREQUENCY RESPONSE	✓	✓	Service providing for continuous balancing of resources (generation and interchange) with load, and for maintaining scheduled interconnection frequency by committing on-line generation where output is raised or lowered and by other non-generation resources capable of providing this service as necessary to follow the moment-by-moment changes in load (Ancillary Service). For Contracts, reported if the contract provides for sale of the product. ~~For Transactions, sales by third-party providers (i.e., non-transmission function) are reported.~~
SPINNING RESERVE	✓	✓	Unloaded synchronized generating capacity that is immediately responsive to system frequency and that is capable of being loaded in a short time period or non-generation resources capable of providing this service (Ancillary Service). For Contracts, reported if the contract provides for sale of the product. ~~For Transactions, sales by third-party providers (i.e., non-transmission function) are reported.~~
SUPPLEMENTAL RESERVE	✓	✓	Service needed to serve load in the event of a system contingency, available with greater delay than SPINNING RESERVE. This service may be provided by generating units that are on-line but unloaded, by quick-start generation, or by interruptible load or other non-generation resources capable of providing this service (Ancillary Service). For Contracts, reported if the contract provides for sale of the product. ~~For Transactions, sales by third-party providers (i.e., non-transmission function) are reported.~~

[FR Doc. 2016–23447 Filed 10–6–16; 8:45 am]
BILLING CODE 6717–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2016–C–2767]

Wm. Wrigley Jr. Company; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Wm. Wrigley Jr. Company, proposing that the color additive regulations be amended to provide for the safe use of calcium carbonate to color hard and soft candy, mints, and chewing gum.

DATES: The color additive petition was filed on September 1, 2016.

FOR FURTHER INFORMATION CONTACT: Celeste Johnston, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740–3835, 240–402–1282.

SUPPLEMENTARY INFORMATION: Under section 721(d)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379e(d)(1)), we are giving notice that we have filed a color additive petition (CAP 6C0307), submitted by Wm. Wrigley Jr. Company, c/o Exponent, 1150 Connecticut Ave. NW., Suite 1100, Washington, DC 20036. The petition proposes to amend the color additive regulations in part 73 (21 CFR part 73) *Listing of Color Additives Exempt From Certification,* to provide for the safe use of calcium carbonate to color hard and soft candy, mints, and chewing gum.

We have determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: October 3, 2016.

Dennis M. Keefe,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 2016–24208 Filed 10–6–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2015–0015]

RIN 1218–AC94

Additional PortaCount® Quantitative Fit-Testing Protocols: Amendment to Respiratory Protection Standard

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: OSHA is proposing to add two modified PortaCount® quantitative fit-testing protocols to its Respiratory Protection Standard. The proposed protocols would apply to employers in general industry, shipyard employment, and the construction industry. Both proposed protocols are variations of the existing OSHA-accepted PortaCount® protocol, but differ from it by the exercise sets, exercise duration, and sampling sequence. If approved, the modified PortaCount® protocols would be alternatives to the existing quantitative fit-testing protocols already listed in an appendix of the Respiratory Protection Standard. In addition, OSHA is proposing to amend an appendix to clarify that PortaCount® fit test devices equipped with the N95-Companion™ Technology are covered by the approved PortaCount® protocols.

DATES: Submit comments to this proposal, including comments to the information collection (paperwork) requirements, by December 6, 2016.

ADDRESSES: *Written comments.* You may submit comments, identified by Docket No. OSHA–2015–0015, by any of the following methods:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal e-Rulemaking Portal. Follow the instructions online for making electronic submissions.

Fax: If your submissions, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: You must submit your comments to the OSHA Docket Office, Docket No. OSHA–2015–0015, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). Deliveries (hand, express mail, messenger, or courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., ET.

Instructions: All submissions must include the Agency name and the docket number for this rulemaking (Docket No. OSHA–2015–0015). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as social security numbers and birthdates.

If you submit scientific or technical studies or other results of scientific research, OSHA requests (but does not require) that you also provide the following information where it is available: (1) Identification of the funding source(s) and sponsoring organization(s) of the research; (2) the extent to which the research findings were reviewed by a potentially affected party prior to publication or submission to the docket, and identification of any such parties; and (3) the nature of any financial relationships (*e.g.*, consulting agreements, expert witness support, or research funding) between investigators who conducted the research and any organization(s) or entities having an interest in the rulemaking. If you are submitting comments or testimony on the Agency's scientific and technical analyses, OSHA requests (but does not require) that you disclose: (1) The nature of any financial relationships you may have with any organization(s) or entities having an interest in the rulemaking; and (2) the extent to which your comments or testimony were reviewed by an interested party prior to its submission. Disclosure of such information is intended to promote transparency and scientific integrity of data and technical information submitted to the record. This request is consistent with Executive Order 13563, issued on January 18, 2011, which instructs agencies to ensure the objectivity of any scientific and technological information used to support their regulatory actions. OSHA emphasizes that all material submitted to the rulemaking record will be considered by the Agency to develop the final rule and supporting analyses.

Docket: To read or download comments and materials submitted in response to this **Federal Register** notice, go to Docket No. OSHA–2015–0015 at *http://www.regulations.gov* or to the OSHA Docket Office at the address above. All comments and submissions are listed in the *http://*

www.regulations.gov index; however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through that Web site. All comments and submissions are available for inspection and, where permissible, copying at the OSHA Docket Office.

Electronic copies of this **Federal Register** document are available at *http://regulations.gov.* Copies also are available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1888. This document, as well as news releases and other relevant information, is also available at OSHA's Web site at *http://www.osha.gov.*

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact Frank Meilinger, Director, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *Meilinger.francis2@dol.gov.* For technical inquiries, contact Natalia Stakhiv, Directorate of Standards and Guidance, Room N–3718, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2272; email *stakhiv.natalia@dol.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

Appendix A of OSHA's Respiratory Protection Standard, 29 CFR 1910.134, currently includes four quantitative fit-testing protocols using the following challenge agents: A non-hazardous generated aerosol such as corn oil, polyethylene glycol 400, di-2-ethyl hexyl sebacate, or sodium chloride; ambient aerosol measured with a condensation nuclei counter (CNC), also known as the standard PortaCount® protocol; controlled negative pressure; and controlled negative pressure REDON. Appendix A of the Respiratory Protection Standard also specifies the procedure for adding new fit-testing protocols to this standard. Under that procedure, if OSHA receives an application for a new fit-testing protocol meeting certain criteria, the Agency must commence a rulemaking proceeding to consider adopting the proposal. These criteria include: (1) A test report prepared by an independent government research laboratory (*e.g.*, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, the National Institute for Standards and Technology) stating that the laboratory tested the protocol and found it to be accurate and reliable; or (2) an article published in a peer-reviewed industrial-hygiene journal describing the protocol and explaining how the test data support the protocol's accuracy and reliability. OSHA considers such proposals under the notice-and-comment rulemaking procedures specified in section 6(b)(7) of the Occupational Safety and Health Act of 1970 (the ''Act'') (29 U.S.C. 655(b)(7)). Using this procedure, OSHA added one fit-testing protocol (*i.e.*, the controlled negative pressure REDON quantitative fit-testing protocol) to appendix A of its Respiratory Protection Standard (69 FR 46986, Aug. 4, 2004).

In 2006, TSI Incorporated (hereinafter referred to as TSI) submitted two quantitative fit-testing protocols for acceptance under the Respiratory Protection Standard. OSHA published a notice of proposed rulemaking (NPRM) for those protocols on January 21, 2009 (74 FR 3526–01). The proposed protocols used the same fit-testing requirements and instrumentation specified for the standard PortaCount® protocol in paragraphs (a) and (b) of Part I.C.3 of appendix A of the Respiratory Protection Standard, except:

- Revised PortaCount® QNFT protocol 1 reduced the duration of the eight fit-testing exercises from 60 seconds to 30 seconds; and
- Revised PortaCount® QNFT protocol 2 eliminated two of the eight fit-testing exercises, with each of the remaining six exercises having a duration of 40 seconds; in addition, this proposed protocol increased the minimum pass-fail fit-testing criterion (*i.e.*, reference fit factors) from a fit factor of 100 to 200 for half masks, and from 500 to 1000 for full facepieces.

OSHA withdrew the NPRM on January 27, 2010 (75 FR 4323–01). In withdrawing the NPRM, the Agency concluded that the study data failed to adequately demonstrate that these protocols were sufficiently accurate or as reliable as the quantitative fit-testing protocols already listed in appendix A. OSHA found that the studies submitted with the application did not differentiate between results for half-mask and full-facepiece respirators. OSHA also determined that TSI had not demonstrated that these protocols would accurately determine fit for filtering facepiece respirators.

II. Summary and Explanation of the Proposal

A. Introduction

One of the OSHA-accepted quantitative fit test protocols listed in appendix A is the standard PortaCount® protocol. The standard PortaCount® protocol and instrumentation was introduced by TSI in 1987, and the use of the standard PortaCount® protocol was originally allowed by OSHA under a compliance interpretation published in 1988, until it was incorporated into appendix A in 1998.

In a letter dated July 10, 2014, Darrick Niccum of TSI submitted an application requesting that OSHA approve three additional PortaCount® quantitative fit test protocols to add to appendix A (TSI, 2014a). These three additional protocols are modified versions of the standard PortaCount® protocol. Mr. Niccum included a copy of three peer-reviewed articles from the industrial-hygiene journal, entitled *Journal of the International Society for Respiratory Protection*, describing the accuracy and reliability of these proposed protocols (Richardson et al., 2013; Richardson et al., 2014a; Richardson et al., 2014b). The application letter also included a copy of the ANSI/AIHA Z88.10–2010 standard (ANSI/AIHA, 2010) and a discussion about how the ANSI/AIHA Z88.10–2010, Annex 2 methodology was utilized by TSI to conduct a statistical comparison of fit test methods.

For consistency with the terminology used in the three peer-reviewed articles, OSHA will, in this section of the NPRM (*i.e.*, Summary and Explanation of the Proposal), refer to the three new modified PortaCount® protocols as ''Fast-Full method'' for full-facepiece elastomeric respirators, ''Fast-Half method'' for half-mask elastomeric respirators, and ''Fast-FFR method'' for filtering-facepiece respirators (FFR). It should be noted that the ''Fast-Full'' method and the ''Fast-Half'' method are identical protocols, but were evaluated for method performance separately in two peer-reviewed articles. Since TSI's ''Fast-Full'' and ''Fast-Half'' methods are identical protocols, OSHA is proposing that only two new protocols be added to appendix A: A modified PortaCount® protocol for *both* full-facepiece and half-mask elastomeric respirators and a modified PortaCount® protocol for filtering-facepiece respirators.

All three of TSI's modified PortaCount® protocols use the same fit-testing requirements and instrumentation specified for the standard PortaCount® protocol in paragraphs (a) and (b) of Part I.C.3 of

appendix A of the Respiratory Protection Standard, except that they differ from the standard PortaCount® protocol by the exercise sets, exercise duration, and sampling sequence. The major difference between the proposed Fast-Full and Fast-Half methods and the standard PortaCount® protocol is they include only 3 of the 7 current test exercises (*i.e.*, bending, head side-to-side, and head up-and-down) plus a new exercise (*i.e.*, jogging-in-place), and reduce each exercise duration, thereby reducing the total test duration from 7.2 minutes to 2.5 minutes. The peer-reviewed articles describe studies comparing the fit factors for the new modified PortaCount® protocols to a reference method based on the American National Standards Institute (ANSI/AIHA) Z88.10–2010 Annex A2 ''Criteria for Evaluating New Fit Test Methods'' approach. This approach requires the performance evaluation study administer sequential paired tests using the proposed fit-test method and reference method during the same respirator donning.

B. Evaluation of Fast-Half Method

1. Study Methods

The peer-reviewed article entitled ''Evaluation of a Faster Fit Testing Method for Elastomeric Half-Mask Respirators Based on the TSI PortaCount®,'' appeared in a 2014 issue (Volume 31, Number 1) of the *Journal of the International Society for Respiratory Protection* (Richardson et al., 2014a). The study authors selected three models of NIOSH-approved, half-mask air-purifying respirators from ''leading U.S. mask manufacturers'' equipped with P100 filters. Each model was available in three sizes. Respirators were probed with a flush sampling probe located between the nose and mouth. Twenty-five participants (9 female; 16 male) were included in the study; face sizes were predominantly in the smaller and central cells (1, 2, 3, 4, 5, 7, 8) of the NIOSH bivariate panel; no subjects were in cells 6, 9 or 10 (those with longer—nose to chin—face sizes).

Test subjects donned the respirator for a five-minute comfort assessment and then performed two sets of fit-test exercises, either using the Reference method or the Fast-Half method. The order of the two sets of fit-test exercises was randomized. The Reference method consisted of the eight standard OSHA exercises listed in Section I.A.14 of appendix A of the Respiratory Protection Standard, minus the grimace exercise, in the same order as described in the standard (*i.e.*, normal breathing, deep breathing, head side-to-side, head up-and-down, talking, bending over, normal breathing). Each exercise was performed for 60 seconds.

According to TSI, the study authors chose not to include the grimace exercise because little or no support was found for the grimace exercise among respirator fit-test experts (TSI, 2015a). TSI explained that ''[t]he most common fault expressed by a number of experienced fit testers and industry experts was that the grimace cannot be consistently applied or even defined (TSI, 2015a).'' They further commented that the grimace is intended to break the face seal and may not reseal in the same way for subsequent exercises. As a result, the shift in the respirator can potentially confound comparison of the fit-test methods. TSI also noted that the fit factor from the grimace (if measured) is not used to calculate the overall fit factor test result under the standard PortaCount® method (TSI, 2015a).

The Fast-Half method included four exercises—bending, jogging in place, head side-to-side and head up-and-down. Two breaths were taken at each extreme of the head side-to-side and head up-and-down exercises and at the bottom of the bend in the bending exercise.

Although not discussed in the peer-reviewed journal article, TSI explained their rationale for selecting the exercises that were the most rigorous for (*i.e.*, the best at) identifying poor fitting respirators in two documents submitted to the Agency (TSI, 2014b; TSI, 2015a). TSI selected the exercises based on a literature review, informal conversations with industry fit test experts, and in-house pilot studies. ''Talking out loud,'' ''bending,'' and ''moving head up/down'' were determined to be the three most critical exercises in determining the overall fit factor for abbreviated respirator fit test methods by Zhuang et al. (Zhuang et al., 2004). TSI's in-house pilot collected fit-test data on subjects using consecutive sets of the seven-exercise Reference method described above (TSI, 2014b). TSI analyzed the frequency with which each exercise produced the lowest fit factor. Fit test data was separated into three groups: All fit tests, good-fitting fit tests, and poor-fitting fit tests. A poor-fitting fit test was defined as any test where at least one exercise failed. The results showed that normal breathing, deep breathing, and talking rarely produced the lowest fit factor (frequency ≤3 percent) for poor-fitting full-facepiece respirators. On this basis, these three less rigorous exercises were eliminated for both the Fast-Full and Fast-Half methods. The bending exercise was the most rigorous exercise for poor-fitting full-facepiece and half-mask elastomeric respirators. Talking was the exercise that most often had the lowest fit factor for good-fitting full-facepiece and half-mask respirators in the pilot study. None of the other exercises stood out for half-mask respirators, but TSI reasoned that there was a lack of data suggesting that half-mask respirator fit tests should use different exercises than full-facepiece respirators (TSI, 2015a). The study added jogging-in-place for a fourth rigorous test exercise as part of the protocol. Jogging is an alternate (*i.e.*, elective as opposed to required) exercise in Annex 2—''Criteria for Evaluating New Fit Test Methods of the Respiratory Protection'' of the ANSI/AIHA Z88.10–2010 standard.

A single CPC instrument, PortaCount® Model 8030 (TSI Incorporated, Shoreview MN), was used throughout the Fast-Half method validation experiments. The instrument was connected to two equal-length sampling tubes for sampling inside-facepiece and ambient particle concentrations. TSI software was used to switch between sampling lines and record concentration data. The experiments were conducted in a large chamber to which a NaCl aerosol was added to augment particle concentrations, which were expected to range between 5,000 and 20,000 particles/cm^3 (target = 10,000 p/cm^3).

During the Reference method, for each exercise, the ambient sampling tube was first purged for 4 seconds before an ambient sample was taken for 5 seconds, followed by an 11-second purge of the in-facepiece sampling tube and a 40-second in-facepiece sample. The Reference method took a total of 429 seconds (7 minutes 9 seconds) to complete.

During the first exercise of the Fast-Half method (bending over), the ambient sampling tube was first purged for 4 seconds before an ambient sample was taken for 5 seconds; the in-facepiece sampling tube was then purged for 11 seconds and a sample was then taken from inside the mask for 30 seconds. No ambient sample was taken during the next two exercises (jogging and head side-to-side)—just one 30-second in-facepiece sample was collected for each exercise. For the last exercise (head up-and-down), a 30-second in-facepiece sample was taken, after which a 4-second ambient purge and 5-second ambient sample were conducted. The Fast-Half method took a total of 149 seconds (2 minutes 29 seconds) to complete.

For the Reference method, the authors calculated a fit factor for each exercise by dividing the in-facepiece

concentration taken during that exercise by the mean ambient concentration for that exercise (average of the ambient measurements pre- and post-exercise). The overall fit factor was determined by taking a harmonic mean of the seven exercise fit factors.

For the Fast-Half method, the ambient concentration was calculated by taking the mean of two measurements—one before the first exercise and one after the last exercise. The authors calculated fit factors for each exercise by dividing the in-facepiece concentration taken during that exercise by the mean ambient concentration. As with the Reference method, the harmonic mean of the four exercise fit factors represented the overall fit factor. A minimum fit factor of 100 is required in order to be regarded as an acceptable fit for half-mask respirators under appendix A of the Respiratory Protection Standard.

To ensure that respirator fit was not significantly altered between the two sets of exercises, a 5-second normal breathing fit factor assessment was included before the first exercise set, between the two sets of exercises and at the completion of the second exercise set. If the ratio of the maximum to minimum of these three fit factors was greater than 100, this experimental trial was excluded from data analysis.

2. Study Results

The ANSI/AIHA standard specifies that an exclusion zone within one coefficient of variation for the Reference method must be determined. The exclusion zone is the range of measured fit factors around the pass/fail fit factor of 100 which cannot be confirmed to be greater than 100 or less than 100 with adequate confidence and, therefore, should not be included in evaluating performance. TSI determined the variability associated with the Reference method using 48 pairs of fit factors from 16 participants. The exclusion zone was defined as fit factor measurements within one standard deviation of the 100 pass/fail value. Six pairs of fit factors were omitted because the normal breathing fit factor ratio exceeded 100 and 5 pairs of fit factors were omitted because they were identified as outliers (>3 standard deviations from the mean of the remaining data points). The exclusion zone calculated by the study authors ranged from 82–123 and did not include the five outliers. During review of the study methods, OSHA felt that omitting outliers to define a variability-based exclusion zone deviated from the usual scientific practice. Therefore, OSHA recalculated the exclusion zone with the outlier data included in the analysis (Brosseau and Jones, 2015). The recalculated exclusion zone was somewhat wider, ranging from 68 to 146.

The final dataset for the ANSI/AIHA Fast-Half performance evaluation included 134 pairs of fit factors from 25 participants. Equivalent fractions of each respirator and model were included. Eleven pairs were omitted because the ratio of maximum to minimum normal breathing fit factors was greater than 100 and 1 pair was omitted due to a methodological error; 122 pairs were included in the data analysis.

According to the statistical procedures utilized in the study, the Fast-Half method, even utilizing the wider OSHA-recalculated exclusion zone, met the required acceptance criteria for test sensitivity, predictive value of a pass, predictive value of a fail, test specificity, and kappa statistic [1] as defined in ANSI/AIHA Z88.10–2010 (see Table 1). The study authors concluded that the results demonstrated that the new Fast-Half method can identify poorly fitting respirators as well as the reference method.

C. Evaluation of Fast-Full Method

1. Study Methods

The peer-reviewed article entitled ''Evaluation of a Faster Fit Testing Method for Full-Facepiece Respirators Based on the TSI PortaCount®,'' appeared in a 2013 issue (Volume 30, Number 2) of the *Journal of the International Society for Respiratory Protection* (Richardson et al., 2013). The study authors selected three models of NIOSH-approved, full-facepiece air-purifying respirators from ''leading U.S. mask manufacturers'' equipped with P100 filters. Each model was available in three sizes. Respirators were probed with a non-flush sampling probe inside the nose cup, extending 0.6 into the breathing zone. Twenty-seven participants (11 female; 16 male) were included in the study; face sizes were predominantly in the central cells (2, 3, 4, 5, 7, 8 and 9) of the NIOSH bivariate panel; 1 subject had a face size in cell 6 and none were in cells 1 (very small) or 10 (very large). The Reference method, choice of exercises, PortaCount® instrument, test aerosol, and sampling sequence were exactly the same as those used for the Fast-Half method. A minimum fit factor of 500 is required in order to be regarded as an acceptable fit for full-facepiece respirators under appendix A of the Respiratory Protection Standard.

2. Study Results

TSI determined the variability associated with the Reference method using 54 pairs of fit factors from 17 participants. The exclusion zone was defined as fit factor measurements within one standard deviation of the 500 pass/fail value. Five pairs of fit factors were omitted because the normal breathing fit factor ratio exceeded 100, and three pairs of fit factors were omitted because they were identified as outliers (>3 standard deviations from the mean of the remaining data points). The exclusion zone calculated by the study authors ranged from 345–726 and did not include the three outliers. OSHA recalculated the exclusion zone with the outlier data included in the analysis (Brosseau and Jones, 2015). The recalculated exclusion zone determined by OSHA was somewhat wider ranging from 321–780.

The final dataset for the ANSI/AIHA Fast-Full performance evaluation included 148 pairs of fit factors from 27 participants. Equivalent fractions of each respirator and model were included. Eleven pairs were omitted because the ratio of maximum to minimum normal breathing fit factors was greater than 100; 1 pair was omitted due to an observational anomaly; 136 pairs were included in the data analysis.

According to the statistical procedures utilized in the study, the Fast-Full method, even utilizing the wider OSHA-recalculated exclusion zone, met the required acceptance criteria for test sensitivity, predictive value of a pass, predictive value of a fail, test specificity, and kappa statistic as defined in ANSI/AIHA Z88.10–2010 (see Table 1). The authors concluded that the results demonstrated that the new Fast-Full method can identify poorly fitting respirators as well as the reference method.

D. Evaluation of Fast-FFR Method

1. Study Methods

The peer-reviewed article, entitled ''Evaluation of a Faster Fit Testing Method for Filtering Facepiece Respirators Based on the TSI PortaCount®,'' appeared in a 2014 issue (Volume 31, Number 1) of the *Journal of the International Society for Respiratory Protection* (Richardson et al., 2014b). Ten models of NIOSH-approved N95 FFRs from six ''leading U.S. mask manufacturers'' were selected for study. The different models were selected to

[1] The kappa statistic is a measure of agreement between the proposed and reference fit-test methods. It compares the observed proportion of fit tests that are concordant with the proportion expected if the two tests were statistically independent. Kappa values can vary from −1 to +1. Values close to +1 indicate good agreement. ANSI/AIHA recommends kappa values >0.70.

represent a range of styles—6 cup-shaped, 2 horizontal flat-fold, and 2 vertical flat-fold models. No information was provided in the publication about whether models were available in different sizes. However, at the Agency's request, TSI submitted additional information regarding the choice of respirators via a letter (TSI, 2015b). The letter states:

> The study plan for FFR called for 10 N95 FFR. Unlike elastomeric respirators, FFR designs vary widely and are typically not offered in different sizes. The authors felt it was important to use a variety of designs that represent the styles currently available in the US. Of the 10 models used, 6 were cup-shaped, 2 were vertical-fold, and 2 were horizontal-fold designs. The cup-shaped style is by far the most common, which is why 6 of the 10 model selected have that fundamental design. Four flat-fold designs (2 vertical-fold and 2 horizontal-fold) models are also included.

Respirators were probed with a flush sampling probe located between the nose and mouth. Lightweight sample tubing and neck straps were used to ensure the tubing did not interfere with respirator fit. Twenty-nine participants (11 female; 18 male) were included in the study; face sizes were predominantly in the smaller and central cells (1, 2, 3, 4, 5, 7, 8) of the NIOSH bivariate panel; 1 subject was in cell 6 and no subjects were in cells 9 or 10 (those with longer—nose to chin—face sizes). The Reference method, test aerosol, and most other study procedures were analogous to those used for the Fast-Half and Fast-Full methods. However, the Fast-FFR method employed these four exercises: Bending, talking, head side-to-side and head up-and-down with the same sampling sequence and durations as the other test protocols. The talking exercise replaces the jogging exercise used in the Fast-Half and Fast-Full methods. TSI decided not to eliminate the talking exercise for FFRs even though their pilot study indicated that it rarely produces the lowest fit factor (TSI, 2015a). They felt from their own experience that jogging does not represent the kind of motions that FFR wearers do when using the respirator (TSI, 2015a). TSI also indicated that the sampling probe configured on lightweight FFR respirators caused the respirator to pull down and away from the face during jogging creating unintentional leakage. A PortaCount® Model 8038 operated in the N95 mode (TSI Inc., Shoreview MN), was used to measure aerosol concentrations throughout the experiments. The particle concentrations in the test chamber were expected to be greater than 400 p/cm^3. A minimum fit factor of 100 is required in order to be regarded as an acceptable fit for these types of respirators under appendix A of the Respiratory Protection Standard.

2. Study Results

The study administered sequential paired fit tests using the Fast-FFR method and a reference method according to the ANSI/AIHA standard. TSI determined the variability associated with the Reference method using 63 pairs of fit factors from 14 participants. The exclusion zone was defined as fit factor measurements within one standard deviation of the 500 pass/fail value. Two pairs of fit factors were omitted because the normal breathing fit factor ratio exceeded 100, and six pairs of fit factors were omitted because they were identified as outliers (>3 standard deviations from the mean of the remaining data points). The exclusion zone calculated by the study authors ranged from 78–128 and did not include the six outliers. OSHA recalculated the exclusion zone with the outlier data included in the analysis (Brosseau and Jones, 2015). The recalculated exclusion zone was somewhat wider ranging from 69–144.

The final dataset for the ANSI/AIHA Fast-FFR performance evaluation included 114 pairs from 29 participants. Equivalent fractions of each respirator and model were included. Two pairs were omitted because the ratio of maximum to minimum normal breathing fit factors was greater than 100; 112 pairs were included in the data analysis.

According to the statistical procedures utilized in the study, the Fast-FFR method, even utilizing the wider OSHA-recalculated exclusion zone, met the required acceptance criteria for test sensitivity, predictive value of a pass, predictive value of a fail, test specificity, and kappa statistic as defined in ANSI/AIHA Z88.10–2010 (see Table 1). The authors concluded that the results demonstrated that the new Fast-FFR method can identify poorly fitting respirators as well as the reference method.

TABLE 1—COMPARISON OF TSI FIT TEST PROTOCOLS WITH ANSI CRITERIA

	ANSI Z88.10	Fast-full	Fast-half	Fast-FFR
Sensitivity	≥0.95	0.98	0.96	1.00
PV Pass	≥0.95	0.98	0.97	1.00
Specificity	≥0.50	0.98	0.97	0.85
PV Fail	≥0.50	0.98	0.93	0.93
Kappa	≥0.70	0.97	[1] 0.89	[1] 0.89

[1] The kappa values in the table are those determined using the OSHA recalculated exclusion zone. The kappa values reported by the journal authors using a narrower exclusion zone were 0.90 and 0.87, respectively, for the Fast-Half and Fast-FFR methods. Other statistical values were the same for both OSHA and study author exclusion zone determinations.

E. Conclusions

OSHA believes that the information submitted by TSI in the July 10, 2014 letter from Mr. Niccum in support of the modified PortaCount® quantitative fit test protocols meets the criteria for determining whether OSHA must publish fit-test protocols for notice-and-comment rulemaking established by the Agency in Part II of appendix A of its Respiratory Protection Standard. Therefore, the Agency is initiating this rulemaking to determine whether to approve these proposed protocols for inclusion in Part I.C of appendix A of its Respiratory Protection Standard.

Each proposed protocol is a variation of the standard OSHA-accepted PortaCount® protocol, but differs from it by the exercise sets, exercise duration, and sampling sequence. The major difference between the proposed Fast-Full and Fast-Half methods and the standard OSHA-accepted PortaCount® protocol is they include only 3 of the 7 current test exercises (*i.e.*, bending, head side-to-side, and head up-and-down) plus a new exercise (*i.e.*, jogging-in-place), and reduce the total test duration from 7.2 minutes to 2.5 minutes. The major difference between the proposed Fast-FFR method and the standard OSHA-accepted PortaCount® protocol is it includes 4 of the 7 current test exercises (*i.e.*, bending, talking, head side-to-side, and head up-and-down), and it reduces the total test

duration from 7.2 minutes to 2.5 minutes.

The Agency is proposing to add two modified PortaCount® protocols to appendix A (see section V of this preamble titled ''Proposed Amendment to the Standard''). If approved, the new protocols would be alternatives to the existing quantitative fit-testing protocols already listed in the Part I.C of appendix A of the Respiratory Protection Standard; employers would be free to select these alternatives or to continue using any of the other protocols currently listed in the appendix.

F. N95-Companion™ Technology

OSHA is also taking the opportunity of this rulemaking to make a clarifying change to appendix A of the Respiratory Protection Standard to reflect a technological development. The original PortaCount® model could only fit test elastomeric respirators (*i.e.*, full-facepiece and half-mask) and filtering facepiece respirators equipped with ≥99% efficient filter media. In 1998, TSI introduced the N95-Companion™ Technology, which enables newer PortaCount® models to quantitatively fit test elastomeric respirators (*i.e.*, full-facepiece and half-mask) and filtering facepiece respirators equipped with <99% efficient filter media (*e.g.*, N95 filters). The N95-Companion™ Technology does not alter the fit-testing protocol; it merely enables the fit testing of respirators with <99% efficient filter media. Therefore, OSHA has proposed text to appendix A, Part I.C.3 to clarify the difference between the existing PortaCount® models with and without the N95-Companion™ Technology.

III. Issues for Public Comment

OSHA invites comments from the public regarding the accuracy and reliability of the proposed protocols, their effectiveness in detecting respirator leakage, and their usefulness in selecting respirators that will protect employees from airborne contaminants in the workplace. Specifically, the Agency invites public comment on the following issues:

- Were the three studies described in the peer-reviewed journal articles well controlled and conducted according to accepted experimental design practices and principles?
- Were the results of the three studies described in the peer-reviewed journal articles properly, fully, and fairly presented and interpreted?
- Did the three studies treat outliers appropriately in determination of the exclusion zone?
- Will the two proposed protocols generate reproducible fit-testing results?
- Will the two proposed protocols reliably identify respirators with unacceptable fit as effectively as the quantitative fit-testing protocols, including the OSHA-approved standard PortaCount® protocol, already listed in appendix A of the Respiratory Protection Standard?
- Did the protocols in the three studies meet the sensitivity, specificity, predictive value, and other criteria contained in the ANSI/AIHA Z88.10–2010, Annex A2, Criteria for Evaluating Fit Test Methods?
- Are the specific respirators selected in the three studies described in the peer-reviewed journal articles representative of the respirators used in the United States?
- Does the elimination of certain fit-test exercises (*e.g.*, normal breathing, deep breathing, talking) required by the existing OSHA-approved standard PortaCount® protocol impact the acceptability of the proposed protocols?
- Is the test exercise, jogging-in-place, that has been added to the Fast-Full and Fast-Half protocols appropriately selected and adequately explained? Should the jogging exercise also be employed for the Fast-FFR protocol? Is the reasoning for not replacing the talking exercise with the more rigorous jogging exercise in the Fast-FFR protocol (as was done in Fast-Full and Fast-Half) adequately explained?
- Was it acceptable to omit the grimace from the Reference method employed in the studies evaluating performance of the proposed fit-testing protocols? Is it appropriate to exclude the grimace completely from the proposed protocols, given that it is not used in the calculation of the fit factor result specified under the existing or proposed test methods? If not, what other criteria could be used to assess its inclusion or exclusion?
- The protocols in the three studies specify that participants take two deep breaths at the extreme of the head side-to-side and head up-and-down exercises and at the bottom of the bend in the bend-forward exercise. According to the developers of these protocols, the deep breaths are included to make the exercises more rigorous and reproducible from one subject to the next. Are these additional breathing instructions adequately explained in the studies and in the proposed amendment to the standard? Are they reasonable and appropriate?
- Does OSHA's proposed regulatory text for the two new protocols offer clear instructions for implementing the protocols accurately?

IV. Procedural Determinations

A. Legal Authority

The purpose of the Occupational Safety and Health Act of 1970 (''the Act''; 29 U.S.C. 651 et seq.) is ''to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources'' (29 U.S.C. 651(b)). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards (29 U.S.C. 655(b)).

Under the Act, a safety or health standard is a standard that ''requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment'' (29 U.S.C. 652(8)). A standard is reasonably necessary or appropriate within the meaning of section 652(8) of the Act when it substantially reduces or eliminates a significant workplace risk, and is technologically and economically feasible, cost effective, consistent with prior Agency action or supported by a reasoned justification for departing from prior Agency action, and supported by substantial evidence; it also must effectuate the Act's purposes better than any national consensus standard it supersedes (see *International Union, UAW* v. *OSHA (LOTO II)*, 37 F.3d 665 (D.C. Cir. 1994); and 58 FR 16612–16616 (March 30, 1993)). Rules promulgated by the Agency must be highly protective (see 58 FR 16612, 16614–15 (March 30, 1993); *LOTO II*, 37 F.3d 665, 669 (D.C. Cir. 1994)). Moreover, section 8(g)(2) of the Act authorizes OSHA ''to prescribe such rules and regulations as [it] may deem necessary to carry out its responsibilities under the Act'' (see 29 U.S.C. 657(g)(2)). OSHA adopted the respirator standard in accordance with these requirements (63 FR 1152).

Appendix A, part II of the respirator standard requires OSHA to commence a rulemaking to adopt an alternative fit test protocol where an applicant provides a detailed description the protocol supported by a test report from an independent laboratory or a published study in a peer-reviewed industrial hygiene journal showing that the protocol is accurate and reliable. In such cases, OSHA relies on the authority in section 6(b)(7) of the OSH Act. This provision allows the Agency to make updates to technical monitoring, measuring, and medical examination requirements in a standard to reflect newly developed information using the informal rulemaking notice

and comment procedures of section 553 of the Administrative Procedure Act, rather than the more elaborate procedures of section 6(b) of the Act. In this case, TSI's proposed protocols are supported by three articles in a peer-reviewed industrial hygiene journal. Each article described one of the proposed protocols and explained how test data support the protocol's accuracy and reliability. Section 6(b)(7) also requires consultation with the Secretary of Health and Human Services, and here OSHA has consulted informally with NIOSH about TSI's proposed protocols. OSHA anticipates that NIOSH will submit formal comments in response to this proposal.

Based on all the submitted information, and after consultation with NIOSH, OSHA has preliminarily determined that the modified PortaCount® protocols provide employees with protections comparable to protections afforded them by the standard PortaCount® protocol already approved by the Agency. OSHA has also made a preliminary finding that the proposed rule is technologically feasible because the protective measures it requires already exist.

As OSHA has explained before, Congress adopted section 6(b)(7) to provide a simple, expedited process to update technical requirements in Agency standards to ensure that they reflect current experience and technological developments (see 77 FR 17602). OSHA believes that the provision of an expedited process to provide technical updates to existing standards shows Congress's intent that new findings of significant risk are unnecessary in such circumstances (see id.). But even if OSHA was proceeding under its normal standard setting requirements, it would need to make no new showing of significant risk because the new protocols would not replace existing fit-testing protocols, but instead would be alternatives to them. OSHA believes that the proposal would not directly increase or decrease the protection afforded to employees, nor would it increase employers' compliance burdens. As demonstrated in the following section, the proposal may reduce employers' compliance burdens by decreasing the time required to fit test respirators for employee use.

B. Preliminary Economic Analysis and Regulatory Flexibility Certification

The proposal is not economically significant within the context of Executive Order 12866 (58 FR 51735), or a ''major rule'' under Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804). The proposal would impose no additional costs on any private- or public-sector entity, and does not meet any of the criteria for a significant or major rule specified by Executive Order 12866 or other relevant statutes. This rulemaking allows employers increased flexibility in choosing fit-testing methods for employees, and the final rule does not require an employer to update or replace its current fit-testing method(s) as a result of this rule if the fit-testing method(s) currently in use meets existing standards. Furthermore, as discussed, because the proposed rule offers additional options that employers would select only if those options imposed no net cost burden on them, the proposed rule would not have a significant economic impact on a substantial number of small entities.

The Agency is proposing to supplement the quantitative fit-testing (QNFT) protocols currently in appendix A of the Respiratory Protection Standard, including the standard PortaCount® protocol, with the proposed modified protocols. This would provide employers additional options to fit test their employees for respirator use. Employers already using the standard PortaCount® protocol would have a choice between the existing standard PortaCount® protocol, which consists of eight exercises lasting one minute each, or the proposed protocols, which OSHA estimates would save 4.8 minutes per fit test. This time saving would provide a corresponding cost saving to the employer.

According to TSI, the PortaCount® manufacturer, ''[e]xisting owners of the PortaCount® Respirator Fit Tester Pro Model 8030 and/or PortaCount® Pro+ Model 8038 will be able to utilize the new protocols without additional expense. It will be necessary to obtain a firmware and FitPro software upgrade, which TSI will be providing as a free download. As an alternative to the free download, PortaCount® Models 8030 and 8038 returned for annual service will be upgraded without additional charge. Owners of the PortaCount® Plus Model 8020 with or without the N95-Companion™ Technology (both discontinued in 2008) will be limited to the current 8-exercise OSHA fit test protocol'' (TSI, 2015b). There are approximately 12,000 Model 8030 or 8038 units in the field, significantly more than the discontinued Model 8020. The time required to adopt the new proposed protocols is expected to be minimal for existing PortaCount® users. The users will be able to update the firmware and software, which is estimated to take less than 5 minutes, and the fit tester would be able to select the proposed protocol or the currently existing test in 29 CFR 1910.134. The updates can be installed at the establishment's location; they do not need to be sent into the manufacturer to load. For the individual being fit tested, it is also likely to take minimal time to gain an understanding of the new protocols. The existing respiratory protection rule contains an annual training component, and information about the new protocol could be imparted during that time, thus adding no additional burden to the employer or employee (TSI, 2015c). OSHA anticipates that the proposed protocols would be adopted by many employers who currently use the standard PortaCount® protocol for their employees. These employers would adopt the proposed protocols because they would take less time to administer than the standard PortaCount® protocol, thereby decreasing the labor cost required for fit testing their employees.

Other establishments use either some other form of quantitative fit testing or qualitative fit testing. The Agency expects that the proposed protocols are less likely to be adopted by employers who currently perform fit testing using other quantitative or qualitative fit tests because of the significant equipment and training investment they already will have made to administer these fit tests. For example, it is estimated that switching from qualitative to quantitative fit testing would require an upfront investment of between $8,000 and $12,000 (TSI, 2015c).

While the Agency has estimates of the number of users of the PortaCount® technology at the establishment level, both from the manufacturer and from the 2001 NIOSH Respirator Survey, what is not known is how many respirator wearers, that is, employees, are fit tested using a PortaCount® device. The Agency expects that economies of scale would apply in this situation—larger establishments would be more likely to encounter situations needing QNFT, but would also have more employees over which to spread the capital costs. Once employers have invested capital in a quantitative fit-testing device, they are likely to perform QNFT on a number of other devices and users, even if not all those devices require QNFT. If sufficiently large, some employers apparently choose to invest in a QNFT device, even though none of the respirator users may technically be required to use a QNFT. Also, some QNFT devices are acquired by third parties, or ''fit-testing houses,'' that provide fit-testing services to employers. In short, employers using PortaCount®

QNFT will not be average size establishments for the purpose of estimating the number of respirator wearers. Some of these establishments might use them for hundreds or possibly thousands of respirator wearers in the course of a year. Alternately, one could look at the number of respirator users estimated to be using respirators that would presumably require QNFT, although it is uncertain what percentage of the QNFT market utilizes the PortaCount® technology currently; also uncertain is the percentage of users of optional QNFT devices using QNFT currently.

Nonetheless, it is possible to develop a plausible estimate of the number of potentially affected respirator wearers, in which these two sets of data converge. For example, if one starts with an estimate of 12,000 establishments using PortaCount® models 8030 and 8038 annually for all of their employees and assumes an average of 100 respirator wearers fit tested annually per establishment, this would yield an estimate of 1.2 million respirator wearers that could potentially benefit from the new QNFT protocol.[2] Alternately, a similar estimate can be obtained if one assumes that 50 percent of the devices requiring QNFT (such as full-facepiece elastomeric negative pressure respirators) use PortaCount® currently, as well as 25 percent of half-mask elastomeric respirators, and 10 percent of filtering facepieces.[3] At a loaded wage rate of $33.81 and assuming savings of 5 minutes per respirator wearer per year, this would imply an annual savings for respirator wearers of approximately $3.4 million.[4] There would also likely be some time savings for the person administering the fit tests. The time saved may potentially be as much as a one-to-one ratio between the tester and those being tested. The Agency solicits comment on the practical experience of employers and others administering fit tests as to the likely effects on total labor productivity (or potentially other cost elements) from being able to expedite the fit-testing process. As discussed, this does not include potential conversions from other types of fit-testing methods currently being used. Alternately, it is possible that some of these assumptions could be overestimates or that some employers are simply comfortable with the existing method and would continue to use the existing protocol despite the potential time savings.

[2] TSI estimated the number of users of their devices at over 12,000 establishments (TSI, 2015c). This is consistent with data from the 2001 NIOSH respirator survey (NIOSH, 2003), which, if benchmarked to a 2012 count of establishments (Census Bureau, 2012) and containing fit-testing methods to include ambient aerosol, generated aerosol, and a proportionally allocated percentage of the ''don't know'' respondents, would provide an estimate of 12,458 establishments using PortaCount® currently. Based on information from TSI, the large majority of these are estimated to be the newer 8030 and 8038 devices.

[3] NIOSH respirator survey (NIOSH, 2003), benchmarked to 2012 County Business Patterns (Census Bureau, 2012). These estimates are based only on private employers. Governmental entities would account for an even larger number of respirator users.

[4] Mean wage rate of $23.23 (BLS, 2016a), assuming fringe benefits are 31.3 percent of total compensation (BLS, 2016b).

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (as amended), OSHA has examined the regulatory requirements of the proposed rule to determine whether these proposed requirements would have a significant economic impact on a substantial number of small entities. This proposed rule would impose no required costs and could provide a cost savings in excess of $3 million per year to regulated entities. The Assistant Secretary for Occupational Safety and Health therefore certifies that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* include enhancing the quality and utility of information the Federal government requires and minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information (paperwork), including publishing a summary of the collection of information and a brief description of the need for and proposed use of the information.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by the Office of Management and Budget (OMB) under the PRA and displays a currently valid OMB control number; the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. When a NPRM includes an information collection, the sponsoring agency must submit a request to the OMB in order to obtain PRA approval. OSHA is submitting an Information Collection Request (ICR), concurrent with the publication of this NPRM. A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201511-1218-005* (this link will only become active on the day following publication of this notice) or by contacting Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

The proposed protocols of this NPRM would revise the information collection in a way that reduces existing burden hours and costs. In particular, the paperwork requirement specified in paragraph (m)(2) of OSHA's Respiratory Protection Standard, at 29 CFR 1910.134, specifies that employers must document and maintain the following information on quantitative fit tests administered to employees: The name or identification of the employee tested; the type of fit test performed; the specific make, model, style, and size of respirator tested; the date of the test; and the test results. The employer must maintain this record until the next fit test is administered. While the information on the fit-test record remains the same, the time to obtain the necessary information for the fit-test record could be reduced since some of the proposed protocols would take an employer less time to administer that those currently approved in appendix A. OSHA accounts for this burden under the Information Collection Request, or paperwork analysis, for the Respiratory Protection Standard (OMB Control Number 1218–0099).

OSHA has estimated that the addition of a new protocol, which takes less time to administer, will result in a burden hour reduction of 150,432 hours. OSHA has submitted a revised Respiratory Protection ICR reflecting this reduction to OMB. As required by 5 CFR 1320.5(a)(1)(iv) and 1320.8(d)(2), OSHA is providing the following summary information about the Respiratory Protection information collection:

Title: Respiratory Protection Standard (29 CFR 1910.134).

Number of respondents: 616,035.

Frequency of responses: Various.

Number of responses: 23,443,707.

Average time per response: Various.

Estimated total burden hours: 6,971,401.

Estimated costs (capital-operation and maintenance): $296,098,562.

The Agency solicits comments on these determinations. In addition, the Agency is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper

performance of the Agency's functions, including whether the information is useful;

• Evaluate the accuracy of OSHA's estimate of the burden (time and cost) of the information collection requirements, including the validity of the methodology and assumptions used;

• Evaluate the quality, utility and clarity of the information collected; and

• Evaluate ways to minimize the compliance burden on employers, for example, by using automated or other technological techniques for collecting and transmitting information.

Members of the public who wish to comment on the Agency's collection of information may send their written comments to the Office of Information and Regulatory Affairs, Attn: Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, Washington DC 20503. You may also submit comments to OMB by email at *OIRA.submission@omb.gov* (please reference control number 1218–0099 in order to help ensure proper consideration). The Agency encourages commenters also to submit their comments related to the Agency's clarification of the collection of information requirements to the rulemaking docket (Docket Number OSHA–2015–0006) along with their comments on other parts of the proposed rule. For instructions on submitting these comments to the rulemaking docket, see the sections of this **Federal Register** notice titled **DATES** and **ADDRESSES**. You also may obtain an electronic copy of the complete ICR by visiting the Web page at *http://www.reginfo.gov/public/do/PRAMain* and scrolling under ''Currently Under Review'' to ''Department of Labor (DOL)'' to view all of the DOL's ICRs, including those ICRs submitted for proposed rulemakings. To make inquiries, or to request other information, contact Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue NW., Washington DC 20210; telephone (202) 693–2222; email *owen.todd@dol.gov.*

D. Federalism

OSHA reviewed the proposal according to the Executive Order on Federalism (E.O. 13132, 64 FR 43255, Aug. 10, 1999), which requires that Federal agencies, to the extent possible, refrain from limiting state policy options, consult with states before taking actions that would restrict states' policy options and take such actions only when clear constitutional authority exists and the problem is of national scope. The Executive Order provides for preemption of state law only with the expressed consent of Congress. Federal agencies must limit any such preemption to the extent possible.

Under section 18 of the Occupational Safety and Health Act (the ''Act,'' 29 U.S.C. 651 *et seq.*), Congress expressly provides that states may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards (29 U.S.C. 667). OSHA refers to states that obtain Federal approval for such a plan as ''State Plan states.'' Occupational safety and health standards developed by State Plan states must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to these requirements, State Plan states are free to develop and enforce under state law their own requirements for occupational safety and health standards.

With respect to states that do not have OSHA-approved plans, the Agency concludes that this proposed rule conforms to the preemption provisions of the Act. Section 18 of the Act prohibits states without approved plans from issuing citations for violations of OSHA standards. The Agency finds that the proposed rulemaking does not expand this limitation. Therefore, for States that do not have approved occupational safety and health plans, this proposed rule would not affect the preemption provisions of Section 18 of the Act.

OSHA's proposal for additional fit-testing protocols under its Respiratory Protection Standard at 29 CFR 1910.134 is consistent with Executive Order 13132 because the problems addressed by these fit-testing requirements are national in scope. The Agency preliminarily concludes that the fit-testing protocols proposed by this rulemaking would provide employers in every state with procedures that would assist them in protecting their employees from the risks of exposure to atmospheric hazards. In this regard, the proposal offers thousands of employers across the nation an opportunity to use additional protocols to assess respirator fit among their employees. Therefore, the proposal would provide employers in every state with an alternative means of complying with the fit-testing requirements specified by paragraph (f) of OSHA's Respiratory Protection Standard.

Should the Agency adopt a proposed standard in a final rulemaking, Section 18(c)(2) of the Act (29 U.S.C. 667(c)(2)) requires State Plan states to adopt the same standard, or to develop and enforce an alternative standard that is at least as effective as the OSHA standard. However, the new fit-testing protocols proposed in this rulemaking would only provide employers with alternatives to the existing fit-testing protocols specified in the Respiratory Protection Standard; therefore, the alternative is not, itself, a mandatory standard. Accordingly, states with OSHA-approved State Plans would not be obligated to adopt the final provisions that may result from this proposed rulemaking. Nevertheless, OSHA strongly encourages them to adopt the final provisions to provide additional compliance options to employers in their states.

In summary, this proposal complies with Executive Order 13132. In states without OSHA-approved State Plans, this proposed rule limits state policy options in the same manner as other OSHA standards. In State Plan states, this rulemaking does not significantly limit state policy options.

E. State-Plan States

Section 18(c)(2) of the Act (29 U.S.C. 667(c)(2)) requires State-Plan states to adopt mandatory standards promulgated by OSHA. However, as noted in the previous section of this preamble, states with OSHA-approved State Plans would not be obligated to adopt the final provisions that may result from this proposed rulemaking. Nevertheless, OSHA strongly encourages them to adopt the final provisions to provide compliance options to employers in their States. In this regard, OSHA preliminarily concludes that the fit-testing protocols proposed by this rulemaking would provide employers in the State-Plan states with procedures that would protect the safety and health of employees who use respirators against hazardous airborne substances in their workplace at least as well as the existing quantitative fit-testing protocols in appendix A of the Respiratory Protection Standard.

There are 28 states and U.S. territories that have their own OSHA-approved occupational safety and health programs called State Plans. The following 22 State Plans cover state and local government employers and private-sector employers: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. The following six State Plans cover state and local government employers only: Connecticut, Illinois, Maine, New Jersey, New York, and the Virgin Islands.

F. Unfunded Mandates Reform Act

OSHA reviewed this notice of proposed rulemaking according to the Unfunded Mandates Reform Act of 1995 (UMRA) 2 U.S.C. 1501–1507 and Executive Order 12875, 58 FR 58093 (1993). As discussed above in section B of this preamble (''Preliminary Economic Analysis and Regulatory Flexibility Certification''), OSHA preliminarily determined that the proposed rule imposes no additional costs on any private-sector or public-sector entity. The substantive content of the proposed rule applies only to employers whose employees use respirators for protection against airborne contaminants, and compliance with the protocols contained in the proposed rule would be strictly optional for these employers. Accordingly, the proposed rule would require no additional expenditures by either public or private employers. Therefore, this proposal is not a significant regulatory action within the meaning of Section 202 of the UMRA, 2 U.S.C. 1532.

As noted above under Section E (''State Plan States'') of this preamble, OSHA standards do not apply to state or local governments except in states that have voluntarily elected to adopt an OSHA-approved State Plan. Consequently, this notice of proposed rulemaking does not meet the definition of a ''Federal intergovernmental mandate'' (see 2 U.S.C. 658(5)). Therefore, for the purposes of the UMRA, the Assistant Secretary for Occupational Safety and Health certifies that this proposal does not mandate that state, local, or tribal governments adopt new, unfunded regulatory obligations, or increase expenditures by the private sector of more than $100 million in any year.

G. Applicability of Existing Consensus Standards

Section 6(b)(8) of the Act (29 U.S.C. 655(b(8)) requires OSHA to explain ''why a rule promulgated by the Secretary differs substantially from an existing national consensus standard,'' by publishing ''a statement of the reasons why the rule as adopted will better effectuate the purposes of the Act than the national consensus standard.'' In this regard, when OSHA promulgated its original respirator fit-testing protocols under appendix A of its final Respiratory Protection Standard (29 CFR 1910.134), no national consensus standards addressed these protocols. Later, the American National Standards Institute (ANSI) developed a national consensus standard on fit-testing protocols (''Respirator Fit Testing Methods,'' ANSI Z88.10–2001) as an adjunct to its national consensus standard on respiratory protection programs. ANSI/AIHA updated the Z88.10 standard in 2010 (''Respirator Fit Testing Methods,'' ANSI Z88.10–2010).

Paragraph 7.2 of ANSI/AIHA Z88.10–2010 specifies the requirements for conducting a particle-counting instrument (*e.g.,* PortaCount®) quantitative fit test, which differ substantially from the standard PortaCount® protocol provided in appendix A of OSHA's Respiratory Protection Standard. These protocols differ in terms of both the fit-testing exercises required and the duration of these exercises. The proposed modified PortaCount® protocols are variations of the ANSI/AIHA particle-counting instrument quantitative fit test protocol, in that they require the same 30 second duration for fit-testing exercises, but they do not require the same exercises required by ANSI/AIHA. However, Annex A2 of ANSI/AIHA Z88.10–2010 recognizes that a universally accepted measurement standard for respirator fit testing does not exist and provides a specific procedure and criteria for evaluating new fit-testing methods. The Agency is requiring that in order to be adopted by the Agency, TSI statistically show that its proposed modified PortaCount® protocols meet the ANSI/AIHA Annex A2 performance requirements. The Agency believes that if the proposed modified PortaCount® protocols meet the criteria outlined in ANSI/AIHA Z88.10–2010, Annex A2, then they would be as accurate and reliable as the ANSI/AIHA protocol, but shorter in duration and less costly to administer.

H. Advisory Committee for Construction Safety and Health (ACCSH) Review of the Proposed Standard

The proposal to add two quantitative fit-test protocols to appendix A of OSHA's Respiratory Protection Standard would affect the construction industry because it revises the fit-testing procedures specified by the standard, which is applicable to the construction industry (see 29 CFR 1926.103). Whenever the Agency proposes a rule involving construction activities, the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3704), OSHA regulations governing the Advisory Committee for Construction Safety and Health (ACCSH) (*i.e.,* 29 CFR 1912.3), and provisions governing OSHA rulemaking (*i.e.,* 29 CFR 1911.10) require OSHA to consult with the ACCSH. Specifically, 29 CFR 1911.10 requires that the Assistant Secretary provide the ACCSH with ''any proposal of his own,'' together with ''all pertinent factual information available to him, including the results of research, demonstrations, and experiments.'' Accordingly, OSHA provided the ACCSH members with copies of Mr. Niccum's application letter and its supporting documents, along with other relevant information, prior to the December 4, 2014 ACCSH meeting. OSHA staff presented a slide presentation to the ACCSH at that meeting to explain the proposal. At the end of this session, the ACCSH unanimously recommended to proceed with the initiation of a notice-and comment rulemaking under Section 6(b)(7) of the OSH Act to seek public comment on adding proposed new fit-test protocols into appendix A of the Respiratory Protection Standard.

V. References

[ANSI/AIHA] American National Standards Institute, Inc./American Industrial Hygiene Association. (2010). ANSI/AIHA Z88.10–2010. American National Standard–Respirator Fit Testing Methods. American Industrial Hygiene Association, Fairfax, VA.

[BLS] Bureau of Labor Statistics. (2016a). News Release, March 30, 2016. Occupational Employment and Wages—May 2015. *http://www.bls.gov/news.release/pdf/ocwage.pdf* [See Table 1].

[BLS] Bureau of Labor Statistics. (2016b). News Release, March 10, 2016. Employer Costs for Employee Compensation, December 2015. *http://www.bls.gov/news.release/archives/ecec_03102016.pdf* [See Table A]

Brosseau, LM and Jones RM. (2015). Evaluation of three new condensation nuclei counter (CNC) fit testing protocols. February 22, 2015.

Census Bureau. (2012). County Business Patterns. File downloaded 6/3/2014 *http://www.census.gov/econ/cbp/download/* [See 2012 See ''Complete U.S. File'']

[NIOSH] National Institute for Occupational Safety and Health. (2003). Respirator Usage in Private Sector Firms, 2001. Bureau of Labor Statistics, National Institute for Occupational Safety and Health, September 2003. *http://www.cdc.gov/niosh/docs/respsurv/pdfs/respsurv2001.pdf*

Richardson, AW, Hofacre, KC, Weed, J, Holm, R, and Remiarz, R. (2013). Evaluation of a faster fit testing method for full-facepiece respirators based on the TSI PortaCount®. Journal of the International Society for Respiratory Protection. 30(2): 116–128.

Richardson, AW, Hofacre, KC, Weed, J, Holm, R, and Remiarz, R. (2014a). Evaluation of a faster fit testing method for elastomeric half-mask respirators based on the TSI PortaCount®. Journal of the International Society for Respiratory Protection. 31(1): 9–22.

Richardson, AW, Hofacre, KC, Weed, J, Holm, R, and Remiarz, R. (2014b). Evaluation of a faster fit testing method for

filtering facepiece respirators based on the TSI PortaCount®. Journal of the International Society for Respiratory Protection. 31(1): 43–56.
TSI. (2014a). Application letter submitted to OSHA by Darrick Niccum of TSI, July 10, 2014a.
TSI. (2014b). TSI White Paper: Analysis of the talking exercise used for respirator fit testing, July 10, 2014b.
TSI. (2015a). Exercise Rational Cover Letter and Exercise Selection Rationale White Paper submitted to OSHA by Gregory Olson of TSI, February 6, 2015.
TSI. (2015b). Letter submitted to OSHA by TSI (Gregory Olson), April 2, 2015.
TSI. (2015c). Phone conversation between TSI and Labor Department employees, April 6, 2015.
Zhuang, Z, Coffey, CC and Lawrence, RB. (2004). The effect of ambient aerosol concentration and exercise on PortaCount® quantitative fit factors. Journal of the International Society for Respiratory Protection 21: 11–20.

List of Subjects in 29 CFR Part 1910

Fit testing, Hazardous substances, Health, Occupational safety and health, Respirators, Respiratory protection, Toxic substances.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 directed the preparation of this notice. Accordingly, the Agency issues this notice under the following authorities: 29 U.S.C. 663, 655 and 656, 40 U.S.C. 3701, *et seq.,* Secretary of Labor's Order No. 1–2012 (77 FR 3912), and 29 CFR part 1911.

Signed at Washington, DC, on September 26, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Proposed Amendment to the Standard

For the reasons stated in the preamble, the Agency proposes to amend 29 CFR part 1910 as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart I—Personal Protective Equipment

■ 1. Revise the authority citation for subpart I of part 1910 to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable, and 29 CFR part 1911.

■ 2. Amend appendix A to § 1910.134 as follows:

■ a. Revise the introductory text of paragraph 14(a) in Part I.A.

■ b. In Part I.C.3, revise the introductory paragraph and remove the terms ''Portacount™'' and ''Portacount'' and add in their place the term ''PortaCount®'' wherever they occur.

■ c. In Part I.C, redesignate protocol 4, ''Controlled negative pressure (CNP) quantitative fit testing protocol.'' as protocol 6.

■ d. In Part I.C, redesignate protocol 5, ''Controlled negative pressure (CNP) REDON quantitative fit testing protocol.'' as protocol 7.

■ e. Add new protocols 4 and 5.

■ f. Revise paragraphs (a) and (b) in newly redesignated Part I.C.7.

The revisions and additions read as follows:

§ 1910.134 Respiratory protection.

* * * * *

Appendix A to § 1910.134—Fit Testing Procedures (Mandatory)

Part I. OSHA-Accepted Fit Test Protocols

A. Fit Testing Procedures—General Requirements

* * * * *

14. * * *

(a) Employers must perform the following test exercises for all fit testing methods prescribed in this appendix, except for the two modified CNC quantitative fit testing protocols, the CNP quantitative fit testing protocol, and the CNP REDON quantitative fit testing protocol. For the modified CNC quantitative fit testing protocols, employers shall ensure that the test subjects (*i.e.,* employees) perform the exercise procedure specified in Part I.C.4(b) of this appendix for full facepiece and half-mask elastomeric respirators, or the exercise procedure specified in Part I.C.5(b) of this appendix for filtering facepiece respirators. Employers shall ensure that the test subjects (*i.e.,* employees) perform the exercise procedure specified in Part I.C.6(b) of this appendix for the CNP quantitative fit testing protocol, or the exercise procedure described in Part I.C.7(b) of this appendix for the CNP REDON quantitative fit testing protocol. For the remaining fit testing methods, employers shall ensure that the test exercises are performed in the appropriate test environment in the following manner:

* * * * *

C. Quantitative Fit Test (QNFT) Protocols

* * * * *

3. Ambient Aerosol Condensation Nuclei Counter (CNC) Quantitative Fit Testing Protocol

The ambient aerosol condensation nuclei counter (CNC) quantitative fit testing (PortaCount®) protocol quantitatively fit tests respirators with the use of a probe. The probed respirator is only used for quantitative fit tests. A probed respirator has a special sampling device, installed on the respirator, that allows the probe to sample the air from inside the mask. A probed respirator is required for each make, style, model, and size that the employer uses and can be obtained from the respirator manufacturer or distributor. The CNC instrument manufacturer, TSI Incorporated, also provides probe attachments (TSI mask sampling adapters) that permit fit testing in an employee's own respirator. A minimum fit factor pass level of at least 100 is necessary for a half-mask respirator (elastomeric or filtering facepiece), and a minimum fit factor pass level of at least 500 is required for a full facepiece elastomeric respirator. Two PortaCount® Respirator Fit Tester models are available. One model is used to fit test elastomeric respirators (*i.e.,* full facepiece and half-mask) and filtering facepiece respirators using ≥99% efficient filter media, and another model, with the N95-Companion™ Technology capability, is used to fit test elastomeric respirators (*i.e.,* full facepiece and half-mask) and filtering facepiece respirators with any type of filter media, including those equipped with <99% efficient filter media. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.

* * * * *

4. Modified Ambient Aerosol Condensation Nuclei Counter (CNC) Quantitative Fit Testing Protocol for Full Facepiece and Half-Mask Elastomeric Respirators

(a) When administering this protocol to test subjects, employers shall comply with the requirements specified in Part I.C.3 of this appendix (ambient aerosol condensation nuclei counter (CNC) quantitative fit testing protocol), except they shall use the test exercises described below in paragraph (b) of this protocol instead of the test exercises specified in section I.C.3(a)(6) of this appendix.

(b) Employers shall ensure that each test subject being fit tested using this protocol follows the exercise and duration procedures, including the order of administration, described below in Table A–1 of this appendix.

TABLE A–1—MODIFIED CNC QUANTITATIVE FIT TESTING PROTOCOL FOR FULL FACEPIECE AND HALF-MASK ELASTOMERIC RESPIRATORS

Exercises [1]	Exercise procedure	Measurement procedure
Bending Over	The test subject shall bend at the waist, as if going to touch his/her toes for 50 seconds and inhale 2 times at the bottom [2].	A 20 second ambient sample, followed by a 30 second mask sample.
Jogging-in Place	The test subject shall jog in place comfortably for 30 seconds	A 30 second mask sample.
Head Side-to-Side	The test subject shall stand in place, slowly turning his/her head from side to side for 30 seconds and inhale 2 times at each extreme [2].	A 30 second mask sample.
Head Up-and-Down	The test subject shall stand in place, slowly moving his/her head up and down for 39 seconds and inhale 2 times at each extreme [2].	A 30 second mask sample followed by a 9 second ambient sample.

[1] Exercises are listed in the order in which they are to be administered.
[2] It is optional for test subjects to take additional breaths at other times during this exercise.

5. Modified Ambient Aerosol Condensation Nuclei Counter (CNC) Quantitative Fit Testing Protocol for Filtering Facepiece Respirators

(a) When administering this protocol to test subjects, employers shall comply with the requirements specified in Part I.C.3 of this appendix (Ambient aerosol condensation nuclei counter (CNC) quantitative fit testing protocol), except they shall use the test exercises described below in paragraph (b) of this protocol instead of the test exercises specified in section I.C.3(a)(6) of this appendix.

(b) Employers shall ensure that each test subject being fit tested using this protocol follows the exercise and duration procedures, including the order of administration, described below in Table A–2 of this appendix.

TABLE A–2—MODIFIED CNC QUANTITATIVE FIT TESTING PROTOCOL FOR FILTERING FACEPIECE RESPIRATORS

Exercises [1]	Exercise procedure	Measurement procedure
Bending Over	The test subject shall bend at the waist, as if going to touch his/her toes for 50 seconds and inhale 2 times at the bottom.[2]	A 20 second ambient sample, followed by a 30 second mask sample.
Talking	The test subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor for 30 seconds. He/she will either read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.	A 30 second mask sample.
Head Side-to-Side	The test subject shall stand in place, slowly turning his/her head from side to side for 30 seconds and inhale 2 times at each extreme.[2]	A 30 second mask sample.
Head Up-and-Down	The test subject shall stand in place, slowly moving his/her head up and down for 39 seconds and inhale 2 times at each extreme.[2]	A 30 second mask sample followed by a 9 second ambient sample.

[1] Exercises are listed in the order in which they are to be administered.
[2] It is optional for test subjects to take additional breaths at other times during this exercise.

* * * * *

7. Controlled Negative Pressure (CNP) REDON Quantitative Fit Testing Protocol

(a) When administering this protocol to test subjects, employers must comply with the requirements specified in paragraphs (a) and (c) of part I.C.6 of this appendix (''Controlled negative pressure (CNP) quantitative fit testing protocol,'') as well as use the test exercises described below in paragraph (b) of this protocol instead of the test exercises specified in paragraph (b) of part I.C.6 of this appendix.

(b) Employers must ensure that each test subject being fit tested using this protocol follows the exercise and measurement procedures, including the order of administration described below in Table A–3 of this appendix.

TABLE A–3—CNP REDON QUANTITATIVE FIT TESTING PROTOCOL

Exercises [1]	Exercise procedure	Measurement procedure
Facing Forward	Stand and breathe normally, without talking, for 30 seconds	Face forward, while holding breath for 10 seconds.
Bending Over	Bend at the waist, as if going to touch his or her toes, for 30 seconds	Face parallel to the floor, while holding breath for 10 seconds.
Head Shaking	For about three seconds, shake head back and forth vigorously several times while shouting.	Face forward, while holding breath for 10 seconds.
REDON 1	Remove the respirator mask, loosen all facepiece straps, and then redon the respirator mask.	Face forward, while holding breath for 10 seconds.
REDON 2	Remove the respirator mask, loosen all facepiece straps, and then redon the respirator mask again.	Face forward, while holding breath for 10 seconds.

[1] Exercises are listed in the order in which they are to be administered.

* * * * *

[FR Doc. 2016–23928 Filed 10–6–16; 8:45 am]
BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2012–0953; FRL–9952–77–Region 6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Infrastructure Requirements for Consultation With Government Officials, Public Notification and Prevention of Significant Deterioration and Visibility Protection for the 2008 Ozone and 2010 Nitrogen Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of State Implementation Plan (SIP) submittals from the State of Texas pertaining to Clean Air Act (CAA) section 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration and Visibility Protection for the 2008 Ozone (O_3) and 2010 Nitrogen Dioxide (NO_2) National Ambient Air Quality Standards (NAAQS). These submittals address how the existing SIP provides for implementation, maintenance, and enforcement of the 2008 O_3 and 2010 NO_2 NAAQS (infrastructure SIPs or i-SIPs). These i-SIPs ensure that the State's SIP is adequate to meet the State's responsibilities under the CAA. Today's proposal and the accompanying direct final action will complete the rulemaking process started in our February 8, 2016, proposal, approve the SIP submittals as meeting CAA section 110(a)(2)(J), and confirm that the SIP has adequate infrastructure to implement, maintain and enforce this section of the CAA with regard to the 2008 O_3 and 2010 NO_2 NAAQS.

DATES: Written comments should be received on or before November 7, 2016.

ADDRESSES: Submit your comments, identified by EPA–R06–OAR–2012–0953, at *http://www.regulations.gov* or via email to *fuerst.sherry@epa.gov*. For additional information on how to submit comments see the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sherry Fuerst, (214) 665–6454, *fuerst.sherry@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's i-SIP submittal as a direct rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: September 30, 2016.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2016–24117 Filed 10–6–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2015–0425; FRL–9952–45–Region 6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Control of Air Pollution From Motor Vehicles, Vehicle Inspection and Maintenance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Texas State Implementation Plan (SIP). The revisions to the SIP were submitted in 2015. These revisions are related to the implementation of the state's motor vehicle emissions Inspection and Maintenance (I/M) Program. The EPA is proposing to approve these revisions pursuant to the Clean Air Act (CAA).

DATES: Written comments should be received on or before November 7, 2016.

ADDRESSES: Submit your comments, identified by EPA–R06–OAR–2015–0425, at *http://www.regulations.gov* or via email to *walser.john@epa.gov*. For additional information on how to submit comments see the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. John Walser, (214) 665–7128, *walser.john@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct rule without prior proposal because the Agency views this as noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action no further activity is contemplated. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: September 30, 2016.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2016–24206 Filed 10–6–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2016–0555; FRL–9953–60–Region 7]

Approval of Nebraska's Air Quality Implementation Plans; Nebraska Air Quality Regulations and State Operating Permit Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Nebraska. This proposed action will amend the SIP to include revisions to title 129 of the Nebraska Air Quality Regulations, chapter 5, ''Operating Permits—When Required''; chapter 9, ''General Operating Permits for Class I and II Sources''; chapter 22, ''Incinerators; Emission Standards''; Chapter 30, ''Open Fires''; and chapter 34 ''Emission Sources; Testing; Monitoring''. These revisions were requested by the Nebraska Department of Environmental Quality (NDEQ) in three submittals, submitted on May 1,

2003, November 8, 2011, and July 14, 2014. The May 1, 2003, submittal revised chapters 5 and 9, to address changes in regard to the permits-by-rule provisions of Title 129. The November 8, 2011, submittal allows for the issuance of multiple operating permits to major sources through revisions to chapter 5. In addition, revisions to chapters 22 and 30 encourage the use of air curtain incinerators over open burning; and changes to chapter 34 clarify the authority of NDEQ to order emission sources to do testing when NDEQ deems it necessary. The July 14, 2014, submittal further revises chapter 34, by updating the reference to allowable test methods for evaluating solid waste, changing the amount of time allowed to submit test results, and allowing NDEQ to approve a request for testing with less than 30 days notification. For additional information on the revisions to chapters 5, 9, 22, 30 and 34 see the detailed discussion table in the docket.

DATES: Comments must be received by November 7, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2016–0555, to *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.*

FOR FURTHER INFORMATION CONTACT: Greg Crable, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7391, or by email at *crable.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: This document proposes to take action on the State Implementation Plan (SIP) revisions submitted by the State of Nebraska. We have published a direct final rule approving the State's SIP revision(s) in the ''Rules and Regulations'' section of this **Federal Register**, because we view this as a noncontroversial action and anticipate no relevant adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive 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.

List of Subjects

40 CFR Part 52

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

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 27, 2016.

Mike Brincks,

Acting Regional Administrator, Region 7.

[FR Doc. 2016–24087 Filed 10–6–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF DEFENSE

40 CFR Part 1700

[EPA–HQ–OW–2016–0351; FRL–9949–12–OW]

RIN 2040–AF53

Uniform National Discharge Standards for Vessels of the Armed Forces—Phase II Batch Two

AGENCY: Environmental Protection Agency (EPA) and Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) and the U.S. Department of Defense (DoD) propose discharge performance standards for 11 discharges incidental to the normal operation of a vessel of the Armed Forces into the navigable waters of the United States, the territorial seas, and the contiguous zone. When implemented, the proposed discharge performance standards would reduce the adverse environmental impacts associated with the vessel discharges, stimulate the development of improved vessel pollution control devices, and advance the development of environmentally sound vessels of the Armed Forces. The 11 discharges addressed by the proposed rule are the following: catapult water brake tank and post-launch retraction exhaust, controllable pitch propeller hydraulic fluid, deck runoff, firemain systems, graywater, hull coating leachate, motor gasoline and compensating discharge, sonar dome discharge, submarine bilgewater, surface vessel bilgewater/oil-water separator effluent, and underwater ship husbandry.

DATES: Comments must be received on or before December 6, 2016.

ADDRESSES: Submit your comments, identified by Docket No. EPA–HQ–OW–2016–0351, at *http://www.regulation.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.*

FOR FURTHER INFORMATION CONTACT: Katherine B. Weiler, Marine Pollution Control Branch (4504T), U.S. EPA, 1200 Pennsylvania Avenue NW., Washington, DC 20460; (202) 566–1280; *weiler.katherine@epa.gov,* or Mike

Pletke, Chief of Naval Operations (N45), 2000 Navy Pentagon (Rm. 2D253), Washington, DC 20350–2000; (703) 695–5184; *mike.pletke@navy.mil.*

SUPPLEMENTARY INFORMATION: This supplementary information is organized as follows:

I. General Information

A. Legal Authority for the Proposed Rule

The EPA and DoD propose this rule under the authority of Clean Water Act (CWA) section 312 (33 U.S.C. 1322). Section 325 of the National Defense Authorization Act of 1996 (''NDAA''), entitled ''Discharges from Vessels of the Armed Forces'' (Pub. L. 104–106, 110 Stat. 254), amended CWA section 312, to require the Administrator of the U.S. Environmental Protection Agency (Administrator) and the Secretary of Defense of the U.S. Department of Defense (Secretary) to develop uniform national standards to control certain discharges incidental to the normal operation of a vessel of the Armed Forces. The term Uniform National Discharge Standards or UNDS is used in this preamble to refer to the provisions in CWA section 312(a)(12) through (14) and (n) (33 U.S.C. 1322(a)(12) through (14) and (n)).

B. Purpose of the Proposed Rule

UNDS are intended to enhance the operational flexibility of vessels of the Armed Forces domestically and internationally, stimulate the development of innovative vessel pollution control technology, and advance the development of environmentally sound ships. Section 312(n)(3)(A) of the CWA requires the EPA and DoD to promulgate uniform national discharge standards for certain discharges incidental to the normal operation of a vessel of the Armed Forces (CWA section 312(a)(12)), unless the Secretary finds that compliance with UNDS would not be in the national security interests of the United States (CWA section 312(n)(1)).

The proposed rule would amend title 40 Code of Federal Regulations (CFR) part 1700 to establish discharge performance standards for 11 discharges incidental to the normal operation of a vessel of the Armed Forces from among the 25 discharges for which the EPA and DoD previously determined (64 FR 25126, May 10, 1999) that it is reasonable and practicable to require a marine pollution control device (MPCD). The 11 discharges addressed by the proposal are the following: Catapult water brake tank and post-launch retraction exhaust, controllable pitch propeller hydraulic fluid, deck runoff, firemain systems, graywater, hull coating leachate, motor gasoline and compensating discharge, sonar dome discharge, submarine bilgewater, surface vessel bilgewater/oil-water separator effluent, and underwater ship husbandry.

The proposed discharge performance standards would not become enforceable until after promulgation of a final rule, as well as promulgation of regulations by DoD under CWA section 312(n)(5)(C) to govern the design, construction, installation, and use of a MPCD.

UNDS do not apply to the following discharges from vessels of the Armed Forces: Overboard discharges of rubbish, trash, garbage, or other such materials; sewage; air emissions resulting from the operation of a vessel propulsion system, motor-driven equipment, or incinerator; or discharges that require permitting under the National Pollutant Discharge Elimination System (NPDES) program, including operational discharges and other discharges that are not incidental to the normal operation of a vessel of the Armed Forces.

C. What vessels are potentially affected by the proposed rule?

The proposed rule would apply to vessels of the Armed Forces. For the purposes of the rulemaking, the term ''vessel of the Armed Forces'' is defined at CWA section 312(a)(14). Vessel of the Armed Forces means any vessel owned or operated by the U.S. Department of Defense (*i.e.,* U.S. Navy, Military Sealift Command, U.S. Marine Corps, U.S. Army, and U.S. Air Force), other than a time- or voyage-chartered vessel, as well as any U.S. Coast Guard vessel designated by the Secretary of the Department in which the U.S. Coast Guard is operating. The preceding list is not intended to be exhaustive, but rather provides a guide for the reader regarding the vessels of the Armed Forces to be regulated by the proposed rule. The proposed rule would not apply to commercial vessels; private vessels; vessels owned or operated by state, local, or tribal governments; vessels under the jurisdiction of the U.S. Army Corps of Engineers; certain vessels under the jurisdiction of the U.S. Department of Transportation; vessels preserved as memorials and museums; vessels under construction; vessels in drydock; amphibious vehicles; and, as noted above, time- or voyage-chartered vessels. For answers to questions regarding the applicability of this action to a particular vessel, consult one of the contacts listed in the **FOR FURTHER INFORMATION CONTACT** section.

D. What is the geographic scope of the proposed rule?

The proposed rule would be applicable to discharges from a vessel of the Armed Forces operating in the navigable waters of the United States, territorial seas, and the contiguous zone (CWA section 1322(n)(8)(A)). The proposed rule applies in both fresh and marine waters and can include bodies of water such as rivers, lakes, and oceans. Together, the preamble refers to these waters as ''waters subject to UNDS.''

Sections 502(7), 502(8), and 502(9) of the CWA define the term ''navigable waters,'' ''territorial seas,'' and ''contiguous zone,'' respectively. The term ''navigable waters'' means waters of the United States including the territorial seas, where the United States includes the states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands. The term ''territorial seas'' means the belt of seas that generally extends three miles seaward from the line of ordinary low water along the portion of the coast in direct contact with the open sea and the line marking the seaward limit of inland waters. The term ''contiguous zone'' means the entire zone established or to be established by the United States under Article 24 of the *Convention of the Territorial Sea and the Contiguous Zone.* Generally, the contiguous zone extends seaward for the next nine miles (*i.e.,* from three to 12 miles from the U.S. coastline). The proposed rule would not be applicable seaward of the contiguous zone.

E. Rulemaking Process

The UNDS rulemaking is a joint rulemaking between the EPA and DoD and is under development in three phases. The first two phases reflect joint rulemaking between the EPA and DoD; the third phase is a DoD-only rule.

Phase I

The EPA and DoD promulgated the Phase I regulations on May 10, 1999 (64 FR 25126), and these existing regulations are codified at 40 CFR part 1700. During Phase I, the EPA and DoD identified the discharges incidental to the normal operation of a vessel of the Armed Forces for which it is reasonable and practicable to require control with a MPCD to mitigate potential adverse impacts on the marine environment (CWA section 312(n)(2)), as well as those discharges for which it is not. Section 312(a)(13) of the CWA defines a MPCD as any equipment or management practice, for installation or use on a vessel of the Armed Forces, that is designed to receive, retain, treat, control, or discharge a discharge incidental to the normal operation of a vessel; and determined by the Administrator and the Secretary to be the most effective equipment or management practice to reduce the environmental impacts of the discharge consistent with the considerations set forth by UNDS.

During Phase I, the EPA and DoD identified the following 25 discharges as requiring control with a MPCD: Aqueous Film-Forming Foam; Catapult Water Brake Tank and Post-Launch Retraction Exhaust; Chain Locker Effluent; Clean Ballast; Compensated Fuel Ballast; Controllable Pitch Propeller Hydraulic Fluid; Deck Runoff; Dirty Ballast; Distillation and Reverse Osmosis Brine; Elevator Pit Effluent; Firemain Systems; Gas Turbine Water Wash; Graywater; Hull Coating Leachate; Motor Gasoline and Compensating Discharge; Non-Oily Machinery Wastewater; Photographic Laboratory Drains; Seawater Cooling Overboard Discharge; Seawater Piping Biofouling Prevention; Small Boat Engine Wet Exhaust; Sonar Dome Discharge; Submarine Bilgewater; Surface Vessel Bilgewater/Oil-Water Separator Effluent; Underwater Ship Husbandry; and Welldeck Discharges (40 CFR 1700.4).

During Phase I, the EPA and DoD identified the following 14 discharges as not requiring control with a MPCD: Boiler Blowdown; Catapult Wet Accumulator Discharge; Cathodic Protection; Freshwater Layup; Mine Countermeasures Equipment Lubrication; Portable Damage Control Drain Pump Discharge; Portable Damage Control Drain Pump Wet Exhaust; Refrigeration/Air Conditioning Condensate; Rudder Bearing Lubrication; Steam Condensate; Stern Tube Seals and Underwater Bearing Lubrication; Submarine Acoustic Countermeasures Launcher Discharge; Submarine Emergency Diesel Engine Wet Exhaust; and Submarine Outboard Equipment Grease and External Hydraulics.

As of the effective date of the Phase I rule (June 9, 1999), neither states nor political subdivisions of states may adopt or enforce any state or local statutes or regulations with respect to the 14 discharges that were identified as not requiring control, except to establish no-discharge zones (CWA sections 312(n)(6)(A) and 312(n)(7)). However, section 312(n)(5)(D) of the CWA authorizes a Governor of any state to submit a petition to DoD and the EPA requesting the re-evaluation of a prior determination that a MPCD is required for a particular discharge (40 CFR 1700.4) or that a MPCD is not required for a particular discharge (40 CFR 1700.5), if there is significant new information not considered previously, that could reasonably result in a change to the determination (CWA section 312(n)(5)(D) and 40 CFR 1700.11).

Phase II

Section 312(n)(3) of the CWA provides for Phase II and requires the EPA and DoD to develop federal discharge performance standards for each of the 25 discharges identified in Phase I as requiring control. In doing so, the EPA and DoD are required to consult with the Department in which the U.S. Coast Guard is operating, the Secretary of Commerce, interested states, the Secretary of State, and other interested federal agencies. In promulgating Phase II discharge performance standards, CWA section 312(n)(2)(B) directs the EPA and DoD to consider seven factors: The nature of the discharge; the environmental effects of the discharge; the practicability of using the MPCD; the effect that installation or use of the MPCD would have on the operation or the operational capability of the vessel; applicable U.S. law; applicable international standards; and the economic costs of installation and use of the MPCD. Section 312(n)(3)(C) of the CWA further provides that the EPA and DoD may establish discharge standards that (1) distinguish among classes, types, and sizes of vessels; (2) distinguish between new and existing vessels; and (3) provide for a waiver of applicability of standards as necessary or appropriate to a particular class, type, age, or size of vessel.

The EPA and DoD developed a process to establish the Phase II discharge performance standards in three batches (three separate rulemakings). The first batch of discharge performance standards was published on February 3, 2014 (79 FR 6117) and addressed 11 of the 25 discharges identified as requiring control (64 FR 25126). The second batch of discharge performance standards, the subject of this proposed rule, addresses 11 additional discharges identified as requiring control (64 FR 25126). The third batch of discharge performance standards that will address the remaining three discharges will be proposed in a separate rule.

In developing the Phase II discharge performance standards, the EPA and DoD reference the 2013 NPDES Vessel General Permit and the 2014 NPDES Small Vessel General Permit (hereinafter

referred to collectively as the NPDES VGPs) as the baseline for each comparable discharge incidental to the normal operation of a vessel of the Armed Forces (78 FR 21938, April 12, 2013 and 79 FR 53702, September 10, 2014). The NPDES VGPs provide for CWA authorization of discharges incidental to the normal operation of non-military and non-recreational vessels extending to the outer reach of the three-mile territorial sea as defined in CWA section 502(8). The NPDES VGPs include effluent limits that are based on both the technology available to treat pollutants (*i.e.,* technology-based effluent limitations), and limits that would be protective of the designated uses of the receiving waters (*i.e.,* water quality-based effluent limits), including both non-numeric and numeric limitations. Vessels covered under the NPDES VGPs vary widely by type, size, and activity and similarly, the contents and volume of the waste streams can vary dependent upon seas, cargo carried, and age of the vessel. Though the 2013 NPDES VGP was remanded to EPA after a judicial challenge, *NRDC* v. *EPA,* 808 F.3d 556 (2d Cir. 2015), the contested issues remanded to EPA are specific to the CWA NPDES permit program and thus are not relevant to the development of the proposed UNDS discharge performance standards. Numeric effluent limitations were used when feasible but due to the variety of vessel types, sizes, and activities, the EPA also used non-numeric effluent limitations to regulate vessel discharges covered by the NPDES VGPs. Additional information on NPDES permitting can be found on-line at *http://www.epa.gov/npdes/.*

Using the NPDES VGPs as a baseline for developing the performance standards for discharges incidental to the normal operation of a vessel of the Armed Forces allowed the EPA and DoD to maximize the use of the EPA's scientific and technical work developed to support the NPDES VGPs. The NPDES VGPs technology-based and water quality-based effluent limitations were then adapted, as appropriate, for the relevant discharges from vessels of the Armed Forces.

Phase III

Phase III of UNDS requires DoD, in consultation with the EPA and the Secretary of the Department in which the U.S. Coast Guard is operating, within one year of finalization of the Phase II standards, to promulgate regulations governing the design, construction, installation, and use of MPCDs necessary to meet the discharge performance standards. DoD will implement the Phase III regulations under the authority of the Secretary as a DoD publication. The Phase III regulations will be publicly released and are expected to be made available on the Defense Technical Information Center Web site: *http://www.dtic.mil/whs/directives.* Similar to Phase II, Phase III will be promulgated in three batches.

Following the effective date of regulations under Phase III, it will be unlawful for a vessel of the Armed Forces to operate within waters subject to UNDS if the vessel is not equipped with a MPCD that meets the final Phase II standards (CWA section 312 (n)(7)). It also will be unlawful for a vessel of the Armed Forces to discharge a regulated UNDS discharge into an UNDS no-discharge zone (*i.e.,* waters where a prohibition on a discharge has been established) (CWA section 312(n)(8)). Any person in violation of this requirement shall be liable to a civil penalty of not more than $5,000 for each violation (CWA section 312(j)). The Secretary of the Department in which the U.S. Coast Guard is operating shall enforce these provisions and may utilize law enforcement officers, EPA personnel and facilities, other federal agencies, or the states to carry out these provisions. States may also enforce these provisions (CWA section 312(k) and (n)(9)).

In addition, as of the effective date of the Phase III regulations, neither States nor political subdivisions of States may adopt or enforce any state or local statute or regulation with respect to discharges identified as requiring control, except to establish no-discharge zones (CWA section 312(n)(7)). CWA section 312(n)(7) provides for the establishment of no-discharge zones either (1) by State prohibition after application and a determination by the EPA, or (2) directly by EPA prohibition. The Phase I UNDS regulations established the criteria and procedures for establishing UNDS no-discharge zones (40 CFR 1700.9 and 40 CFR 1700.10).

If a state determines that the protection and enhancement of the quality of some or all of its waters require greater environmental protection, the state may prohibit one or more discharges incidental to the normal operation of a vessel of the Armed Forces, whether treated or not, into those waters (40 CFR 1700.9). A state prohibition does not apply until after the Administrator determines that (1) the protection and enhancement of the quality of the specified waters within the state require a prohibition of the discharge into the waters; (2) adequate facilities for the safe and sanitary removal of the discharge incidental to the normal operation of a vessel are reasonably available for the waters to which the prohibition would apply; and (3) the prohibition will not have the effect of discriminating against a vessel of the Armed Forces by reason of the ownership or operation by the federal government, or the military function, of the vessel (40 CFR 1700.9(b)(2)).

Alternatively, a State may request that the EPA prohibit, by regulation, the discharge of one or more discharges incidental to the normal operation of a vessel of the Armed Forces, whether treated or not, into specified waters within a state (40 CFR 1700.10). In this case, the EPA would make a determination that the protection and enhancement of the quality of the specified waters requires a prohibition of the discharge. As with the application of a state prohibition described above, the Administrator would need to determine that (1) the protection and enhancement of the quality of the specified waters within the state require a prohibition of the discharge into the waters; (2) adequate facilities for the safe and sanitary removal of the discharge incidental to the normal operation of a vessel are reasonably available for the waters to which the prohibition would apply; and (3) the prohibition will not have the effect of discriminating against a vessel of the Armed Forces by reason of the ownership or operation by the federal government, or the military function, of the vessel (40 CFR 1700.9(b)(2)). The EPA may not, however, disapprove a state application for this latter type of prohibition for the sole reason that there are not adequate facilities for the safe and sanitary removal of such discharges (CWA section 312(n)(7)(B)(ii) and 40 CFR 1700.10(b)).

The statute also requires the EPA and DoD to review the determinations and standards every five years and, if necessary, to revise them based on significant new information. Specifically, CWA section 312(n)(5)(A) and (B) contain provisions for reviewing and modifying both of the following determinations: (1) Whether control should be required for a particular discharge, and (2) the substantive standard of performance for a discharge for which control is required. A Governor also may petition the Administrator and the Secretary to review a UNDS determination or standard if there is significant new information, not considered previously, that could reasonably result in a change

to the determination or standard (CWA section 312(n)(5)(D) and 40 CFR 1700.11).

F. Summary of Public Outreach and Consultation With Federal Agencies, States, Territories, and Tribes

During the development of the proposed rule, the EPA and DoD consulted with other federal agencies, states, and tribes regarding the reduction of adverse environmental impacts associated with discharges from vessels of the Armed Forces; development of innovative vessel pollution control technology; and advancement of environmentally sound vessels of the Armed Forces. In addition, the EPA and DoD reviewed comments on the NPDES VGPs.

G. Supporting Documentation

The proposed rule is supported by ''Technical Development Document (TDD) Phase I Uniform National Discharge Standards (UNDS) for Vessels of the Armed Forces,'' the UNDS Phase I rules, the ''Final 2013 Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels (VGP),'' the ''Vessel General Permit (VGP) Fact Sheet,'' the ''Final Small Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels Less Than 79 Feet (sVGP),'' the ''Small Vessel General Permit (sVGP) Fact Sheet,'' the ''Economics and Benefits Analysis of the Final 2013 Vessel General Permit (VGP),'' the ''Economics and Benefits Analysis of the Final 2013 Small Vessel General Permit (sVGP),'' the ''February 2014 Uniform National Discharge Standards for Vessels of the Armed Forces—Phase II,'' the ''Report to Congress: Study of Discharges Incidental to Normal Operation of Commercial Fishing Vessels and Other Non-Recreational Vessels Less than 79 Feet,'' and the ''Environmentally Acceptable Lubricants.'' These documents are available from the EPA Water Docket, Docket No. EPA–HQ–OW–2016–0351 (Email: *ow-docket@epa.gov;* Phone Number: (202) 566–2426; Mail: Water Docket, *Mail Code:* 2822–IT, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or Online: *http://www.regulations.gov*). The NPDES VGPs background documents also are available online: *https://www.epa.gov/npdes/vessels.*

H. What should I consider as I prepare my comments?

The public may submit comments in written or electronic form. Electronic comments must be identified by the docket number EPA–HQ–OW–2016–0351. These electronic submissions will be accepted in Microsoft Word or Adobe PDF. If your comment cannot be read due to technical difficulties and you cannot be contacted for clarification, the EPA and DoD may not be able to consider your comment. Avoid the use of special characters and any form of encryption.

Tips for Preparing Comments. Please follow these guidelines as you prepare your comments so that the EPA and DoD can better address them in a timely manner.

1. Identify the proposed rule by docket number and other identifying information (subject heading, **Federal Register** date, and page number).

2. Explain why you agree or disagree with any proposed discharge performance standards; suggest alternatives and substitute language for your requested changes.

3. Describe any assumptions and provide any technical information or data that you used.

4. Provide specific examples to illustrate your concerns and suggest alternatives.

5. Explain your views as clearly as possible.

Make sure to submit your comments by the comment period deadline. The EPA and DoD are not obligated to accept or consider late comments.

II. UNDS Performance Standards Development

During the development of the proposed discharge performance standards, the EPA and DoD analyzed the information from the Phase I of UNDS, considered the relevant language in the NPDES VGPs effluent limitations, and took into the consideration the seven statutory factors listed in CWA section 312(n)(2)(B). These seven statutory factors are: The nature of the discharge; the environmental effects of the discharge; the practicability of using the MPCD; the effect that installation or use of the MPCD would have on the operation or operational capability of the vessel; applicable U.S. law; applicable international standards; and the economic costs of the installation and use of the MPCD. The EPA and DoD determined that the NPDES VGPs effluent limitations, which include technology-based and water quality-based effluent limitations, provide a sound basis to serve as a baseline for developing the discharge performance standards for the 11 discharges in this proposed rule. The subsections below outline the EPA and DoD's approach to considering the seven statutory factors listed in CWA section 312(n)(2)(B).

A. Nature of the Discharge

During Phase I, the EPA and DoD gathered information on the discharges incidental to the normal operation of a vessel of the Armed Forces and developed nature of the discharge reports. The nature of the discharge reports discuss how the discharge is generated, volumes and frequencies of the generated discharge, where the discharge occurs, and the constituents present in the discharge. In addition, the EPA and DoD reviewed relevant discharge information in the supporting documentation of the NPDES VGPs. The EPA and DoD briefly describe the nature of each of the 11 discharges below; however, the complete nature of the discharge reports can be found in Appendix A of the Technical Development Document—EPA 821–R–99–001.

B. Environmental Effects

Discharges incidental to the normal operation of a vessel of the Armed Forces have the potential to negatively impact the aquatic environment. The discharges contain a wide variety of constituents that have the potential to negatively impact aquatic species and habitats. These discharges can cause thermal pollution and can contain aquatic nuisance species (ANS), nutrients, bacteria or pathogens (*e.g., E. coli* and fecal coliforms), oil and grease, metals, most conventional pollutants (*e.g.,* organic matter, bicarbonate, and suspended solids), and other toxic and non-conventional pollutants with toxic effects. While it is unlikely that these discharges would cause an acute or chronic exceedance of the EPA recommended water quality criteria across a large water body, these discharges have the potential to cause adverse environmental impacts on a more localized scale due to the end-of-pipe nature of the discharges. For each of the 11 discharges below, the EPA and DoD discuss the constituents of concern released into the environment and potential water quality impacts. The proposed discharge performance standards would reduce the discharge of constituents of concern and mitigate the environmental risks to the receiving waters.

C. Cost, Practicability, and Operational Impacts

The universe of vessels of the Armed Forces affected by the proposed rule encompasses more than 6,000 vessels distributed among the U.S. Navy, Military Sealift Command, U.S. Coast Guard, U.S. Army, U.S. Marine Corps, and U.S. Air Force. These vessels range

in design and size from small boats with lengths of less than 20 feet for coastal operations, to aircraft carriers with lengths of over 1,000 feet for global operations. Approximately 80 percent of the vessels of the Armed Forces are less than 79 feet in length. Larger vessels (*i.e.,* vessels with length greater than or equal to 79 feet) comprise 20 percent of the vessels of the Armed Forces. The EPA and DoD considered vessel class, type, and size when developing the proposed discharge standards as not all vessels of the Armed Forces have the same discharges. For more information on the various vessel classes, characteristics, and missions, see Appendix A.

The EPA and DoD assessed the relative costs, practicability, and operational impacts of the proposed rule by comparing current operating conditions and practices of vessels of the Armed Forces with the anticipated operating conditions and practices that would be required to meet the proposed discharge performance standards. The EPA and DoD determined that the proposed discharge performance standards applicable to operating conditions and practices for the 11 discharges would only result in a marginal increase in performance costs, practicability, and operational impacts.

D. Applicable U.S. and International Law

The EPA and DoD reviewed U.S. laws and international standards that would be relevant to discharges incidental to the normal operation of a vessel of the Armed Forces. A number of U.S. environmental laws include specific provisions for federal facilities and properties that may result in different environmental requirements for federal and non-federal entities. Similarly, many international treaties do not apply to vessels of the Armed Forces either because vessels of the Armed Forces are entitled to sovereign immunity under international law or because any particular treaty may apply different approaches to the adoption of appropriate environmental control measures consistent with the objects and purposes of such treaties. The EPA and DoD incorporated any relevant information in the development of the proposed discharge standards after reviewing the requirements of the following treaties and domestic implementing legislation, as well as other relevant and potentially applicable U.S. environmental laws: International Convention for the Prevention of Pollution from Ships (also referred to as MARPOL); International Convention on the Control of Harmful Anti-Fouling Systems on Ships; Act to Prevent Pollution from Ships; CWA section 311, as amended by the Oil Pollution Control Act of 1990; CWA section 402 and the National Pollutant Discharge Elimination System Vessel General Permit and small Vessel General Permit; Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); Hazardous Materials Transportation Act; Title X of the Coast Guard Authorization Act of 2010; National Marine Sanctuaries Act; Antiquities Act of 1906; Resource Conservation and Recovery Act; Toxic Substances Control Act; and the St. Lawrence Seaway Regulations. The EPA and DoD invite comment on the application of the laws and international standards considered in the development of the proposed discharge performance standards.

E. Definitions

The EPA and DoD propose adding UNDS definitions to 40 CFR part 1700. Specifically, the proposal would establish new definitions or revise proposed definitions found in UNDS Phase II Batch One (79 FR 6117, February 3, 2014) for the following terms: Bioaccumulative; Biodegradable; environmentally acceptable lubricants; Great Lakes; minimally-toxic; minimally-toxic soaps, cleaners, and detergents; not bioaccumulative; phosphate free soaps, cleaners, and detergents; and state. The EPA and DoD propose defining these terms in order to support the proposal of the discharge performance standards described in the following section. These definitions are intended to clarify, simplify, or improve understanding of the proposed discharge performance standards. Some of the definitions are slightly different from the definitions established under the NPDES VGPs in order to increase clarity and understanding. The EPA and DoD invite comment on these definitions as applied to the specific proposed discharge performance standards for vessels of the Armed Forces.

III. UNDS Discharge Analysis and Performance Standards

This section describes the nature of the discharge, the environmental effects of the discharge, and the proposed discharge performance standards determined to be reasonable and practicable to mitigate the adverse impacts to the marine environment for the 11 discharges. In developing these standards, the EPA and DoD considered the information from Phase I of UNDS, Phase II of UNDS, the NPDES VGPs effluent limitations, and the seven statutory factors listed in CWA section 312(n)(2)(B). For more information on each discharge included in this proposed rule, please see the Phase I Uniform National Discharge Standards for Vessels of the Armed Forces: Technical Development Document; EPA 821–R–99–001.

The 11 proposed discharge performance standards described in each section below apply to vessels of the Armed Forces operating within waters subject to UNDS, except as otherwise expressly excluded in the ''exceptions'' in 40 CFR 1700.39. In addition, if two or more regulated discharge streams are combined prior to discharge, then the resulting discharge would need to meet the discharge performance standards applicable to each of the discharges that are being combined (40 CFR 1700.40). Furthermore, recordkeeping (40 CFR 1700.41) and non-compliance reporting (40 CFR 1700.42) apply generally to each proposed discharge performance standard unless expressly provided in a particular discharge performance standard.

A. Catapult Water Brake Tank and Post-Launch Retraction Exhaust

1. Nature of Discharge

Catapult water brake tank and post-launch retraction exhaust is the oily water skimmed from the water brake tank and the condensed steam discharged during catapult operations. Catapult water brakes stop the forward motion of an aircraft carrier catapult system used to launch various aircraft from Navy aircraft carriers. In waters subject to UNDS, the catapult water brake is primarily used for testing catapults on recently constructed aircraft carriers, following major drydock overhauls, or after major catapult modifications. Most flight operations occur outside of waters subject to UNDS. The catapult water brake tank serves as the water supply for the catapult water brake system. During each aircraft launch or test, lubricating oil is introduced to the catapult water brake tank by the catapult pistons; as the water is recirculated through the catapult water brake and the water brake tank, oil accumulates in the tank. The testing alone of the catapult water brake does not generate a sufficient accumulation of oily water in the catapult water brake tank to generate a discharge. However, during flight operations the oily water from the catapult water brake tank is discharged above the waterline.

During the post-launch retraction of the catapult piston, the condensed

steam remaining in the power cylinder and a small amount of residual oil from the catapult cylinder are discharged overboard through the catapult exhaust piping. Catapult flight operations (including qualification and operational training) and testing both generate the post-launch retraction exhaust discharge.

Only Navy aircraft carriers, which represent less than one percent of vessels of the Armed Forces, are likely to produce catapult water brake tank and post-launch retraction exhaust discharge.

For more information regarding catapult water brake tank and post-launch retraction exhaust discharge, please see the catapult water brake tank and post-launch retraction exhaust nature of the discharge report in Appendix A of the Technical Development Document—EPA 821–R–99–001.

2. Environmental Effects

The catapult water brake tank and post-launch retraction exhaust discharges could negatively impact receiving waters due to the presence of lubricating oil and small amounts of metals generated within the catapult system itself. Additionally, the post-launch retraction exhaust discharge contains oil and water (in the condensed steam), nitrogen (in the form of ammonia, nitrates and nitrites, and total nitrogen), and metals such as copper and nickel from the piping systems. Among the constituents, oil, copper, lead, nickel, nitrogen, ammonia, bis(2-ethylhexyl) phthalate, phosphorus, and benzidine could be present in concentrations that exceed the EPA recommended water quality criteria.

Prohibiting the discharge of catapult water brake tank effluent and limiting the number of post-launch retraction exhaust discharges to only those required to support necessary testing and training operations would significantly limit the potential for release of the associated constituents of concern and protect the quality of the receiving waters.

3. Selection of Marine Pollution Control Device Performance Standard

The EPA and DoD propose to prohibit the discharge of catapult water brake tank effluent and to minimize post-launch retraction exhaust discharges by limiting the number of launches required to test and validate the system and conduct qualification and operational training.

B. Controllable Pitch Propeller Hydraulic Fluid

1. Nature of Discharge

Controllable pitch propeller (CPP) hydraulic fluid is the hydraulic fluid that discharges into the receiving waters from propeller seals as part of normal operation, and the hydraulic fluid released during routine maintenance of the propellers. CPPs are used to control a vessel's speed or direction while maintaining a constant propulsion plant output (*i.e.,* varying the pitch or ''bite'' of the propeller blades without varying the propulsion shaft speed). High-pressure hydraulic oil is used throughout the CPP system of pumps, pistons, crossheads, and crank rings. The hydraulic fluid might be discharged into the surrounding water due to leaks associated with CPP seals and during routine maintenance or replacement of the propellers.

Leakage through CPP seals is most likely to occur while the vessel is underway because the CPP system operates under higher pressure when underway than at pierside or at anchor. CPP assemblies are typically designed to operate at 400 pounds per square inch (psi) without leaking. Typical CPP internal pressures while pierside range from 6 to 8 psi. CPP seals are designed to last five to seven years, which is the longest period between scheduled dry-dock cycles, and are inspected quarterly for damage or excessive wear. As a result of the hub design and frequent CPP seal inspections, leaks of hydraulic fluid from CPP hubs are expected to be negligible.

CPP blade maintenance or replacement, which occurs in port on an as-needed basis when dry-docking is unavailable or impractical, also might result in the discharge of hydraulic fluid.

U.S. Coast Guard patrol ships, Navy surface combatants and some amphibious support ships, and some Military Sealift Command auxiliary ships might produce this discharge. Those ships represent approximately five percent of the vessels of the Armed Forces.

For more information regarding discharges from CPP systems, please see the CPP hydraulic fluid nature of the discharge report in Appendix A of the Technical Development Document—EPA 821–R–99–001.

2. Environmental Effects

The amount of hydraulic fluid released during underwater CPP maintenance could cause a sheen in the receiving waters. Constituents of the discharge include paraffins, olefins, and metals such as copper, aluminum, tin, nickel, and lead. Metal concentrations are expected to be insignificant because hydraulic fluid is not corrosive to metal piping, and the hydraulic fluid is continually filtered to protect against system failures. The use of shore facilities for CPP maintenance activities when possible would reduce the discharge of hydraulic fluid. The use of spill containment measures would minimize any adverse environmental effects, should the release of oil occur. Reducing the likelihood of discharge of CPP hydraulic fluid and the associated constituents of concern would protect the quality of the receiving waters.

3. Selection of Marine Pollution Control Device Performance Standard

The EPA and DoD propose to require that the protective seals on CPPs be maintained in good operating order to minimize the leakage of hydraulic fluid. To the greatest extent practicable, maintenance activities on CPPs should be conducted when a vessel is in drydock. If maintenance and repair activities must occur when the vessel is not in drydock, appropriate spill response equipment (*e.g.,* oil booms) must be used to contain and clean any oil leakage. The discharge of CPP hydraulic fluid must not contain oil in quantities that: Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines; or contain an oil content above 15 parts per million (ppm) as measured by EPA Method 1664a or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (*e.g.,* ISO Method 9377) or U.S. Coast Guard; or otherwise are harmful to the public health or welfare of the United States.

C. Deck Runoff

1. Nature of Discharge

Deck runoff is an intermittent discharge generated from precipitation, freshwater washdowns, wave action, or seawater spray falling on the weather deck or the flight deck that is discharged overboard through deck openings. Deck runoff contains any residues that may be present on the deck surface.

Residues and contaminants present on the deck originate from topside equipment components as well as the varied activities that take place on the deck. Some or all of these pollutants can be introduced to the deck from shipboard activities, storage of material on the deck, maintenance activities, and

the decking material itself. Deck runoff has the potential to contain a variety of pollutants, including oil and grease, petroleum hydrocarbons, surfactants, soaps and detergents, glycols, solvents, and metals. Constituents and volumes of deck runoff vary widely depending on the purpose, service, and practices of the vessel.

All vessels of the Armed Forces generate deck runoff and the discharge occurs whenever the deck surface is exposed to water. Only vessels of the Armed Forces that support flight operations have flight decks. The proposed standards distinguish between flight decks and other vessel decks.

For more information regarding deck runoff, please see the deck runoff nature of the discharge report in Appendix A of the Technical Development Document—EPA 821–R–99–001.

2. Environmental Effects

Deck runoff could negatively impact receiving waters due to the possible presence of oil and grease, petroleum hydrocarbons, surfactants, soaps and detergents, glycols, solvents, and metals. These constituents may be present in concentrations that could potentially contribute to an exceedance of the EPA recommended water quality criteria. Existing DoD management practices provide for the clean-up of oil and other substances spilled during routine maintenance. These practices reduce the environmental effects of the discharge. Prohibiting the washdown of flight decks and restricting the discharge of deck runoff and the associated constituents of concern would protect the quality of the receiving waters.

3. Selection of Marine Pollution Control Device Performance Standard

The EPA and DoD propose to require that vessels prohibit flight deck washdowns and minimize deck washdowns while in port and in federally-protected-waters. Additionally, before deck washdowns occur, exposed decks must be broom cleaned and on-deck debris, garbage, paint chips, residues, and spills must be removed, collected, and disposed of onshore in accordance with any applicable solid waste or hazardous waste management and disposal requirements. If a deck washdown or above water line hull cleaning would create a discharge, the washdown or above water line cleaning must be conducted with minimally-toxic and phosphate free soaps, cleaners, and detergents. The use of soaps that are labeled as toxic is prohibited. All soaps and cleaners must be used as directed by the label. Furthermore, soaps, cleaners, and detergents should not be caustic and must be biodegradable. Where feasible, machinery on deck must have coamings or drip pans where necessary to collect any oily discharge that may leak from machinery and prevent spills. The drip pans must be drained to a waste container for proper disposal onshore in accordance with any applicable oil and hazardous substance management and disposal requirements. The presence of floating solids, visible foam, halogenated phenol compounds, and dispersants and surfactants in deck washdowns must be minimized. Topside surfaces and other above-water-line portions of the vessel must be well-maintained to minimize the discharge of rust and other corrosion by-products, cleaning compounds, paint chips, non-skid material fragments, and other materials associated with exterior topside surface preservation. Residual paint droplets entering the water must be minimized when conducting maintenance painting. The discharge of unused paint is prohibited. Paint chips and unused paint residues must be collected and disposed of onshore in accordance with applicable solid waste and hazardous substance management and disposal requirements. When vessels conduct underway fuel replenishment, scuppers must be plugged to prevent the discharge of oil. Any oil spilled must be cleaned, managed, and disposed of onshore in accordance with any applicable onshore oil and hazardous substance management and disposal requirements.

D. Firemain Systems

1. Nature of Discharge

Firemain system discharges consist of the surrounding water pumped through the firemain system for testing, maintenance, and training, as well as secondary uses for the operation of certain vessel systems. Firemain systems are essential to the safety of a vessel and crew and therefore, require testing and maintenance. The firefighting equipment served by a vessel's firemain system includes fire hose stations, seawater sprinkling systems, and foam proportioning stations. Any foam discharges associated with firemain systems are not covered under this performance standard but would need to meet the requirements of 40 CFR 1700.14 (aqueous film-forming foam). The secondary uses of wet firemain systems may include deck washdowns, cooling water for auxiliary machinery, eductors, ship stabilization and ballast tank filling, and flushing for urinals, commodes, firemain loop recirculation, and pulpers.

Firemain systems for vessels of the Armed Forces fall into two categories: Wet and dry firemains. Wet firemains are continuously pressurized so that the system has the capacity to provide water immediately upon demand. Dry firemains are not charged with water and, as a result, do not supply water upon demand. Most Navy surface vessels operate wet firemains and most Military Sealift Command vessels, U.S. Coast Guard, and U.S. Army vessels use dry firemains.

The firemain system includes all components between the fire pump suction sea chest and the cutout valves to the various services including sea chests, fire pumps, valves, piping, fire hoses, and heat exchangers. The water passed through the firemain system is drawn from the sea and returned to the sea by either discharge over the side from fire hoses or through submerged pipe outlets. The seawater discharged overboard from the firemain system can contain entrained or dissolved materials, principally metals, from natural degradation of the internal components of the firemain system itself. Some traces of oil or other lubricants may also enter the seawater from valves or pumps. If the firemain system is used for a secondary use and a performance standard does not exist for that secondary use, then the performance standard for the firemain system applies.

Most vessels of the Armed Forces greater than or equal to 79 feet in length are expected to discharge from firemain systems. Most boats and service craft that are less than 79 feet in length do not generate firemain systems discharge because smaller boats and craft typically use portable fire pumps or fire extinguishers. Approximately 20 percent of vessels of the Armed Forces produce firemain systems discharge.

For more information regarding firemain systems, please see the firemain systems nature of the discharge report in Appendix A of the Technical Development Document—EPA 821–R–99–001.

2. Environmental Effects

Discharges from the firemain system could negatively impact receiving waters due to the possible presence of copper, zinc, nickel, aluminum, tin, silver, iron, titanium, and chromium. Many of these constituents can be traced to the corrosion and erosion of the firemain piping system, valves, or pumps. Consequently, when feasible, the maintenance and training discharges from the firemain should occur outside

of ports or other shallow waters. Restricting the discharge from firemain systems and the associated constituents of concern would protect the quality of the receiving waters.

3. Selection of Marine Pollution Control Device Performance Standard

Firemain systems may be discharged for testing and inspections of the firemain system. The EPA and DoD propose to require that to the greatest extent practicable, firemain system maintenance and training be conducted outside of port and as far away from shore as possible. In addition, firemain systems must not be discharged in federally-protected waters except when needed to comply with anchor washdown requirements in Subpart 1700.16 (Chain locker effluent). Firemain systems may be used for secondary uses if the intake comes directly from the surrounding waters or potable water supplies.

E. Graywater

1. Nature of Discharge

Graywater is galley, bath, and shower water, as well as wastewater from lavatory sinks, laundry, interior deck drains, water fountains, and shop sinks. On vessels of the Armed Forces, graywater is distinct from blackwater. Blackwater is the sewage generated by toilets and urinals and is regulated separately. Graywater discharges can contain oil and grease, detergent and soap residue, bacteria, pathogens, metals (*e.g.,* cadmium, chromium, lead, copper, zinc, silver, nickel, and mercury), solids, and nutrients.

Vessels of the Armed Forces have different methods for collecting and discharging graywater. Most vessels are designed to direct graywater to the vessel's sewage tanks while pierside for transfer to a shore-based treatment facility. These vessels are not generally designed to hold graywater for extended periods of time and must drain or pump their graywater overboard while operating away from the pier in order to preserve holding capacity for sewage tanks. Some vessels with either larger graywater holding capacity or U.S. Coast Guard-certified marine sanitation devices (MSDs) have the capacity to hold or treat graywater for longer periods of time.

Approximately 20 percent of the vessels of the Armed Forces (*i.e.,* aircraft carriers, surface combatants, amphibious support ships, submarines, patrol ships, and some auxiliary ships, boats, and service craft) generate graywater.

For more information regarding graywater, please see the graywater nature of the discharge in Appendix A of the Technical Development Document—EPA 821–R–99–001.

2. Environmental Effects

Graywater discharges may contain soaps and detergents; oil and grease from foods; food residue; nutrients and oxygen demand from food residues and detergents; hair; bleach and other cleaners and disinfectants; pathogens; and a variety of additional personal care products such as moisturizer, deodorant, perfume, and cosmetics. Graywater discharge could negatively impact receiving waters due to the possible presence of bacteria, pathogens, oil and grease, detergent and soap residue, metals (*e.g.,* cadmium, chromium, lead, copper, zinc, silver, nickel, and mercury), solids, and nutrients (*e.g.,* phosphates from the detergents). Of these constituents, the EPA and DoD have found ammonia, copper, lead, mercury, nickel, silver, and zinc in concentrations that may exceed the EPA recommended water quality criteria. Restricting the discharge of graywater and the associated constituents of concern would protect the quality of the receiving waters.

3. Selection of Marine Pollution Control Device Performance Standard

The EPA and DoD propose to require that large quantities of cooking oils (*e.g.,* from deep fat fryers), including animal fats and vegetable oils, must not be added to graywater systems. The EPA and DoD further propose to require that the addition of smaller quantities of cooking oils (*e.g.,* from pot and dish rinsing) to the graywater system must be minimized when the vessel is within three miles of shore. The EPA and DoD propose to require that graywater discharges must not contain oil in quantities that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines; or contain an oil content above 15 ppm as measured by EPA Method 1664a or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (*e.g.,* ISO Method 9377) or U.S. Coast Guard; or otherwise are harmful to the public health or welfare of the United States. In addition, minimally-toxic soaps, cleaners and detergents and phosphate free soaps, cleaners, and detergents must be used in the galley, scullery, and laundry. These soaps, cleaners, and detergents should also be free from bioaccumulative compounds and not lead to extreme shifts in the receiving water pH (*i.e.,* pH to fall below 6.0 or rise above 9.0).

For vessels designed with the capacity to hold graywater, EPA and DoD propose to require that graywater must not be discharged in federally-protected waters or the Great Lakes. In addition, such vessels would be prohibited from discharging graywater within one mile of shore if an onshore facility is available and use of such a facility is reasonable and practicable. When an onshore facility is either not available or when use of such a facility is not reasonable and practicable, production and discharge of graywater must be minimized within one mile of shore.

For vessels that do not have the capacity to hold graywater, EPA and DoD propose to require that graywater production must be minimized in federally-protected waters or the Great Lakes. In addition, such vessels would be prohibited from discharging graywater within one mile of shore if an onshore facility is available and use of such a facility is reasonable and practicable. When an onshore facility is either not available or use of such a facility is not reasonable and practicable, production and discharge of graywater must be minimized within one mile of shore.

F. Hull Coating Leachate

1. Nature of Discharge

Hull coating leachate is defined as the constituents that leach, dissolve, ablate, or erode from the paint on the vessel hull into the surrounding seawater. Antifouling hull coatings are often used on vessel hulls to prevent or inhibit the attachment and growth of aquatic life or biofouling and contain biocides which are used to prevent biofouling growth on the hull by continuous leaching of biocides into the surrounding water. The primary biocide in most antifouling hull coatings is copper, although zinc is also used. Copper ablative coatings, which are designed to wear or ablate away as a result of water flow over a hull, and vinyl antifouling hull coatings, which release copper as a result of copper leaching and hydrolysis of rosin particles, are the most predominantly used copper-containing coatings. Tributyltin (TBT)-based coatings were historically used on vessel hulls; however, antifouling coatings with organotin (*e.g.,* TBT) compounds used as active ingredients are no longer authorized for use in the United States and as such are no longer applied to vessels of the Armed Forces.

Approximately 50 percent of the vessels of the Armed Forces use antifouling hull coatings and contribute to the hull coating leachate discharge when they are waterborne.

For more information regarding hull coating leachate, please see the hull coating leachate nature of the discharge report in Appendix A of the Technical Development Document—EPA 821–R–99–001.

2. Environmental Effects

The discharge of hull coating leachate could negatively impact receiving waters due to the presence of copper and zinc that are used as biocides. While the rate at which the metals leach from coatings is relatively slow (4–17 micrograms per square centimeter-day (μg/cm^2/day)), metal-leaching coatings can account for significant accumulations of metals in receiving waters of ports where numerous vessels are present. The adverse impact could be significant in waters already classified as impaired due to elevated metal levels, for example, copper. While the purpose of antifouling hull coatings is to prevent marine organisms from growing on the hull, an effective antifoulant should minimize the attachment and transport of non-indigenous species, decrease fuel usage, and reduce gaseous emissions. Restricting the discharge of hull coating leachate and the associated constituents of concern would protect the quality of the receiving waters.

3. Selection of Marine Pollution Control Device Performance Standard

The EPA and DoD propose to require that antifouling hull coatings subject to FIFRA (7 U.S.C 136 *et seq.*) must be applied, maintained, and removed in a manner consistent with requirements on the coatings' FIFRA labels. The EPA and DoD also propose to prohibit the use of biocides or toxic materials banned for use in the United States (including those on EPA's List of Banned or Severely Restricted Pesticides). This proposed requirement would apply to all vessels, including vessels with a hull coating applied outside of the United States. Antifouling hull coatings must not contain TBT or other organotin compounds as a hull coating biocide. Antifouling hull coatings may contain small quantities of organotin compounds when the organotin is used as a chemical catalyst and is not present above 2,500 milligrams of total tin per kilogram of dry paint film. Also, any such antifouling hull coatings used must be designed to not slough or peel from the vessel hull. In addition, the proposed standard would encourage the use of non-biocidal alternatives to copper coatings to the greatest extent practicable. The EPA and DoD also recommend to the greatest extent practicable, the use of antifouling hull coatings with the lowest effective biocide release rates, rapidly biodegradable components (once separated from the hull surface), or use of non-biocidal alternatives, such as silicone coatings. Finally, to the greatest extent practicable, avoid the use of anti-fouling hull coatings on vessels that are regularly removed from the water and unlikely to accumulate hull growth.

G. Motor Gasoline and Compensating Discharge

1. Nature of Discharge

Motor gasoline and compensating discharge is the seawater taken into, and discharged from, motor gasoline tanks to eliminate free space where vapors could accumulate. Seawater, which is less buoyant than gasoline, occupies the free space to prevent potentially explosive gasoline vapors from forming. The retained seawater is then discharged when the vessel refills the tanks with gasoline in port or when performing maintenance. Motor gasoline and compensating effluent is likely to contain residual oils and soluble traces of gasoline components and additives, as well as metals. Only U.S. Navy amphibious support ships, which represent less than one percent of the vessels of the Armed Forces, produce motor gasoline and compensating discharge.

For more information regarding motor gasoline and compensating discharge, please see the motor gasoline and compensating discharge nature of the discharge in Appendix A of the Technical Development Document—EPA 821–R–99–001.

2. Environmental Effects

Motor gasoline and compensating discharge could negatively impact receiving waters due to the presence of residual oil. The discharge may contain traces of gasoline constituents, which generally contain alkanes, alkenes, aromatics (*e.g.,* benzene, toluene, ethylbenzene, phenol, and naphthalene), metals, and additives. Analyses of compensating discharge have shown that benzene, toluene, ethylbenzene, phenol, and naphthalene may exceed the EPA recommended water quality criteria. Restricting the discharge of motor gasoline and compensating discharge and the associated constituents of concern would protect the receiving waters.

3. Selection of Marine Pollution Control Device Performance Standard

The EPA and DoD propose to require that the discharge of motor gasoline and compensating effluent must not contain oil in quantities that: Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines; or contain an oil content above 15 ppm as measured by the EPA Method 1664a or other appropriate method for determination of oil content as accepted by the IMO (*e.g.,* ISO Method 9377) or U.S. Coast Guard; or otherwise are harmful to the public health or welfare of the United States. In addition, if an oily sheen is observed, the EPA and DoD propose to require that any spill or overflow of oil must be cleaned up, recorded, and reported to the National Response Center immediately. The discharge of motor gasoline and compensating discharge must be minimized in port and is prohibited in federally-protected waters.

H. Sonar Dome Discharge

1. Nature of Discharge

Sonar dome discharge occurs from the leaching of antifouling materials into the surrounding seawater and the release of seawater or freshwater retained within the sonar dome. Sonar domes are structures located on the hull of ships and submarines, used for the housing of electronic equipment for detection, navigation, and ranging. The shape and design pressure in sonar domes are maintained by filling them with water. Antifouling materials are used on the exterior of the sonar dome to prevent fouling which degrades sonar performance. Navy surface ship domes are made of rubber with an exterior layer that is impregnated with TBT. On submarines and Military Sealift Command surface ships, the sonar domes are made of steel or glass reinforced plastic and do not contain TBT but are covered with an antifouling coating.

The discharge of the water from the interior of the sonar domes primarily occurs when the vessel is pierside and is intermittent depending on when the dome is emptied for maintenance. On average, sonar domes on surface vessels are emptied twice a year and sonar domes on submarines are emptied once a year. The discharge of sonar dome water can range between 300 gallons to 74,000 gallons depending on the size of the sonar dome and the type of maintenance event.

Approximately ten percent of vessels of the Armed Forces generate sonar dome discharge. These vessel types include auxiliary ships, submarines, and surface combatants.

For more information regarding sonar dome discharge, please see the sonar dome nature of the discharge report in Appendix A of the Technical Development Document—EPA 821–R–99–001.

2. Environmental Effects

Sonar dome discharge could negatively impact receiving waters due to the possible presence of antifouling agents on the exterior rubber boots of the sonar dome, as well as from tin, zinc, copper, nickel, and epoxy paint from a sonar dome interior. The concentrations of some of these components are estimated to exceed the EPA recommended water quality criteria. Restricting the sonar dome discharge and the associated constituents of concern would protect the receiving waters.

3. Selection of Marine Pollution Control Device Performance Standard

The EPA and DoD propose to require that the water inside the sonar dome not be discharged for maintenance activities unless the use of a drydock for the maintenance activity is not feasible. The water inside the sonar dome may be discharged for equalization of pressure between the interior and exterior of the dome. This would include the discharge of water required to protect the shape, integrity, and structure of the sonar dome due to internal and external pressures and forces. The EPA and DoD also propose to require that a biofouling chemical that is bioaccumulative should not be applied to the exterior of a sonar dome when a non-bioaccumulative alternative is available.

I. Submarine Bilgewater

1. Nature of Discharge

Submarine bilgewater is the wastewater from a variety of sources that accumulates in the lowest part of the submarine (*i.e.,* bilge). Submarine bilgewater consists of a mixture of discharges and leakage from a wide variety of sources (*e.g.,* seawater accumulation, normal water leakage from machinery, and fresh water washdowns), and includes all the wastewater collected in the bilge compartment, oily waste holding tank, or any other oily water or holding tank. Consequently, the discharge can contain a variety of constituents including cleaning agents, solvents, fuel, lubricating oils, and hydraulic oils. Submarines have a drain system consisting of a series of oily bilge collecting tanks and a waste oil collecting tank or tank complex to collect oily wastewater. Discharges from these tanks occur from the bottom of the tank after gravity separation. Some submarines have baffles to enhance the separation of oil and water.

Approximately one percent of the vessels of the Armed Forces are submarines and generate submarine bilgewater. Most submarines do not discharge bilgewater while in transit within waters subject to UNDS and instead hold and transfer submarine bilgewater to a shore-based facility. However, one class of submarines (SSN 688) discharges some of the water phase of the separated bilgewater collecting tank, as necessary.

For more information regarding submarine bilgewater, please see the submarine bilgewater nature of the discharge report in the Technical Development Document—EPA–821–R–99–001.

2. Environmental Effects

Submarine bilgewater discharge could negatively impact receiving waters due to the possible presence of oil and grease, volatile and semivolatile organic compounds, and metals. These constituents occur in cleaning agents, solvents, fuel, lubricating oils, and hydraulic oils used on submarines and may be present in concentrations that could contribute to an exceedance of the EPA recommended water quality criteria. Restricting the discharge of submarine bilgewater and the associated constituents of concern would help to protect the receiving waters.

3. Selection of Marine Pollution Control Device Performance Standard

The EPA and DoD propose to require that the discharge of submarine bilgewater must not contain oil in quantities that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines; or contain an oil content above 15 ppm as measured by the EPA Method 1664a or other appropriate method for determination of oil content as accepted by the IMO (*e.g.,* ISO Method 9377) or U.S. Coast Guard; or otherwise are harmful to the public health or welfare of the United States. In addition, the discharge of submarine bilgewater must not contain dispersants, detergents, emulsifiers, chemicals, or other substances to remove the appearance of a visible sheen. The proposed performance standard would not, however, prohibit the use of these materials in machinery spaces for the purposes of cleaning and maintenance activities associated with vessel equipment and structures. The discharge of submarine bilgewater also must only contain substances that are produced in the normal operation of a vessel. Oil solidifiers, flocculants, or other additives (excluding any dispersants or surfactants) may be used to enhance oil/water separation during processing in an oil-water separator only if such solidifiers, flocculants, or other additives are minimized in the discharge and do not alter the chemical composition of the oils in the discharge. Solidifiers, flocculants, or other additives must not be directly added, or otherwise combined with, the water in the bilge.

The EPA and DoD propose to require that submarine bilgewater discharges must not occur while the submarine is in port, when the port has the capability to collect and transfer the bilgewater to an onshore facility. If the submarine is not in port, then any such discharge must be minimized and discharged as far from shore as technologically feasible. The EPA and DoD also propose to require that submarine bilgewater discharges be minimized in federally-protected waters. Finally, submarines would need to employ management practices to minimize leakage of oil and other harmful pollutants into the bilge.

J. Surface Vessel Bilgewater/Oil-Water Separator Effluent (OWSE)

1. Nature of Discharge

Surface vessel bilgewater is the wastewater from a variety of sources that accumulates in the lowest part of the vessel (the bilge) and the oil-water separator effluent is produced when the wastewater is processed by an oil-water separator. Bilgewater consists of water and other residue that accumulates in a compartment of the vessel's hull or is collected in the oily waste holding tank or any other oily water holding tank. The primary sources of drainage into the bilge are the main engine room(s) and auxiliary machinery room(s), which house the vessel's propulsion system and auxiliary systems (*i.e.,* steam boilers and water purification systems), respectively.

The composition of bilgewater varies from vessel-to-vessel and from day-to-day on the same vessel. The propulsion and auxiliary systems use fuels, lubricants, hydraulic fluid, antifreeze, solvents, and cleaning chemicals as part of routine operation and maintenance. Small quantities of these materials enter

the bilge as leaks and spills in the engineering spaces. Bilgewater generation rates vary by vessel and by vessel class because of the differences in vessel age, shipboard equipment (*e.g.,* type of propulsion system), operations, whether the vessel segregates its non-oily wastewater from the bilge, and other procedures.

Approximately 75 percent of vessels of the Armed Forces generate surface vessel bilgewater/oil-water separator effluent; submarines and some of the smaller boats and service craft do not generate surface vessel bilgewater discharge/oil-water separator effluent. Oil-water separator systems are installed on most vessels of the Armed Forces to collect the waste oil for onshore disposal. Some smaller vessels are not outfitted with oil-water separator systems; thus, bilgewater is stored for onshore disposal.

For more information regarding surface vessel bilgewater/oil-water separator effluent, please see the surface vessel bilgewater/oil-water separator nature of the discharge report in Appendix A of the Technical Development Document—EPA 821–R–99–001.

2. Environmental Effects

Surface vessel bilgewater/oil-water separator effluent could negatively impact receiving waters due to the possible presence of oil and grease, volatile and semivolatile organic compounds, and metals. These constituents exist in cleaning agents, solvents, fuel, lubricating oils, and hydraulic oils and may be present in concentrations that could potentially contribute to an exceedance of the EPA recommended water quality criteria. Restricting the discharge of surface vessel bilgewater/oil-water separator effluent and the associated constituents of concern would protect the receiving waters.

3. Selection of Marine Pollution Control Device Performance Standard

The EPA and DoD propose to require that surface vessels equipped with an oil-water separator must not discharge bilgewater and must only discharge oil-water separator effluent through an oil-content monitor. All surface vessels greater than 400 gross tons must be equipped with an oil-water separator. If measurements for gross tonnage are not available for a particular vessel, full displacement measurements may be used instead. The EPA and DoD also propose to require that the discharge of oil-water separator effluent not occur in port if the port has the capability to collect and transfer oil-water separator effluent to an onshore facility. In addition, the discharge of oil-water separator effluent must be minimized within one mile of shore, must occur at speeds greater than six knots if the vessel is underway, and must be minimized in federally-protected waters.

For surface vessels not equipped with an oil-water separator, the EPA and DoD propose to require that bilgewater must not be discharged if the vessel has the capability to collect, hold, and transfer to an onshore facility.

In addition, the discharge of bilgewater/oil-water separator effluent must not contain dispersants, detergents, emulsifiers, chemicals, or other substances to remove the appearance of a visible sheen. The proposed performance standard would not, however, prohibit the use of these materials in machinery spaces for the purposes of cleaning and maintenance activities associated with vessel equipment and structures. The discharge of bilgewater/oil-water separator effluent must contain substances that are produced in the normal operation of a vessel. For the discharge of oil-water separator effluent, oil solidifiers, flocculants or other additives (excluding any dispersants or surfactants) may be used to enhance oil/water separation during processing only if such solidifiers, flocculants, or other additives are minimized and do not alter the chemical composition of the oils in the discharge. Solidifiers, flocculants, or other additives must not be directly added, or otherwise combined with, the water in the bilge.

The discharge of surface vessel bilgewater/oil-water separator effluent must not contain oil in quantities that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines; or contain an oil content above 15 ppm as measured by the EPA Method 1664a or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (*e.g.,* ISO Method 9377) or U.S. Coast Guard; or otherwise are harmful to the public health or welfare of the United States.

When a visible sheen is observed as a result of a surface vessel bilgewater/oil-water separator effluent discharge, the discharge must be suspended immediately until the problem is corrected. Any spill or overflow of oil or other engine fluids must be cleaned up, recorded, and reported immediately to the National Response Center. The surface vessel must also employ management practices to minimize leakage of oil and other harmful pollutants into the bilge. Such practices may include regular inspection and maintenance of equipment and remediation of oil spills or overflows into the bilge using oil-absorbent or other spill clean-up materials.

K. Underwater Ship Husbandry

1. Nature of Discharge

Underwater ship husbandry discharges occur during the inspection, maintenance, cleaning, and repair of hulls and hull appendages while a vessel is waterborne. Underwater ship husbandry includes activities such as hull cleaning, fiberglass repair, welding, sonar dome repair, propeller lay-up, non-destructive testing/inspections, masker belt repairs, and painting operations. Underwater ship husbandry operations are normally conducted pierside, and could result in the release of metals (copper or zinc) or the introduction of non-indigenous species.

All vessels of the Armed Forces greater than or equal to 79 feet in length and some boats and service craft less than 79 feet in length, comprising 60 percent of the vessels, are expected to generate underwater ship husbandry discharge. While underwater ship husbandry discharges occur during the maintenance of all classes of vessels, many vessels less than 79 feet in length are regularly pulled from the water for hull maintenance or stored on land.

For more information regarding underwater ship husbandry, please see the underwater ship husbandry nature of the discharge report in Appendix A of the Technical Development Document—EPA 821–R–99–001.

2. Environmental Effects

Underwater ship husbandry could negatively impact receiving waters due to the possible presence of metals and non-indigenous species. With the exception of underwater hull cleaning, other underwater ship husbandry discharges have a low potential for causing an adverse environmental effect. Metals, such as copper and zinc from antifouling coatings, are released during underwater hull cleaning in concentrations that have the potential to cause an adverse environmental effect and could contribute to an exceedance of the EPA recommended water quality criteria. The potential also exists for release of non-indigenous species during hull cleaning. Restricting the discharge from underwater ship husbandry activities and the associated

constituents of concern would protect the receiving waters.

3. Selection of Marine Pollution Control Device Performance Standard

The EPA and DoD propose to require that to the greatest extent practicable, vessel hulls with antifouling hull coatings must not be cleaned within 90 days after the antifouling coating application. Vessel hulls must be inspected, maintained, and cleaned to minimize the removal and discharge of antifouling hull coatings and transport of fouling organisms. To the greatest extent practicable, rigorous vessel hull cleanings must take place in drydock or at a land-based facility where the removed fouling organisms or spent antifouling hull coatings can be disposed of onshore in accordance with any applicable solid waste or hazardous substance management and disposal requirements. The proposed performance standard would also require that vessel hull cleanings be conducted in a manner that minimizes the release of antifouling hull coatings and fouling organisms (*e.g.,* less abrasive techniques and softer brushes to the greatest extent practicable). Vessel hull cleanings must also adhere to any applicable cleaning requirements found on the coatings' FIFRA label. For vessels less than 79 feet in length, the proposed standard would require inspection of vessels before overland transport to a different body of water to control invasive species. For vessels greater than 79 feet in length, the proposed standard would require that to the greatest extent practicable, vessel hulls with a copper-based antifouling coating must not be cleaned within 365 days after the antifouling coating application.

IV. Additional Information of the Proposed Rule

This section provides an overview of the additional amendments proposed for 40 CFR part 1700. These proposed changes include the reservation of sections for the remaining discharge standards.

1. Reservation of Sections

As noted previously, the EPA and DoD are proposing the Phase II standards in three batches. For the purpose of proposing the remaining batches, the proposal reserves the following sections for those future rulemaking actions:

Section 1700.17 Clean Ballast;

Section 1700.18 Compensated Fuel Ballast;

Section 1700.21 Dirty Ballast

V. Related Acts of Congress and Executive Orders

Additional information about these statutes and Executive Orders can be found at *https://www.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

This action does not impose any new information collection burden, as the EPA and DoD have determined that Phase II of UNDS does not create any additional collection of information beyond that already mandated under the Phase I of UNDS. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR part 1700) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0187. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

We certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action implements mandates specifically and explicitly set forth in CWA section 312 without the exercise of any policy discretion by EPA.

E. Executive Order 13132: Federalism

The EPA and DoD concluded that the proposed rule, once finalized in Phase III, will have federalism implications. Once the proposed discharge performance standards are promulgated in Phase III by DoD, adoption and enforcement of new or existing state or local regulations for the discharges will be preempted.

Accordingly, the EPA and DoD provide the following federalism summary impact statement. During Phase I of UNDS, the EPA and DoD conducted two rounds of consultation meetings (*i.e.,* outreach briefings) to allow states and local officials to have meaningful and timely input into the development of the rulemaking. Twenty-two states accepted the offer to be briefed on UNDS and discuss state concerns. The EPA and DoD provided clarification on the technical aspects of the UNDS process, including preliminary discharge determinations and analytical information supporting decisions to control or not control discharges. State representatives were provided with discharge summaries containing the description, analysis, and preliminary determination of each of the 39 discharges from vessels of the Armed Forces—25 of which were determined to require control.

During Phase II, the EPA and DoD consulted again with state representatives early in the process of developing the proposed regulation. On March 9, 2016, the EPA held a Federalism consultation in Washington, DC, and invited representatives from states and political subdivisions of states in order to obtain meaningful and timely input in the development of the proposed discharge standards. The EPA and DoD informed the state representatives that the two agencies planned to use the NPDES VGPs effluent limitations as a baseline for developing the proposed discharge performance standards for the 25 discharges identified in Phase I as requiring control. During the Federalism consultation period, the EPA and DoD did not receive any substantive comments from state and local government entities.

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

This action does not have tribal implication as specified in Executive Order 13175. The UNDS rulemaking will not impact vessels operated by tribes because the rule only regulates discharges from vessels of the Armed Forces. However, tribes may be interested in this action because vessels of the Armed Forces, including U.S. Coast Guard vessels, may operate in or near tribal waters. The EPA hosted a National Teleconference on March 23, 2016, in order to obtain meaningful and timely input during the development of the proposed discharge standards. The EPA and DoD informed the representatives that the two agencies planned to use the NPDES VGPs effluent limitations as a baseline for developing the discharge performance standards for the 25 discharges identified in Phase I as requiring

control. During the Tribal consultation period, the EPA and DoD did not receive any substantive comments from the Indian Tribal Governments.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA and DoD do not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The 11 proposed discharge standards are designed to control discharges incidental to the normal operation of a vessel of the Armed Forces that could adversely affect human health and the environment. The standards reduce the impacts to the receiving waters and any person using the receiving waters, regardless of age.

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

This action is not subject to Executive Order 1321, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This action involves technical standards. The EPA and DoD propose to use ISO Method 9377—determination of hydrocarbon oil index. ISO Method 9377 is a voluntary consensus standard developed by an independent, non-governmental international organization.

J. Executive Order 13112: Invasive Species

Executive Order 13112, entitled ''Invasive Species'' (64 FR 6183, February 8, 1999), requires each federal agency, whose actions may affect the status of invasive species, to identify such actions, and, subject to the availability of appropriations, use relevant programs and authorities to, among other things, prevent, detect, control, and monitor the introduction of invasive species. As defined by this Executive Order, ''invasive species'' means an alien species whose introduction causes, or is likely to cause, economic or environmental harm or harm to human health.

As part of the environmental effects analyses, the EPA and DoD considered the control of invasive species when developing the proposed discharge performance standards for all 11 discharges (See Section II). For example, the underwater ship husbandry discharge performance standard requires the inspection of all vessels under 79 feet in length for the detection and removal of invasive species prior to transport overland from one body of water to another. This requirement as well as others within the proposed discharge standards would help to prevent or control the introduction of invasive species into the receiving waters.

K. Executive Order 13089: Coral Reef Protection

Executive Order 13089, entitled ''Coral Reef Protection'' (63 FR 32701, June 16, 1998), requires all federal agencies to identify actions that may affect U.S. coral reef ecosystems; utilize their programs and authorities to protect the conditions of such ecosystems; and to the extent permitted by law, ensure that any actions they authorize, fund, or carry out will not degrade the conditions of such ecosystems. The proposed discharge standards are designed to control or eliminate the discharges incidental to the normal operation of vessels of the Armed Forces, ultimately minimizing the potential for causing adverse impacts to the marine environment including coral reefs.

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

The EPA and DoD believe 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). The proposed discharge performance standards only apply to vessels of the Armed Forces and ultimately increase environmental protection.

VI. Appendix A—Description of Vessels of the Armed Forces

Table A-1

Vessel Type	Total Vessels of the Armed Forces			
	Large Vessels (Greater than or equal to 79 feet)		Small Vessels (Less than 79 feet)	
	Count	% of Vessels	Count	% of Vessels
Aircraft Carriers	10	1		
Amphibious Support Ships	33	3		
Auxiliary Ships	361	33		
Boats			5,128	100
Patrol Ships	180	17		
Service Craft	345	32	12	< 1
Submarines	71	6		
Surface Combatants	90	8		
Total	**1,090**	100	**5,140**	100

Table A–1 provides information regarding the composition of vessels of the Armed Forces by vessel type and vessel size.

Aircraft Carriers: These are the largest vessels of the Armed Forces. They are designed primarily for conducting combat operations by fixed wing aircraft that are launched with catapults. Nuclear energy powers all vessels in this group. Aircraft carriers exceed 1,000 feet in length, and have crews of 4,000 to 6,000. Except during transit in and out of port, these vessels operate predominantly seaward of waters subject to UNDS.

Amphibious Support Ships: These are large vessels, ranging in length from 569 feet to 847 feet, designed to support amphibious assault operations. Many of these vessels have large clean ballast tanks used to lower and raise the hull during amphibious operations, and welldecks to support the recovery of landing crafts and amphibious vehicles. These large ocean-going vessels may operate within waters subject to UNDS during training and testing of equipment.

Auxiliary Ships: This is a large and diverse group of self-propelled vessels with lengths equal to or greater than 79 feet in length and designed to provide general support to either combatant forces or shore-based establishments. These ships fulfill multiple duties including, but are not limited to, transporting supplies (*e.g.,* fuel, ammunitions) and troops to and from the theater of operations, executing mine countermeasures operations, conducting research, maintaining navigations systems (*e.g.,* buoys), and recovering targets and drones. This vessel class has crew sizes ranging from 10 to 200 people. Depending on mission and operation requirements, these vessels operate both within and seaward of waters subject to UNDS.

Boats: This type of vessel encompasses 81 percent of the vessels of the Armed Forces and includes all self-propelled vessels less than 79 feet in length. These vessels are used for such roles as security, combat operations, rescue, and training. Because of their relatively small size, these vessels have small crews that range from 1 to 19, and produce limited sources of liquid discharges. These vessels operate predominantly within waters subject to UNDS, but may operate seaward of waters subject to UNDS when deployed from larger ships.

Patrol Ships: These are self-propelled vessels with lengths equal to or greater than 79 feet in length, and are designed to conduct patrol duties (*i.e.,* maritime homeland security, law enforcement, and national defense missions). Vessels in this group have crew sizes ranging

from 10 to 200. Some vessels in this group may operate seaward of waters subject to UNDS, but the majority predominantly operate within waters subject to UNDS conducting security patrol missions.

Service Craft: This is a diverse group of non-self-propelled vessel classes designed to provide general support to other vessels in the Armed Forces fleet or shore-based establishments. Vessel classes in this group have an average length of 155 feet with more than 95 percent of them being between 40 feet and 310 feet. While most of these vessels have a very limited crew or no crew, barracks craft can provide sleeping accommodations for 100 to 1,200 crew members. These vessels include multiple barges and lighter designs, dredges, floating dry-docks, floating cranes, floating causeway ferries, floating roll-on-off discharge facilities, dry deck shelters, floating workshops, and floating barracks. These vessels operate predominantly within waters subject to UNDS.

Submarines: These submersible combat vessels powered with nuclear energy can fulfill combatant, auxiliary, or research and development roles. Except during transit in and out of port, these vessels operate predominantly seaward of waters subject to UNDS.

Surface Combatants: These are surface ships designed primarily to engage in attacks against airborne, surface, sub-surface, and shore targets. Vessel classes in this group range in length from 378 feet to 567 feet, and have crew sizes that range from 40 for the Littoral Combat Ship to under 400 for a Guided Missile Destroyer or Cruiser. Except during transit in and out of port, these vessels operate predominantly seaward of waters subject to UNDS.

List of Subjects in 40 CFR Part 1700

Environmental protection, Armed Forces, Vessels, Coastal zone, Reporting and recordkeeping requirements, Water pollution control.

Dated: September 16, 2016.

Gina McCarthy,

Administrator, Environmental Protection Agency.

Dated: September 26, 2016.

Dennis McGinn,

Assistant Secretary of the Navy, Energy, Installations, and Environment.

For the reasons stated in the preamble, title 40, chapter VII, of the Code of Federal Regulations is proposed to be amended as follows:

PART 1700—UNIFORM NATIONAL DISCHARGE STANDARDS FOR VESSELS OF THE ARMED FORCES

■ 1. The authority citation for 40 CFR part 1700 continues to read as follows:

Authority: 33 U.S.C. 1322, 1361.

Subpart A—Scope

■ 2. Section 1700.3 is amended by adding in alphabetical order definitions for ''Bioaccumulative'', ''Biodegradable'', ''Environmentally acceptable lubricants'', ''Great Lakes'', ''Minimally-toxic'', ''Minimally-toxic soaps, cleaners, and detergents'', ''Not bioaccumulative'', ''Phosphate free soaps, cleaners, and detergents'', and ''State'' to read as follows:

§ 1700.3 Definitions.

* * * * *

Bioaccumulative means the opposite of *not bioaccumulative.*

Biodegradable means the following for purposes of the standards:

(1) Regarding *environmentally acceptable lubricants* and greases, *biodegradable* means lubricant formulations that contain at least 90% (weight in weight concentration or w/w) or grease formulations that contain at least 75% (w/w) of a constituent substance or constituent substances (only stated substances present above 0.10% must be assessed) that each demonstrate either the removal of at least 70% of dissolved organic carbon, production of at least 60% of the theoretical carbon dioxide, or consumption of at least 60% of the theoretical oxygen demand within 28 days. Test methods include: Organization for Economic Co-operation and Development Test Guidelines 301 A–F, 306, and 310, ASTM 5864, ASTM D–7373, OCSPP Harmonized Guideline 835.3110, and International Organization for Standardization 14593:1999. For lubricant formulations, the 10% (w/w) of the formulation that need not meet the above biodegradability requirements, up to 5% (w/w) may be non-biodegradable, but not bioaccumulative, while the remaining 5–10% must be inherently biodegradable. For grease formulations, the 25% (w/w) of the formulation that need not meet the above biodegradability requirement, the constituent substances may be either inherently biodegradable or non-biodegradable, but may not be bioaccumulative. Test methods to demonstrate inherent biodegradability include: OECD Test Guidelines 302C (>70% biodegradation after 28 days) or OECD Test Guidelines 301 A–F (>20% but <60% biodegradation after 28 days).

(2) Regarding *cleaning products, biodegradable* means products that demonstrate either the removal of at least 70% of dissolved organic carbon, production of at least 60% of the theoretical carbon dioxide, or consumption of at least 60% of the theoretical oxygen demand within 28 days. Test methods include: Organization for Economic Cooperation and Development Test Guidelines 301 A–F, 306, and 310, and International organization for Standardization 14593:1999.

(3) Regarding *biocidal substances, biodegradable* means a compound or mixture that yields 60% of theoretical maximum carbon dioxide and demonstrate a removal of at least 70% of dissolved organic carbon within 28 days as described in EPA 712–C–98–075 (OPPTS 835.3100 Aerobic Aquatic Biodegradation).

* * * * *

Environmentally acceptable lubricants means lubricants that are *biodegradable, minimally-toxic,* and *not bioaccumulative* as defined in this subpart. The following labeling programs and organizations meet the definition of being *environmentally acceptable lubricants:* Blue Angel, European Ecolabel, Nordic Swan, the Swedish Standards SS 155434 and 155470, Safer Choice, and the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) requirements.

* * * * *

Great Lakes means waters of the United States extending to the international maritime boundary with Canada in Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, and Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the international maritime boundary with Canada).

* * * * *

Minimally-toxic means a substance must pass either OECD 201, 202, and 203 for acute toxicity testing, or OECD 210 and 211 for chronic toxicity testing. For purposes of the standards, equivalent toxicity data for marine species, including methods ISO/DIS 10253 for algae, ISO TC147/SC5/W62 for crustacean, and OSPAR 2005 for fish, may be substituted for OECD 201, 202, and 203. If a substance is evaluated for the formulation and main constituents, the LC50 of fluids must be at least 100 mg/L and the LC50 of greases, two-stroke oils, and all other

total loss lubricants must be at least 1000 mg/L. If a substance is evaluated for each constituent substance, rather than the complete formulation and main compounds, then constituents comprising less than 20% of fluids can have an LC50 between 10–100 mg/L or a no-observed-effect concentration (NOEC) between 1–10 mg/L, constituents comprising less than 5% of fluids can have an LC50 between 1–10 mg/L or a NOEC between 0.1–1 mg/L, and constituents comprising less than 1% of fluids, can have an LC50 less than 1 mg/L or a NOEC between 0–0.1 mg/L.

Minimally-toxic soaps, cleaners, and detergents means any substance or mixture of substances which has an acute aquatic toxicity value (LC50) corresponding to a concentration greater than 10 ppm and does not produce byproducts with an acute aquatic toxicity value (LC50) corresponding to a concentration less than 10 ppm. *Minimally-toxic soaps, cleaners, and detergents* typically contain little to no nonylphenols.

* * * * *

Not bioaccumulative means any of following: the partition coefficient in the marine environment is log Kow <3 or >7 using test methods OECD 117 and 107; molecular mass > 800 Daltons; molecular diameter > 1.5 nanometer; bioconcentration factor (BCF) or bioaccumulation factor (BAF) is < 100 L/kg, using OECD 305, OCSPP 850.1710, OCSPP 850.1730, or a field-measured BAF; or polymer with molecular weight fraction below 1,000 g/mol is <1%.

* * * * *

Phosphate free soaps, cleaners, and detergents means any substance or mixture of substances which contain, by weight, 0.5% or less of phosphates or derivatives of phosphates.

State means a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

* * * * *

■ 3. Revise subpart D to read as follows:

Subpart D—Marine Pollution Control Device (MPCD) Performance Standards

Sec.

Subpart D—Marine Pollution Control Device (MPCD) Performance Standards

§ 1700.14 [Reserved]

§ 1700.15 Catapult water brake tank & post-launch retraction exhaust.

(a) Discharges of catapult water brake tank effluent are prohibited.

(b) The number of post-launch retractions must be limited to the minimum number required to test and validate the system and conduct qualification and operational training.

§ 1700.16 through 1700.18 [Reserved]

§ 1700.19 Controllable pitch propeller hydraulic fluid.

(a) The protective seals on controllable pitch propellers must be maintained to minimize the leaking of hydraulic fluid.

(b) To the greatest extent practicable, maintenance activities on controllable pitch propellers must be conducted when a vessel is in drydock. If maintenance and repair activities must occur when the vessel is not in drydock, appropriate spill response equipment (*e.g.,* oil booms) must be used to contain and clean any oil leakage.

(c) The discharge of controllable pitch propeller hydraulic fluid must not contain oil in quantities that:

(1) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or

(2) Cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines; or

(3) Contain an oil content above 15 ppm as measured by EPA Method 1664a or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (*e.g.,* ISO Method 9377) or U.S. Coast Guard; or

(4) Otherwise are harmful to the public health or welfare of the United States.

§ 1700.20 Deck runoff.

(a) Flight deck washdowns are prohibited.

(b) Minimize deck washdowns while in port and in federally-protected waters.

(c) Prior to performing a deck washdown, exposed decks must be broom cleaned and on-deck debris, garbage, paint chips, residues, and spills must be removed, collected, and disposed of onshore in accordance with any applicable solid waste or hazardous substance management and disposal requirements.

(d) If a deck washdown or above water line hull cleaning will result in a discharge, it must be conducted with minimally-toxic and phosphate free soaps, cleaners, and detergents. The use of soaps that are labeled toxic is prohibited. Furthermore, soaps, cleaners, and detergents should not be caustic and must be biodegradable. All soaps and cleaners must be used as directed by the label.

(e) Where feasible, machinery on deck must have coamings or drip pans, where necessary, to prevent spills and collect any oily discharge that may leak from machinery. The drip pans must be drained to a waste container for disposal onshore in accordance with any applicable oil and hazardous substance management and disposal requirements. The presence of floating solids, visible foam, halogenated phenol compounds, dispersants, and surfactants in deck washdowns must be minimized.

(f) Topside surfaces and other above water line portions of the vessel must be well maintained to minimize the discharge of rust (and other corrosion by-products), cleaning compounds, paint chips, non-skid material fragments, and other materials associated with exterior topside surface preservation. Residual paint droplets entering the water must be minimized when conducting maintenance painting. The discharge of unused paint is prohibited. Paint chips and unused paint residues must be collected and disposed of onshore in accordance with any applicable solid waste and hazardous substance management and disposal requirements.

(g) When vessels conduct underway fuel replenishment, scuppers must be plugged to prevent the discharge of oil. Any oil spilled must be cleaned, managed, and disposed of onshore in accordance with any applicable oil and hazardous substance management and disposal requirements.

§ 1700.21 through 1700.23 [Reserved]

§ 1700.24 Firemain systems

(a) Firemain systems may be discharged for testing and inspections of the firemain system. To the greatest extent practicable, conduct maintenance and training outside of port and as far away from shore as possible. Firemain systems may be discharged in port for certification, maintenance, and training

requirements if the intake comes directly from the surrounding waters or potable water supplies and there are no additions (*e.g.,* aqueous film-forming foam) to the discharge.

(b) Firemain systems must not be discharged in federally-protected waters except when needed to washdown the anchor chain to comply with anchor washdown requirements in § 1700.16.

(c) Firemain systems may be used for secondary uses if the intake comes directly from the surrounding waters or potable water supplies.

§ 1700.25 [Reserved]

§ 1700.26 Graywater.

(a) For discharges from vessels that have the capacity to hold graywater:

(1) Graywater must not be discharged in federally-protected waters or the Great Lakes.

(2) Graywater must not be discharged within one mile of shore if an onshore facility is available and disposal at such a facility is reasonable and practicable.

(3) Production and discharge of graywater must be minimized within one mile of shore when an onshore facility is either not available or use of such a facility is not reasonable and practicable.

(b) For discharges from vessels that do not have the capacity to hold graywater:

(1) Production and discharge of graywater must be minimized in federally-protected waters or the Great Lakes.

(2) Graywater must not be discharged within one mile of shore if an onshore facility is available and disposal at such a facility is reasonable and practicable.

(3) Production and discharge of graywater must be minimized within one mile of shore when an onshore facility is either not available or use of such a facility is not reasonable and practicable.

(c) Large quantities of cooking oils (*e.g.,* from a deep fat fryer), including animal fats and vegetable oils, must not be added to the graywater system. Small quantities of cooking oils (*e.g.,* from pot and dish rinsing) must be minimized if added to the graywater system within three miles of shore.

(d) Minimally-toxic soaps, cleaners, and detergents and phosphate free soaps, cleaners, and detergents must be used in the galley, scullery, and laundry. These soaps, cleaners, and detergents should also be free from bioaccumulative compounds and not lead to extreme shifts in the receiving water pH. For purposes of this subparagraph, extreme shifts means causing the receiving water pH to fall below 6.0 or rise above 9.0 as a direct result of the discharge.

(e) The discharge of graywater must not contain oil in quantities that:

(1) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or

(2) Cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines; or

(3) Contain an oil content above 15 ppm as measured by EPA Method 1664a or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (*e.g.,* ISO Method 9377) or U.S. Coast Guard; or

(4) Otherwise are harmful to the public health or welfare of the United States.

§ 1700.27 Hull coating leachate.

(a) Antifouling hull coatings subject to registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C 136 *et seq.*) must be applied, maintained, and removed in a manner consistent with requirements on the coatings' FIFRA label.

(b) Antifouling hull coatings not subject to FIFRA registration (*i.e.,* exempt or not produced for sale and distribution in the United States) must not contain any biocides or toxic materials banned for use in the United States (including those on EPA's List of Banned or Severely Restricted Pesticides). This performance standard applies to all vessels, including vessels with a hull coating applied outside the United States.

(c) Antifouling hull coatings must not contain tributyltin (TBT).

(d) Antifouling hull coatings must not contain any organotin compounds when the organotin is used as a biocide. Antifouling hull coatings may contain small quantities of organotin compounds other than TBT (*e.g.,* dibutyltin) when the organotin is acting as a chemical catalyst and not present above 2,500 milligrams total tin per kilogram of dry paint film. In addition, any such antifouling hull coatings must be designed to not slough or peel from the vessel hull.

(e) Antifouling hull coatings that contain TBT or other organotin compounds that are used as a biocide must be removed or an overcoat must be applied.

(f) Incidental amounts of antifouling hull coating discharged after contact with other hard surfaces (*e.g.,* moorings) are permissible.

(g) To the greatest extent practicable, use non-copper based and less toxic antifouling hull coatings. To the greatest extent practicable, use antifouling hull coatings with the lowest effective biocide release rates, rapidly biodegradable components (once separated from the hull surface), or use non-biocidal alternatives, such as silicone coatings.

(h) To the greatest extent practicable, avoid use of antifouling hull coatings on vessels that are regularly removed from the water and unlikely to accumulate hull growth.

§ 1700.28 Motor gasoline and compensating discharge.

(a) The discharge of motor gasoline and compensating effluent must not contain oil in quantities that:

(1) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or

(2) Cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines; or

(3) Contain an oil content above 15 ppm as measured by EPA Method 1664a or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (*e.g.,* ISO Method 9377) or U.S. Coast Guard; or

(4) Otherwise are harmful to the public health or welfare of the United States.

(b) The discharge of motor gasoline and compensating effluent must be minimized in port. If an oily sheen is observed, any spill or overflow of oil must be cleaned up, recorded, and reported to the National Response Center immediately.

(c) The discharge of motor gasoline and compensating effluent is prohibited in federally-protected waters.

§ 1700.29 through 1700.33 [Reserved]

§ 1700.34 Sonar dome discharge.

(a) The water inside the sonar dome must not be discharged for maintenance activities unless the use of a drydock for the maintenance activity is not feasible.

(b) The water inside the sonar dome may be discharged for equalization of pressure between the interior and exterior of the dome.

(c) A biofouling chemical that is bioaccumulative should not be applied to the exterior of a sonar dome when a non-bioaccumulative alternative is available.

§ 1700.35 Submarine bilgewater.

The discharge of submarine bilgewater:

(a) Must not contain oil in quantities that:

(1) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or

(2) Cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines; or

(3) Contain an oil content above 15 ppm as measured by EPA Method 1664a or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (*e.g.,* ISO Method 9377) or U.S. Coast Guard; or

(4) Otherwise are harmful to the public health or welfare of the United States.

(b) Must not contain dispersants, detergents, emulsifiers, chemicals, or other substances to remove the appearance of a visible sheen. This performance standard does not prohibit the use of these materials in machinery spaces for the purposes of cleaning and maintenance activities associated with vessel equipment and structures.

(c) Must only contain substances that are produced in the normal operation of a vessel. Oil solidifiers, flocculants or other additives (excluding any dispersants or surfactants) may be used to enhance oil-water separation during processing in an oil-water separator only if such solidifiers, flocculants, or other additives are minimized in the discharge and do not alter the chemical make-up of the oils being discharged. Solidifiers, flocculants, or other additives must not be directly added, or otherwise combined with, the water in the bilge.

(d) Must not occur in port if the port has the capability to collect and transfer the submarine bilgewater to an onshore facility.

(e) Must be minimized and, if technologically feasible, discharged as far from shore as possible.

(f) Must be minimized in federally-protected waters.

(g) Must employ management practices that will minimize leakage of oil and other harmful pollutants into the bilge.

§ 1700.36 Surface vessel bilgewater/oil-water separator effluent.

(a) All surface vessels must employ management practices that will minimize leakage of oil and other harmful pollutants into the bilge.

(b) Surface vessels equipped with an oil-water separator must not discharge bilgewater and must only discharge oil-water separator effluent through an oil-content monitor consistent with paragraph (c) of this section. All surface vessels greater than 400 gross tons must be equipped with an oil-water separator. Surface vessels not equipped with an oil-water separator must only discharge bilgewater consistent with paragraph (d) of this section.

(c) The discharge of oil-water separator effluent:

(1) Must not contain oil in quantities that:

(i) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or

(ii) Cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines; or

(iii) Contain an oil content above 15 ppm as measured by EPA Method 1664a or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (*e.g.,* ISO Method 9377) or U.S. Coast Guard; or

(iv) Otherwise are harmful to the public health or welfare of the United States.

(2) Must not contain dispersants, detergents, emulsifiers, chemicals, or other substances to remove the appearance of a visible sheen. This performance standard does not prohibit the use of these materials in machinery spaces for the purposes of cleaning and maintenance activities associated with vessel equipment and structures.

(3) Must only contain substances that are produced in the normal operation of a vessel. Oil solidifiers, flocculants or other additives (excluding any dispersants or surfactants) may be used to enhance oil-water separation during processing in an oil-water separator only if such solidifiers, flocculants, or other additives are minimized in the discharge and do not alter the chemical make-up of the oils being discharged. Solidifiers, flocculants, or other additives must not be directly added, or otherwise combined with, the water in the bilge.

(4) Must not occur in port if the vessel has the capability to collect and transfer oil-water separator effluent to an onshore facility.

(5) Must be minimized within one mile of shore.

(6) Must occur while sailing at speeds greater than six knots, if the vessel is underway.

(7) Must be minimized in federally-protected waters.

(d) The discharge of bilgewater (*i.e.,* wastewater from the bilge that has not been processed through an oil-water separator):

(1) Must not occur if the vessel has the capability to collect, hold, and transfer bilgewater to an onshore facility.

(2) Notwithstanding the prohibition of the discharge of bilgewater from vessels that have the capability to collect, hold, and transfer bilgewater to an onshore facility; the discharge of bilgewater:

(i) Must not contain dispersants, detergents, emulsifiers, chemicals, or other substances to remove the appearance of a visible sheen. This performance standard does not prohibit the use of these materials in machinery spaces for the purposes of cleaning and maintenance activities associated with vessel equipment and structures.

(ii) Must only contain substances that are produced in the normal operation of a vessel. Routine cleaning and maintenance activities associated with vessel equipment and structures are considered to be normal operation of a vessel.

(iii) Must not contain oil in quantities that:

(A) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or

(B) Cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines; or

(C) Contain an oil content above 15 ppm as measured by EPA Method 1664a or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (*e.g.,* ISO Method 9377) or U.S. Coast Guard; or

(D) Otherwise are harmful to the public health or welfare of the United States.

(iv) Must be suspended immediately if a visible sheen is observed. Any spill or overflow of oil or other engine fluids must be cleaned up, recorded, and reported to the National Response Center immediately.

§ 1700.37 Underwater ship husbandry.

(a) For discharges from vessels that are less than 79 feet in length:

(1) To the greatest extent practicable, vessel hulls with an antifouling hull coating must not be cleaned within 90 days after the antifouling coating application.

(2) Vessel hulls must be inspected, maintained, and cleaned to minimize the removal and discharge of antifouling coatings and the transport of fouling organisms. To the greatest extent practicable, rigorous vessel hull cleanings must take place in drydock or at a land-based facility where the removed fouling organisms or spent antifouling coatings can be disposed of onshore in accordance with any applicable solid waste or hazardous substance management and disposal requirements.

(3) Prior to the transport of the vessel overland from one body of water to another, vessel hulls must be inspected for any visible attached living organisms. If fouling organisms are found, they must be removed and disposed of onshore in accordance with any applicable solid waste and

hazardous substance management and disposal requirements.

(4) Vessel hull cleanings must be conducted in a manner that minimizes the release of antifouling hull coatings and fouling organisms, including:

(i) Adhere to any applicable cleaning requirements found on the coatings' FIFRA label.

(ii) Use soft brushes or less abrasive cleaning techniques to the greatest extent practicable.

(iii) Use hard brushes only for the removal of hard growth.

(iv) Use a vacuum or other collection/control technology, when available and feasible.

(b) For discharges from vessels that are greater than or equal to 79 feet in length:

(1) To the greatest extent practicable, vessel hulls with an antifouling hull coating must not be cleaned within 90 days after the antifouling coating application. To the greatest extent practicable, vessel hulls with copper-based antifouling coatings must not be cleaned within 365 days after coating application.

(2) Vessel hulls must be inspected, maintained, and cleaned to minimize the removal and discharge of antifouling coatings and the transport of fouling organisms. To the greatest extent practicable, rigorous vessel hull cleanings must take place in drydock or at a land-based facility where the removed fouling organisms or spent antifouling coatings can be disposed of onshore in accordance with any applicable solid waste or hazardous substance management and disposal requirements.

(3) Vessel hull cleanings must be conducted in a manner that minimizes the release of antifouling hull coatings and fouling organisms, including:

(i) Adhere to any applicable cleaning requirements found on the coatings' FIFRA label.

(ii) Use soft brushes or less abrasive cleaning techniques to the greatest extent practicable.

(iii) Use hard brushes only for the removal of hard growth.

(iv) Use a vacuum or other collection/control technology, when available and feasible.

§ 1700.38 through 1700.42 [Reserved]

[FR Doc. 2016–24079 Filed 10–6–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 16–271; WT Docket No. 10–208; FCC 16–115]

Connect America Fund, Connect America Fund—Alaska Plan; Universal Service Reform—Mobility Fund

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on various specific issues involved in implementing a process of eliminating the provision of high-cost support to more than one competitive Eligible Telecommunications Carrier (ETC) in the same geographic area. The Commission specifically seeks comment on how best to eliminate duplicative funding consistent with our universal service goals, should the evaluation of Form 477 data reveal areas where more than one carrier is receiving support for the provision of 4G LTE service. The Commission also seeks comment on how to address a carrier's performance obligations and support payments to the extent it loses funding eligibility as a consequence of the elimination of duplicative support.

DATES: Comments are due on or before December 6, 2016 and reply comments are due on or before January 5, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket No. 10–90, WC Docket No. 16–271 and WT Docket No. 16–208, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/* Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Because more than one docket number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484, Matthew Warner of the Wireless Telecommunications Bureau, (202) 418–2419, or Audra Hale-Maddox of the Wireless Telecommunications Bureau, (202) 418–0794.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in WC Docket Nos. 10–90, 16–271 and WT Docket No. 16–208; FCC 16–115, adopted on August 23, 2016 and released on August 31, 2016. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th St. SW., Washington, DC 20554 or at the following Internet address: *https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-115A1.docx.*

The Report and Order that was adopted concurrently with the FNPRM is published elsewhere in this issue of the **Federal Register**.

I. Introduction

1. In the concurrently adopted Report and Order, the Commission adopts an integrated plan to address both fixed and mobile voice and broadband service in high-cost areas of the state of Alaska,

building on a proposal submitted by the Alaska Telephone Association. In February 2015, the Alaska Telephone Association (ATA) proposed a consensus plan designed to maintain, extend, and upgrade broadband service across all areas of Alaska served by rate-of-return carriers and their wireless affiliates. Given the unique climate and geographic conditions of Alaska, the Commission finds that it is in the public interest to provide Alaskan carriers with the option of receiving fixed amounts of support over the next ten years to deploy and maintain their fixed and mobile networks. If each of the Alaska carriers elects this option, the Commission expects this plan to bring broadband to as many as 111,302 fixed locations and 133,788 mobile consumers at the end of this 10-year term.

II. Further Notice of Proposed Rulemaking

2. The Commission's policy has been to eliminate the provision of high-cost support to more than one competitive ETC in the same geographic area. Although there currently is no duplicative support for 4G LTE service in remote Alaska, the Commission has established a process in the Report and Order to identify the existence of any such overlap mid-way through the 10-year term, and to take steps to eliminate duplicative support levels in the second half of the 10-year term of the Plan. This FNPRM seeks comment on various specific issues involved in implementing that process.

3. In the concurrently adopted Report and Order, the Commission adopts, for purposes of identifying where duplicative support is occurring, a definition that includes those areas where there is subsidized 4G LTE service provided by more than one carrier. The Commission will identify such areas and evaluate the extent of overlap, if any, based on the Form 477 data filed by the carriers in March, 2021, which will represent deployment as of December 31, 2020.

4. The Commission seeks comment on how best to eliminate duplicative funding consistent with our universal service goals, should the evaluation of that Form 477 data reveal areas where more than one carrier is receiving support for the provision of 4G LTE service. How should the Commission identify the relevant amount of support to attribute to any overlap area? Once the amount of support is identified, what mechanism should the Commission apply to eliminate the duplicative funding? For example, should the Commission eliminate support to all carriers receiving duplicative support in any given area? To the extent the Commission continues to provide support to one provider in any such area, how should the amount of support, and the recipient of that support, be determined? For example, should the Commission award support by auction in areas receiving duplicative support? Alternatively, should it award support to whichever provider serves the larger service area? If so, how should the relevant service area be defined? Should the Commission adopt an approach that would award support for any overlap area to the carrier that builds out 4G LTE in an area first? Are there other mechanisms the Commission could use to eliminate any identified overlap in 4G LTE supported service? If any of these or other proposals would result in an area being served by one subsidized provider and one unsubsidized provider, how should the Commission address that, consistent with our general policy of not providing funding where there is an unsubsidized provider?

5. Given the distinct needs and unique nature of Alaska, and the extent to which it lags much of the rest of the Nation in 4G LTE deployment, the Commission proposes that any funds no longer provided as a result of the elimination of duplicative support be used to support other mobile services in high-cost areas of Alaska. The Commission seeks comment on this proposal and, more specifically, on how any affected funds should best be used.

6. The Commission also seeks comment on how to address a carrier's performance obligations and support payments to the extent it loses funding eligibility as a consequence of the elimination of duplicative support. In such instances, the Commission proposes that a carrier amend its performance plan and that it should neither be required nor permitted to include the population in the relevant overlap area in order to meet its performance commitments. The Commission also seeks comment on whether, for carriers losing support, they should provide a phase down of support for such carriers, such as over two or three years.

7. As discussed above, the Commission will not evaluate whether there is any duplicative support or make adjustments to support payments until year five of the Alaska Plan. Given the important role of high-cost support in bringing mobile broadband service to remote Alaska, however, the Commission thinks that it is critical to engage in this process now in order to ensure a smooth transition should any modifications to the Plan be necessary to address duplicative support. Commenters are invited to address the proposals set forth above. In addition, are there other issues or alternatives that the Commission should consider in defining or eliminating duplicative competitive ETC support in Alaska?

III. Procedural Matters

8. The FNPRM contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the proposed information collection requirements contained in this document, as required by the PRA. In addition, pursuant to the Small Business Paperwork Relief Act, the Commission seeks specific comment on how they might further reduce the information collection burden for small business concerns with fewer than 25 employees.

9. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided on the first page of this document. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

10. The FNPRM is needed to ensure fiscal responsibility and maximize limited support for the support going to ensure universal service in remote areas of Alaska. The FNPRM seeks comment about duplicative support under the Alaska Plan and how such support should be addressed. The FNPRM proposes that duplicative areas be defined as those areas where there is subsidized 4G LTE service provided by more than one carrier in a service area and proposes that this would be determined by using March 2021 Form 477 data. The FNPRM seeks comment on options for addressing this issue during the course of the 10-year support period under the Alaska Plan and seeks comment on eliminating duplicative support in years six through ten of the Alaska Plan, as adopted (*e.g.,* from

January 1, 2022 through December 31, 2026).

11. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1, 2, 4(i), 5, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 1302.

12. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A small-business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

13. Total Small Entities. Our proposed action, if implemented, may, over time, affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA, which represents 99.7% of all businesses in the United States. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,215 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 89,327 entities may qualify as ''small governmental jurisdictions.'' Thus, the Commission estimates that most governmental jurisdictions are small.

14. *Permit-But-Disclose.* The proceeding that this Report and Order and Further Notice of Proposed Rulemaking initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

15. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 1302 that this Further Notice of Proposed Rulemaking is adopted.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2016–23917 Filed 10–6–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BG33

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Amendment 37

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

ACTION: Notice of availability (NOA); request for comments.

SUMMARY: The South Atlantic Fishery Management Council (South Atlantic Council) has submitted Amendment 37 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce, Amendment 37 would modify the management unit boundaries for hogfish in the South Atlantic by establishing two hogfish stocks off (1) Georgia through North Carolina and (2) Florida Keys/East Florida; establish a rebuilding plan for the Florida Keys/East Florida hogfish stock; specify fishing levels and accountability measures (AMs), and modify or establish management measures for the Georgia through North Carolina and Florida Keys/East Florida stocks of hogfish. The purpose of Amendment 37 is to manage hogfish using the best scientific information available while ending overfishing and rebuilding the Florida Keys/East Florida hogfish stock.

DATES: Written comments must be received by December 6, 2016.

ADDRESSES: You may submit comments on Amendment 37 identified by ''NOAA–NMFS–2016–0068'' by either of the following methods:

- *Electronic Submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0068,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit all written comments to Nikhil Mehta, NMFS Southeast Regional Office (SERO), 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be

considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 37 may be obtained from *www.regulations.gov* or the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.* Amendment 37 includes a final environmental impact statement, initial regulatory flexibility analysis, regulatory impact review, and fishery impact statement.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, NMFS SERO, telephone: 727–824–5305, or email: *nikhil.mehta@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

The FMP being revised by Amendment 37 was prepared by the South Atlantic Council, and Amendment 37, if approved, would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

Currently, hogfish is managed under the FMP as a single stock in the South Atlantic from the jurisdictional boundary between the South Atlantic Council and Gulf of Mexico Fishery Management Council (Gulf Council) (approximately the Florida Keys) to a line extending seaward from the North Carolina and Virginia state border. The current status determination criteria such as maximum sustainable yield (MSY) and minimum stock size threshold (MSST), annual catch limits (ACLs), recreational annual catch targets (ACTs), AMs, and management measures in the FMP are established for a single stock of hogfish for the South Atlantic region. The most recent stock assessment for hogfish was completed in 2014 through the Southeast Data, Assessment, and Review assessment process (SEDAR 37). SEDAR 37 identified two separate stocks of hogfish in the South Atlantic region under the jurisdiction of the South Atlantic Council, and one stock of hogfish in the Gulf of Mexico (Gulf) under the jurisdiction of the Gulf Council. In the South Atlantic region, one stock of hogfish was identified to exist off North Carolina, South Carolina, and Georgia; and a separate stock of hogfish was identified to exist off the Florida Keys and East Florida. The South Atlantic Council's Scientific and Statistical Committee (SSC) did not consider the SEDAR 37 results for the Georgia through North Carolina stock as sufficient to determine stock status and inform South Atlantic Council management decisions, and the South Atlantic Council concurred. NMFS agreed and determined that the overfishing and overfished status determination of the Georgia through North Carolina stock is unknown. Based on SEDAR 37 and the South Atlantic Council's SSC recommendation for the Florida Keys/East Florida stock, NMFS determined that the Florida Keys/East Florida stock is currently undergoing overfishing and is overfished. Based on SEDAR 37, NMFS also determined that the West Florida hogfish stock in the Gulf identified by SEDAR 37, which occurs off the west coast of Florida to Texas, is neither overfished, nor undergoing overfishing. NMFS notified the South Atlantic Council of its determinations via letter on February 17, 2015.

Actions Contained in the Amendment 37

Amendment 37 includes actions to revise the hogfish fishery management unit in the FMP by establishing two hogfish stocks, one in Federal waters off Georgia through North Carolina and one in Federal waters off the Florida Keys/East Florida; establish a rebuilding plan for the Florida Keys/East Florida hogfish stock; specify fishing levels and accountability measures (AMs), and modify or establish management measures for the Georgia through North Carolina and Florida Keys/East Florida stocks of hogfish. All weights of hogfish are described in round weight.

Fishery Management Unit for Hogfish

Currently, hogfish is managed as a single stock in Federal waters in the South Atlantic region from the jurisdictional boundary between the South Atlantic and Gulf Councils to the North Carolina/Virginia border. Amendment 37 would establish new stock boundaries and create two stocks of hogfish under the jurisdiction of the South Atlantic Council. The first stock would be the Georgia through North Carolina stock, with a southern boundary extending from the Florida/Georgia state border, and a northern border extending from the North Carolina/Virginia state border. The second stock would be the Florida Keys/East Florida hogfish stock, with a southern boundary extending from 25°09′ N. lat. near Cape Sable on the west coast of Florida. The management area would extend south and east around the Florida Keys and have a northern border extending from the Florida/Georgia state border.

The Gulf Council has approved Amendment 43 to the FMP for the Reef Fish Resources of the Gulf, and has selected the same boundary near Cape Sable on the west coast of Florida to separate the Florida Keys/East Florida hogfish stock from the hogfish stock in the Gulf (West Florida hogfish stock). In accordance with Section 304(f) of the Magnuson-Stevens Act, the Gulf Council requested that the Secretary designate the South Atlantic Council as the responsible Council for management of this hogfish stock in Gulf Federal waters south of 25°09′ N. lat. near Cape Sable on the west coast of Florida. If the Gulf Council's request is approved, the Gulf Council would continue to manage the West Florida hogfish stock in Federal waters in the Gulf, except in Federal waters south of this boundary. Therefore, the South Atlantic Council, and not the Gulf Council, would establish the management measures for the entire range of the Florida Keys/East Florida hogfish stock, including in Federal waters south of 25°09′ N. lat. near Cape Sable in the Gulf. Commercial and recreational for-hire vessels fishing for hogfish in Gulf Federal waters, *i.e.,* north and west of the jurisdictional boundary between the Gulf and South Atlantic Councils, would still be required to have the appropriate Federal Gulf reef fish permits, and vessels fishing for hogfish in South Atlantic Federal waters, *i.e.,* south and east of the jurisdictional boundary, would still be required to have the appropriate Federal South Atlantic snapper-grouper permits. Those permit holders would still be required to follow the sale and reporting requirements associated with the respective permits.

As described in Amendment 37, the proposed stock boundary near Cape Sable, Florida, would be a good demarcation point because it coincides with an existing State of Florida management boundary for Florida's

Pompano Endorsement Zone and, therefore, would aid in simplifying regulations across management jurisdictions. NMFS specifically seeks public comment regarding the revised stock boundaries and the manner in which the Councils would have jurisdiction over these stocks if both Amendment 37 for the South Atlantic and Amendment 43 for the Gulf are approved and implemented.

MSY and MSST for the Georgia Through North Carolina and Florida Keys/East Florida Hogfish Stocks

Currently, MSY for the single hogfish stock in the South Atlantic is the yield produced by the fishing mortality rate at MSY (F_{MSY}) or the F_{MSY} proxy, and MSST is equal to the spawning stock biomass at MSY (SSB_{MSY})*(1–M) or 0.5, whichever is greater (where M equals natural mortality). However, MSY and MSST values for the single hogfish stock are unknown because hogfish were unassessed until recently. Amendment 37 would specify the MSY for the Georgia through North Carolina and Florida Keys/East Florida stocks of hogfish as equal to the yield produced by F_{MSY} or the F_{MSY} proxy, with the MSY and F_{MSY} proxy recommended by the most recent stock assessment. Based on SEDAR 37, the resulting MSY for the Florida Keys/East Florida hogfish stock is 346,095 lb (156,986 kg), and is unknown for the Georgia through North Carolina hogfish stock. Amendment 37 would specify the MSST for these two stocks of hogfish at 75 percent of SSB_{MSY}, which results in an unknown MSST value for the Georgia through North Carolina hogfish stock, and an MSST for the Florida Keys/East Florida hogfish stock of 1,725,293 lb (782,580 kg). The proposed MSST for hogfish is consistent with how the South Atlantic Council has defined MSST for other snapper-grouper stocks with low natural mortality estimates.

Rebuilding Plan for the Florida Keys/East Florida Hogfish Stock

Because the Florida Keys/East Florida hogfish stock is overfished, Amendment 37 would establish a rebuilding plan that would set the acceptable biological catch (ABC) equal to the yield at a constant fishing mortality rate and rebuild the stock in 10 years with a 72.5 percent probability of success. Year 1 of the rebuilding plan would be 2017, and 2027 would be the last year. The South Atlantic Council's SSC indicated that harvest levels proposed in the Amendment 37 rebuilding plan are sustainable and would achieve the goal of rebuilding the Florida Keys/East Florida hogfish stock. As explained below, the ABC for the Florida Keys/East Florida hogfish stock would be 17,930 fish in 2017 and would increase annually through 2027 when the ABC would be 63,295 fish.

ACLs and OY for the Georgia Through North Carolina and Florida Keys/East Florida Hogfish Stocks

Currently, the total ABC for the single hogfish stock (equal to ACL and OY) is 134,824 lb (61,155 kg), with a commercial ACL sector allocation (36.69 percent) of 49,469 lb (22,439 kg), and recreational ACL sector allocation (63.31 percent) of 85,355 lb (38,716 kg). For the Georgia through North Carolina hogfish stock, Amendment 37 would specify an ABC of 35,716 lb (16,201 kg), a total ACL and OY (equal to 95 percent of the ABC) of 33,930 lb (15,390 kg), and commercial and recreational ACLs based on re-calculated sector allocations of 69.13 percent to the commercial sector and 30.87 percent to the recreational sector. It was necessary to re-calculate the sector allocations based on the existing formula from the Comprehensive ACL Amendment, based on the appropriate landings from the relevant geographic region of the new stock. The commercial ACL would be 23,456 lb (10,639 kg) and the recreational ACL would be 988 fish.

For the Florida Keys/East Florida stock of hogfish, Amendment 37 would specify an ABC of 17,930 fish which would increase annually through 2027 when the ABC would be 63,295 fish. The total ACL and OY would be equal to 95 percent of the ABC, and the commercial and recreational ACLs would be based on re-calculated sector allocations of 9.63 percent to the commercial sector and 90.37 percent to the recreational sector. In 2017, the total ACL (and OY) would be 17,034 fish, the commercial ACL would be 3,510 lb (1,592 kg), and the recreational ACL would be 15,689 fish and would increase annually through 2027 as the stock rebuilds. In 2027, the total ACL (and OY) for the Florida Keys/East Florida hogfish stock would be 60,130 fish, the commercial ACL would be 17,018 lb (7,719 kg), and recreational ACL would be 53,610 fish.

Recreational ACTs for the Georgia Through North Carolina and Florida Keys/East Florida Hogfish Stocks

The recreational ACT for the current hogfish stock is 59,390 lb (26,939 kg). Amendment 37 would specify a recreational ACT (equal to 85 percent of the recreational ACL) of 840 fish for the Georgia through North Carolina stock, and 13,335 fish for the Florida Keys/East Florida stock in 2017. The recreational ACTs for the Florida Keys/East Florida stock would increase annually from 2017 through 2027 as the stock rebuilds. NMFS notes that the recreational ACT is currently used only for monitoring.

AMs for the Commercial and Recreational Sectors for Both the Georgia Through North Carolina and Florida Keys/East Florida Hogfish Stocks

The current South Atlantic commercial AMs for the single hogfish stock consist of an in-season closure of the commercial sector if the commercial ACL is met or projected to be met; and if the commercial ACL is exceeded, a post-season AM that would reduce the commercial ACL by the amount of the commercial ACL overage during the following fishing year, only if the total ACL is also exceeded and hogfish are overfished. Amendment 37 would retain the current South Atlantic in-season and post-season AMs for the commercial sector, and apply them to both the Georgia through North Carolina and Florida Keys/East Florida hogfish stocks.

The current South Atlantic recreational AMs for the single hogfish stock consist of an in-season closure of the recreational sector if the recreational ACL is met or is projected to be met. If the recreational ACL is exceeded, then during the following fishing year, NMFS will monitor for a persistence in increased landings. The post-season AM would reduce the length of the recreational season and the recreational ACL by the amount of the recreational ACL overage, only if the total ACL is also exceeded and hogfish are overfished. Amendment 37 would retain these current South Atlantic recreational AMs for both the Georgia through North Carolina and Florida Keys/East Florida hogfish stocks.

Minimum Size Limits for the Georgia Through North Carolina and Florida Keys/East Florida Hogfish Stocks

The current minimum size limit for the single hogfish stock in the South Atlantic is 12 inches (30.5 cm), fork length (FL), for both the commercial and recreational sectors. For both the commercial and recreational sectors, Amendment 37 would increase the minimum size limit to 17 inches (43.2 cm), FL, for the Georgia through North Carolina hogfish stock, and 16 inches (40.6 cm), FL, for the Florida Keys/East Florida hogfish stock. The South Atlantic Council determined these minimum size limits could serve as a precautionary approach to address population stability, considering life

history characteristics for hogfish off Georgia through North Carolina, and reduce disruption to spawning, avoid recruitment overfishing, and benefit the spawning populations off the Florida Keys and East Florida.

Commercial Trip Limit for the Georgia Through North Carolina and Florida Keys/East Florida Hogfish Stocks

Currently, there is no commercial trip limit for hogfish in the South Atlantic. Amendment 37 would establish a commercial trip limit of 500 lb (227 kg) for the Georgia through North Carolina stock, and 25 lb (11 kg) for the Florida Keys/East Florida stock. As described in Amendment 37, few fishermen catch more than 500 lb (227 kg) of hogfish per trip off Georgia through North Carolina, and the proposed commercial ACL is not expected to be met. However, because restrictions on commercial harvest of hogfish from the Florida Keys/East Florida stock could be large, there was some concern that fishermen may shift effort to Georgia and the Carolinas. Therefore, the South Atlantic Council proposed a 500-lb (227-kg) commercial trip limit for the Georgia through North Carolina stock to enable commercial harvest in that geographic sub-region to take place year-round. The South Atlantic Council determined that implementing a trip limit of 25 lb (11 kg) for the Florida Keys/East Florida stock would restrict harvest and help to extend the commercial fishing season.

Recreational Bag Limits for the Georgia Through North Carolina and Florida Keys/East Florida Hogfish Stocks

The current recreational bag limit for hogfish in the South Atlantic is five fish per person per day in Federal waters off Florida, with no recreational bag limits in Federal waters off Georgia, South Carolina, and North Carolina. Amendment 37 would set a recreational bag limit of one fish per person per day in Federal waters off the Florida Keys and East Florida, and a recreational bag limit of two fish per person per day in Federal waters off Georgia through North Carolina. The South Atlantic Council determined that these bag limits would reduce harvest and help to extend the recreational fishing season.

Recreational Fishing Season for the Florida Keys/East Florida Hogfish Stock

Currently, hogfish is available for the recreational sector to harvest year-round, as long as the recreational ACL has not been met. Amendment 37 would establish a recreational fishing season from May through October for the Florida Keys/East Florida hogfish stock. As described in Amendment 37, hogfish spawning activity occurs predominantly during the months of December through April, and begins (and ends) slightly earlier in the Florida Keys than on the West Florida shelf (*e.g.,* from the Florida panhandle south along the west coast of Florida to Naples, Florida). Analysis in Amendment 37 showed that based on the proposed recreational ACLs, minimum size limits, and recreational bag limits, a recreational fishing season that is open for 6 months would help constrain recreational landings below the recreational ACL for the Florida Keys/East Florida hogfish stock. The South Atlantic Council determined that specifying a May through October fishing season would protect the overfished Florida Keys/East Florida hogfish stock during the peak spawning season, and the proposed ACLs and AMs would help ensure overfishing does not occur. The South Atlantic Council decided not to establish a recreational fishing season for the Georgia through North Carolina hogfish stock, because that stock does not seem to be experiencing heavy fishing pressure, and the average recreational landings in recent years have been well below the proposed recreational ACL.

Proposed Rule for Amendment 37

A proposed rule that would implement Amendment 37 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The South Atlantic Council has submitted Amendment 37 for Secretarial review, approval, and implementation. Comments on Amendment 37 must be received by December 6, 2016. Comments received during the respective comment periods, whether specifically directed to Amendment 37 or the proposed rule will be considered by NMFS in the decision to approve, disapprove, or partially approve Amendment 37. Comments received after the comment periods will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: October 4, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–24334 Filed 10–6–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 195
Friday, October 7, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Submission for OMB Review; Comment Request

October 4, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 7, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Importation of Live Poultry, Poultry Meat, and Other Poultry Products from Specified Regions.

OMB Control Number: 0579–0228.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. Veterinary Services of the USDA's Animal and Plant Health Inspection Service (APHIS) is responsible for administering regulations intended to prevent the introduction of animal diseases into the United States. The regulations in 9 CFR part 93 and 94 allow the export of live poultry, poultry meat and other poultry products from Argentina and the Mexican States of Campeche, Quintana Roo, and Yucatan under certain conditions. APHIS will collect information through the use of a health certification statement that must be completed by Mexican veterinary authorities prior to export and three APHIS forms VS 17–129, VS 17–29, and VS 17–30.

Need and Use of the Information: The information collected from the health certificate and forms will provide APHIS with critical information concerning the origin and history of the items destined for importation in the United States. Without the information APHIS would be unable to establish an effective defense against the incursion of HPAI and END from import poultry and poultry products.

Description of Respondents: Federal Government; Business or other for-profit.

Number of Respondents: 22.

Frequency of Responses: Reporting: On occasion.

Total burden hours: 224.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–24287 Filed 10–6–16; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ozark-Ouachita Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ozark-Ouachita Resource Advisory Committee (RAC) will meet in Fort Smith, Arkansas. 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. Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_Page?id=001t0000002JcwBAAS*.

DATES: The meeting will be held November 1, 2016, beginning at 1:00 p.m. (CST). In the event of unavoidable circumstances, alternate dates for the meeting are November 2 and November 3, 2016.

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 Janet Huckabee Arkansas River Valley Nature Center, 8300 Wells Lake Road, Fort Smith, Arkansas.

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 100 Reserve Street, Hot Springs, Arkansas. Please

call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Caroline Mitchell, Committee Coordinator, by phone at 501–321–5318 or via email at *carolinemitchell@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:

1. To review Title II proposals.

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 October 28, 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 Caroline Mitchell, Committee Coordinator, PO Box 1270, Hot Springs, Arkansas, or via facsimile to 501–321–5399.

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 by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: September 30, 2016.

Bill Pell,

Designated Federal Official.

[FR Doc. 2016–24311 Filed 10–6–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2016–0008]

Notice of Proposed Changes to the National Handbook of Conservation Practices for the Natural Resources Conservation Service

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture (USDA).

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices (NHCP) for public review and comment.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a series of revised conservation practice standards in NHCP. These standards include Brush Management (Code 314), Herbaceous Weed Treatment (Code 315), Lined Waterway or Outlet (Code 468), Prescribed Grazing (Code 528), and Restoration of Rare or Declining Natural Communities (Code 643). NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into section IV of their respective electronic Field Office Technical Guide. These practices may be used in conservation systems that treat highly erodible land (HEL), or on land determined to be a wetland. Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment all proposed revisions to conservation practice standards used to carry out HEL and wetland provisions of the law.

DATES: *Effective Date:* This is effective October 7, 2016.

Comment Date: Submit comments on or before November 7, 2016. Final versions of these new or revised conservation practice standards will be adopted after the close of the 30-day period and after consideration of all comments.

ADDRESSES: Comments should be submitted, identified by Docket Number NRCS–2016–0008, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or hand-delivery:* Public Comments Processing, Attention: Regulatory and Agency Policy Team, Strategic Planning and Accountability, Natural Resources Conservation Service, 5601 Sunnyside Avenue, Building 1–1112D, Beltsville, Maryland 20705.

NRCS will post all comments on *http://www.regulations.gov.* In general, personal information provided with comments will be posted. If your comment includes your address, telephone number, email, or other personal identifying information, your comments, including personal information, may be available to the public. You may ask in your comment that your personal identifying information be withheld from public view, but this cannot be guaranteed.

FOR FURTHER INFORMATION CONTACT: Terri Ruch, acting national agricultural engineer, Conservation Engineering Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue SW., Room 6133 South Building, Washington, DC 20250.

Electronic copies of the proposed revised standards are available from *http://go.usa.gov/TXye.* Requests for paper versions or inquiries may be directed to Emil Horvath, national practice standards review coordinator, Natural Resources Conservation Service, Central National Technology Support Center, 501 West Felix Street, Fort Worth, Texas 76115.

SUPPLEMENTARY INFORMATION: The amount of the proposed changes varies considerably for each of the conservation practice standards addressed in this notice. To fully understand the proposed changes, individuals are encouraged to compare these changes with each standard's current version as shown at: *http://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/technical/cp/ncps/?cid=nrcs143_026849* .To aid in this comparison, following are highlights of some of the proposed revisions to each standard:

Brush Management (Code 314): The brush management standard was reviewed and updated to reflect current agency policy and science. Changes also were made to bring the standard up to date on current ecological site descriptions. Added statement to the ''purpose'' that when standard is applied successively, it facilitates the process to achieve the desired plant community. ''Criteria'' section was changed to add statement to ensure practice area has the correct plant diversity for the desired plant community after completion.

Herbaceous Weed Treatment (Code 315): The herbaceous weed control standard was reviewed and updated to reflect current agency policy and science. Changes also were made to bring standard up to date on current ecological site descriptions. ''Purpose'' was adjusted to focus on consideration of reducing wildfire fuel loading. Two ''purposes'' were added that reflect agency consideration and focus on improving rangeland health, and that when the standard is applied successively, it facilitates the process to achieve the desired plant community.

Lined Waterway or Outlet (Code 468): The entire document is edited for clarity. Restriction for maximum capacity is removed. Criteria for minimum capacity is modified to include provisions for minimal slopes and downstream conveyance capacities. Specific ''n'' values and design criteria

are replaced with references to NRCS National Engineering Handbook. References and citations are updated to the current editions.

Prescribed Grazing (Code 528): The prescribed grazing standard was reviewed and updated to reflect current agency policy and science. Changes were made to clarify and recognize the benefits of prescribed grazing on soil health. Clarified ''practice description'' by adding ''. . . with the intent to achieve specific ecological, economic, and management objectives.'' In ''purpose,'' the concept of plant community ''structure'' was added when addressing plant communities, and added verbiage identifying the benefits of this practice to soil health.

Restoration of Rare or Declining Natural Communities (Code 643): Changed title from Restoration and Management of Rare and Declining Habitats to Restoration of Rare or Declining Natural Communities. The term ''habitats'' is changed to ''natural communities'' to encompass not only wildlife resource concerns, but also activities targeting a unique plant community. Unique to restoration efforts of rare and declining natural communities, the restoration of the abiotic conditions is typically necessary, prior to restoration of biotic conditions. Broadened the scope to include abiotic restoration and restoration of plant communities.

Dated: September 29, 2016.

Jason A. Weller,

Chief, Natural Resources Conservation Service.

[FR Doc. 2016–24329 Filed 10–6–16; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the West Virginia Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of monthly planning meetings.

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 meetings of the West Virginia Advisory Committee (Committee) to the Commission will convene by conference call at 12:00 p.m. (EST) on. The purpose of meetings are to discuss and vote on the Committee's report regarding Mental Health and discuss topics for the Committee's future civil rights review.

DATES: Friday, November 4, 2016; Friday, December 2, 2016; and Friday, January 6, 2017.

TIME: 12:00 p.m. (EST).

PUBLIC CALL-IN INFORMATION: Conference call-in number: 1–888–601–3861 and password: 636552.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–888–601–3861 and password: 636552. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1-800–977–8339 and providing the operator with the toll-free conference call-in number: 1–888–601–3861 and password: 636552.

Members of the public are invited to submit written comments; the comments must be received in the regional office approximately 30 days after each scheduled meeting. 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.

Records and documents discussed during the meeting will be available for public viewing as they become available at *http://facadatabase.gov/committee/meetings.aspx?cid=281;* click the ''Meeting Details'' and ''Documents'' links. 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 meetings. 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 numbers, email or street address.

Agenda

I. Welcome and Introductions
—Rollcall
Planning Meeting
—Discuss Mental Health Project and Other Topics for Civil Right Project
II. Other Business
III. Open Comment
IV. Adjournment

Dated: October 3, 2016.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2016–24238 Filed 10–6–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–67–2016]

Foreign-Trade Zone (FTZ) 82—Mobile, Alabama; Notification of Proposed Production Activity; Airbus Americas, Inc. (Commercial Passenger Jet Aircraft); Mobile, Alabama

The City of Mobile, Alabama, grantee of FTZ 82, submitted a notification of proposed production activity to the FTZ Board on behalf of Airbus Americas, Inc. (Airbus), located in Mobile, Alabama. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on September 29, 2016.

Airbus already has authority to produce commercial passenger jet aircraft within Site 1 of FTZ 82. The current request would add additional foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Airbus from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, Airbus would be able to choose the duty rates during customs entry procedures that apply to commercial passenger jet aircraft (duty rate free) for the foreign-status materials/components noted below and in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Talcum powder; oil-based preservatives; engine, turbine and gear box oils; petroleum jelly; glycerol; non-aqueous paints and

lacquers; paints and coatings in non-aqueous dispersions; paints and coatings in aqueous dispersions; epoxy top coat lacquers; adhesives and sealants; greases and anti-corrosion preparations; lubricants and anticorrosion preparations; glues and adhesives; transfer tape and adhesives; cartridge detonators for fire extinguishing systems; paint thinners and activators; hydraulic fluids; wash primers and adhesion promoters; epoxy resins; HDI chemical compound hardeners; foam profile shapes; plastic tubes and sleeves; plastic flexible hoses; plastic hose fittings and unions; plastic self-adhesive tape and strip; plastic self-adhesive tape, labels, placards and plate; plastic sheet and strip for insulation; plastic plate and non-adhesive tape; plastic non-adhesive tape for packing electrical connectors; foam plate; plastic panels; plastic bobbins; plastic caps and plugs; plastic brackets covers, caps and other fittings; plastic spacers, clips, fasteners and other aircraft parts; cellular rubber sheet and tape; rubber tape and foam; rubber shims; rubber profile shapes; rubber hoses; rubber landing gear tires; rubber O-rings, seals and gaskets; rubber bushings, spacers, grommets and other aircraft parts; Prepreg Nomex rigid flight accessory cases; plywood stowage trunks for maintenance equipment; leather cases and pouches for equipment storage; textile pouches for airline demonstration equipment; plastic cases for equipment; leather pockets; thermal transfer paper; aircraft marking decals; unlighted placards and signs; twill tape for aircraft carpet; linen sewing yarn for aircraft carpet installation; synthetic sewing yarn for threading insulation blankets; water absorbent felt for cabin bracket installation; synthetic braided cordage; synthetic emergency escape rope and retaining cords; finished aircraft carpet assemblies; rubberized fabric aircraft carpet tape; shim plates and insulating washers; synthetic fireproof gloves; finished aircraft curtain and class divider assemblies; life vests; probe and sensor covers and protection sleeves; glass cords for aircraft insulation installation; fiberglass batting assemblies; flexible fiberglass sheets; fiberglass hook and loop strip, pressure-sensitive adhesive strip and heat protection webbing; fiberglass gaskets and shims; fiberglass door caps and other aircraft parts; stainless steel sheet; stainless steel layered foil; stainless steel round bars; stainless steel rods; stainless steel wire; stainless steel pipe connections and flanges; stainless steel unions, couplings and sleeves; stainless steel elbows; stainless steel tees; threaded and non-threaded steel pipe unions; steel pipe fittings; oxygen cylinder assemblies; steel self-tapping screws; steel bolts, machine screws and studs; steel screws, steel nuts; steel blind bolts, hi-lok fasteners and threaded pins and inserts; steel washers; steel rivets; steel helical springs; steel wire springs, spring plates and spring retainers; steel rings and clips; steel repair bushings, shims, clamps, stops and other aircraft parts; refined copper wire; copper tube fittings; copper round and flat braid assemblies; copper washers; copper and brass cotter pins and circlips; copper screws; copper bushings and couplings; nickel alloy fasteners and clamps; aluminum profiles and shims; aluminum rods, bars and shafts; aluminum plates and sheets; aluminum foils; aluminum tubes; aluminum pipe fittings; aluminum oxygen and gas cylinders; aluminum clamps, shims, spacers, bushings and other aircraft parts; zinc stud receptacles; titanium bolts, rivets, screws, pins and other fasteners; titanium pipe and tube for fluid and gasses; crash axes; opening tools; door lock assemblies; steel and aluminum hinges and hinge components; steel flexible tubing; aluminum blanking caps; unlighted metal placards; hydraulic actuators and servo controls; RAM air turbines; horizontal stabilizer actuators; hydraulic pumps; fuel pumps; jet pump eductors; pump components; circulation and cooling fans; air chillers; beverage maker and food preparation equipment parts; fluid and fuel filter assemblies; air filter elements and assemblies; inert gas generators; fire extinguisher parts and rain repellant cans; data printers; hydraulic accumulators and wiper blade assemblies; pressure regulators and bleed valves; tire fill valves; flow control, solenoid, regulator, fuel, suction and other valve assemblies; levers, caps, plugs and other valve parts; spherical roller bearings; bushings; gear boxes; travel limiters and actuators; generators; auxiliary power units and generators; lamp ballasts; static inverters, power supplies and adapters; power supply and static inverter parts; door lock magnets; spare batteries; NICAD storage batteries; flashlights; inner line heaters; heater bridges and heating elements; communication handsets; megaphones; cockpit voice recorders; floppy disks; CD–ROMS; flash memory cards; VHF radios and transceivers; air traffic control equipment and weather radar; directional receivers, emergency locator transmitters, traffic management computers and other avionics; LCD monitors; antennas for avionics equipment; waveguides; static discharger wicks; LED/LCD indicator and information panels; warning lights, indicators, strobes and intercommunication directors; lens plates, indicators, housings, detection units, decoders/encoders and passenger service information units; dimmer units; relays and contactors; electrical connectors and sockets; solder sleeves, terminals and splices; junction modules; control panels and units, circuit breaker panels and keypad assemblies; receptacles, back shells, contacts and other electrical parts; incandescent lamps; fluorescent lamps; flight data recorders and transducer units; control boxes, interface units and mixing units; coaxial cable and cable harnesses; cable splices and insulators; landing gear and landing gear parts, wheels hubcaps and other parts; life raft assemblies; standby compasses; data concentrators, slat/flap control computers and air data inertial reference units; multipurpose control display units/parts and other navigational equipment; stencils for painting; oxygen masks, container assemblies and protective breathing equipment; demonstrational safety equipment; temperature sensors; fuel level probes and indicators; pitot probes and pressure indicators; electronic smoke detectors; vibration monitoring units, accelerometers, control units, sensors and interface/management units; display management computers and other parts of measuring/checking equipment; pressure controllers; system controllers and control units, ventilation and heating computers; aircraft clocks; lighting fixtures for cabins; exterior lighting assemblies; lighted placards and signs; lamp lenses and housings; light assembly components; and, snap fasteners (duty rate ranges from duty free to 20%).

The applicant has elected to admit the following components into the zone site in privileged foreign status: Textile pouches (4202.92); twill tape (5208.39); synthetic sewing yarn (5401.10); water absorbent felt (5602.10); synthetic braided cordage (5607.50); synthetic emergency escape rope and retaining cords (5609.00); synthetic fireproof gloves (6116.93); and, finished aircraft curtain and class divider assemblies (6303.92).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 16, 2016.

A copy of the notification will be available for public inspection at the

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: October 3, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–24359 Filed 10–6–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–66–2016]

Foreign-Trade Zone (FTZ) 44H—East Hanover, New Jersey; Notification of Proposed Production Activity; Givaudan Flavors Corporation (Flavor Products); East Hanover, New Jersey

Givaudan Flavors Corporation (Givaudan) submitted a notification of proposed production activity to the FTZ Board for its facility in East Hanover, New Jersey within Subzone 44H. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on September 20, 2016.

The Givaudan facility is used for the production of flavor compounds. Givaudan's notification seeks to add additional finished products using the components previously authorized for the facility. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Givaudan from customs duty payments on the foreign status components used in export production. On its domestic sales, for the foreign status components in the existing scope of authority, Givaudan would be able to choose the duty rates during customs entry procedures that apply to: Cocoa food preparations; dairy food preparations; coffee food preparations; seasonings; sauces; other food preparations with dairy; confectionary without sugar; other food preparations; food articles containing sugar; other cyclanes, cyclenes and cycloterpenes; other cyclic hydrocarbons; acyclic terpene alcohols; butanoic acids; pentanoic acids their salts and esters; aqueous distillates and aqueous solutions of essential oils; and, terpenic by-products of the deterpenation of essential oils (duty rate ranges from free to 70.4 cents/kg +8.50%). Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is November 16, 2016.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: September 30, 2016.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2016–24355 Filed 10–6–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Emerging Technology and Research Advisory Committee; Notice of Open Meeting

The Emerging Technology and Research Advisory Committee (ETRAC) will meet on October 27, 2016, 8:30 a.m., Room 3884, at the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on emerging technology and research activities, including those related to deemed exports.

Agenda

Open Session

1. Welcome and Opening Remarks.
2. Update on Export Control Reform, Bureau of Industry and Security.
3. *Issues for discussion:* Atom-based sensing; International Summit on Human Gene Editing; Nanotechnology; Advanced Materials; Emerging Technology issues at recent events; State of Emerging Technologies-ETRAC members: Cutting edge technology development; Where and who is doing the research; Potential unclassified applications; and Status of issues at International Control Regimes meetings.
4. *Presentation:* Emerging Technologies Strategic Studies Quarterly—An Air Force Sponsored Strategic Forum on National and International Security.
5. *Presentation:* Deemed Export Control Interactive Tool Demonstration
6. *Review of Research:* Emerging Technologies being conducted by U.S. Army as presented at Association of the U.S. Army Annual Conference October 3–5, 2016.
7. Comments from the Public.

The open sessions will be accessible via teleconference to 25 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than, October 20, 2016.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

For more information, call Yvette Springer at (202) 482–2813.

Dated: October 4, 2016.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2016–24318 Filed 10–6–16; 8:45 am]

BILLING CODE 3510–JT–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 and communication of travel facilitation issues, among other tasks. On August 3, 2016 we published in the **Federal Register** a ''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'' (78 FR 44531), announcing membership opportunities on the Board of Directors of the Corporation for Travel Promotion. The application period closed on September 23, 2016. We are now reopening the application period to solicit additional applications. This notice supplements the notice of August 3, 2016. Interested parties who have already applied in response to that **Federal Register** notice do not need to re-apply.

DATES: All applications must be received by the National Travel & Tourism Office by close of business on October 21, 2016.

ADDRESSES: Electronic applications may be sent to: *CTPBoard@trade.gov.* Written applications can be submitted to Isabel Hill, Director, National Travel & Tourism Office, U.S. Department of Commerce, Mail Stop 10003, 1401 Constitution Avenue NW., Washington, DC 20230. Telephone: 202.482.0140. Email: *Isabel.Hill@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Julie Heizer, Deputy Director, National Travel & 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.

On August 3, 2016, we published in the **Federal Register** a ''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'' (FR Doc. 2016–18531), announcing membership opportunities on the Board of Directors of the Corporation for Travel Promotion. The application period closed on September 23, 2016. We are now reopening the application period to solicit additional applications from:

(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

(D) 1 shall have appropriate expertise and experience as an official in the passenger air transportation sector.

This notice supplements the notice of August 3, 2016. Interested parties who have already applied in response to that **Federal Register** notice do not need to re-apply.

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 PL 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;

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; and

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: October 3, 2016.

Isabel Hill,

Director, National Travel & Tourism Office.

[FR Doc. 2016–24378 Filed 10–6–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission

automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for November 2016

The following Sunset Reviews are scheduled for initiation in November 2016 and will appear in that month's Notice of Initiation of Five-Year Sunset Review (''Sunset Review'').

	Department contact
Antidumping Duty Proceedings	
Helical Spring Lock Washers from the PRC (A–570–822) (4th Review)	David Goldberger (202) 482–4136.
Multilayered Wood Flooring from the PRC (A–570–970) (1st Review)	Matthew Renkey (202) 482–2312.
Gray Portland Cement and Cement Clinker from Japan (A–588–815) (4th Review)	David Goldberger (202) 482–4136.
Welded ASTM A–312 Stainless Steel Pipe from Republic of Korea (A–580–810) (4th Review)	Jacqueline Arrowsmith (202) 482–5255.
Solid Urea from Russia (A–821–801) (4th Review)	David Goldberger (202) 482–4136.
Helical Spring Lock Washers from Taiwan (A–583–820) (4th Review)	David Goldberger (202) 482–4136.
Welded ASTM A–312 Stainless Steel Pipe from Taiwan (A–583–815) (4th Review)	Jacqueline Arrowsmith (202) 482–5255.
Solid Urea from Ukraine (A–823–801) (4th Review)	David Goldberger (202) 482–5255.
Countervailing Duty Proceedings	
Multilayered Wood Flooring from the PRC (C–570–971) (1st Review)	David Goldberger (202) 482–4136.
Suspended Investigations	
No Sunset Review of suspended investigations is scheduled for initiation in November 2016.	

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 22, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–24371 Filed 10–6–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Effective October 7, 2016.

SUMMARY: The Department of Commerce (''Department'') hereby publishes a list of scope rulings and anticircumvention determinations made between October 1, 2015, and December 31, 2015, inclusive. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department's regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings on a quarterly basis.[1] Our most recent notification of scope rulings was published on March 17, 2016.[2] This current notice covers all scope rulings and anticircumvention determinations made by Enforcement and Compliance between October 1, 2015, and December 31, 2015, inclusive. Subsequent lists will follow after the close of each calendar quarter.

Scope Rulings Made Between October 1, 2015 and December 31, 2015

People's Republic of China

A–570–967 and C–570–968: Aluminum Extrusions From the People's Republic of China

Requestor: Agilent Technologies, Inc.; Agilent's KF 16 Hose Adapter consists entirely of extruded aluminum. Therefore, it does not meet the definition of ''finished merchandise'' and is within the scope of the antidumping and countervailing duty orders; October 27, 2015.

A–570–967 and C–570–968: Aluminum Extrusions From the People's Republic of China

Requestor: Clam Corporation; aluminum spreader poles which may be used to support and stabilize the frames of various ice fishing shelters are outside the scope of the antidumping and countervailing duty orders; October 28, 2015.

A–570–967 and C–570–968: Aluminum Extrusions From the People's Republic of China

Requestor: Carrand Companies Inc.; wash poles that include two (2) aluminum poles of differing dimensions, a two-part polypropylene locking collar, foam comfort grips, a threaded polypropylene end for attachment of a garden hose, and a locking head mechanism or threaded tip (made of plastic or metal) that allows the Telescoping Wash Poles to be used with a variety of attachments are outside

[1] *See* 19 CFR 351.225(o).

[2] *See Notice of Scope Rulings,* 81 FR 14421 (March 17, 2016).

the scope of the antidumping and countervailing duty orders; November 4, 2015.

A–570–967 and C–570–968: Aluminum Extrusions From the People's Republic of China

Requestor: Immediate Response Technology; IRT Scissor Strut, IRT Scissor Strut—29'' Tube with Holes, and IRT Scissor Strut—29'' Tube without Holes products are within the scope of the antidumping and countervailing duty orders; November 18, 2015.

A–570–967 and C–570–968: Aluminum Extrusions From the People's Republic of China

Requestor: Dometic Corporation; lateral arm assemblies for supporting recreational vehicle awnings are ''finished merchandise'' and are outside the scope of the antidumping duty and countervailing duty orders; November 23, 2015.

A–5A–570–967 and C–570–968: Aluminum Extrusions From the People's Republic of China

Requestor: Delphi Tube and Block Assemblies; aluminum tube and block assemblies for automotive heating and cooling systems consist entirely of extruded aluminum. Therefore, they do not meet the definition of ''finished merchandise'' and are within the scope of the antidumping and countervailing duty orders; November 24, 2015.

A–570–967 and C–570–968: Aluminum Extrusions From the People's Republic of China

Requestor: Poolmaster, Inc.; Poolmaster's telescoping aluminum poles, aluminum skimmers, aluminum rakes and life hook are ''finished merchandise'' and are outside the scope of the antidumping and countervailing duty orders. Poolmaster's aluminum leaf skimmer kits, pool vacuums, spa vacuums and telescopic pole with brush are ''finished goods kits'' and are outside the scope of the antidumping and countervailing duty orders; November 24, 2015.

A–570–967 and C–570–968: Aluminum Extrusions From the People's Republic of China

Requestor: Liberty Hardware Manufacturing Co.; shower door kits including extruded aluminum frames and tracks, glass door panels, and assorted non-aluminum parts are ''finished goods kits'' and are outside the scope of the antidumping and countervailing duty orders; December 9, 2015.

A–570–967 and C–570–968: Aluminum Extrusions From the People's Republic of China

Requestor: Bridging China International Ltd.; telescoping pool poles comprising extruded aluminum tubing with non-aluminum components are ''finished merchandise'' outside the scope of the antidumping and countervailing duty orders; December 28, 2015.

A–570–018 and C–570–019: Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China

Requestor: Rankam VDG Industries Ltd. and Rankam (China) Manufacturing Co. Ltd. (collectively, ''Rankam''); Rankam's four bolted steel shelving units are outside the scope of the orders because the shelving units require bolts to assemble and hold the units upright in a fixed, weight-loading position; December 3, 2015.

A–570–018 and C–570–019: Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China

Requestor: ACCO Brands USA LLC (''ACCO''); ACCO's locker shelves are outside the scope of the orders because the decking is necessary for the structural integrity of the unit; December 10, 2015.

A–570–901: Certain Lined Paper Products From the People's Republic of China

Requestor: DaySpring Cards, Inc.; the ''Live Beautifully'' journal, a 10 inch by 7.5 inch journal that contains approximately 160 pages, is pre-printed with horizontal lines, contains inspirational quotes on each page, and whose cover is affixed to a text block made from a binders board and spine strip is outside the scope because it meets the exclusion criteria for printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap; November 18, 2015.

A–570–504: Certain Petroleum Wax Candles From the People's Republic of China

Requestor: PriceSmart, Inc. (''PriceSmart''); PriceSmart's LED candles are outside the scope of the order because they have plastic wicks; October 9, 2015.

A–570–972: Certain Stilbenic Optical Brightening Agents From the People's Republic China

Requestor: Procter & Gamble; Products—Aako FB–71C and Fluorescent Brighter 351; P&G's Aako FB–71C meets the exclusion language of the Order, and P&G's Fluorescent Brighter 351 is not covered by the Order as it is not a triazinylaminostilbene or a derivative chemical; October 16, 2015.

A–570–010 and C–570–011: Crystalline Silicon Photovoltaic Products From the People's Republic of China

Requestor: Aireko Construction, LLC; solar modules assembled in the People's Republic of China using solar cells produced in the United States are within the scope of the antidumping duty orders because the scope of these orders explicitly includes solar modules assembled in the People's Republic of China consisting of solar cells produced in a third-country; November 12, 2015.

A–570–970: Multilayered Wood Flooring From the People's Republic of China

Requestor: Jiangsu Keri Wood Co., Ltd.; Product—two-layer engineered wood flooring; Keri's two-layer wood flooring is not within the scope because it lacks the requisite ''two or more layers of plies of wood veneer in combination with a core''; October 16, 2015.

A–570–970: Multilayered Wood Flooring From the People's Republic of China

Requestor: Zhejiang Fuma Warm Technology Co., Ltd.; Product—two-layer engineered wood flooring; Fuma's two-layer wood flooring is not within the scope because it lacks the requisite ''two or more layers of plies of wood veneer in combination with a core''; October 16, 2015.

A–570–886: Polyethylene Retail Carrier Bags From the People's Republic of China

Requestor: Grand A International Company, Inc.; Certain bags identified as ''Green T-Shirt Bags Reusable'' are within the scope of the antidumping duty order on polyethylene carrier bags from the People's Republic of China; December 16, 2015.

A–570–928: Uncovered Innerspring Units From the People's Republic of China

Requestor: Leggett & Platt Incorporated; exports to the United States of uncovered innerspring units completed and assembled in Malaysia by Goldon Manufacturing Sdn. Bhd. from PRC-origin innerspring components are circumventing the antidumping duty order; November 30, 2015.

Interested parties are invited to comment on the completeness of this

list of completed scope and anticircumvention inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, 14th Street and Constitution Avenue NW., APO/Dockets Unit, Room 1870, Washington, DC 20230.

This notice is published in accordance with 19 CFR 351.225(o).

Dated: September 22, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–24357 Filed 10–6–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–044]

1,1,1,2-Tetrafluoroethane (R-134a) From the People's Republic of China: Preliminary Determination of Sales at Less-Than-Fair Value and Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Effective October 7, 2016.

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that 1,1,1,2-Tetrafluoroethane (''R-134a'') from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''). The period of investigation (''POI'') is July 1, 2015, through December 31, 2015. The estimated margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. The final determination will be issued 75 days after publication of this preliminary determination in the **Federal Register**. Interested parties are invited to comment on this preliminary determination.

FOR FURTHER INFORMATION CONTACT: Keith Haynes or Paul Stolz, 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) 482–5139 or, (202) 482–4474 respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Investigation

The product subject to this investigation is 1,1,1,2-Tetrafluoroethane, R-134a. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in Appendix I.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Tariff Act of 1930, as amended (''the Act''). We calculated export prices in accordance with section 772 of the Act. Because the PRC is a non-market economy within the meaning of section 771(18) of the Act, normal value (''NV'') was calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum hereby adopted by this notice.[1] The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *https://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Affirmative Determination of Critical Circumstances

On September 9, 2016, Petitioners filed a timely critical circumstances allegation pursuant to section 733(e)(1) of the Act and 19 CFR 351.206 with respect to imports of the subject merchandise.[2] We preliminarily determine that critical circumstances exist for the non-selected separate rate respondents and the PRC-wide entity, but do not exist for the mandatory respondent, Zhejiang Sanmei Chemical Industry Co., Ltd.[3] For a full description of the methodology and the results of our analysis, *see* the Preliminary Decision Memorandum.

Use of Adverse Facts Available

The Department preliminarily finds that the PRC-wide entity, which includes certain PRC exporters and/or producers that did not respond to the Department's requests for information, withheld information requested by the Department and significantly impeded this proceeding by not submitting requested information. Specifically, 26 companies within the PRC-wide entity failed to respond to the Department's request for quantity and value (''Q&V'') information.[4] Furthermore, the Department finds that the PRC-wide entity's lack of participation, including the failure of certain parts of the PRC-wide entity to submit Q&V information, constitutes circumstances under which it is reasonable to conclude that the PRC-wide entity as a whole failed to cooperate to the best of its ability to comply with the Department's request for information.[5]

Therefore, we preliminarily find that an adverse inference is warranted in selecting from among the facts otherwise available with respect to the PRC-wide entity in accordance with sections 776(a) and 776(b) of the Act and 19 CFR 351.308(a). As adverse facts available, we have preliminarily assigned the PRC-wide entity a rate of 187.71 percent. Further, with respect to critical circumstances, we have preliminarily determined, again, based on adverse facts available, that the PRC-wide entity dumped ''massive imports'' over a ''relatively short period.'' For further explanation and analysis, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,*[6] the Department stated that it would calculate combination rates for the respondents that are eligible for a

[1] *See* ''Decision Memorandum for Preliminary Determination for the Antidumping Duty Investigation of 1,1,1,2-Tetrafluoroethane (R-134a) from the People's Republic of China,'' dated concurrently with this notice (''Preliminary Decision Memorandum'').

[2] *See* Petitioners' letter, ''1.1.1.2 Tetrafluoroethane (R-134a) from the People's Republic of China: Critical Circumstances Allegation,'' dated September 9, 2016.

[3] *See* Preliminary Decision Memorandum at ''Application of Facts Available and Adverse Inferences.''

[4] *Id.*

[5] *See Nippon Steel Corporation* v. *United States,* 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a ''failure to cooperate to the best of a respondent's ability'' existed (*i.e.,* information was not provided ''under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.'')).

[6] *See 1,1,1,2-Tetrafluoroethane (R–134a) from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 81 FR 18830 (April 1, 2016) (''*Initiation Notice*'').

separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[7]

Preliminary Determination

The preliminary weighted-average antidumping duty (''AD'') margin percentages are as follows:

Exporter	Producer	Weighted-Average Margin (percent)
Zhejiang Sanmei Chemical Industry Co., Ltd	Zhejiang Sanmei Chemical Industry Co., Ltd. and Jiangsu Sanmei Chemicals Co., Ltd.	137.23
Jiangsu Bluestar Green Technology Co., Ltd	Jiangsu Bluestar Green Technology Co., Ltd	137.23
T.T. International Co., Ltd	Electrochemical Factory of Zhejiang Juhua Co., Ltd	137.23
T.T. International Co., Ltd	Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd	137.23
T.T. International Co., Ltd	Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd	137.23
T.T. International Co., Ltd	Zhejiang Sanmei Chemical Ind. Co., Ltd	137.23
T.T. International Co., Ltd	Zhejiang Zhonglan Refrigeration Technology Co., Ltd	137.23
Weitron International Refrigeration Equipment Co., Ltd	Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd	137.23
Weitron International Refrigeration Equipment Co., Ltd	Weitron International Refrigeration Equipment Co., Ltd	137.23
Weitron International Refrigeration Equipment Co., Ltd	Zhejiang Organic Fluor-Chemistry Plant, Zhejiang Juhua Co., Ltd	137.23
Weitron International Refrigeration Equipment Co., Ltd	Zhejiang Quhua Fluor-Chemistry Co., Ltd	137.23
Weitron International Refrigeration Equipment Co., Ltd	Zhejiang Quhua Juxin Fluorochemical Industry Co., Ltd	137.23
Weitron International Refrigeration Equipment Co., Ltd	Zhejiang Sanmei Chemical Industry Co., Ltd	137.23
PRC-Wide Entity		188.94

As detailed further in the Preliminary Decision Memorandum, Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd., a mandatory respondent in this investigation, did not demonstrate that it was entitled to a separate rate. Accordingly, we consider this company to be part of the PRC-wide entity.

Suspension of Liquidation

In accordance with section 733(d) of the Act the Department will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of R–134a from the PRC, as described in the ''Scope of the Investigation'' in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. We preliminarily find that critical circumstances exist for imports of R–134a from the PRC produced and exported by the separate rate respondents, and the PRC-wide entity. Accordingly, for the separate rate respondents and the PRC-wide entity, in accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

Pursuant to 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit[8] equal to the weighted-average amount by which NV exceeds U.S. price as follows: (1) The cash deposit rate for the exporter/producer combinations listed in the table above will be the rate the Department determines in this preliminary determination; (2) for all combinations of PRC exporters/producers of merchandise under consideration that have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate established for the PRC-wide entity; and (3) for all non-PRC exporters of merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this proceeding within five days after public announcement of the preliminary determination in accordance with 19 CFR 351.224(b). Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[9] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically at Enforcement and Compliance's electronic records system, ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[10] Hearing requests should contain the party's name, address, and telephone number, the number of

[7] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (''Policy Bulletin 05.1''), available on the Department's Web site at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[8] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[9] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[10] *See* 19 CFR 351.310(c).

participants, and a list of the issues you intend to present at the hearing. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by Petitioners. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 29, 2016, pursuant to 19 CFR 351.210(b) and (e), Sanmei requested that, contingent upon an affirmative preliminary determination of sales at LTFV for the respondents, the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.[11]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[12]

[11] *See* Letter from Sanmei, ''1,1,1,2-Tetrafluoroethane (R134a) from the People's Republic of China: Request for Extension to Supplemental Section C&D Response,'' dated September 29, 2016.

[12] *See also* 19 CFR 351.210(e).

International Trade Commission (''ITC'') Notification

In accordance with section 733(f) of the Act, we notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of R–134a, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: September 29, 2016.

Paul Piquado,

Assistant Secretary, for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The product subject to this investigation is 1,1,1,2-Tetrafluoroethane, R–134a, or its chemical equivalent, regardless of form, type, or purity level. The chemical formula for 1,1,1,2-Tetrafluoroethane is CF_3-CH_2F, and the Chemical Abstracts Service registry number is CAS 811–97–2.[13]

Merchandise covered by the scope of this investigation is currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheading 2903.39.2020. Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

List of Topics Discussed in the Preliminary Decision Memorandum

[13] 1,1,1,2-Tetrafluoroethane is sold under a number of trade names including Klea 134a and Zephex 134a (Mexichem Fluor); Genetron 134a (Honeywell); Freon™ 134a, Suva 134a, Dymel 134a, and Dymel P134a (Chemours); Solkane 134a (Solvay); and Forane 134a (Arkema). Generically, 1,1,1,2-Tetrafluoroethane has been sold as Fluorocarbon 134a, R–134a, HFC–134a, HF A–134a, Refrigerant 134a, and UN3159.

[FR Doc. 2016–24358 Filed 10–6–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: The Judges Panel of the Malcolm Baldrige National Quality Award (Judges Panel) will meet in closed session Sunday, October 30, 2016 through Friday, November 4, 2016, from 8:30 a.m. until 5:30 p.m. Eastern time each day. The purpose of this meeting is to review recommendations from site visits, and recommend 2016 Malcolm Baldrige National Quality Award recipients. The meeting is closed to the public in order to protect the proprietary data to be examined and discussed at the meeting.

DATES: The meeting will be held Sunday, October 30, 2016 through Friday, November 4, 2016, from 8:30 a.m. until 5:30 p.m. Eastern time each day. The entire meeting will be closed to the public.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Robert Fangmeyer, Director, Baldrige Performance Excellence Program, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020, telephone number (301) 975–2360, email *robert.fangmeyer@nist.gov.*

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 3711a(d)(1) and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Judges Panel will meet Sunday, October 30, 2016 through Friday, November 4, 2016, from 8:30 a.m. until 5:30 p.m. Eastern time each day. The Judges Panel is composed of twelve members, appointed by the Secretary of Commerce, chosen for their familiarity with quality improvement operations and competitiveness issues of manufacturing companies, service companies, small businesses, health care providers, and educational institutions. Members are also chosen who have broad experience in for-profit and nonprofit areas. The purpose of this meeting is to review recommendations from site visits and recommend 2016 Malcolm Baldrige National Quality Award (Award) recipients. The meeting is closed to the public in order to protect the proprietary data to be examined and discussed at the meeting.

The Chief Financial Officer and Assistant Secretary for Administration, with the concurrence of the Assistant General Counsel for Administration and Transactions, formally determined on May 19, 2016 and amended on September 26, 2016, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in Sunshine Act, P.L. 94–409, that the meeting of the Judges Panel may be closed to the public in accordance with 5 U.S.C. 552b(c)(4) because the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential; and 5 U.S.C. 552b(c)(9)(B) because for a government agency the meeting is likely to disclose information that could significantly frustrate implementation of a proposed agency action. The meeting, which involves examination of current Award applicant data from U.S. organizations and a discussion of these data as compared to the Award criteria in order to recommend Award recipients, will be closed to the public.

Kevin Kimball,

NIST Chief of Staff.

[FR Doc. 2016–24240 Filed 10–6–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Applications and Reports for Registration as a Tanner or Agent

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 6, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Les Cockreham, (907) 271–3021 or *les.cockreham@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

The Marine Mammal Protection Act exempts Alaskan natives from the prohibitions on taking, killing, or injuring marine mammals if the taking is done for subsistence or for creating and selling authentic native articles of handicraft or clothing. The natives need no permit, but non-natives who wish to act as a tanner or agent for such native products must register with NOAA and maintain and submit certain records. The information is necessary for law enforcement purposes.

II. Method of Collection

Paper documentation is submitted to meet the requirements found at 50 CFR 216.23(c).

III. Data

OMB Number: 0648–0179.

Form Number: None.

Type of Review: Regular (extension of a currently approved information collection).

Affected Public: Business or other for profit organizations.

Estimated Number of Respondents: 10.

Estimated Time per Response: 2 hours for an application and 2 hours for a report.

Estimated Total Annual Burden Hours: 20.

Estimated Total Annual Cost to Public: $20.00 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 4, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–24302 Filed 10–6–16; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products and service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

DATES: Comments must be received on or before: 11/6/2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to furnish the products and service listed below from the nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and service are proposed for addition to the Procurement List for provision by the nonprofit agencies listed:

Products

NSN(s)—Product Name(s):
6530–00-NIB–0186—Cap, Pharmaceutical bottle, 38/400, White, CRC, Foil liner, VA Logo
6530–00–NIB–0268—Cap, Pharmaceutical bottle, 38/400, White, CRC, Foam liner, VA Logo
Mandatory for: Department of Veteran's Affairs
Mandatory Source(s) of Supply: Alphapointe, CA
Contracting Activity: NCO15 CMOP Acquisitions Division
Distribution: C-List

Service

Service Type: Custodial Service
Service is Mandatory for: Architect of the Capitol, Capitol Power Plant & Coal Yard, 25 E Street, SE & 42 I Street, Washington, DC
Mandatory Source(s) of Supply: Anchor Mental Health Association, Washington, DC
Contracting Activity: Architect of the Capitol, U.S. Capitol Building, Washington, DC

The Commission is publishing corrections to its Notice published in the **Federal Register** on Friday, September 30, 2016 for Service Type: Document Control and Conversion Support Service as follows. The corrections are changing the *Mandatory Source(s) of Supply* to Linden Resources, Inc., Arlington, VA and the *Mandatory for* to Federal Communications Commission, FCC HQ, Washington, DC, but do not change the date published for public comments to be submitted to the U.S. AbilityOne Commission.

Service Type: Document Control and Conversion Support Service
Mandatory for: Federal Communications Commission, FCC HQ, Washington, DC
Mandatory Source(s) of Supply: Linden Resources, Inc., Arlington, VA
Contracting Activity: U.S. Federal Communications Commission, Office of Managing Director, Enterprise Acquisition Center, Washington, DC

Deletions

The following products are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s):
1670–01–062–6303—Line, Multi-Loop, low altitude parachute extraction system, 12′
1670–01–062–6304—Line, Multi-Loop, low altitude parachute extraction system, 9′
1670–01–062–6305—Line, Multi-Loop, low altitude parachute extraction system, 9′
1670–01–062–6306—Line, Multi-Loop, low altitude parachute extraction system, 3′
1670–01–062–6308—Line, Multi-Loop, low altitude parachute extraction system, 16′
1670–01–062–6312—Line, Multi-Loop, low altitude parachute extraction system, 120′
1670–01–062–6313—Line, Multi-Loop, low altitude parachute extraction system, 60′
1670–01–063–7760—Line, Multi-Loop, low altitude parachute extraction system, 11′
1670–01–064–4451—Line, Multi-Loop, low altitude parachute extraction system, 36′
1670–01–064–4452—Line, Multi-Loop, low altitude parachute extraction system, 60′
1670–01–107–7652—Line, Multi-Loop, low altitude parachute extraction system, 160′
Mandatory Source(s) of Supply: UNKNOWN
Contracting Activity: Defense Logistics Agency Aviation
NSN(s)—Product Name(s):
1670–01–062–6301—Line, Multi-Loop, low altitude parachute extraction system, 3′
1670–01–062–6302—Line, Multi-Loop, low altitude parachute extraction system, 20′
1670–01–062–6309—Line, Multi-Loop, low altitude parachute extraction system, 28′
1670–01–064–4453—Line, Multi-Loop, low altitude parachute extraction system, 20′
1670–01–064–4454—Line, Multi-Loop, low altitude parachute extraction system, 60′
1670–01–107–7651—Line, Multi-Loop, low altitude parachute extraction system, 140′
Mandatory Source(s) of Supply: UNKNOWN
Contracting Activity: Army Contracting Command—Aberdeen Proving Ground, Natick Contracting Division
NSN(s)—Product Name(s): 7920–00–297–1511—Brush, Scrub
Mandatory Source(s) of Supply: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: General Services Administration, Fort Worth, TX
NSN(s)—Product Name(s): 3990–01–415–6951—Pallet, Runner
Mandatory Source(s) of Supply: Tarrant County Association for the Blind, Fort Worth, TX
Contracting Activity: General Services Administration, Fort Worth, TX
NSN(s)—Product Name(s): 7520–00–543–7149—Pen, Ballpoint, with Chain, Blue, Medium Pt
Mandatory Source(s) of Supply: Industries of the Blind, Inc., Greensboro, NC; Industries for the Blind, Inc., West Allis, WI
Contracting Activity: General Services Administration, New York, NY
NSN(s)—Product Name(s):
8520–00–NIB–0110—PURELL/SKILCRAFT Instant Hand Sanitizer Value Pack
8520–00–NIB–0111—PURELL/SKILCRAFT 1200mL Anitbacterial Hand Wash
8520–00–NIB–0120—Purell-Skilcraft, Instant Hand Sanitizer—foam
Mandatory Source(s) of Supply: Travis Association for the Blind, Austin, TX
Contracting Activity: Department of Veterans Affairs
NSN(s)—Product Name(s): 6532–00–122–0468—Cap, Operating, Surgical, Blue or Green
Mandatory Source(s) of Supply: UNKNOWN
Contracting Activity: Strategic Acquisition Center, Fredericksburg, VA
NSN(s)—Product Name(s):
8455–00–985–7336—Scarf, Branch of Service, Aviation Units, USAF and USA, Blue
Mandatory Source(s) of Supply: UNKNOWN
Contracting Activity: Defense Logistics Agency Troop Support

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2016–24363 Filed 10–6–16; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and deletions from the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be provided by nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* 11/6/2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, Telephone: (703) 603–

7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 5/20/2016 (81 FR 31917–31918), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will provide the service to the Government.

2. The action will result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type: Warehouse Support Service
Service Mandatory For: Health and Human Services, Program Support Center, Supply Service Center, Perry Point, MD and North East, MD
Mandatory Source(s) of Supply: Didlake, Inc., Manassas, VA
Contracting Activity: Department of Health and Human Services, Perry Point, MD

Deletions

On 8/26/2016 (81 FR 58913–58917), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN(s)—Product Name(s):
8405–01–540–1280—Trousers, NWU, Men's, Blue Digital Camouflage, X–SMALL X–SHORT
8405–01–540–1318—Trousers, NWU, Men's, Blue Digital Camouflage, X–SMALL SHORT
8405–01–540–1328—Trousers, NWU, Men's, Blue Digital Camouflage, X–SMALL REGULAR
8405–01–540–1339—Trousers, NWU, Men's, Blue Digital Camouflage, X–SMALL LONG
8405–01–540–1350—Trousers, NWU, Men's, Blue Digital Camouflage, SMALL X–SHORT
8405–01–540–1356—Trousers, NWU, Men's, Blue Digital Camouflage, SMALL SHORT
8405–01–540–1363—Trousers, NWU, Men's, Blue Digital Camouflage, SMALL REGULAR
8405–01–540–1375—Trousers, NWU, Men's, Blue Digital Camouflage, SMALL X–LONG
8405–01–540–1430—Trousers, NWU, Men's, Blue Digital Camouflage, SMALL LONG
8405–01–540–1464—Trousers, NWU, Men's, Blue Digital Camouflage, LARGE XX–LONG
8405–01–540–1475—Trousers, NWU, Men's, Blue Digital Camouflage, X–LARGE XX–LONG
8405–01–540–1436—Trousers, NWU, Men's, Blue Digital Camouflage, MEDIUM X–SHORT
8405–01–540–1467—Trousers, NWU, Men's, Blue Digital Camouflage, X–LARGE SHORT
8405–01–540–1471—Trousers, NWU, Men's, Blue Digital Camouflage, X–LARGE REGULAR
8405–01–540–1446—Trousers, NWU, Men's, Blue Digital Camouflage, MEDIUM SHORT
8405–01–540–1447—Trousers, NWU, Men's, Blue Digital Camouflage, MEDIUM REGULAR
8405–01–540–1450—Trousers, NWU, Men's, Blue Digital Camouflage, MEDIUM LONG
8405–01–540–1451—Trousers, NWU, Men's, Blue Digital Camouflage, MEDIUM X–LONG
8405–01–540–1472—Trousers, NWU, Men's, Blue Digital Camouflage, X–LARGE LONG
8405–01–540–1473—Trousers, NWU, Men's, Blue Digital Camouflage, X–LARGE X–LONG
8405–01–540–1455—Trousers, NWU, Men's, Blue Digital Camouflage, MEDIUM XX–LONG
8405–01–540–1496—Trousers, NWU, Men's, Blue Digital Camouflage, XX–LARGE REGULAR
8405–01–540–1508—Trousers, NWU, Men's, Blue Digital Camouflage, XX–LARGE XX–LONG
8405–01–540–1458—Trousers, NWU, Men's, Blue Digital Camouflage, LARGE SHORT
8405–01–540–1459—Trousers, NWU, Men's, Blue Digital Camouflage, LARGE REGULAR
8405–01–540–1461—Trousers, NWU, Men's, Blue Digital Camouflage, LARGE LONG
8405–01–540–1462—Trousers, NWU, Men's, Blue Digital Camouflage, LARGE X–LONG
8405–01–540–1501—Trousers, NWU, Men's, Blue Digital Camouflage, XX–LARGE LONG
8405–01–540–1506—Trousers, NWU, Men's, Blue Digital Camouflage, XX–LARGE X–LONG
8405–01–573–8838—Trousers, NWU, Men's, Type II, Desert, X Large Regular
8405–01–573–8898—Trousers, NWU, Men's, Type II, Desert, X Large Long
8405–01–574–6613—Trousers, NWU, Men's, Type III, Woodland, Small Short
8405–01–574–6616—Trousers, NWU, Men's, Type III, Woodland, Small Regular
8405–01–590–7676—Trousers, NWU, Women's, Type II, Desert, 29 X Short
8405–01–590–7835—Trousers, NWU, Women's, Type III, Woodland, 37 Short
8405–01–573–8152—Trousers, NWU, Men's, Type II, Desert, X Small Short
8405–01–573–8399—Trousers, NWU, Men's, Type II, Desert, Medium Regular
8405–01–573–8370—Trousers, NWU, Men's, Type II, Desert, Medium Short
8405–01–573–8362—Trousers, NWU, Men's, Type II, Desert, Medium X Short
8405–01–573–8350—Trousers, NWU, Men's, Type II, Desert, Small Long
8405–01–573–8253—Trousers, NWU, Men's, Type II, Desert, Small X Long
8405–01–573–8244—Trousers, NWU, Men's, Type II, Desert, Small Regular
8405–01–573–8239—Trousers, NWU, Men's, Type II, Desert, Small Short
8405–01–573–8226—Trousers, NWU, Men's, Type II, Desert, Small X Short
8405–01–573–8216—Trousers, NWU, Men's, Type II, Desert, X Small Long
8405–01–573–8170—Trousers, NWU, Men's, Type II, Desert, X Small Regular
8405–01–573–8831—Trousers, NWU, Men's, Type II, Desert, X Large Short
8405–01–573–8443—Trousers, NWU, Men's, Type II, Desert, Large XX Long
8405–01–573–8439—Trousers, NWU, Men's, Type II, Desert, Large X Long

8405–01–573–8432—Trousers, NWU, Men's, Type II, Desert, Large Long
8405–01–573–8426—Trousers, NWU, Men's, Type II, Desert, Large Regular
8405–01–573–8421—Trousers, NWU, Men's, Type II, Desert, Large Short
8405–01–573–8417—Trousers, NWU, Men's, Type II, Desert, Medium XX Long
8405–01–573–8410—Trousers, NWU, Men's, Type II, Desert, Medium X Long
8405–01–573–8404—Trousers, NWU, Men's, Type II, Desert, Medium Long
8405–01–573–9066—Trousers, NWU, Men's, Type II, Desert, XX Large XX Long
8405–01–573–9065—Trousers, NWU, Men's, Type II, Desert, XX Large X Long
8405–01–573–9016—Trousers, NWU, Men's, Type II, Desert, XX Large Long
8405–01–573–9005—Trousers, NWU, Men's, Type II, Desert, XX Large Regular
8405–01–573–8987—Trousers, NWU, Men's, Type II, Desert, X Large XX Long
8405–01–573–8924—Trousers, NWU, Men's, Type II, Desert, X Large X Long
8405–01–573–7890—Trousers, NWU, Men's, Type II, Desert, X Small X Short
8405–01–574–6864—Trousers, NWU, Men's, Type III, Woodland, Medium Regular
8405–01–574–6879—Trousers, NWU, Men's, Type III, Woodland, Medium X Long
8405–01–574–6934—Trousers, NWU, Men's, Type III, Woodland, Large Short
8405–01–574–6948—Trousers, NWU, Men's, Type III, Woodland, Large Long
8405–01–574–7294—Trousers, NWU, Men's, Type III, Woodland, Large XX Long
8405–01–574–7747—Trousers, NWU, Men's, Type III, Woodland, X Large Regular
8405–01–574–8158—Trousers, NWU, Men's, Type III, Woodland, X Large XX Long
8405–01–574–8175—Trousers, NWU, Men's, Type III, Woodland, XX Large Long
8405–01–574–8189—Trousers, NWU, Men's, Type III, Woodland, XX Large XX Long
8405–01–574–6039—Trousers, NWU, Men's, Type III, Woodland, X Small X Short
8405–01–574–6047—Trousers, NWU, Men's, Type III, Woodland, X Small Short
8405–01–574–6588—Trousers, NWU, Men's, Type III, Woodland, X Small Regular
8405–01–574–6593—Trousers, NWU, Men's, Type III, Woodland, X Small Long
8405–01–574–6605—Trousers, NWU, Men's, Type III, Woodland, Small X Short
8405–01–574–6720—Trousers, NWU, Men's, Type III, Woodland, Small X Long
8405–01–574–6836—Trousers, NWU, Men's, Type III, Woodland, Small Long
8405–01–574–6841—Trousers, NWU, Men's, Type III, Woodland, Medium X Short
8405–01–574–6852—Trousers, NWU, Men's, Type III, Woodland, Medium Short
8405–01–574–6868—Trousers, NWU, Men's, Type III, Woodland, Medium Long
8405–01–574–6896—Trousers, NWU, Men's, Type III, Woodland, Medium XX Long
8405–01–574–6944—Trousers, NWU, Men's, Type III, Woodland, Large Regular
8405–01–574–7016—Trousers, NWU, Men's, Type III, Woodland, Large X Long
8405–01–574–7301—Trousers, NWU, Men's, Type III, Woodland, X Large Short
8405–01–574–7750—Trousers, NWU, Men's, Type III, Woodland, X Large Long
8405–01–574–7764—Trousers, NWU, Men's, Type III, Woodland, X Large X Long
8405–01–574–8168—Trousers, NWU, Men's, Type III, Woodland, XX Large Regular
8405–01–574–8184—Trousers, NWU, Men's, Type III, Woodland, XX Large X Long
8405–01–590–7671—Trousers, NWU, Women's, Type II, Desert, 25 X Short
8405–01–590–7672—Trousers, NWU, Women's, Type II, Desert, 25 Short
8405–01–590–7679—Trousers, NWU, Women's, Type II, Desert, 29 Short
8405–01–590–7681—Trousers, NWU, Women's, Type II, Desert, 29 Regular
8405–01–590–7682—Trousers, NWU, Women's, Type II, Desert, 33 X Short
8405–01–590–7699—Trousers, NWU, Women's, Type II, Desert, 33 Short
8405–01–590–7726—Trousers, NWU, Women's, Type II, Desert, 33 Regular
8405–01–590–7747—Trousers, NWU, Women's, Type II, Desert, 37 Short
8405–01–590–7755—Trousers, NWU, Women's, Type II, Desert, 37 Regular
8405–01–590–7795—Trousers, NWU, Women's, Type III, Woodland, 29 X Short
8405–01–590–7771—Trousers, NWU, Women's, Type III, Woodland, 25 X Short
8405–01–590–7775—Trousers, NWU, Women's, Type III, Woodland, 25 Short
8405–01–590–7811—Trousers, NWU, Women's, Type III, Woodland, 29 Short
8405–01–590–7822—Trousers, NWU, Women's, Type III, Woodland, 33 X Short
8405–01–590–7819—Trousers, NWU, Women's, Type III, Woodland, 29 Regular
8405–01–590–7827—Trousers, NWU, Women's, Type III, Woodland, 33 Short
8405–01–590–7832—Trousers, NWU, Women's, Type III, Woodland, 33 Regular
8405–01–590–7837—Trousers, NWU, Women's, Type III, Woodland, 37 Regular
8405–01–540–1554—Trousers, NWU, Women's, Blue Digital Camouflage, 37 REGULAR
8405–01–540–1532—Trousers, NWU, Women's, Blue Digital Camouflage, 33 X–SHORT
8405–01–540–1549—Trousers, NWU, Women's, Blue Digital Camouflage, 37 SHORT
8405–01–540–1544—Trousers, NWU, Women's, Blue Digital Camouflage, 33 REGULAR
8405–01–540–1511—Trousers, NWU, Women's, Blue Digital Camouflage, 25 X–SHORT
8405–01–540–1513—Trousers, NWU, Women's, Blue Digital Camouflage, 25 SHORT
8405–01–540–1540—Trousers, NWU, Women's, Blue Digital Camouflage, 33 SHORT
8405–01–540–1527—Trousers, NWU, Women's, Blue Digital Camouflage, 29 REGULAR
8405–01–540–1522—Trousers, NWU, Women's, Blue Digital Camouflage, 29 SHORT
8405–01–540–1521—Trousers, NWU, Women's, Blue Digital Camouflage, 29 X–SHORT

Mandatory Source(s) of Supply: Goodwill Industries of South Florida, Inc., Miami, FL

Contracting Activity: Defense Logistics Agency Troop Support

NSN(s)—Product Name(s):

8405–01–540–1280—Trousers, NWU, Men's, Blue Digital Camouflage, X–SMALL X–SHORT
8405–01–540–1318—Trousers, NWU, Men's, Blue Digital Camouflage, X–SMALL SHORT
8405–01–540–1328—Trousers, NWU, Men's, Blue Digital Camouflage, X–SMALL REGULAR
8405–01–540–1339—Trousers, NWU, Men's, Blue Digital Camouflage, X–SMALL LONG
8405–01–540–1350—Trousers, NWU, Men's, Blue Digital Camouflage, SMALL X–SHORT
8405–01–540–1356—Trousers, NWU, Men's, Blue Digital Camouflage, SMALL SHORT
8405–01–540–1363—Trousers, NWU, Men's, Blue Digital Camouflage, SMALL REGULAR
8405–01–540–1375—Trousers, NWU, Men's, Blue Digital Camouflage, SMALL X–LONG
8405–01–540–1430—Trousers, NWU, Men's, Blue Digital Camouflage, SMALL LONG
8405–01–540–1464—Trousers, NWU, Men's, Blue Digital Camouflage, LARGE XX–LONG
8405–01–540–1475—Trousers, NWU, Men's, Blue Digital Camouflage, X–LARGE XX–LONG
8405–01–540–1436—Trousers, NWU, Men's, Blue Digital Camouflage, MEDIUM X–SHORT
8405–01–540–1467—Trousers, NWU, Men's, Blue Digital Camouflage, X–LARGE SHORT
8405–01–540–1471—Trousers, NWU, Men's, Blue Digital Camouflage, X–LARGE REGULAR
8405–01–540–1446—Trousers, NWU, Men's, Blue Digital Camouflage, MEDIUM SHORT

8405–01–540–1447—Trousers, NWU, Men's, Blue Digital Camouflage, MEDIUM REGULAR
8405–01–540–1450—Trousers, NWU, Men's, Blue Digital Camouflage, MEDIUM LONG
8405–01–540–1451—Trousers, NWU, Men's, Blue Digital Camouflage, MEDIUM X–LONG
8405–01–540–1472—Trousers, NWU, Men's, Blue Digital Camouflage, X–LARGE LONG
8405–01–540–1473—Trousers, NWU, Men's, Blue Digital Camouflage, X–LARGE X–LONG
8405–01–540–1455—Trousers, NWU, Men's, Blue Digital Camouflage, MEDIUM XX–LONG
8405–01–540–1496—Trousers, NWU, Men's, Blue Digital Camouflage, XX–LARGE REGULAR
8405–01–540–1508—Trousers, NWU, Men's, Blue Digital Camouflage, XX–LARGE XX–LONG
8405–01–540–1458—Trousers, NWU, Men's, Blue Digital Camouflage, LARGE SHORT
8405–01–540–1459—Trousers, NWU, Men's, Blue Digital Camouflage, LARGE REGULAR
8405–01–540–1461—Trousers, NWU, Men's, Blue Digital Camouflage, LARGE LONG
8405–01–540–1462—Trousers, NWU, Men's, Blue Digital Camouflage, LARGE X–LONG
8405–01–540–1501—Trousers, NWU, Men's, Blue Digital Camouflage, XX–LARGE LONG
8405–01–540–1506—Trousers, NWU, Men's, Blue Digital Camouflage, XX–LARGE X–LONG
8405–01–573–8838—Trousers, NWU, Men's, Type II, Desert, X Large Regular
8405–01–573–8898—Trousers, NWU, Men's, Type II, Desert, X Large Long
8405–01–574–6613—Trousers, NWU, Men's, Type III, Woodland, Small Short
8405–01–574–6616—Trousers, NWU, Men's, Type III, Woodland, Small Regular
8405–01–590–7676—Trousers, NWU, Women's, Type II, Desert, 29 X Short
8405–01–590–7835—Trousers, NWU, Women's, Type III, Woodland, 37 Short
8405–01–573–8152—Trousers, NWU, Men's, Type II, Desert, X Small Short
8405–01–573–8399—Trousers, NWU, Men's, Type II, Desert, Medium Regular
8405–01–573–8370—Trousers, NWU, Men's, Type II, Desert, Medium Short
8405–01–573–8362—Trousers, NWU, Men's, Type II, Desert, Medium X Short
8405–01–573–8350—Trousers, NWU, Men's, Type II, Desert, Small Long
8405–01–573–8253—Trousers, NWU, Men's, Type II, Desert, Small X Long
8405–01–573–8244—Trousers, NWU, Men's, Type II, Desert, Small Regular
8405–01–573–8239—Trousers, NWU, Men's, Type II, Desert, Small Short
8405–01–573–8226—Trousers, NWU, Men's, Type II, Desert, Small X Short
8405–01–573–8216—Trousers, NWU, Men's, Type II, Desert, X Small Long
8405–01–573–8170—Trousers, NWU, Men's, Type II, Desert, X Small Regular
8405–01–573–8831—Trousers, NWU, Men's, Type II, Desert, X Large Short
8405–01–573–8443—Trousers, NWU, Men's, Type II, Desert, Large XX Long
8405–01–573–8439—Trousers, NWU, Men's, Type II, Desert, Large X Long
8405–01–573–8432—Trousers, NWU, Men's, Type II, Desert, Large Long
8405–01–573–8426—Trousers, NWU, Men's, Type II, Desert, Large Regular
8405–01–573–8421—Trousers, NWU, Men's, Type II, Desert, Large Short
8405–01–573–8417—Trousers, NWU, Men's, Type II, Desert, Medium XX Long
8405–01–573–8410—Trousers, NWU, Men's, Type II, Desert, Medium X Long
8405–01–573–8404—Trousers, NWU, Men's, Type II, Desert, Medium Long
8405–01–573–9066—Trousers, NWU, Men's, Type II, Desert, XX Large XX Long
8405–01–573–9065—Trousers, NWU, Men's, Type II, Desert, XX Large X Long
8405–01–573–9016—Trousers, NWU, Men's, Type II, Desert, XX Large Long
8405–01–573–9005—Trousers, NWU, Men's, Type II, Desert, XX Large Regular
8405–01–573–8987—Trousers, NWU, Men's, Type II, Desert, X Large XX Long
8405–01–573–8924—Trousers, NWU, Men's, Type II, Desert, X Large X Long
8405–01–573–7890—Trousers, NWU, Men's, Type II, Desert, X Small X Short
8405–01–574–6864—Trousers, NWU, Men's, Type III, Woodland, Medium Regular
8405–01–574–6879—Trousers, NWU, Men's, Type III, Woodland, Medium X Long
8405–01–574–6934—Trousers, NWU, Men's, Type III, Woodland, Large Short
8405–01–574–6948—Trousers, NWU, Men's, Type III, Woodland, Large Long
8405–01–574–7294—Trousers, NWU, Men's, Type III, Woodland, Large XX Long
8405–01–574–7747—Trousers, NWU, Men's, Type III, Woodland, X Large Regular
8405–01–574–8158—Trousers, NWU, Men's, Type III, Woodland, X Large XX Long
8405–01–574–8175—Trousers, NWU, Men's, Type III, Woodland, XX Large Long
8405–01–574–8189—Trousers, NWU, Men's, Type III, Woodland, XX Large XX Long
8405–01–574–6039—Trousers, NWU, Men's, Type III, Woodland, X Small X Short
8405–01–574–6047—Trousers, NWU, Men's, Type III, Woodland, X Small Short
8405–01–574–6588—Trousers, NWU, Men's, Type III, Woodland, X Small Regular
8405–01–574–6593—Trousers, NWU, Men's, Type III, Woodland, X Small Long
8405–01–574–6605—Trousers, NWU, Men's, Type III, Woodland, Small X Short
8405–01–574–6720—Trousers, NWU, Men's, Type III, Woodland, Small X Long
8405–01–574–6836—Trousers, NWU, Men's, Type III, Woodland, Small Long
8405–01–574–6841—Trousers, NWU, Men's, Type III, Woodland, Medium X Short
8405–01–574–6852—Trousers, NWU, Men's, Type III, Woodland, Medium Short
8405–01–574–6868—Trousers, NWU, Men's, Type III, Woodland, Medium Long
8405–01–574–6896—Trousers, NWU, Men's, Type III, Woodland, Medium XX Long
8405–01–574–6944—Trousers, NWU, Men's, Type III, Woodland, Large Regular
8405–01–574–7016—Trousers, NWU, Men's, Type III, Woodland, Large X Long
8405–01–574–7301—Trousers, NWU, Men's, Type III, Woodland, X Large Short
8405–01–574–7750—Trousers, NWU, Men's, Type III, Woodland, X Large Long
8405–01–574–7764—Trousers, NWU, Men's, Type III, Woodland, X Large X Long
8405–01–574–8168—Trousers, NWU, Men's, Type III, Woodland, XX Large Regular
8405–01–574–8184—Trousers, NWU, Men's, Type III, Woodland, XX Large X Long
8405–01–590–7671—Trousers, NWU, Women's, Type II, Desert, 25 X Short
8405–01–590–7672—Trousers, NWU, Women's, Type II, Desert, 25 Short
8405–01–590–7679—Trousers, NWU, Women's, Type II, Desert, 29 Short
8405–01–590–7681—Trousers, NWU, Women's, Type II, Desert, 29 Regular
8405–01–590–7682—Trousers, NWU, Women's, Type II, Desert, 33 X Short
8405–01–590–7699—Trousers, NWU, Women's, Type II, Desert, 33 Short
8405–01–590–7726—Trousers, NWU, Women's, Type II, Desert, 33 Regular
8405–01–590–7747—Trousers, NWU, Women's, Type II, Desert, 37 Short
8405–01–590–7755—Trousers, NWU, Women's, Type II, Desert, 37 Regular
8405–01–590–7795—Trousers, NWU, Women's, Type III, Woodland, 29 X Short
8405–01–590–7771—Trousers, NWU, Women's, Type III, Woodland, 25 X Short
8405–01–590–7775—Trousers, NWU, Women's, Type III, Woodland, 25 Short
8405–01–590–7811—Trousers, NWU, Women's, Type III, Woodland, 29 Short
8405–01–590–7822—Trousers, NWU, Women's, Type III, Woodland, 33 X Short
8405–01–590–7819—Trousers, NWU, Women's, Type III, Woodland, 29 Regular
8405–01–590–7827—Trousers, NWU, Women's, Type III, Woodland, 33 Short
8405–01–590–7832—Trousers, NWU, Women's, Type III, Woodland, 33 Regular
8405–01–590–7837—Trousers, NWU, Women's, Type III, Woodland, 37 Regular

8405–01–540–1554—Trousers, NWU, Women's, Blue Digital Camouflage, 37 Regular
8405–01–540–1532—Trousers, NWU, Women's, Blue Digital Camouflage, 33 X–Short
8405–01–540–1549—Trousers, NWU, Women's, Blue Digital Camouflage, 37 Short
8405–01–540–1544—Trousers, NWU, Women's, Blue Digital Camouflage, 33 Regular
8405–01–540–1511—Trousers, NWU, Women's, Blue Digital Camouflage, 25 X–Short
8405–01–540–1513—Trousers, NWU, Women's, Blue Digital Camouflage, 25 Short
8405–01–540–1540—Trousers, NWU, Women's, Blue Digital Camouflage, 33 Short
8405–01–540–1527—Trousers, NWU, Women's, Blue Digital Camouflage, 29 Regular
8405–01–540–1522—Trousers, NWU, Women's, Blue Digital Camouflage, 29 Short
8405–01–540–1521—Trousers, NWU, Women's, Blue Digital Camouflage, 29 X–Short
Mandatory Source(s) of Supply: ReadyOne Industries, Inc., El Paso, TX
Contracting Activity: Defense Logistics Agency Troop Support

Services

Service Type: CD-ROM Replication—Program 5588–S
Mandatory for: Government Printing Office: Program 5588–S, U.S. Government Publishing Office, Columbus, OH
Mandatory Source(s) of Supply: Association for the Blind and Visually Impaired—Goodwill Industries of Greater Rochester, Rochester, NY
Contracting Activity: Government Printing Office
Service Type: CD-ROM Replication—Program A890–M
Mandatory for: Government Printing Office, NW., 710 North Capitol & H Street NW., Washington, DC
Mandatory Source(s) of Supply: Association for the Blind and Visually Impaired—Goodwill Industries of Greater Rochester, Rochester, NY
Contracting Activity: Government Printing Office
Service Type: CD–ROM Replication—Program 2239S
Mandatory for: Government Printing Office: Philadelphia Regional Printing Procurement Office, Southhampton, PA
Mandatory Source(s) of Supply: Association for the Blind and Visually Impaired—Goodwill Industries of Greater Rochester, Rochester, NY
Contracting Activity: Government Printing Office
Service Type: Administrative/General Support Service
Mandatory for: GSA, Southwest Supply Center, 819 Taylor Street, Fort Worth, TX
Mandatory Source(s) of Supply: Tarrant County Association for the Blind, Fort Worth, TX
Contracting Activity: General Services Administration, FPDS Agency Coordinator
Service Type: Employment Placement Service
Mandatory for: Defense Logistics Agency: National Human Resource, Offices (HRO), Locations—Columbus, OH; Richmond, VA; Fort Belvoir, VA
Mandatory Source(s) of Supply: Virginia Industries for the Blind, Charlottesville, VA
Contracting Activity: Defense Logistics Agency Support Services
Service Type: Mailroom Operation
Mandatory for: Department of Housing and Urban Development, 600 E. Broad St., Richmond, VA
Mandatory Source(s) of Supply: Virginia Industries for the Blind, Charlottesville, VA
Contracting Activity: Department of Health And Human Services
Service Type: Administrative/General Support Service
Mandatory for: GSA, Northeast Distribution Center, Federal Supply Service (3FS), Burlington, NJ
Mandatory Source(s) of Supply: Bestwork Industries for the Blind, Inc., Cherry Hill, NJ
Contracting Activity: General Services Administration, FPDS Agency Coordinator
Service Type: Mattress Resizing
Mandatory for: Defense Supply Center Philadelphia, Philadelphia, PA
Mandatory Source(s) of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: Defense Logistics Agency Troop Support
Service Type: Mailroom Operation
Mandatory for: McCoy Federal Building, 100 W. Capitol St., Jackson, MS
Mandatory Source(s) of Supply: Mississippi Industries for the Blind, Jackson, MS
Contracting Activity: Dept of Housing and Urban Development
Service Type: Order Processing Service
Mandatory for: National Institute of Health, 31 Center Dr., Bethesda, MD
Mandatory Source(s) of Supply: Blind Industries & Services of Maryland, Baltimore, MD
Contracting Activity: Department of Health and Human Services
Service Type: Administrative Service
Mandatory for: GSA, Federal Supply Service Bureau: Service Acquisition Center, Arlington, VA
Mandatory Source(s) of Supply: Virginia Industries for the Blind, Charlottesville, VA
Contracting Activity: General Services Administration, FPDS Agency Coordinator
Service Type: Administrative Service
Mandatory for: GSA, Federal Supply Service Bureau: Fleet Management Division, Washington, DC
Mandatory Source(s) of Supply: Virginia Industries for the Blind, Charlottesville, VA
Contracting Activity: General Services Administration, FPDS Agency Coordinator
Service Type: Customer Service Representatives
Mandatory for: GSA, Springfield: Customer Supply and Industrial Products Center, Springfield, VA
Mandatory Source(s) of Supply: Virginia Industries for the Blind, Charlottesville, VA
Contracting Activity: General Services Administration, FPDS Agency Coordinator
Service Type: Customer Service Representatives
Mandatory for: GSA, Springfield: Customer Supply and Industrial Products Center, GSA Franconia Bldg. A, Springfield, VA
Mandatory Source(s) of Supply: Virginia Industries for the Blind, Charlottesville, VA
Contracting Activity: General Services Administration, FPDS Agency Coordinator
Service Type: Storage, Handling & Distribution of CLI Promotion
Mandatory for: Environmental Protection Agency: 1200 Pennsylvania Avenue NW., Washington, DC
Mandatory Source(s) of Supply: Virginia Industries for the Blind, Charlottesville, VA
Contracting Activity: U.S. Environmental Protection Agency
Service Type: Administrative/General Support Services
Mandatory for: GSA, Southwest Supply Center: 819 Taylor Street, Fort Worth, TX
Mandatory Source(s) of Supply: East Texas Lighthouse for the Blind, Tyler, TX
Contracting Activity: General Services Administration, FPDS Agency Coordinator

Patricia Briscoe,

Deputy Director, Business Operations, (Pricing and Information Management).

[FR Doc. 2016–24364 Filed 10–6–16; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

AGENCY: Air Force Materiel Command, Department of Defense.

ACTION: Notice of Intent.

SUMMARY: Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, as amended; the Department of the Air Force announces its intention to grant The Regents of the University of Michigan, a land-grant educational institution of the State of Michigan, having a place of business at 503 S. State St., Ann Arbor, MI 48109.

DATES: The Air Force intends to grant a license for the patent and pending applications unless a written objection is received within fifteen (15) calendar

days from the date of publication of this Notice.

ADDRESSES: Written objection should be sent to: Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Rm. 101, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–3733.

FOR FURTHER INFORMATION CONTACT: Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Rm. 101, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–3733.

SUPPLEMENTARY INFORMATION: An exclusive license in any right, title, and interest of the Air Force in: U.S. Provisional Application No. 62/383,775, entitled, ''DURABLE HYDROPHOBIC SURFACES,'' by Anish Tuteja, Kevin Golovin, James Gose, Matthew Boban, Joseph Mabry, Marc Perlin, and Steven Ceccio and filed on 6 September 2016.

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2016–24241 Filed 10–6–16; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0040]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 7, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Customer Satisfaction Surveys Generic Clearance. OMB Control Number 0704–0403.

Type of Request: Reinstatement, with change.

Annual Estimates

Expected Annual Number of Activities/Collections: 8.

Annual Number of Respondents: 4600.

Annual Number of Responses: 6400.

Frequency of Response: On Occasion.

Average Burden per Response: 8 minutes.

Annual Burden Hours: 1,273 hours.

3-Year Estimates: The 3-Year Ceiling for This Generic Collection Will Be

Total Expected Number of Activities/Collections: 12.

Total Number of Respondents: 13,800.

Total Number of Responses: 19,200.

Frequency of Response: On Occasion.

Average Burden per Response: 8 minutes.

Total Burden Hours: 3,819 hours.

Needs and Uses: The information collection requirement is necessary to assess the level of service the DTIC provides to its current customers. The surveys will provide information on the level of overall customer satisfaction as well as on customer satisfaction with several attributes of service that impact the level of overall satisfaction. These customer satisfaction surveys are required to implement Executive Order 12862, ''Setting Customer Service Standards.'' Respondents are DTIC registered users who are components of the DoD, military services, other Federal Government Agencies, U.S. Government contractors, and universities involved in federally funded research. The information obtained by these surveys will be used to assist agency senior management in determining agency business policies and processes that should be selected for examination, modification, and reengineering from the customer's perspective. These surveys will also provide statistical and demographic basis for the design of follow-on surveys. Future surveys will be used to assist monitoring of changes in the level of customer satisfaction overtime.

Affected Public: Business or other for-profit; individuals or households; Federal Government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Dated: October 4, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–24315 Filed 10–6–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0094]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, and Office of Management and Budget (OMB) Circular No. A–130, notice is hereby given that the Office of the Secretary of Defense proposes to alter a system of records DUSDP 11, entitled ''POW/Missing Personnel Office Files,'' last published at 62 FR 40051, July 25, 1997. This system of records exists to collect information concerning DoD personnel and U.S. citizens who are known or may be prisoners of war or officially missing in order to provide the fullest possible accounting for our missing personnel to their families and the nation. The data is also used to produce studies and analytical reports for agencies that develop policies with respect to American military members and civilians designated as missing or prisoners of war as a result of campaigns or wars involving the U.S. Military.

This update reflects considerable administrative changes that in sum warrant an alteration to the system of records notice. In this notice, references to specific wars and conflicts has been removed from the categories of individuals to clarify who may be a subject of these records. The records are no longer retrieved by Social Security

Number (SSN), therefore a statement has been added to the category of records and reference to the SSN has been removed from the retrievability section. Additionally, the applicable DoD Routine Uses have been incorporated in the notice to provide clarity for the public. Further, the system name, system location, authorities, storage, purpose, safeguards, retention and disposal, system manager(s) and address, notification procedure, record access procedures, and record source categories were updated to ensure the information is accurate and current. Finally, the exemptions claimed for this system were reviewed and determined to remain applicable and current.

DATES: Comments will be accepted on or before November 7, 2016. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPD2), 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0478.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division Web site at *http://dpcld.defense.gov/.*

The proposed system report, as required by U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 13, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4 of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' revised November 28, 2000 (December 12, 2000 65 FR 77677).

Dated: October 4, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DUSDP 11

SYSTEM NAME:

POW/Missing Personnel Office Files (July 25, 1997, 62 FR 40051).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''POW/MIA Personnel Files.''

SYSTEM LOCATION:

Delete entry and replace with ''Defense POW/MIA Accounting Agency (DPAA), 241 18th Street S., Suite 800, Arlington, VA 22202–3420.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''U.S. Military personnel designated by their Service Secretary or U.S. citizens by the U.S. Department of State as prisoners of war or missing in action (POW/MIA). The status applies to those POW or MIA during any campaign or hostile action involving U.S. Military intervention or declared war, and includes private citizens on personal travel that were detained or went missing in current or previous hostile fire/combat zones.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, date of birth, place of birth, branch of military service, serial/service number or DOD Identification (DoD ID) number, field search case number or source reference number (in the case of a classified source); next of kin and/or requester name, current address, personal telephone number, and email address. Other records included in the system are operational and information reports, biographic records, physical descriptions, personal statements and correspondence, returnee debriefings, interviews and media reports.

The Social Security Number is no longer collected or used to retrieve records in this system.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 134, Under Secretary of Defense for Policy; 10 U.S.C. Chapter 76, Missing Persons (sections 1501 through 1513); and DoD Directive 5110.10, Defense Prisoner of War/Missing Personnel Office (DPMO).''

PURPOSE(S):

Delete entry and replace with ''To develop a detailed and comprehensive body of information concerning Department of Defense personnel and U.S. citizens who are known or may be prisoners of war or officially missing in order to provide the fullest possible accounting for our missing personnel to their families and the nation. Records are used to investigate the event and account for POW/MIA personnel. Data are also used to produce studies and analytical reports furnished as background material to offices and agencies that enunciate and promulgate National policy with respect to American military members and civilians designated as missing or prisoners of war as a result of campaigns or wars involving the U.S. Military.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To a domestic or foreign entity that has entered into a public-private partnership with the Defense POW/MIA Accounting Agency (DPAA) as authorized by 10 U.S.C. 1501a, when DPAA determines that such disclosure is necessary to the performance of services DPAA has agreed shall be performed by the partner.

Congressional Inquiries Disclosure Routine Use: Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosures Required by International Agreements Routine Use: A record from a system of records maintained by a DoD Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating

the stationing and status in foreign countries of DoD military and civilian personnel.

Disclosure to the Department of Justice for Litigation Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Disclosure of Information to the National Archives and Records Administration Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Data Breach Remediation Purposes Routine Use: A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.''

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with ''Paper records, electronic storage media, microfilm, and microfiche.''

RETRIEVABILITY:

Delete entry and replace with ''Retrieved by any or a combination of: Individual's name, serial/service number, date of birth, branch of military service, next of kin and/or requester's name, current address, personal telephone number, email address, or source reference number (in the case of a classified source).''

SAFEGUARDS:

Delete entry and replace with ''Paper records, microfilm, and microfiche are maintained in a controlled access office and are stored in a secure vault work area. Access to electronic records is restricted by Common Access Card (CAC) and/or username/password which are changed periodically. All records are only accessible to authorized personnel with a demonstrated need for access. Personnel are properly screened, cleared, and trained in the protection of privacy information.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Permanent. Transfer legal custody to NARA 25 years after closure.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Defense Prisoner of War/Missing in Action Accounting Agency (DPAA), 2000 Defense Pentagon, Washington, DC 20301–2000.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Prisoner of War/Missing in Action Accounting Agency (DPAA), 2000 Defense Pentagon, Washington, DC 20301–2000.

Signed written requests should include full name, serial/service number as appropriate (if any), and date of birth, branch of military service, if applicable, as well as the requester's current address and telephone number.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Office of the Secretary of Defense/Joint Staff, Freedom of Information Requester Service Center, 1155 Defense Pentagon, Washington DC 20301–1155.

Signed written requests should include full name, serial/service number as appropriate (if any), and date of birth, branch of military service, if applicable, as well as the requester's current address, email address, telephone number, and the name and number of this system of records notice.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' ''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Department of Defense, Department of State and U.S. Intelligence Agencies, interviews and debriefings of returnees, next of kin, confidential sources, and other individuals; representatives of concerned organizations; resident aliens; foreign sources; and open publications.''

* * * * *

DUSDP 11

SYSTEM NAME:

POW/MIA Personnel Files.

SYSTEM LOCATION:

Defense POW/MIA Accounting Agency (DPAA), 241 18th Street S., Suite 800, Arlington, VA 22202–3420.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Military personnel designated by their Service Secretary or U.S. citizens by the U.S. Department of State as prisoners of war or missing in action (POW/MIA). The status applies to those POW or MIA during any campaign or hostile action involving U.S. Military intervention or declared war, and includes private citizens on personal travel that were detained or went missing in current or previous hostile fire/combat zones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, place of birth, branch of military service, serial/service number or DOD Identification (DoD ID)

number, field search case number or source reference number (in the case of a classified source); next of kin and/or requester name, current address, personal telephone number, and email address. Other records included in the system are operational and information reports, biographic records, physical descriptions, personal statements and correspondence, returnee debriefings, interviews and media reports.

The Social Security Number is no longer collected or used to retrieve records in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 134, Under Secretary of Defense for Policy; 10 U.S.C. Chapter 76, Missing Persons (sections 1501 through 1513); and DoD Directive 5110.10, Defense Prisoner of War/Missing Personnel Office (DPMO).

PURPOSE(S):

To develop a detailed and comprehensive body of information concerning Department of Defense personnel and U.S. citizens who are known or may be prisoners of war or officially missing in order to provide the fullest possible accounting for our missing personnel to their families and the nation. Records are used to investigate the event and account for POW/MIA personnel. Data are also used to produce studies and analytical reports furnished as background material to offices and agencies that enunciate and promulgate National policy with respect to American military members and civilians designated as missing or prisoners of war as a result of campaigns or wars involving the U.S. Military.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To a domestic or foreign entity that has entered into a public-private partnership with the Defense POW/MIA Accounting Agency (DPAA) as authorized by 10 U.S.C. 1501a, when DPAA determines that such disclosure is necessary to the performance of services DPAA has agreed shall be performed by the partner.

Congressional Inquiries Disclosure Routine Use: Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

DISCLOSURES REQUIRED BY INTERNATIONAL AGREEMENTS ROUTINE USE:

A record from a system of records maintained by a DoD Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of DoD military and civilian personnel.

Disclosure to the Department of Justice for Litigation Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Disclosure of Information to the National Archives and Records Administration Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Data Breach Remediation Purposes Routine Use: A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, electronic storage media, microfilm, and microfiche.

RETRIEVABILITY:

Retrieved by any or a combination of: Individual's name, serial/service number, date of birth, branch of military service, next of kin and/or requester's name, current address, personal telephone number, email address, or source reference number (in the case of a classified source).

SAFEGUARDS:

Paper records, microfilm, and microfiche are maintained in a controlled access office and are stored in a secure vault work area. Access to electronic records is restricted by Common Access Card (CAC) and/or username/password which are changed periodically. All records are only accessible to authorized personnel with a demonstrated need for access. Personnel are properly screened, cleared, and trained in the protection of privacy information.

RETENTION AND DISPOSAL:

Permanent. Transfer legal custody to NARA 25 years after closure.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Prisoner of War/Missing in Action Accounting Agency (DPAA), 2000 Defense Pentagon, Washington, DC 20301–2000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Prisoner of War/Missing in Action Accounting Agency (DPAA), 2000 Defense Pentagon, Washington, DC 20301–2000.

Signed written requests should include full name, serial/service number as appropriate (if any), and date of birth, branch of military service, if applicable, as well as the requester's current address and telephone number.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or

commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Office of the Secretary of Defense/Joint Staff, Freedom of Information Requester Service Center, 1155 Defense Pentagon, Washington DC 20301–1155.

Signed written requests should include full name, serial/service number as appropriate (if any), and date of birth, branch of military service, if applicable, as well as the requester's current address, email address, telephone number, and the name and number of this system or records notice.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense (OSD) rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Department of Defense, Department of State and U.S. Intelligence Agencies, interviews and debriefings of returnees, next of kin, confidential sources, and other individuals; representatives of concerned organizations; resident aliens; foreign sources; and open publications.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 2016–24331 Filed 10–6–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (Judicial Proceedings Panel); Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (''the Judicial Proceedings Panel'' or ''the Panel''). The meeting is open to the public.

DATES: A meeting of the Judicial Proceedings Panel will be held on Friday, October 14, 2016. The public session will begin at 9:00 a.m. and end at 4:30 p.m.

ADDRESSES: Judicial Proceedings Panel, One Liberty Center, 875 N. Randolph Street, Conference Room, 14th Floor, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Carson, Judicial Proceedings Panel, One Liberty Center, 875 N. Randolph Street, Suite 150, Arlington, Virginia 22203. Email: *whs.pentagon.em.mbx.judicial-panel@mail.mil.* Phone: (703) 693–3849. Web site: *http://jpp.whs.mil.*

SUPPLEMENTARY INFORMATION: Due to difficulties beyond the control of the Department of Defense, the Designated Federal Officer was unable to submit the **Federal Register** notice pertaining to the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel meeting agenda for its scheduled meeting of October 14, 2016, that ensured compliance with the requirements of 41 CFR 102–3.150(a). Accordingly the Advisory Committee Management Officer for the Department of Defense, waives the 15-calendar day notification requirement pursuant to 41 CFR 102–3.150(b).

This public meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: In Section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), as amended, Congress tasked the Judicial Proceedings Panel to conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice (UCMJ) involving adult sexual assault and related offenses since the amendments made to the UCMJ by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81; 125 Stat. 1404), for the purpose of developing recommendations for improvements to such proceedings. At this meeting, the Panel will receive testimony from civilian attorneys on their perspectives regarding sexual assault victims' appellate rights. The Panel will also receive testimony from JPP Subcommittee members regarding site visit trends and issues.

Agenda:

8:30 a.m.–9:00 a.m. Administrative Work (41 CFR 102–3.160, not subject to notice & open meeting requirements)

9:00 a.m.–9:15 a.m. Welcome and Introduction
- —Designated Federal Officer Opens Meeting
- —Remarks of the Chair

9:15 a.m.–12:00 p.m. Civilian Attorneys' Perspectives on Victims' Appellate Rights
- —Ms. Meg Garvin, Executive Director, National Crime Victim Law Institute
- —Professor Steven Saltzburg, Wallace and Beverly Woodbury University Professor of Law, The George Washington University Law School
- —Mr. Don Christensen, President, Protect Our Defenders
- —Mr. Ryan Guilds, Counsel, Arnold & Porter LLP
- —**Note:* Additional presenters may be included in this session and the agenda will be updated accordingly and posted on the Web site at *http://jpp.whs.mil.*

12:00 p.m.–1:00 p.m. Lunch

1:00 p.m.–3:30 p.m. Report of the Subcommittee on Site Visit Trends and Issues
- —Ms. Jill Wine-Banks
- —Mr. James Schwenk
- —Ms. Laurie Kepros
- —Professor Lee Schinasi
- —Dean Lisa Schenck

3:30 p.m.–3:45 p.m. Public Comment

3:45 p.m.–4:30 p.m. Panel Deliberations

4:30 p.m. Meeting Adjourned

Availability of Materials for the Meeting: A copy of the October 14, 2016 public meeting agenda and any updates or changes to the agenda, including individual speakers not identified at the

time of this notice, as well as other materials provided to Panel members for use at the public meeting, may be obtained at the meeting or from the Panel's Web site at *http://jpp.whs.mil.*

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. Visitors are required to sign in at the One Liberty Center security desk and must leave a government-issued photo identification on file while in the building. Department of Defense Common Access Card (CAC) holders who do not have authorized access to One Liberty Center must provide an alternate form of government-issued photo identification to leave on file with security while in the building. All visitors must pass through a metal detection security screening.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact the Judicial Proceedings Panel at *whs.pentagon.em.mbx.judicial-panel@mail.mil* at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Procedures for Providing Public Comments: Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Panel about its mission and topics pertaining to this public session. Written comments must be received by the JPP at least five (5) business days prior to the meeting date so that they may be made available to the Judicial Proceedings Panel for their consideration prior to the meeting. Written comments should be submitted via email to the Judicial Proceedings Panel at *whs.pentagon.em.mbx.judicial-panel@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the Judicial Proceedings Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. If members of the public are interested in making an oral statement pertaining to the agenda for the public meeting, a written statement must be submitted as above along with a request to provide an oral statement. After reviewing the written comments and the oral statement, the Chairperson and the Designated Federal Officer will determine who of the requesting persons will be able to make an oral presentation of their issue during the public comment portion of this meeting. Determination of who will be making an oral presentation is at the sole discretion of the Committee Chair and the Designated Federal Officer and will depend on time available and relevance to the Panel's activities for that meeting, and on a first-come basis. When approved in advance, oral presentations by members of the public will be permitted from 3:30 p.m. to 3:45 p.m. on October 14, 2016 in front of the Panel members.

Committee's Designated Federal Officer: The Panel's Designated Federal Officer is Ms. Maria Fried, Department of Defense, Office of the General Counsel, 1600 Defense Pentagon, Room 3B747, Washington, DC 20301–1600.

Dated: October 4, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–24328 Filed 10–6–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0073]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 7, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Post Government Employment Advice Opinion Request; DD Form 2945; OMB Control Number 0704–0467.

Type of Request: Reinstatement.

Number of Respondents: 250.

Responses per Respondent: 1.

Annual Responses: 250.

Average Burden per Response: 60 minutes.

Annual Burden Hours: 250 hours.

Needs and Uses: The information collection requirement is necessary to obtain minimal information on which to base an opinion about post Government employment of select former and departing DoD employees seeking to work for Defense Contractors within two years after leaving DoD. The departing or former DoD employee uses the form to organize and provide employment-related information to an ethics official who will use the information to render an advisory opinion to the employee requesting the opinion. *The National Defense Authorization of Act for Fiscal Year 2008,* Public Law 110–181, section 847, requires that select DoD officials and former DoD officials who, within two years after leaving DoD, expect to receive compensation from a DoD Contractor, shall, before accepting such compensation, request a written opinion regarding the applicability of postemployment restrictions to activities that the official or former official may undertake on behalf of a contractor.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Dated: October 4, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–24337 Filed 10–6–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2016–OS–0095]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, and Office of Management and Budget (OMB) Circular No. A–130, notice is hereby given that the Office of the Secretary of Defense proposes to alter a system of records, DHRA 12 DoD, entitled ''Defense Injury and Unemployment Compensation System,'' last published at 79 FR 19872, April 10, 2014. This system of records exists to administer Federal Employees Compensation Act claims in which individuals seek monetary, medical, and similar benefits for injuries or deaths sustained while performing assigned duties. Maintaining this record is necessary to provide counsel and assistance to employees regarding their entitlements and to conduct audits of such entitlements with concerned State Employment Security Agencies.

This update reflects administrative changes that in sum warrant an alteration to the systems of records notice. Information collected on the individual has been reduced by eliminating the Occupational Safety and Health Act initial notification report from the record; accordingly, the reference has been removed from the categories of records and the purpose sections of the notice. The source authority, 5 U.S.C. 85, Unemployment Compensation, has been included as the DoD policy is derived from this statute. Further, the applicable DoD Routine Uses have been incorporated in the notice to provide clarity for the public. There are also modifications to system identifier, system name, system location, retention and disposal, system manager(s) and address, and notification procedure.

DATES: Comments will be accepted on or before November 7, 2016. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPD2), 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0478.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy, Civil Liberties, and Transparency Division Web site at *http://dpcld.defense.gov/.*

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, were submitted on September 20, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4 of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' revised November 28, 2000 (December 12, 2000 65 FR 77677).

Dated: October 4, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHRA 12 DoD

SYSTEM NAME:

Defense Injury and Unemployment Compensation System (April 10, 2014, 79 FR 19872).

CHANGES:

SYSTEM ID:

Delete entry and replace with ''DMDC 27 DoD.''

SYSTEM NAME:

Delete entry and replace with ''Defense Injury and Unemployment Compensation System (DIUCS).''

SYSTEM LOCATION:

Delete entry and replace with ''Defense Manpower Data Center, Denver Data Center, 1401 Del Norte Street, Denver, CO 80221–7143.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, Social Security Number (SSN), claim number, date of birth, gender, home phone number, home address; component, occupation, assignment and duty location information; wages, benefits, entitlement data necessary to injury and unemployment claim management; Department of Labor/Office of Workers Compensation Programs (DOL/OWCP) claim status; authorization for medical care; related DoD personnel records such as, timekeeping and payroll data, reports descriptive of the incident and extent of injury for use in DOL/OWCP adjudication of the claim; reports related to payment of benefits through SESA offices, State where the claim for unemployment compensation was filed and approximate date filed with the SESA.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 5 U.S.C. 81, Compensation for Work Injuries; 5 U.S.C. 85, Unemployment Compensation; DoD Instruction (DoDI) 1400.25–V810, DoD Civilian Personnel Management System: Injury Compensation; DoDI 1400.25–V850, DoD Civilian Personnel Management System: Unemployment Compensation (UC); and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''To manage FECA claims seeking monetary, medical, and similar benefits for injuries or deaths sustained while performing assigned duties.

Records are maintained for the purpose of auditing the State itemized listings of unemployment compensation charges, identifying erroneous charges and requesting credits from the SESAs, and tracking the charges to ensure that credits are received from the appropriate State jurisdictions.''

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Office of Personnel Management, Department of Labor and Social Security Administration for the purpose of ensuring appropriate payment of benefits.

Law Enforcement Routine Use: If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

Disclosure When Requesting Information Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DoD Component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

Disclosure of Requested Information Routine Use: A record from a system of records maintained by a DoD Component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Congressional Inquiries Disclosure Routine Use: Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosure to the Office of Personnel Management Routine Use: A record from a system of records subject to the Privacy Act and maintained by a DoD Component may be disclosed to the Office of Personnel Management (OPM) concerning information on pay and leave, benefits, retirement deduction, and any other information necessary for the OPM to carry out its legally authorized government-wide personnel management functions and studies.

Disclosure to the Department of Justice for Litigation Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Disclosure of Information to the National Archives and Records Administration Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Data Breach Remediation Purposes Routine Use: A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Destroy closed claims 10 years after the case is closed by the Department of Labor and all related activity has ceased.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''DIUCS Program Manager, Defense Manpower Data Center, Enterprise Human Resources Information Systems Directorate, 4800 Mark Center Drive, Alexandria, VA 22350–4000.

Functional Program Manager, Defense Civilian Personnel Advisory Service, Human Resources Operational Programs and Advisory Service, 4800 Mark Center Drive, Alexandria, VA 22350–1100.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves relating to a workers compensation claim is contained in this system should address written inquiries to their designated Injury Compensation Program Administrator (ICPA), or contact the Defense Civilian Personnel Advisory Service, Human Resources Operational Programs and Advisory Service, 4800 Mark Center Drive, Alexandria, VA 22350–1100.

Signed, written requests regarding Unemployment Compensation should include the individual's full name, SSN, address, state where the claim for unemployment compensation was filed, and approximate date filed with the SESA.

Individuals seeking to determine whether information about themselves relating to SESA is contained in this system should address written inquiries to their designated Unemployment Compensation Program Administrator (UCPA), or contact the Defense Civilian Personnel Advisory Service, Human Resources Operational Programs and Advisory Service, 4800 Mark Center Drive, Alexandria, VA 22350–1100.

Signed, written requests regarding SESA should include the individual's full name, SSN, address, state where the claim for unemployment compensation was filed, and approximate date filed with the SESA.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury

that the foregoing is true and correct. Executed on (date). (Signature).' ''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the OSD/Joint Staff, Freedom of Information Act Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed, written requests should include the individual's full name, SSN, address, and the name and number of this system of records notice. If the request involves unemployment compensation, it should include the State where the claim for unemployment compensation was filed and approximate date filed with the SESA.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' ''

* * * * *

[FR Doc. 2016–24369 Filed 10–6–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of the Draft Environmental Impact Statement for Millennium Bulk Terminals—Longview, LLC Shipping Terminal, in the Columbia River, Near Longview, Cowlitz County, Washington

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (Corps) Seattle District has prepared a Draft Environmental Impact Statement (EIS) to analyze the direct, indirect, and cumulative effects of an action proposed by Millennium Bulk Terminals—Longview, LLC (MBTL) involving the Columbia River and adjacent waters of the United States. The Proposed Action is to construct and operate a shipping terminal to export up to 44 million metric tons of coal per year. Construction of the terminal and support facilities would result in the permanent loss of 29.3 acres of waters of the United States, consisting of 24.1 acres of wetlands and 5.2 acres of ditches and other waters. The proposed work requires Department of the Army authorization from the Corps under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. The permit applicant is Millennium Bulk Terminals—Longview, LLC.

This Draft EIS was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and Corps regulations for implementing NEPA (33 Code of Federal Regulations [CFR] Part 230 and Part 325, Appendix B). The Corps' Seattle District, is the lead federal agency, with the Environmental Protection Agency and U.S. Coast Guard participating as cooperating agencies. Information contained in this EIS will support a future decision regarding issuance of a Department of the Army permit under Sections 10 and 404. This EIS also provides information for state, local, and other Federal agencies having jurisdictional responsibility for the affected resources.

DATES: Written comments on the Draft EIS will be accepted thru November 29, 2016. Oral and/or written comments may also be presented at Public Hearings to be held Monday, October 24, 2016 at the Cowlitz County Regional Conference Center, 1900 7th Avenue, Longview, Washington and on Tuesday, October 25, 2016 at the Clark County Event Center, 17402 NE Delfel Road, Ridgefield, Washington. Each hearing is scheduled for 1:00 p.m. to 9:00 p.m., with a one-hour break between 4:00 p.m. and 5:00 p.m.

ADDRESSES: Send written comments regarding the Proposed Action and Draft EIS to Ms. Danette L. Guy, U.S. Army Corps of Engineers, Millennium Bulk Terminals—Longview NEPA EIS, c/o ICF International, 710 Second Avenue, Suite 550, Seattle, WA 98104. Comments may also be submitted online at *http://www.millenniumbulkeiswa.gov/submit-comments.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Danette L. Guy, Project Manager, U.S. Army Corps of Engineers, Seattle District, Regulatory Branch by email at *NWS.MBTL@usace.army.mil* or by telephone at (206) 316–3048.

SUPPLEMENTARY INFORMATION: The purpose of the Draft EIS is to provide decision makers and the public information pertaining to the Proposed Action, including alternatives, environmental impacts, and mitigation measures that could reduce impacts of the action.

An electronic copy of the Draft EIS may be obtained by visiting the project Web site at *http://www.millenniumbulkeiswa.gov/.*

Dated: September 30, 2016.

John G. Buck,

Colonel, Corps of Engineers, District Engineer, Seattle District.

[FR Doc. 2016–24312 Filed 10–6–16; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2016–ICCD–0107]

Agency Information Collection Activities; Comment Request; State Longitudinal Data System (SLDS) Survey 2017–2019

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before December 6, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0107. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact NCES Information Collections at *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in

accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: State Longitudinal Data System (SLDS) Survey 2017–2019.

OMB Control Number: 1850–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 112.

Abstract: As authorized by the Educational Technical Assistance Act of 2002, Title II, the Statewide Longitudinal Data Systems (SLDS) Grant Program has awarded competitive, cooperative agreement grants to states since 2005. Through grants and a growing range of services and resources, the program has helped propel the successful design, development, implementation, and expansion of K12 and P–20W (early learning through the workforce) longitudinal data systems. These systems are intended to enhance the ability of States to efficiently and accurately manage, analyze, and use education data, including individual student records. The SLDSs should help states, districts, schools, educators, and other stakeholders to make data-informed decisions to improve student learning and outcomes; as well as to facilitate research to increase student achievement and close achievement gaps. The SLDS grants extend for three to five years for up to twenty million dollars per grantee, and grantees are obligated to submit annual reports and a final report on the development and implementation of their systems. All 50 states, five territories, and the District of Columbia are eligible to apply, and each state can apply multiple times to develop different aspects of their data system. Since November 2005, 97 grants have been awarded. In addition to the grants, the program offers many services and resources to assist education agencies with SLDS-related work. Best practices, lessons learned, and non-proprietary products/solutions developed by recipients of these grants and other states are disseminated to aid all state and local education agencies. This request is to formalize the annual SLDS Interim Progress Report (IPR) as the SLDS Survey, intended to provide insight on state and U.S. territory SLDS capacity for automated linking of K–12, teacher, postsecondary, workforce, career and technical education (CTE), adult education, and early childhood data. The SLDS Survey will help inform ongoing evaluation and targeted technical assistance efforts to enhance the quality of the SLDS Program's support to states. This submission is to conduct the annual SLDS Survey from 2017 through 2019.

Dated: October 4, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–24298 Filed 10–6–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–506–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

Take notice that on September 23, 2016, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221 filed in Docket No. CP16–506–000, filed a prior notice request pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA) and National Fuel's blanket authorizations issued in Docket Nos. CP73–294–000. National Fuel seeks authorization to abandon on indicator well and associated facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

National Fuel proposes to abandon facilities in its East Branch Storage Field, located in McKean County, Pennsylvania. National Fuel proposes to abandon one indicator well, Well 841–P, and abandon in place the associated facilities. National Fuel states that based on the excessive cost to rehabilitate this well, it claims that the most prudent course of action is to abandon it and that the proposed abandonment will not result in a material decrease in service to customers.

Any questions regarding this Application should be directed to Laura P. Berloth, Attorney for National Fuel, 6363 Main Street, Williamsville, New York 14221, by phone (716) 857–7001, by fax (716) 857–7206, or by email at *berlothl@natfuel.com.*

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record

for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: September 30, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–24269 Filed 10–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF16–6–000]

Driftwood LNG, LLC and Driftwood LNG Pipeline Company, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Planned Driftwood LNG Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Sessions

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Driftwood LNG Project involving construction and operation of facilities by Driftwood LNG, LLC and Driftwood LNG Pipeline Company, LLC (collectively referred to as ''DWLNG'') in Calcasieu, Jefferson Davis, Acadia, and Evangeline Parishes, Louisiana. The Commission will use this EIS in its decision-making process to determine whether the planned project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EIS. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before November 4, 2016.

If you sent comments on this project to the Commission before the opening of this docket on June 6, 2016, you will need to file those comments in Docket No. PF16–6–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*http://www.ferc.gov/resources/guides/gas/gas.pdf*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Public Participation

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided verbally. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.''* If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (PF16–6–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend one of the public scoping sessions its staff will conduct in the project area, scheduled as follows:

FERC PUBLIC SCOPING MEETINGS DRIFTWOOD LNG PROJECT

Date and time	Location
Tuesday, October 25, 2016, 5:00 pm to 8:30 pm	Town of Kinder Community Center, 316 N 8th Street, Kinder, LA 70648.
Wednesday, October 26, 2016, 5:00 pm to 8:30 pm	West Cal Event Center, 401 Arena Road, Sulphur, LA 70665.
Thursday, October 27, 2016, 5:00 pm to 8:30 pm	Northwest Community Center, 501 Samuel Drive, Eunice, LA 70535.

The primary goal of these scoping sessions is to identify the specific environmental issues and concerns that should be considered and addressed in the EIS.

Commission staff will accept verbal comments between 5:00 and 8:30 p.m. There *will not* be a formal presentation by Commission staff when the session begins; however, Commission staff will be available to answer your questions about the environmental review process. Your comments will be recorded individually by a stenographer (with FERC staff or representative present) and placed into the Commission's administrative record. A transcript of the scoping session(s) will be entered into the FERC's publicly available eLibrary (see below for instructions on using eLibrary). It is important to note that verbal comments hold the same weight as written or electronically submitted comments.

Please note this is not your only public input opportunity; please refer to the review process flow chart in appendix 1.[1]

Summary of the Planned Project

DWLNG intends to construct a planned natural gas liquefaction and export facility in Calcasieu Parish, Louisiana, along the west side of the Calcasieu River, with a liquefaction capacity of about 26 million tonnes per annum (MTPA) of natural gas.

Additionally, DWLNG plans to construct 96 miles of pipeline in Calcasieu, Jefferson Davis, Acadia, and Evangeline Parishes, that would connect the liquefaction and export facility to the existing interstate U.S. natural gas grid.

The proposed facilities would consist of the following components: (1) Five LNG plants, each comprising one gas pre-treatment unit and four gas-turbine-driven Integrated Pre-cooled Single Mixed Refrigerant liquefaction units; (2) Three full-containment LNG storage tanks of approximately 250,000 m^3 each; (3) Three berths and loading facilities for LNG ships ranging from 125,000 m^3 up to 216,000 m^3 cargo capacity; and (4) Three compressor stations, 15 meter stations, a 3.5-mile 36-inch-diameter pipeline lateral, and three pipeline segments, consisting of about 74 miles of 48-inch-diameter pipeline, 11 miles of 42-inch-diameter pipeline, and 11 miles of 36-inch-diameter pipeline.

DWLNG plans to commence construction in second quarter 2018 and expects to be ready to commence LNG exports in second quarter 2022.

The general location of the project facilities is shown in appendix 2.

Land Requirements for Construction

The Driftwood LNG Project would be situated on the west side of the Calcasieu River in Calcasieu Parish, Louisiana, approximately five miles south of the town of Carlyss. The facility site would cover an area of approximately 800 acres. DWLNG would own or lease all of the land required for the facility and own, lease, or acquire the necessary rights of way on land required for the pipeline. At this time, DWLNG has purchased approximately 140 acres and has leased an additional 475 acres of the facility site with the right to enter into a long-term lease for up to a total of fifty years.

Following construction, DWLNG would maintain approximately 305 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses.

Non-Jurisdictional Facilities

The project would include two non-jurisdictional facilities: Power supply and water/wastewater systems.

Power Supply: During normal operations electric power would be drawn from the power grid. Approximately 200 megawatts of electrical power would be required for the operation of the Facility. Power would be provided by the local electricity utility company. The Facility would have essential diesel generation capacity to generate sufficient electrical power to allow for lighting of safe egress, controlled shutdown of the facility in the event of a power failure from the main grid system and power for critical systems which may be required during storm events or emergency situations.

Water and Wastewater: The project would connect to the local parish municipality for water services (Calcasieu Parish Waterworks District). Connection to the municipal system would not require any modifications to the existing infrastructure. The project would install a packaged sanitary sewage treatment system.

Although FERC doesn't have the regulatory authority to modify or deny the construction of the above-described facilities, we will disclose available information regarding the construction impacts in the cumulative impacts section of our EIS.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EIS. We will consider all filed comments during the preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- socioeconomics;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate possible alternatives to the planned project or

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EIS.

The EIS will present our independent analysis of the issues. We will publish and distribute the draft EIS for public comment. After the comment period, we will consider all timely comments and revise the document, as necessary, before issuing a final EIS. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2 on this notice.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EIS.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. The U.S. Department of Energy, U.S. Coast Guard, and U.S. Army Corps of Engineers are anticipated to participate as cooperating agencies in the preparation of the EIS to satisfy their NEPA responsibilities related to this project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for Section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Native American Tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EIS for this project will document our findings on the impacts on historic properties and summarize the status of consultations under Section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the planned facilities, the environmental information provided by DWLNG, comments received at DWLNG's open houses, and those comments filed to-date. This preliminary list of issues may change based on your additional comments and our analysis:

- Visual impacts;
- noise and air emissions;
- traffic; and
- cumulative impacts.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

Copies of the completed draft EIS will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version, or would like to remove your name from the mailing list, please return the attached Information Request (appendix 3).

Becoming an Intervenor

Once DWLNG files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-Filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* PF16–6). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings/sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: October 3, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–24273 Filed 10–6–16; 8:45 am]

BILLING CODE 6717–01–P

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14797–000]

California Department of Water Resources; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent To File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 14797–000.

c. *Date Filed:* August 1, 2016.

d. *Submitted By:* California Department of Water Resources.

e. *Name of Project:* Devil Canyon Project.[1]

f. *Location:* The project is located along the East Branch of the California Aqueduct, in San Bernardino County, California. The project occupies 220.98 acres of United States lands administered by the U.S. Department of Agriculture, Forest Service, as part of the San Bernardino National Forest.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Ted Craddock, Chief, Hydropower License Planning and Compliance Office, California Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236–0001; (916) 557–4555; email—*Ted.Craddock@water.ca.gov.*

i. *FERC Contact:* John Mudre at (202) 502–8902; or email at *john.mudre@ferc.gov.*

j. California Department of Water Resources filed its request to use the Traditional Licensing Process on August 1, 2016. California Department of Water Resources provided public notice of its request on July 29 and August 1, 2016. In a letter dated September 30, 2016, the Director of the Division of Hydropower Licensing approved California Department of Water Resources' request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402. We are also initiating consultation with the California State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating California Department of Water Resources as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and consultation pursuant to section 106 of the National Historic Preservation Act.

m. California Department of Water Resources filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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 at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 14797. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by January 31, 2020.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: September 30, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–24272 Filed 10–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Availability of Environmental Assessment

FFP Missouri 16, LLC	Project No. 13753–002
FFP Missouri 15, LLC	Project No. 13762–002
Solia 8 Hydroelectric, LLC	Project No. 13771–002
FFP Missouri 13, LLC	Project No. 13763–002
Solia 5 Hydroelectric, LLC	Project No. 13766–002
Solia 4 Hydroelectric, LLC	Project No. 13767–002

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 Code of Federal Regulations Part 380, Office of Energy Projects staff has reviewed applications for original licenses for the Opekiska Lock and Dam Hydroelectric Project (FERC No. 13753–002), Morgantown Lock and Dam Hydroelectric Project (FERC No. 13762–002), Point Marion Lock and Dam Hydroelectric Project (FERC No. 13771–002), Grays Landing Lock and Dam Hydroelectric Project (FERC No. 13763–002), Maxwell Locks and Dam Hydroelectric Project (FERC No. 13766–002), and Monongahela Locks and Dam 4 (also known as Charleroi Locks and Dam) Hydroelectric Project (FERC No. 13767–002) on the Monongahela River. These projects are referred to collectively as the Monongahela River Projects.

The projects would all be located at existing locks and dams owned by the U.S. Army Corps of Engineers on the Monongahela River. The Opekiska Lock and Dam Hydroelectric Project would be located upstream of Fairmont, West Virginia, in Monongalia County at river mile (RM) 115.4. The Morgantown Lock and Dam Hydroelectric Project would be located downstream of Morgantown, West Virginia, in Monongalia County at RM 102. The Point Marion Lock and Dam Hydroelectric Project would be located near Point Marion, Pennsylvania, in Fayette County at RM 90.8. The Grays Landing Lock and Dam Hydroelectric Project would be located southwest of Masontown, Pennsylvania,

[1] The proposed Devil Canyon Project is currently licensed as part of the South SWP Project (P–2426).

in Greene and Fayette Counties at RM 82. The Maxwell Locks and Dam Hydroelectric Project would be located downstream of Brownsville, Pennsylvania, in Washington County at RM 61.2. The Monongahela Locks and Dam 4 Hydroelectric Project would be located near Charleroi, Pennsylvania, in Washington County at RM 41.5. The projects would collectively occupy 19.9 acres of federal land.

Staff has prepared a multi-project environmental assessment (EA) that analyzes the potential environmental effects of the six projects and concludes that constructing and operating the projects, with appropriate environmental protection measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the ''eLibrary'' link. Enter the docket number for one of the proposed projects (*e.g.,* P–13753), excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659. 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: ''Opekiska Lock and Dam Hydroelectric Project No. 13753–002, Morgantown Lock and Dam Hydroelectric Project No. 13762–002, Point Marion Lock and Dam Hydroelectric Project No. 13771–002, Grays Landing Lock and Dam Hydroelectric Project No. 13763–002, Maxwell Locks and Dam Hydroelectric Project No. 13766–002, and/or Monongahela Locks and Dam 4 Hydroelectric Project No. 13767–002,'' as appropriate.

For further information, contact Nicholas Ettema at (202) 502–6565 or by email at *nicholas.ettema@ferc.gov.*

Dated: September 30, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–24271 Filed 10–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD16–25–000]

Utilization In the Organized Markets of Electric Storage Resources as Transmission Assets Compensated Through Transmission Rates, for Grid Support Services Compensated in Other Ways, and for Multiple Services; Notice of Technical Conference

Take notice that the Federal Energy Regulatory Commission (Commission) will convene a technical conference on November 9, 2016, at the Commission's offices at 888 First Street NE., Washington, DC 20426 beginning at 10:00 a.m. and ending at 3:00 p.m. (Eastern Time). Commission staff will lead the conference, and Commissioners may attend.

Electric storage resources [1] are able to provide services to multiple entities (*i.e.,* Regional Transmission Organizations/Independent System Operators (RTO/ISO), the distribution utilities, or other markets). In addition, these storage resources may fit into one or more of the traditional asset functions of generation, transmission, and distribution. The Commission wants to explore the circumstances under which it may be appropriate for electric storage resources to provide multiple services, whether the RTO/ISO tariffs need to include provisions to accommodate these business models, and how the Commission may ensure just and reasonable compensation for these resources in the RTO/ISO markets.[2] The subject of the conference will be the utilization of electric storage resources as transmission assets compensated through transmission rates, for grid support services that are compensated in other ways, and for multiple services. The discussion will include issues related to (1) potential models for cost recovery for electric storage resources utilized as transmission assets, while also selling energy, capacity or ancillary services at wholesale; (2) potential models to enable an electric storage resource to provide a compensated grid support service (like a generator providing ancillary services under a reliability must-run contract) rather than being compensated for providing transmission service; and (3) practical considerations for electric storage resources providing multiple services at once (*i.e.,* providing both wholesale service(s) and retail and/or end-use service(s)). Further details of the conference will be specified in a supplemental notice.

Those wishing to participate in this conference should submit a nomination form online by 5:00 p.m. on October 14, 2016 at: *https://www.ferc.gov/whats-new/registration/11-09-16-speaker-form.asp.*

All interested persons may attend the conference, and registration is not required. However, in-person attendees are encouraged to register on-line at: *https://www.ferc.gov/whats-new/registration/11-09-16-form.asp.*

This conference will be transcribed and webcasted. Transcripts will be available immediately for a fee from Ace Reporting Company at (202) 347–3700. A link to the webcast of this event will be available in the Commission Calendar of Events at *www.ferc.gov.* The Capitol Connection provides technical support for the webcasts and offers the option of listening to the conferences via phone-bridge for a fee. For additional information, visit *www.CapitolConnection.org* or call (703) 993–3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call (866) 208–3372 (toll free) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For information about the technical conference, please contact Rahim Amerkhail at (202) 502–8266, *rahim.amerkhail@ferc.gov.* For logistic information, please contact Sarah McKinley at (202) 502–8368, *sarah.mckinley@ferc.gov.*

[1] For purposes of this conference, Commission staff defines an electric storage resource as a facility that can receive electric energy from the grid and store it for later injection of electricity back to the grid. This includes all types of electric storage technologies, regardless of their size and storage medium, or whether they are interconnected to the transmission system, distribution system, or behind a customer meter.

[2] On April 11, 2016, Commission staff issued, in Docket No. AD16–20–000, data requests and a request for comments seeking information about the rules in RTO/ISO markets that affect the participation of electric storage resources.

Dated: September 30, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–24274 Filed 10–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–501–000]

Texas Eastern Transmission, LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Marshall County Mine Panel 17w Project Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the proposed Marshall County Mine Panel 17W Project involving construction and operation of facilities by Texas Eastern Transmission, LP (Texas Eastern) in Marshall County, West Virginia. Texas Eastern indicates the project would excavate, elevate and/or replace certain sections of four different pipelines and appurtenant facilities located in Marshall County due to planned longwall mining activities. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before October 30, 2016.

If you sent comments on this project to the Commission before the opening of this docket on September 29, 2016, you will need to file those comments in Docket No. CP16–501–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Texas Eastern provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.''* If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP16–501–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Texas Eastern proposes to excavate and elevate 0.5-mile-sections of each of its Lines 10 (30-inch diameter), 15 (30-inch-diameter), 25 (36-inch-diameter) and 30 (36-inch-diameter) to minimize and monitor potential strains on the pipelines due to anticipated longwall mining activities of Marshall Coal. Concurrent with pipeline elevation, portions of two of the lines, Lines 10 and 15, would be replaced with new pipe to accommodate a minimum Class 2 design. All but two sections of Lines 10 and 15 will be removed. Texas Eastern will also perform maintenance activities on sections of Lines 25 and 30. The four mainline sections will be returned to natural gas service while remaining elevated using sandbags and skids during the longwall mining activities and potential ground subsidence. Once the mining-induced subsidence and the 2017–2018 heating season have both ended, the two sections of Lines 10 and 15 located within wetlands will be removed and the four elevated pipeline sections will be re-installed belowground, hydrostatically tested, and placed back into service.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction workspace would disturb about 54.7 acres of land for the pipeline excavation, elevation, and/or replacement. Following construction, Texas Eastern would maintain about 8.6 acres of existing right-of-way for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-filing'' link on the Commission's Web site. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP16–501). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: September 30, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–24268 Filed 10–6–16; 8:45 am]

BILLING CODE 6717–01–P

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2426–227]

California Department of Water Resources and Los Angeles Department of Water and Power; Notice of Intent To File License Application, Filing of Pre-Application Document (PAD), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the PAD and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Pre-filing Process.

b. *Project No.:* 2426–227.

c. *Dated Filed:* August 1, 2016.

d. *Submitted By:* California Department of Water Resources and Los Angeles Department of Water and Power (Co-Applicants).

e. *Name of Project:* South SWP Hydropower Project.

f. *Location:* Along the West Branch of the State Water Project's California Aqueduct, in Los Angeles County, California. Excluding transmission lines, the project occupies 2,807.25 acres of United States lands, including 2,790.25 acres of National Forest System lands within the Angeles and the Los Padres National Forests and 17 acres under the jurisdiction of the U.S. Department of the Interior's Bureau of Land Management.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicant Contacts:* Ted Craddock, Chief, Hydropower License Planning and Compliance Office, Executive Division, California Department of Water Resources, 2033 Howe Avenue, Suite 220, Sacramento, CA 98525, (916) 557–4555 or *Ted.Craddock@water.ca.gov.;* and Simon Zewdu, Manager of Strategic Initiatives, Power Planning and Development, Los Angeles Department of Water and Power, 111 North Hope Street, Room 921, Los Angeles, CA 90012, (213) 367–0881, or *Simon.Zewdu@ladwp.com.*

i. *FERC Contact:* John Mudre at (202) 502–8902 or email at *john.mudre@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *With this notice, we are initiating informal consultation with:* (a) the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Co-Applicants as the Commission's non-federal representatives for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. On August 1, 2016, Co-Applicants filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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 at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Commission's staff Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents 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.* 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–2426–227.

All filings with the Commission must bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by November 29, 2016.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the times and places noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Wednesday, October 26, 2016.

Time: 9:00 a.m.

Location: Embassy Suites by Hilton Valencia, 28508 Westinghouse Place, Valencia, CA, 91355.

Phone: (661) 257–3111.

Evening Scoping Meeting

Date: Wednesday, October 26, 2016.

Time: 6:00 p.m.

Location: Embassy Suites by Hilton Valencia, 28508 Westinghouse Place, Valencia, CA, 91355.

Phone: (661) 257–3111.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Environmental Site Review

The potential applicant and Commission staff will conduct an Environmental Site Review (site visit) of the project on Wednesday October 25, 2016, starting at 9:00 a.m. and ending at or about 3:00 p.m. All participants should meet at Vista Del Lago Visitor's Center, located at 38500 Vista Del Lago Road, Gorman, California. Participants are responsible for their own transportation. Persons planning on participating in the site visit, or with questions about it, should contact Ms. Gwen Sholl of California Department of Water Resources at (916) 557–4554 or *Gwen.Scholl@water.ca.gov* on or before October 14, 2016.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public records of the project.

Dated: September 30, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–24270 Filed 10–6–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9029–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EISs)

Filed 09/26/2016 through 09/30/2016

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20160225, Final, BR, NM, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, Review Period Ends: 11/07/2016, Contact: Hector Garcia 505–462–3550

EIS No. 20160226, Draft, FRA, GA, Atlanta to Chattanooga High Speed Ground Transportation Project, Comment Period Ends: 11/21/2016, Contact: John Winkle 202–493–6067

EIS No. 20160227, Draft, USFS, WY, Upper Green River Area Rangeland Project, Comment Period Ends: 11/21/2016, Contact: Dave Booth 307–367–5754

EIS No. 20160228, Final Supplement, BLM, ID, Proposed Land Use Plan Amendments for Segments 8 and 9 of the Gateway West 500-kV Transmission Line Project, Review Period Ends: 11/07/2016, Contact: Jim Stobaugh 775–861–6478

EIS No. 20160229, Final, DOE, ID, Recapitalization of Infrastructure Supporting Naval Spent Nuclear Fuel Handling at the Idaho National Laboratory, Review Period Ends: 11/07/2016, Contact: Erik Anderson 202–781–6057

EIS No. 20160230, Draft, USACE, WA, Millennium Bulk Terminals—Longview, Comment Period Ends: 11/29/2016, Contact: Danette L. Guy 206–316–3048

Amended Notices

EIS No. 20160200, Draft, USACE, NY, Atlantic Coast of New York, East Rockaway Inlet to Rockaway Inlet and Jamaica Bay, Comment Period Ends: 11/17/2016, Contact: Robert J. Smith 917–790–8729

Revision to FR Notice Published 09/02/2016; Extending Comment Period from 11/02/2016 to 11/17/2016

Dated: October 4, 2016.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2016–24335 Filed 10–6–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL—9953–80–OW]

Information Session; Implementation of the Water Infrastructure Finance and Innovation Act of 2014

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing plans to hold information sessions on: October 14, 2016 in Chicago, Illinois; October 20, 2016 in Orlando, Florida; November 7, 2016 in New York, New York; November 14, 2016 in San Francisco, California; November 15, 2016 in Los Angeles, California; and November 18, 2016 in Dallas, Texas.

The purpose of these sessions is to provide potential applicants with information about the implementation of the ''Water Infrastructure Finance and Innovation Act of 2014'' (WIFIA).

Under WIFIA, EPA will provide loans and loan guarantees for water infrastructure of national or regional significance. It was signed into law on June 11, 2014 as Public Law 113–121. EPA will provide an overview of the program's statutory and eligibility requirements, application and selection process, and creditworthiness assessment. It will also discuss examples of the potential cost-savings that WIFIA credit assistance could have for projects. The intended audience is potential WIFIA applicants including municipal entities, corporations, partnerships, and State Revolving Fund programs, as well as the private and

non-governmental organizations that support potential applicants.

DATES: The session in Chicago, Illinois will be held on October 14, 2016 from 9:00 a.m.–3:30 p.m. (CT). The session in Orlando, Florida will be held on October 20, 2016 from 9:00 a.m.–3:30 p.m. (ET). The session in New York, New York will be held on November 7, 2016 from 9:00 a.m.–3:30 p.m. (ET). The session in San Francisco, California will be held on November 14, 2016 from 9:00 a.m.–3:30 p.m. (PT). The session in Los Angeles, California will be held on November 15, 2016 from 9:00 a.m.–3:30 p.m. (PT). The session in Dallas, Texas will be held on November 18, 2016 from 9:00 a.m.–3:30 p.m. (CT).

ADDRESSES: The session in Chicago will be held at: Ralph H. Metcalfe Federal Building, Room 328, 77 West Jackson Boulevard, Chicago, Illinois 60604. The session in Orlando will be held at: Orange County Utilities Administration Building, 1st Floor Public Meeting Room, 9150 Curry Ford Road, Orlando, Florida 32825. The session in New York will be held at: EPA Region 2, 290 Broadway, New York, New York 10007. The session in San Francisco will be held at: EPA Region 9, 75 Hawthorne St., San Francisco, California 94105. The session in Los Angeles will be held at: Los Angeles Federal Building, Room E, 300 North Los Angeles Street, Los Angeles, California 90012. The session in Dallas will be held at: EPA Region 6, Fountain Place, 1445 Ross Ave., Dallas, Texas 75202.

TO REGISTER: Please register at the following link: *http://wifia.questionpro.com/*.

FOR FURTHER INFORMATION CONTACT: For further information about this notice, including registration information, contact Karen Fligger, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: 202–564–2992; or email: *WIFIA@epa.gov.* Members of the public are invited to participate in the session as capacity allows.

Authority: Water Infrastructure Finance and Innovation Act, Public Law 113–121.

Dated: September 30, 2016.

Andrew D. Sawyers,

Director, Office of Wastewater Management.

[FR Doc. 2016–24377 Filed 10–6–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R09–OAR–2016–0580; FRL–9953–86–Region 9]

Draft General Permit Under the Federal Indian Country Minor New Source Review Program

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Notice of draft permit.

SUMMARY: The Environmental Protection Agency (EPA) Region 9 provides notice of, and requests public comment on, the EPA's draft general permit for use in Indian country within California pursuant to the Clean Air Act (CAA) Federal Indian Country Minor New Source Review (NSR) program for new and modified minor sources. The draft general permit is for a single source category, gasoline dispensing facilities (GDFs), and would be available in certain areas of Indian country that are within the geographical boundaries of California. This includes areas located in an Indian reservation or in another area of Indian country over which an Indian tribe, or the EPA, has demonstrated that the tribe has jurisdiction and where there is no EPA-approved minor NSR program in place. The EPA is proposing this general permit as an option for CAA minor NSR preconstruction permitting to help streamline the EPA's permitting of certain minor sources that construct or modify in Indian country and belong to the GDF source category.

DATES: Comments will be accepted until November 30, 2016.

ADDRESSES: Documents relevant to the above-referenced permit are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. To arrange for viewing of these documents, call Lisa Beckham at (415) 972–3811. Due to building security procedures, at least 24 hours advance notice is required.

FOR FURTHER INFORMATION CONTACT: Lisa Beckham, EPA Region 9, (415) 972–3811, *beckham.lisa@epa.gov.* Key portions of the administrative record for this decision are available through a link at Region 9's Web site, *https://www.epa.gov/caa-permitting/california-tribal-gasoline-permits,* or at *www.regulations.gov* (Docket ID # EPA–R09–OAR–2016–0580).

SUPPLEMENTARY INFORMATION:

Proposed Action

The United States Environmental Protection Agency, Region 9 (EPA) provides notice of, and requests public comment on, the EPA's draft general permit for use in Indian country within California pursuant to the Clean Air Act (CAA) Federal Indian Country Minor New Source Review (NSR) program for new and modified minor sources at 40 CFR 49.151 through 49.161. The draft general permit is for a single source category, gasoline dispensing facilities (GDFs), and would be available in certain areas of Indian country that are within the geographical boundaries of California. This includes areas located in an Indian reservation or in another area of Indian country (as defined in 18 U.S.C. 1151) over which an Indian tribe, or the EPA, has demonstrated that the tribe has jurisdiction and where there is no EPA-approved minor NSR program in place. The EPA is proposing this general permit as an option for CAA minor NSR preconstruction permitting to help streamline the EPA's permitting of certain minor sources that construct or modify in Indian country and belong to the GDF source category.

A gasoline dispensing facility, or GDF, is any stationary source, such as a gas station, that dispenses gasoline into the fuel tank of a motor vehicle, motor vehicle engine, nonroad vehicle or nonroad engine. Types of GDFs potentially subject to this general permit include, but are not limited to, facilities that dispense gasoline into on- and off-road, street, or highway motor vehicles, lawn equipment, boats, test engines, landscaping equipment, generators, pumps, and other gasoline-fueled engines and equipment. New or modified GDF sources with the potential to emit regulated NSR pollutants over thresholds specified in the Federal Indian Country Minor NSR program regulations at 40 CFR 49.153, and located within the geographic boundaries of California and on an Indian reservation or in another area of Indian country over which an Indian tribe or the EPA has demonstrated that the tribe has jurisdiction, are currently subject to permitting requirements under this EPA minor NSR program.

The general permit that is the subject of this notice is intended to provide a streamlined permitting option for owners and operators of qualifying GDFs to use to meet the requirements of this EPA minor NSR program. However, owners and operators of such GDFs may instead choose to apply to the EPA for a traditional source-specific permit to meet the preconstruction requirements of this permitting program rather than

requesting coverage under the general permit.

The primary pollutant of concern for GDFs that may use this general permit is volatile organic compounds (VOC), which are emitted from storage tanks and gasoline dispensing units at GDFs. Some GDFs may also have emergency engines, but only those sources with emergency engines that are exempt from minor NSR permitting requirements may use this general permit. Emissions of all other regulated NSR pollutants from new or modified GDF sources that may use the general permit are expected to be below the minor NSR permitting thresholds in 40 CFR 49.153.

This draft general permit regulates VOC emissions from GDFs, and includes emission limitations that require each GDF to control emissions from storage tanks during unloading of the gasoline cargo from the tanker truck, using what are known as Stage I controls. In addition, the draft general permit requires GDFs in ozone nonattainment areas to limit VOC emissions caused from vehicle refueling by recovering vapors displaced from the vehicle fuel tank, using pump-based controls known as Stage II controls. There are also limits on the amount of gasoline each GDF can dispense in a 12-month period: 25,000,000 million gallons in ozone attainment areas, marginal ozone nonattainment areas, and moderate ozone nonattainment areas; and 15,000,000 gallons in serious, severe, and extreme ozone nonattainment areas. The emission limitations in the draft general permit are expected to limit emissions of VOC from a new or modified GDF to less than 30 tons per year (tpy) in attainment areas and marginal or moderate ozone nonattainment areas and 8 tpy in serious, severe, and extreme ozone nonattainment areas. The detailed emission limitations are included in the draft permit and discussed in detail in our Technical Support Document for this draft permit, and are available for review here: *https://www.epa.gov/caa-permitting/california-tribal-gasoline-permits.*

Request for Public Comment

Any person may submit written comments on the draft permit during the public comment period. These comments must raise any reasonably ascertainable issue with supporting arguments by the close of the public comment period (including any public hearing). All written comments on the draft general permit must be received or postmarked by November 30, 2016. While the EPA has scheduled a public hearing for this action, as detailed below, anyone may request an additional public hearing. Requests for an additional public hearing must be submitted in writing by November 16, 2016, and must state the nature of the issues proposed to be raised at the hearing. Comments and any requests for public hearings must be sent or delivered in writing to Lisa Beckham at one of the following addresses:

Email: R9airpermits@epa.gov.

Online Docket: www.regulations.gov, Docket ID: EPA–R09–OAR–2016–0580.

U.S. Mail: Lisa Beckham (AIR–3), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Public Hearing

The EPA will hold a public hearing, pursuant to 40 CFR 49.157(c), to provide the public with further opportunity to comment on the draft permit. At the public hearing, any interested person may provide written comments or oral comments, and relevant data pertaining to the draft permit.

The date, time, and location of the public hearing is as follows:

Date: November 30, 2016.

Time: 2:00 p.m.–3:30 p.m.

Location: U.S. EPA Region 9, EPA Conference Center, 1st Floor, 75 Hawthorne St., San Francisco, CA 94105.

If you require a reasonable accommodation, please contact Stacy Johnson, EPA Region 9 Reasonable Accommodations Coordinator, by November 21, 2016 at (415) 947–4500, or *johnson.stacyd@epa.gov.*

Additional Information

The draft general permit and other supporting information, including the Technical Support Document and a Request for Coverage form, are available through the EPA Region 9 Web site at *https://www.epa.gov/caa-permitting/california-tribal-gasoline-permits.* The administrative record for this draft general permit may also be viewed in person, Monday through Friday (excluding Federal holidays) from 9:00 a.m. to 4:00 p.m., at the EPA Region 9 address above. Due to building security procedures, please call Lisa Beckham at (415) 972–3911 at least 24 hours in advance to arrange a visit. Lisa Beckham can also be reached through the EPA Region 9's toll-free general information line at (866) 372–9378.

All comments that are received via email or through *www.regulations.gov* will be included in the public docket without change and will be available to the public, including any personal information provided. Comments submitted to the EPA through U.S. Mail or other another non-electronic delivery method will also be included in the public docket without change and will be available to the public, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Information that is considered to be CBI or otherwise protected should be clearly identified as such and should be submitted only through U.S. Mail or a non-electronic delivery method; such information should not be submitted through *www.regulations.gov* or email. If a commenter sends email directly to the EPA, the email address will be automatically captured and included as part of the public comment. Please note that an email or postal address must be provided with comments if the commenter wishes to receive direct notification of the EPA's final decision regarding the draft general permit following the public comment period. For 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.*

The EPA's Final Action on the Draft Permit

Before issuing a final decision on the draft permit, the EPA will consider all written comments submitted during the public comment period. The EPA will send notice of our final permit decision to each person who submitted comments and contact information during the public comment period or requested notice of the final permit decision. The EPA will summarize the contents of all substantive comments and provide written responses in a document accompanying the EPA's final permit decision.

The EPA's final permit decision will become effective 30 days after the service of notice of the final permit decision, unless:

1. A later date is specified in the permit, or

2. Review of the final permit decision by the EPA's Environmental Appeals Board is requested under 40 CFR 49.159(d), or

3. The EPA elects to make the permit effective immediately upon issuance if no comments request a change in the draft permit or a denial of the permit. Issuance of the final general permit decision, after any administrative review under 40 CFR 49.159(d), is considered final agency action with respect to all aspects of the general permit except its applicability to an individual source. The sole issue that

may be appealed after an individual source is approved to construct under a general permit is the applicability of the general permit to that particular source. The letter notifying an individual source of approval or denial under a general permit is considered a final agency action for purposes of judicial review and is not subject to administrative review. All comments related to the proposed permit conditions must be submitted as part of this action, and will not be reconsidered at the time an individual source seeks coverage under the general permit.

If you have questions, or if you wish to obtain further information, please contact Lisa Beckham at (415) 972–3811, toll-free at (866) 372–9378, via email at *R9airpermits@epa.gov,* or at the mailing address above. If you would like to be added to our mailing list to receive future information about this draft permit decision or other permit decisions issued by the EPA Region 9, please contact Lisa Beckham, or visit the EPA Region 9's Web site at *http://www2.epa.gov/caa-permitting/tribal-nsr-permits-region-9.*

Please bring the foregoing notice to the attention of all persons who would be interested in this matter.

Dated: September 30, 2016.

Elizabeth J. Adams,

Acting Director, Air Division, Region IX.

[FR Doc. 2016–24380 Filed 10–6–16; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

ACTION: Notice.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATES: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 13, 2016, from 11:00 a.m. until such time as the Board concludes its business.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, at (703) 883–4009. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*
- June 9, 2016

B. *Business Reports*
- Quarterly Financial Reports
- Report on Insured and Other Obligations
- Quarterly Report on Annual Performance Plan

C. *New Business*
- Annual Performance Plan FY 2017–2018
- Proposed 2017 and 2018 Budgets

Dale L. Aultman,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 2016–24297 Filed 10–6–16; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1211]

Information Collection Requirement Being Submitted to the Office of Management and Budget for Emergency Review and Approval

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; 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; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before October 28, 2016.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the Title as shown in the ''Supplementary Information'' section below.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The Commission is requesting emergency OMB processing of the information collection requirement(s) contained in this notice and has requested OMB approval no later than 26 days after the collection is received at OMB. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

OMB Control Number: 3060–1211.

Title: Sections 96.17; 96.21; 96.23; 96.33; 96.35; 96.39; 96.41; 96.43; 96.45; 96.51; 96.57; 96.59; 96.61; 96.63; 96.67,

Commercial Operations in the 3550–3650 MHz Band.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents and Responses: 110,782 respondents and 146,432 responses.

Estimated Time per Response: 0.25–1 hour.

Frequency of Response: One time and on occasion reporting requirements; other reporting requirements—as needed basis for the equipment safety certification, and consistently (likely daily) responses automated via the device.

Obligation To Respond: Statutory authority for this currently approved information collection is contained in Sections 1, 2, 4(i), 4(j), 5(c), 302(a), 303, 304, 307(e), and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 302(a), 303, 304, 307(e), and 316. Statutory authority for the revised information collection is contained in Sections 1, 2, 4(i), 4(j), 5(c), 302(a), 303, 304, 307(e), and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 302(a), 303, 304, 307(e), and 316.

Estimated Total Annual Burden: 52,977 hours.

Total Annual Costs: $8,818,100.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: In the 3.5 GHz Order, the Commission adopted rules to protect existing licensees' registered base stations in the 3650–3700 MHz band from harmful interference from Citizens Broadband Radio Service users for a fixed transition period. Pursuant to Section 96.21(a)(1) and (2) of the Commission's rules, during the transition period, existing licensees will receive protection for operations that are within their Grandfathered Wireless Protection Zone, provided that: (1) The stations were registered in the Commission's Universal Licensing System (ULS) on or before April 17, 2015; and (2) as of April 17, 2016 the stations were constructed, in service, and fully compliant with the relevant operating rules.

The 3.5 GHz Order established rules for commercial use of 150 megahertz in the 3.5 GHz Band and creates a new Citizens Broadband Radio Service. The rules create additional capacity for wireless broadband by adopting a new approach to spectrum management to facilitate more intensive spectrum sharing between commercial and federal users and among multiple tiers of commercial users. Freeing additional spectrum is one of the Commission's core spectrum policy goals and the President's Council of Advisors on Science and Technology recommended that this band would be particularly well suited for spectrum sharing.

Before the release of the 3.5 GHz Order, the band segment was currently reserved for use by Department of Defense (DoD) radar systems and commercial fixed satellite service (FSS) earth stations (in the 3600–3650 MHz portion of the band), as well as Grandfathered Wireless Broadband Radio Services. The *3.5 GHz Order* established a roadmap for making the entirety of the 3.5 GHz band available for commercial use in a phased manner. This sharing arrangement is part of a broader three-tiered sharing framework enabled by a Spectrum Access System (SAS). The SAS incorporates a dynamic spectrum database and serves as an advanced, highly automated frequency coordinator across the band.

Incumbent users represent the highest tier in this framework and receive interference protection from Citizens Broadband Radio Service users. Protected incumbents include the federal operations and FSS earth stations described above and, for a finite period, Grandfathered Wireless Broadband Licensees. Non-federal incumbents must register the parameters of their operations with the Commission and/or an SAS to receive protection from Citizens Broadband Radio Service users.

On August 19, 2016, the Wireless Telecommunications Bureau (WTB) and Office of Engineering and Technology (OET) released a Public Notice adopting the final methodology for determining Grandfathered Wireless Protection Zones for existing licensees in the 3650–3700 MHz band, establishing a baseline contour used to protect these areas. *See* 47 CFR 96.3 (Grandfathered Wireless Protection Zone), Wireless Telecommunications Bureau and Office of Engineering and Technology Announce Methodology for Determining the Protected Contours for Grandfathered 3650–3700 MHz Licensees, GN Docket No. 12–354, Public Notice, FCC 16–946 (Aug. 19, 2016). The Public Notice reiterated that licensees are required to certify which of their base stations were constructed, in service, and in full compliance with the rules by April 17, 2016. At the same time that licensees certify to the above they must identify whether or not that base station has unregistered Customer Premises Equipment (CPE) and the distance to the furthest registered CPE for each sector.

The Commission's rules establishing registration and construction requirements for Grandfathered Wireless Broadband Licensees are intended to distinguish between ''real'' networks that that have received substantial investment and provide socially productive service from ''paper networks'' whose only effect is to restrict spectrum accessible by the Citizens Broadband Radio Service. The revised information collection under sections 96.21(a)(1) and (2) will help the Commission and the SASs protect these existing networks from interference during the transition period while promoting spectral access and efficiency by new users in the band and is an important step in making this band available for commercial use. Further, the information will allow the licensees that have invested in such networks to receive interference protection as afforded by the rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary. Office of the Secretary.

[FR Doc. 2016–24275 Filed 10–6–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 16–1076]

Final Notice of Intent To Declare the International Section 214 Authorization of Redes Modernas de la Frontera SA de CV Terminated

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the International Bureau (Bureau) affords Redes Modernas de la Frontera SA de CV (Redes) final notice and opportunity to respond to the April 13, 2016 letter submitted by the Department of Homeland Security (DHS), with the concurrence of the Department of Justice (DOJ) (collectively ''the Agencies'') requesting that the FCC terminate, declare null and void and no longer in effect the international section 214 authorization issued to Redes under file number ITC–214–20070515–00189.

DATES: Submit comments on or before October 24, 2016.

ADDRESSES: The Bureau is serving a copy of the Public Notice on Redes by certified mail, return receipt requested,

at the last addresses of record appearing in Commission records. Redes should send its response to Denise Coca, Chief, Telecommunications and Analysis Division, International Bureau via email at *Denise.Coca@fcc.gov* and to Veronica Garcia-Ulloa, Attorney Advisor, Telecommunications and Analysis Division, International Bureau at *Veronica.Garcia-Ulloa@fcc.gov* and file it in IBFS under File No. ITC–214–20070515–00189.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Veronica Garcia-Ulloa, Attorney Advisor, Telecommunications and Analysis Division, International Bureau, (202) 418–0481.

SUPPLEMENTARY INFORMATION: In the Executive Branch April 13, 2016 Letter, the Agencies state that Redes is no longer in business. The Agencies indicate that they issued their non-objection to the Commission granting the authorization provided that Redes abide by the commitments and undertakings contained in the July 10, 2007 Letter that Redes entered into with the Agencies. On July 5, 2016, the Bureau's Telecommunications and Analysis Division sent a letter to Redes at the last known addresses on record via certified, return receipt mail, asking Redes to respond to the Agencies' allegations by August 3, 2016. The Bureau July 5, 2016 Letter stated that failure to respond would result in the issuance of an order to terminate Redes' international section 214 authorization. Redes did not respond to the request. The FCC Form 499 Database states that Redes is no longer active as of May 1, 2009, and that the company has gone out of business in its entirety.

In addition, Redes may also be in violation of several other Commission rules and requirements. After having received an international section 214 authorization, pursuant to section 63.21(a), a carrier ''is responsible for the continuing accuracy of the certifications made in its application'' and must correct information no longer accurate, ''and in any event, within thirty (30) days.'' There is no indication that Redes is currently providing service pursuant to its international section 214 authorization. If Redes has discontinued service that affected customers, it may also be in violation of section 63.19(a) of the Commission's rules requiring prior notification for such a discontinuance. As part of its authorization, Redes must file annual international telecommunications traffic and revenue as required by section 43.62 of the Commission rules. Section 43.62(b) states that ''[n]ot later than July 31 of each year, each person or entity that holds an authorization pursuant to section 214 to provide international telecommunications service shall report *whether* it provided international telecommunications services during the preceding calendar year.'' Our records indicate that Redes has not filed an annual international telecommunications traffic and revenue report indicating whether or not Redes provided services in 2014 and 2015 and may be in violation of section 43.62 of the Commission rules. All carriers were required to file their section 43.62 traffic and revenue reports for data as of December 31, 2014 by July 31, 2015 and for data as of December 31, 2015 by July 31, 2016. Furthermore, Redes has an outstanding debt and consequently its account is red lighted through the Red Light Display System. Redes must visit the Commission's Red Light Display System's to pay its outstanding debt. Redes' outstanding debt involves regulatory fees. In addition to financial penalties, section 159(c)(3) of the Communications Act and section 1.1164(f) of the Commission's rules grant the Commission the authority to revoke authorizations for failure to timely pay regulatory fees.

Redes' failure to respond to this Public Notice will be deemed as an admission of the facts alleged by the Agencies and of the violations of the statutory and rule provisions set out above. The Bureau hereby provides final notice to Redes that it intends to take action to declare Redes' international 214 authorization terminated for failure to comply with conditions of its authorization. We further advise Redes that its non-compliance with the applicable regulatory provisions would warrant termination wholly apart from demonstrating Redes' inability to satisfy the conditions of its authorization. Redes must respond to this Public Notice and address the issues alleged in the Executive Branch April 13, 2016 Letter, no later than 15 days after publication in the **Federal Register**.

The proceeding in this Notice shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.

Federal Communications Commission.

Denise Coca,

Chief, Telecommunications & Analysis Division, International Bureau.

[FR Doc. 2016–24291 Filed 10–6–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10281 Independent National Bank; Ocala, Florida

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10281 Independent National Bank, Ocala, Florida (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Independent National Bank (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective October 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: October 4, 2016

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–24362 Filed 10–6–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10159 Valley Capital Bank, N.A.; Mesa, Arizona

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10159 Valley Capital Bank, N.A., Mesa, Arizona (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Valley Capital Bank, N.A. (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective October 1, 2016, the Receivership Estate has been terminated, the Receiver discharged,

and the Receivership Estate has ceased to exist as a legal entity.

Dated: October 4, 2016.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–24361 Filed 10–6–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10082 Temecula Valley Bank, Temecula, California

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10082 Temecula Valley Bank, Temecula, California (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Temecula Valley Bank (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective October 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: October 4, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–24289 Filed 10–6–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2016–N–09]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 60-Day notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA or the Agency) is seeking public comments concerning the currently-approved information collection known as ''Federal Home Loan Bank Capital Stock,'' which has been assigned control number 2590–0002 by the Office of Management and Budget (OMB) (the collection was previously known as ''Capital Requirements for the Federal Home Loan Banks''). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on December 31, 2016.

DATES: Interested persons may submit comments on or before December 6, 2016.

ADDRESSES: Submit comments to FHFA, identified by ''Proposed Collection; Comment Request: 'Federal Home Loan Bank Capital Stock, (No. 2016–N–09)' '' by any of the following methods:

- *Agency Web site: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: ''Federal Home Loan Bank Capital Stock, (No. 2016–N–09)''.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

FOR FURTHER INFORMATION CONTACT: Jonathan F. Curtis, Financial Analyst, Division of Federal Home Loan Bank Regulation, at (202) 649–3321, by email at *Jonathan.Curtis@fhfa.gov* or by telephone at (202) 649–3321; or Eric Raudenbush, Associate General Counsel, by email at *Eric.Raudenbush@fhfa.gov* or by telephone at (202) 649–3084, (these are not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

The Federal Home Loan Bank System consists of eleven regional Federal Home Loan Banks (Banks) and the Office of Finance (a joint office that issues and services the Banks' debt securities). The Banks are wholesale financial institutions, organized under authority of the Federal Home Loan Bank Act (Bank Act) to serve the public interest by enhancing the availability of residential housing finance and community lending credit through their member institutions and, to a limited extent, through certain eligible nonmembers. Each Bank is structured as a regional cooperative that is owned and controlled by member institutions located within its district, which are also its primary customers. An institution that is eligible for membership in a particular Bank must purchase and hold a prescribed minimum amount of the Bank's capital stock in order to become and remain a member of that Bank. With limited exceptions, only an institution that is a member of a Bank may obtain access to low cost secured loans, known as advances, or other products provided by that Bank.

Section 6 of the Bank Act establishes capital requirements for the Banks and requires FHFA to issue regulations prescribing uniform capital standards applicable to all of the Banks.[1] Section 6 also establishes parameters relating to the Banks' capital structures and requires that each Bank adopt a ''capital structure plan'' (capital plan) to establish, within those statutory parameters, its own capital structure and to establish requirements for, and govern transactions in, the Bank's capital stock.[2] FHFA has designated 12 CFR part 1277 as the location for its regulations on Bank Capital Requirements, Capital Stock, and Capital Plans. Part 1277 currently includes regulations establishing requirements for the Banks' capital stock (Subpart C; §§ 1277.20–1277.27) and for the Banks' capital plans (Subpart D; §§ 1277.28–1277.29). Regulations governing the Banks' capital requirements are currently located at 12 CFR parts 930 and 932 (in the regulations of the former Federal Housing Finance Board), but will be moved into part 1277 in the near future.

[1] 12 U.S.C. 1426(a).

[2] 12 U.S.C. 1426(b), (c).

Both the Bank Act and FHFA's regulations state that a Bank's capital plan must require its members to maintain a minimum investment in the Bank's capital stock, but both permit each Bank to determine for itself what that minimum investment is and how each member's required minimum investment is to be calculated.[3] Although each Bank's capital plan establishes a slightly different method for calculating the required minimum stock investment for its members, each Bank's method is tied to some degree to both the level of assets held by the member institution (typically referred to as a ''membership stock purchase requirement'') and the amount of advances or other business engaged in between the member and the Bank (typically referred to as an ''activity-based stock purchase requirement'').

A Bank must collect information from its members to determine the minimum capital stock investment each member is required to maintain at any point in time. Although the information needed to calculate a member's required minimum investment and the precise method through which it is collected differ somewhat from Bank to Bank, the Banks typically collect two types of information. First, in order to calculate and monitor compliance with its membership stock purchase requirement, a Bank typically requires each member to provide and/or confirm a quarterly report on the amount and types of assets held by that institution. Second, each time a Bank engages in a business transaction with a member, the Bank typically confirms with the member the amount of additional Bank capital stock, if any, the member must acquire in order to satisfy the Bank's activity-based stock purchase requirement and the method through which the member will acquire that stock.

The OMB number for the information collection is 2590–0002, which is due to expire on December 31, 2016. The likely respondents include current and former Bank members and institutions applying for Bank membership.

B. Burden Estimate

FHFA has analyzed the time burden imposed on respondents by the two collections under this control number and estimates that the average total annual hour burden imposed on all respondents over the next three years will be 33,818 hours. The estimate for each collection was calculated as follows:

I. Membership Stock Purchase Requirement Submissions

FHFA estimates that the average annual number of current and former members and applicants for membership required to report information needed to calculate a membership stock purchase requirement will be 7,320, and that each institution will submit 4 quarterly reports per year, resulting in an estimated total of 29,280 submissions annually. The estimate for the average time required to prepare, review, and submit each report is 0.71 hours. Accordingly, the estimate for the annual hour burden associated with membership stock purchase requirement submissions is (29,280 reports × 0.71 hours per report) = 20,789 hours.

II. Activity-Based Stock Purchase Requirement Submissions

FHFA estimates that the average number of daily transactions between Banks and members that will require the exchange of information to confirm the member's activity-based stock purchase requirement will be 312, and that there will be an average of 261 working days per year, resulting in an estimated 81,432 submissions annually. The estimate for the average preparation time per submission is 0.16 hours. Accordingly, the estimate for the annual hour burden associated with activity-based stock purchase requirement submissions is (81,432 submissions × 0.16 hours per submission) = 13,029 hours.

C. Comment Request

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) The accuracy of FHFA's estimates of the burdens of the collection of information; (3) Ways to enhance the quality, utility, and clarity of the information collected; and (4) Ways to minimize the burden of the collection of information on survey respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: September 30, 2016.

Kevin Winkler,

Chief Information Officer, Federal Housing Finance Agency.

[FR Doc. 2016–24353 Filed 10–6–16; 8:45 am]

BILLING CODE 8070–01–P

[3] 12 U.S.C. 1426(c)(1); 12 CFR 1277.22, 1277.28(a).

FEDERAL HOUSING FINANCE AGENCY

[No. 2016–N–10]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 60-Day notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA or the Agency) is seeking public comments concerning the currently-approved information collection known as ''Members of the Banks,'' which has been assigned control number 2590–0003 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on December 31, 2016.

DATES: Interested persons may submit comments on or before December 6, 2016.

ADDRESSES: Submit comments to FHFA, identified by ''Proposed Collection; Comment Request: 'Members of the Banks, (No. 2016–N–10)' '' by any of the following methods:

- *Agency Web site: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: ''Members of the Banks, (No. 2016–N–10)''.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

FOR FURTHER INFORMATION CONTACT: Jonathan F. Curtis, Financial Analyst, Division of Federal Home Loan Bank Regulation, by email at *Jonathan.Curtisj@fhfa.gov* or by telephone at (202) 649–3321; or Eric Raudenbush, Associate General Counsel, by email at *Eric.Raudenbush@fhfa.gov* or by telephone at (202) 649–3084, (these are not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

The Federal Home Loan Bank System consists of eleven regional Federal Home Loan Banks (Banks) and the Office of Finance (a joint office that issues and services the Banks' debt securities). The Banks are wholesale financial institutions, organized under authority of the Federal Home Loan Bank Act (Bank Act) to serve the public interest by enhancing the availability of residential housing finance and community lending credit through their member institutions and, to a limited extent, through certain eligible nonmembers. Each Bank is structured as a regional cooperative that is owned and controlled by member institutions located within its district, which are also its primary customers. The Banks carry out their public policy functions primarily by providing low cost loans, known as advances, to their members. With limited exceptions, an institution may obtain advances and access other products and services provided by a Bank only if it is member of that Bank.

The Bank Act limits membership in any Bank to specific types of financial institutions located within the Bank's district that meet specific eligibility requirements. Section 4 of the Bank Act specifies the types of institutions that may be eligible for membership and establishes eligibility requirements that each type of applicant must meet in order to become a Bank member.[1] That provision also specifies that (with limited exceptions) an eligible institution may become a member only of the Bank of the district in which the institution's ''principal place of business'' is located.[2] With respect to the termination of Bank membership, section 6(d) of the Bank Act sets forth requirements pursuant to which an institution may voluntarily withdraw from membership or a Bank may terminate an institution's membership for cause.[3]

FHFA's regulation entitled ''Members of the Banks,'' located at 12 CFR part 1263, implements those statutory provisions and otherwise establishes substantive and procedural requirements relating to the initiation and termination of Bank membership. Many of the provisions in the membership regulation require that an institution submit information to a Bank or to FHFA, in most cases to demonstrate compliance with statutory or regulatory requirements or to request action by the Bank or Agency.

In total, there are four types of information collections that may occur under part 1263. First, the regulation provides that (with limited exceptions) no institution may become a member of a Bank unless it has submitted to that Bank an application that documents the applicant's compliance with the statutory and regulatory membership eligibility requirements and that otherwise includes all required information and materials.[4] Second, the regulation provides applicants that have been denied membership by a Bank the option of appealing the decision to FHFA. To file such an appeal, an applicant must submit to FHFA a copy of the Bank's decision resolution denying its membership application and a statement of the basis for the appeal containing sufficient facts, information, and analysis to support the applicant's position.[5] Third, the regulation provides that, in order to initiate a voluntary withdrawal from Bank membership, a member submit to its Bank a written notice of intent to withdraw.[6] Fourth, under certain circumstances, the regulation permits a member of one Bank to transfer its membership to a second Bank ''automatically'' without either initiating a voluntary withdrawal from the first Bank or submitting a membership application to the second Bank. Despite the regulatory reference to such a transfer as being ''automatic,'' a member meeting the criteria for an automatic transfer must initiate the transfer process by filing a request with its current Bank, which will then arrange the details of the transfer with the second Bank.[7]

The Banks use most of the information collected under part 1263 to determine whether an applicant satisfies the statutory and regulatory requirements for Bank membership and should be approved as a Bank member. The Banks may use some of the information collected under part 1263 as a means of learning that a member wishes to withdraw or to transfer its membership to a different Bank so that the Bank can begin to process those requests. In rare cases, FHFA may use the collected information to determine whether an institution that has been denied membership by a Bank should be permitted to become a member of that Bank.

The OMB control number for this information collection is 2590–0003, which is due to expire on December 31, 2016. The likely respondents are financial institutions that are, or are applying to become, Bank members.

B. Burden Estimate

FHFA has analyzed the time burden imposed on respondents by the four collections under this control number and estimates that the average annual burden imposed on all respondents by those collections over the next three years will be 2,193 hours. This estimate is derived from the following calculations:

I. Membership Applications

FHFA estimates that the average number of applications for Bank membership submitted annually will be 151 and that the average time to prepare and submit an application and supporting materials will be 11.7 hours. Accordingly, the estimate for the annual hour burden associated with preparation and submission of applications for Bank membership is (151 applications × 11.7 hours per application) = 1,767 hours.

II. Appeals of Membership Denial

FHFA estimates that the average number of applicants that have been denied membership by a Bank that will appeal such a denial to FHFA will be 1 and that the average time to prepare and submit an application for appeal will be 10 hours. Accordingly, the estimate for the annual hour burden associated with the preparation and submission of membership appeals is (1 appellants × 10 hours per application) = 10 hours.

III. Notices of Intent To Withdraw From Membership

FHFA estimates that the average number of Bank members submitting a notice of intent to withdraw from membership annually will be 276 and that the average time to prepare and submit a notice will be 1.5 hours. Accordingly, the estimate for the annual hour burden associated with

[1] 12 U.S.C. 1424(a).

[2] 12 U.S.C. 1424(b).

[3] 12 U.S.C. 1426(d).

[4] 12 CFR 1263.2(a), 1263.6–1263.9, 1263.11–1263.18.

[5] 12 CFR 1263.5.

[6] 12 CFR 1263.26.

[7] 12 CFR 1263.4(b), 1263.18(d), (e).

preparation and submission of notices of intent to withdraw is (276 withdrawing members × 1.5 hours per application) = 414 hours.

IV. Requests for Automatic Transfer of Membership

FHFA estimates that the average number of Bank members submitting a request for automatic transfer to another Bank will be 1 and that the average time to prepare and submit a request will be 1.5 hours. Accordingly, the estimate for the annual hour burden associated with preparation and submission of requests for automatic transfer is (1 transferring member × 1.5 hours per request) = 1.5 hours.

C. Comment Request

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) The accuracy of FHFA's estimates of the burdens of the collection of information; (3) Ways to enhance the quality, utility, and clarity of the information collected; and (4) Ways to minimize the burden of the collection of information on survey respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: September 30, 2016.

Kevin Winkler,

Chief Information Officer, Federal Housing Finance Agency.

[FR Doc. 2016–24345 Filed 10–6–16; 8:45 am]

BILLING CODE 8070–01–P

GENERAL SERVICES ADMINISTRATION

[Notice-MA–2016–07; Docket No. 2016–0002; Sequence No. 7]

Interagency Per Diem Working Group Meeting Concerning Boundaries To Set Continental United States Lodging and Meals and Incidental Per Diem Reimbursement Rates

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice of meeting.

SUMMARY: The Interagency Per Diem Working Group (IPDWG) is meeting to discuss studying the process of setting continental United States (CONUS) Non-Standard Area (NSA) boundaries for lodging maximum reimbursement rates and meals and incidental expense (M&IE) per diem reimbursement rates. The purpose of the study would be to recommend whether the NSA boundary-setting process should be replaced, changed, or maintained as is. Interested parties are invited to attend and provide comments.

DATES: The meeting will be held on Thursday, October 27, 2016, beginning at 10:00 a.m. Eastern Standard Time, ending no later than 3:00 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held in the GSA Auditorium, located at the GSA Central Office, 1800 F Street NW., Washington, DC, 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Cy Greenidge, Office of Government-wide Policy, Office of Asset and Transportation Management, at 202–219–2349, or by email at *travelpolicy@gsa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 5702, the Administrator of General Services (GSA) sets the maximum lodging allowance and M&IE reimbursement rates for CONUS locations. Each year, GSA sets a standard maximum lodging allowance and M&IE reimbursement rates to cover the majority of CONUS. GSA also sets individual rates for each established NSA. The current methodology for setting rates was established by an independent Federal Advisory Committee in 2006. Another Federal Advisory Committee, chartered in 2013, validated the existing methodology. The latter Committee had a full briefing and discussed the overall per diem methodology, but did not specifically evaluate setting NSA boundaries.

Under the current methodology, NSA boundaries are set as a single county unless an exception is made. As of FY2017, 68 of the 346 CONUS NSAs, or approximately 20 percent, have an exception for one of three reasons: (1) Historically the boundary was set that way, (2) an agency requested that a one-county boundary be adjusted to meet official needs, or (3) the survey methodology required inclusion of multiple counties to have sufficient data to establish a rate.

Authority: 5 U.S.C. 5707.

Meeting Access: The meeting is open to the public. Those wishing to attend must do so in person. Teleconferencing will not be available.

Registration: Interested parties must register by October 21, 2016 via email at *travelpolicy@gsa.gov.* Please provide your full name to expedite entrance into the building. To gain entry into the Federal building where the meeting is being held, public attendees who are Federal employees should bring their Federal employee identification cards, and members of the general public should bring their driver's license or a government-issued photo identification card. Seating will be capped at 275 people on a first-come, first-served basis.

Procedures for Providing Comments: Written comments will be accepted until November 4, 2016, for consideration. Please email comments to *travelpolicy@gsa.gov* with attachments being no more than three pages. Any registrant who wishes to comment orally at the meeting will be limited to 10 minutes. All comments from the public, including attachments and other supporting materials received, are subject to public disclosure.

Dated: October 3, 2016.

Troy Cribb,

Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2016–24263 Filed 10–6–16; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Health and Nutrition Examination Survey (NHANES) DNA Specimens: Guidelines for Proposals To Use Specimens and Cost Schedule

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) announces reopening of the National Center for Health Statistics' (NCHS) National Health and Nutrition Examination Survey (NHANES) DNA Specimen Repository for research proposals. Blood samples for DNA purification were collected from study participants during NHANES III, NHANES 1999–2000, NHANES 2001–02, NHANES 2007–08, and NHANES 2009–10 (Office of Management and Budget Control Numbers 0920–0237/0920–0950). Samples from these DNA Specimens are being made available to the research community for genetic testing. The information gained from research using these samples can be combined with the extensive amount of information available in NHANES which describes the prevalence/trends of disease, nutrition, risk behaviors, and environmental exposures in the US population. A more complete description of this program follows.

FOR FURTHER INFORMATION CONTACT: *NHANES Genetic Project Officer:* Jody McLean M.P.H., Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, MD 20782, Phone: 301–458–4683, Fax: 301–458–4029, EMail: *NHANESgenetics@cdc.gov*.

Authority: Sections 301, 306 and 308 of the Public Health Service Act (42 U.S.C. 241, 2421 and 242m).

SUPPLEMENTARY INFORMATION:

Background

NHANES is a program of periodic surveys conducted by NCHS. Examination surveys conducted since 1960 by NCHS have provided national estimates of the health and nutritional status of the U.S. civilian non-institutionalized population. The goals of NHANES are (1) to estimate the number and percentage of people in the U.S. population and designated subgroups with selected diseases and risk factors for those diseases; (2) to monitor trends in the prevalence, awareness, treatment and control of selected diseases; (3) to monitor trends in risk behaviors and environmental exposures; (4) to analyze risk factors for selected diseases; (5) to study the relation among diet, nutrition and health; (6) to explore emerging public health issues and new technologies; and (7) to establish and maintain a national probability sample of baseline information on health and nutritional status.

The availability of the NHANES III DNA specimens has been previously announced in 2002 (67 FR 51585), 2006 (71 FR 22248), 2007 (72 FR 59094), 2009 (74 FR 45644), and 2010 (75 FR 32191). NHANES III Phase II DNA specimens (1991–1994) are from participants ages 12 or older (*see* NHANES III DNA Specimens section for a description). For details about available NHANES III non-genetic data see *http://www.cdc.gov/nchs/nhanes/nh3data.htm*.

Beginning in 1999, NHANES became a continuous, annual survey rather than a periodic survey. For a variety of reasons, including disclosure and reliability issues, the survey data are released as public use data files every two years. In addition to the analysis of data from any two year cycle, it is possible to combine two cycles to increase sample size and analytic options. Blood samples for DNA purification were collected from participants aged 20 years and older in survey years 1999–2002 and 2007–12. DNA specimens are available as collections from NHANES 1999–2002 (NHANES 1999–2000 and 2001–02 specimens available as one collection), and NHANES two-year cycles 2007–08 and 2009–10(*see* NHANES 1999–2002, 2007–08, and 2009–10 DNA specimens section for a description). Availability of DNA specimens from NHANES 2011–12 is forthcoming and will be announced in a future FRN. The availability of the NHANES 1999–2002 and NHANES 2007–08 DNA specimens has been previously announced (Thursday, September 3, 2009 [74 FR 45644], and Monday, June 7, 2010 [75 FR 32191]). The data release cycle for the NHANES corresponding to the period in which specimens were collected for DNA is described in the following web links: *http://wwwn.cdc.gov/nchs/nhanes/search/nhanes99_00.aspx, http://wwwn.cdc.gov/nchs/nhanes/search/nhanes01_02.aspx, http://wwwn.cdc.gov/nchs/nhanes/search/nhanes07_08.aspx,* and *http://wwwn.cdc.gov/Nchs/Nhanes/Search/nhanes09_10.aspx.*

Identifiable health information collected in the NHANES is kept in strictest confidence. During the informed consent process, survey participants are assured that data collected will be used only for stated purposes and will not be disclosed or released to others without the consent of the individual in accordance with section 308(d) of the Public Health Service Act (42 U.S.C. 242m). During NHANES III, participants 12 years and older (parent or guardian signed the consent form if the participant was under age 18 years) signed a consent form to store a sample of their blood for future research. In NHANES 1999–2002, 2007–08 and 2009–10 a separate consent form was signed by eligible participants who agreed to the storing of specimens for future genetic research. DNA specimens will be available for testing only from participants who consented to future genetic research. Resulting data from DNA specimen testing will be linked to the NCHS variables (public use and restricted) and available for analyses through an NCHS Research Data Center (RDC). Access to these data at an NCHS RDC is only through an approved proposal process mechanism to assure confidentiality.

Research Proposal

Note: The following proposal types differ from those used in previous announcements for use of NHANES III DNA specimens (Thursday, August 8, 2002 [67 FR 51585], Friday, January 13, 2006 [71 FR 22248], and Monday, June 10, 2010 [75 FR 32191]).

Proposals testing a complete NHANES DNA collection of specimens (NHANES III, 7,159 samples; NHANES 1999–2002, 7,839 specimens; NHANES 2007–08, 4,612 specimens; NHANES 2009–10, 4,893 specimens):

Note: If the investigator would like to propose a subsample of the complete set please contact the NHANES Genetic Project Officer to discuss feasibility.

Proposals should investigate specific research hypotheses. The investigator will specify which DNA collection they are requesting and the tests to be conducted on DNA specimens excluding tests that produce incidental findings. The investigator will also include in the research protocol an analytic plan that includes a list of proposed NCHS variables (public use and restricted) that would be used for the data analyses. The investigator will conduct the tests of the approved variants or approved assays on samples of NHANES DNA specimens that are labeled with a lab identification number that is not directly linkable to the public use file and therefore, anonymous to the investigator. Investigators are required to provide the data obtained from DNA testing to Division of Health and Nutrition Examination Survey (DHANES)/NCHS for quality control assessment. Analysis and linkage of the resulting data are conducted in the NCHS RDC via a separate proposal.

After the DHANES/NCHS has completed the initial quality control assessment, investigators will be given up to six months to conduct a comprehensive quality assurance review. The timeframe allowed for this review will depend on the number and characteristics of the tests submitted. At the completion of this review, the availability of the resulting data will be announced to the public on the NHANES Web site Genetic Variant Search: *http://www.nhgeneticvariant.com/*. The resulting data can be linked to other NCHS variables (public use and restricted) for secondary data analysis. For further information on available variant data visit: *http://www.cdc.gov/nchs/nhanes/biospecimens/dnaspecimens.htm#Genetic.*

DNA specimen collections will be provided in 96 well plates to investigators and distributed as samples from a complete collection or from a subsample of a collection.

Proposals testing DNA specimens already obtained from previous solicitations: Investigators that have obtained samples from NHANES DNA specimens from previous solicitations and have sufficient DNA left may request to do additional tests on the

remaining DNA. These proposals must be submitted and approved before the DNA specimens were scheduled to be destroyed or returned. The investigator will specify the test to be conducted on the samples excluding tests that produce incidental findings. The investigator will also include in the research protocol an analytic plan that includes a list of proposed NCHS variables (public use and restricted) that would be used for the data analyses.

DNA Samples

These DNA specimens (NHANES III, NHANES 1999–2002, NHANES 2007–08 and NHANES 2009–10) were processed by the Centers for Disease Control and Prevention (CDC), National Center for Environmental Health (NCEH), Division of Laboratory Sciences (DLS).

NHANES III DNA Specimens

The laboratory will distribute aliquots (samples) of crude DNA lysates extracted from cell lines. DNA concentrations vary and are estimated to range from 7.5–65.0 ng/μL with an average of approximately four micrograms in 100 μL. Samples will be provided in 96 well plates that are bar-coded and labeled with a readable identifier. Quality control samples (5% of the total) will be sent at no charge, on separate plates as blind replicates. DNA specimens are available from 7,159 NHANES III participants. Samples will be distributed in a total of 78 plates with an additional four plates of quality control samples. NHANES III DNA specimens are in limited supply thus are not available as a partial set. Due to the method of extraction, NHANES III DNA specimens are not appropriate for all projects and/or assays.

NHANES 1999–2002, 2007–08, 2009–10 DNA Specimens

The laboratory will distribute aliquots of purified, high molecular DNA in normalized concentrations of 50.0 ng/μL. Some specimens may fall below this threshold. A sample of 40 microliters of each specimen will be supplied. The amount of DNA in each sample may vary but will be on average approximately two micrograms.

There are purified DNA specimens from 7,839 NHANES 1999–2002 participants. Samples from these specimens will be distributed into 90 plates including four plates of quality control samples.

There are purified DNA specimens available from 4,612 NHANES 2007–08 participants. These will be distributed into approximately 54 plates including three plates of quality control samples.

There are purified DNA specimens available from 4,893 NHANES 2009–10 participants. Samples from the specimens will be distributed into 54 plates with approximately three additional plates of quality control samples.

Each 96 well plate will be bar-coded and labeled with a readable identifier. Quality control samples (5% of a collection) will be sent at no charge, on separate plates as blind replicates.

Proposed Cost Schedule for Providing NHANES DNA Samples

Costs are determined by NCHS and include costs incurred from the contracting DNA Repository and DHANES administrative costs. The fee covers the costs of materials, equipment, labor, proposal review, administration and space for storage. For more details see Table 1 below. In prior years, the DNA Repository was maintained by CDC. The DNA Repository is now maintained by a private contractor. The costs of contracting, along with annual inflation increases, are reflected in the proposed cost schedule.

Procedures for Proposals

The investigator should follow these instructions for preparation of proposals. Protocols must be written using the outline below.

Proposal Timeline

- *Submission of Proposals:* Can be submitted on an ongoing basis.
- *Scientific Review:* Within two months of proposal submission.
- *Institutional Review Date:* Within six weeks of final proposal acceptance.
- *Notification of approval:* Approximately 30 days after Institutional Review.
- *Anticipated distribution of samples:* Approximately 60 days after all approvals are obtained.

Note: Timeframe may vary depending on the nature of the proposal and the results of each level of review. Unforeseen circumstances could result in a change to this schedule.

DNA Specimen Program will begin accepting research proposals on December 6, 2016.

In addition to the cover page, the research proposal should contain the title of the research project, the name, address phone number and Email address of the lead investigator along with the name of the institution where the testing will be conducted. Office of Human Research Protections assurance numbers for the institutions engaged in the research project should be included. CDC investigators need to include their Scientific Ethics Verification Number. Email submission of the proposal is required.

The proposals should be a maximum of 20 single-spaced typed pages, excluding figures and tables. Please use appendices sparingly. If a proposal is approved, the title, specific aims, name, and phone number of the author will be maintained by NCHS and released if requested by the public. Unapproved proposals will be returned to the investigator and will not be maintained by NCHS.

Applications will have a Scientific Review by the Genetic Project Officer and the Technical Panel. The Technical Panel is comprised of two members: A Genetic Research Scientist and a Genetic Epidemiologist. The members review each proposal for scientific and technical merit.

After the proposal is approved by the Genetic Technical Panel and the Genetic Project Officer it will be submitted for Institutional review. All proposals will undergo Institutional Review by the NCHS Human Subjects Contact and the NCHS Ethics Review Board (ERB) for any potential human subjects concerns to ensure appropriate human subjects protections are provided in compliance with 45 CFR 46, and by the NCHS Confidentiality Officer for disclosure risk. The ERB will review the proposal even if the investigator has received approval by their institutional review panel.

Proposals should include the following information:

(1) *Cover sheet:* Include the name of the institution where the test will be conducted and Office of Human Research Protections assurance numbers for the institutions engaged in the research project. CDC investigators need to include their Scientific Ethics Verification Number.

(2) *Abstract:* Please limit the abstract to 300 words.

(3) *Specific Aims:* List the broad objectives; describe concisely and realistically what the research is intended to accomplish, and state the specific hypotheses to be tested.

(4) *Background and Public Health Significance:*

(A) Describe the public health significance of the proposed research.

(B) Discuss how the results will be used. Analyses should be consistent with the NHANES mission to assess the health of the nation. The Scientific Review will ensure that the proposed project does not go beyond either the general purpose for collecting the blood samples for DNA in the survey or the specific stated goals of the proposal.

(5) *Design, Method, and Data analysis:* The appropriateness and

adequacy of the methodology proposed to reach the research aims, and the appropriateness of using the NHANES (a complex, multistage probability sample of the national population) to address the goals of the proposal will be assessed.

(A) *Research Design and Methods:* Describe the analytic and statistical methods to be employed. Include power calculations. For all proposal categories, include a detailed description of the laboratory methods. The characteristics of the laboratory assay, such as reliability, validity, should be included with appropriate references. The potential difficulties and limitations of the proposed procedures should also be discussed. Address adequate methods planned for handling and storage of samples of DNA specimens. Proposals *must* specify specific variants or the standard assay(s) that will be used to test the proposed research hypotheses and include a statement of why the specific standard assay(s) is/are necessary to test the proposed hypotheses. The standard assay is a commercially available assay for a curated set of variants. (1) Proposals will be provided with quality control samples at no additional cost. Approved projects must run these quality control samples and submit these results along with the results from the NHANES DNA samples, unless the Genetic Project Officer has approved an alternative quality control review plan. (2) Proposals using residual samples should have residual quality control samples and investigators will be required to use these residual quality control samples. The proposal should address additional quality control procedures the laboratory will use to assure the validity of the test results and address adequate methods planned for handling and storage of sample specimens.

(B) *Data analysis: Note: All resulting data must be analyzed in the NCHS RDC Output:* Please describe the data output that you would like to retain and take out of the RDC after analyses.

(6) *Additional information for NHANES:*

(A) *Clinical Relevance of Research Findings:* The consent document for DNA specimen storage and future studies states that individual results will not be provided to participants therefore no tests that would need to be reported back to the participant can be proposed. DHANES/NCHS will use the most recent American College of Medical Genetics and Genomics (ACMG) recommendations for reporting incidental findings to review the proposed tests and the potential incidental findings. Investigators must justify that the proposed tests do not produce sets of variants on specific genes listed by the most recent ACMG as reportable incidental findings as well as how potential incidental test results will be handled. As of publication the most recent report, published July 2013, ''ACMG Recommendations for Reporting of Incidental Findings in Clinical Exome and Genome Sequencing'', lists 56 genes where specific variants on these genes are pathogenic for 24 conditions.

(B)*Data Transfer:* Specify the secure method to transfer resultant data to NCHS. Investigators must use a device that meets federal information processing standards (FIPS 140–2 and FIPS 197).

(C) *Period of Performance:* Specify the project period. The period may be up to three years. At the end of the project period, any unused samples must be returned to the NHANES DNA Specimen Repository or destroyed by the investigator. Extensions to the period of performance may be requested.

(D) *Funding:* Include the source and status of the funding to perform the requested laboratory analysis. Investigators will be responsible for the cost of processing and shipping the samples (*See table*).

(7) *References.*

(8) *Resumes/CV:* Please include a 2-page CV for each member of the research team in this document (not as attachments).

Public Availability of Data

Data resulting from use of DNA specimens will be made available to the public for secondary data analyses via the NCHS RDC. After DHANES/NCHS quality control assessment is completed, investigators will be given up to six months to conduct comprehensive quality assurance review in the NCHS RDC. The quality assurance review timeframe will be negotiated between the investigator and the NHANES Genetic Project Officer and will depend on the type, number, and characteristics of the tests submitted. The results of the quality assurance review will be provided to DHANES/NCHS and appropriate aspects will become part of the data set documentation. The public announcement, that test results are available for submission of proposals for secondary data analyses, will occur once the quality assurance review timeframe has ended. For a list of currently available variant data see: *http://www.cdc.gov/nchs/nhanes/biospecimens/dnaspecimens.htm#Genetic.*

Proposals for secondary data analyses linking NCHS restricted data, NCHS public use data, or non-NCHS data to data resulting from DNA specimen testing will be reviewed by the NCHS RDC. See *http://www.cdc.gov/rdc* for proposal guidelines.

Submission of Proposals

Proposals can be submitted immediately. The review process will begin approximately 60 days from the publication of the notice and will include all proposals submitted as of that date.

Electronic submission of proposals are required. Please submit proposals to the NHANES Genetic Project Officer: Jody McLean M.P.H., Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, MD 20782, Phone: 301–458–4683, EMail: *NHANESgenetics@cdc.gov*.

Agency Agreement

Investigators must secure funding and sign terms and conditions agreements for the use of the DNA specimens with CDC/NCHS prior to the release of the NHANES DNA samples. Investigators must agree to use the specimens only for the approved tests and use the test results only for purposes as stated in the approved proposal, not link the results of the proposed research to any other data, and not use the DNA specimens for commercial purposes via a legally binding Materials Transfer Agreement for non-government researchers or Interagency Agreement for government researchers. In addition, all investigators will be required to sign a Designated Agent Agreement (DAA) with CDC/NCHS in accordance with NCHS' confidentiality legislation, the Confidential Information Protection and Statistical Efficiency Act (CIPSEA; Title V of the E-Government Act of 2002 (Pub. L. 107–347)). The DAA is the mechanism by which CDC/NCHS may authorize designation of agents to exclusively perform activities needed to produce approved data on CIPSEA protected NHANES DNA specimens.

Approved Proposals

After DNA samples are received and testing is complete, the resulting data will be sent back to DHANES/NCHS for quality control (QC) assessment. While DHANES/NCHS QC assessment is under way the investigator can submit a NCHS RDC proposal to conduct comprehensive quality assurance review. Once the investigator's quality assurance review is complete and the

results returned to DHANES/NCHS, the test results will be made available to the public and the investigator can submit an NCHS RDC proposal to request linkage to NCHS restricted data, NCHS public use data, or Non-NCHS data to conduct their analysis.

After the comprehensive quality assessment process has been completed by the investigator, a list of variants generated from NHANES specimen testing will be made available to the public for potential solicitation via NCHS RDC proposals. The list of variants will be available in the NHANES Genetic Variant Search (*http://www.nhgeneticvariant.com/*). In addition, DHANES/NCHS quality control assessment procedures will be posted on the NHANES Genetic Repository Web site and/or available via email.

Progress Reports

A progress report will be submitted in the annual CDC/NCHS/ERB continuation report. An ERB continuation form will be sent to the investigator each year for project update. If an approved proposal is unable to obtain funding the proposal will be closed.

Termination of ERB Protocol

At the end of laboratory testing the ERB Protocol will be closed.

Disposition of Results and Samples

The provided DNA samples cannot be used for any purpose other than the specifically requested purpose outlined in the proposal and approved through the Scientific and Institutional Review. No DNA samples can be shared with others, including other investigators, unless specified in the proposal and so approved. Samples must be returned upon completion of the approved project or destroyed only with the written approval of the NHANES Genetic Project Officer. Test results from all studies using NHANES DNA specimens will be made available to the public for secondary data analyses. After the DHANES/NCHS quality control assessment is completed, investigators will be given up to six months to conduct a more comprehensive quality assurance review. The final quality assurance review timeframe will be negotiated between the researcher and the NHANES Genetic Project Officer and characteristics of the tests submitted. Proposals for secondary data analyses will be reviewed by the NCHS RDC on a rolling basis; see: *http://www.cdc.gov/rdc* for proposal guidelines. All data analyses will be conducted via access modes available at NCHS RDC.

Dated: October 4, 2016.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

TABLE 1—COST SCHEDULE FOR NHANES DNA SPECIMENS

Total costs	1999–2002, 2007–08, 2009–10 Complete set	1999–2002, 2007–08, 2009–10 Partial set	NHANES III complete set
Materials and Equipment—contractor: Plates, reagents, assays, aliquoting and packaging samples; use of equipment	$1.51	$4.53	$0.75
Labor—contractor: Processing, handling, and shipping; NCHS: Data quality control	4.98	24.90	2.49
Proposal review and Administrative expenses—contractor: Inventory management and reporting; NCHS: Management of proposal process non-NCHS: Technical panel fees	3.02	6.04	1.51
Space—contractor: Freezer use and maintenance	5.59	5.59	2.79
Cost per sample	15.10	41.06	7.55
Cost per new proposal:			
1999–2002	119,260	NA	
2007–2008	72,661		
2009–2010	73,884		
III	.....	.....	54,050
Cost per additional proposal: *			
1999–2002	5,963	**	
2007–2008	3,633		
2009–2010	3,694		
III	.....	.....	2,702

* Additional research using DNA specimens already obtained from previous solicitations.
** This charge will be 5 percent of the original cost.
Note: Applicable CDC overhead and NCHS management and oversight charges will be added to these rates for proposals coming from Federal agencies.

[FR Doc. 2016–24349 Filed 10–6–16; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)

Amendment: A notice of this meeting was published in the **Federal Register** on August 30, 2016, Volume 81, Number 168, Page 59626. The original notice is amended to include the Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention—Health Disparities Subcommittee (HDS) Meeting on October 19, 2016 as follows:

Time and Date: 8:00 a.m.–4:00 p.m., EDT, October 19, 2016.

Place: CDC, Building 19, Room 151, 1600 Clifton Road NE., Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people. The public is welcome to participate during the public comment

period, which is tentatively scheduled from 3:45 p.m. to 3:55 p.m. This meeting is also available by teleconference. Please dial (888) 324–9970 and enter code 32077657.

Purpose: The Subcommittee will contribute to the ACD's advice to the CDC Director on strategic and other health disparities and health equity issues and provide guidance on opportunities for CDC.

Matters for Discussion: The Health Disparities Subcommittee will receive update from STLT Social Determinants of Health (SDOH) Think Tank Collaboration, Funding Opportunity Announcement (FOA) Health Equity Guidance Update and Discussion, HDS priorities, Internal Nomination Process and Update, Health Equity Indicators as well as an update from CDC's Principal Deputy Director.

The agenda is subject to change as priorities dictate.

Contact Person for More Information: Leandris Liburd, Ph.D., M.P.H., M.A., Designated Federal Officer, Health Disparities Subcommittee, Advisory Committee to the Director, CDC, 1600 Clifton Road NE., M/S K–77, Atlanta, Georgia 30329 Telephone (770) 488–8343, Email: *xdy8@cdc.gov.* The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–24365 Filed 10–6–16; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2016–0092]

2018 National Health Interview Survey Questionnaire Redesign

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), in the Department of Health and Human Services (HHS) announces the opening of a docket to obtain public comment on the redesign of the National Health Interview Survey (NHIS) questionnaire (OMB Control No. 0920–0214, expires 01/31/2019) Any proposed changes will be submitted in future notices in compliance with the Paperwork Reduction Act (PRA). The content and structure of the NHIS will be updated in 2018 to improve the measurement of covered health topics, reduce respondent burden by shortening the length of the questionnaire, harmonize overlapping content with other federal health surveys, establish a long-term structure of ongoing and periodic topics, and incorporate advances in survey methodology and measurement.

DATES: Written comments must be received on or before November 7, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0092 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Verita C. Buie, Office of Planning, Budget, and Legislation, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, MS–08, Hyattsville, MD 20782.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *http://regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Marcie Cynamon, Director, of the Division of Health Interview Statistics, National Center for Health Statistics, 3311 Toledo Road, MS–P08, Hyattsville, MD 20782–2064, phone: (301) 458–4174.

SUPPLEMENTARY INFORMATION: The National Center for Health Statistics (NCHS) is redesigning the National Health Interview Survey (NHIS) to be fielded in 2018. The NHIS is the principal source of information on the health of the civilian noninstitutionalized population of the United States. Established by the National Health Survey Act of 1956, the survey has been in the field continuously since July 1957. NHIS data are used widely throughout the Department of Health and Human Services (HHS) to monitor trends in illness and disability and to track progress toward achieving national health objectives. The data are used by HHS and the public health research community in determining barriers to accessing and using health care services, and in tracking those health conditions and behaviors related to the leading causes of morbidity and mortality.

The redesigned NHIS questionnaire and survey structure will be introduced in January 2018. The redesign process presents an opportunity to (1) ensure the survey is capturing the current health and health care needs of individuals in the United States and producing data of the highest-possible quality; and (2) reduce respondent burden by shortening the overall questionnaire length and harmonizing its content with other federal health surveys. The redesign is strategically timed to coordinate with the data cycle used to monitor Healthy People 2020 objectives, providing a clean transition into the next decade of monitoring the nation's critical public health indicators. The redesigned questionnaire reflects advances in survey methodology and measurement since the last NHIS redesign in 1997. This proposal incorporates a long-term structure for the content of the survey. There will be content that remains on the survey each year and content that will be collected on a rotating basis (collected for one or two years, off for one year). The periodicity of rotating content will be established several years in advance. Approximately 15 to 20 minutes of interview time each year will be reserved for sponsored content that addresses the data needs of other federal agencies and partners.

The proposed structure of the redesigned NHIS will differ from the current structure. Since 1997, the NHIS has consisted of a family questionnaire, a sample adult questionnaire, and a sample child questionnaire. The new structure will include a sample adult questionnaire and a sample child questionnaire only; however, in the redesigned NHIS, much of the content from the family section will be collected within the sample adult and sample child interviews. To complete these questionnaires, one adult aged 18 years and over and one child aged 17 years and under (if applicable) will be randomly selected from each sampled household. Information about the sample adult will be collected from the sample adult himself/herself unless s/he is physically or mentally unable to do so, in which case a knowledgeable proxy will be allowed to answer for the sample adult. Information about the sample child will be collected from a knowledgeable adult who may or may not also be the sample adult.

Content from the family questionnaire that will still be obtained from respondents in the redesigned NHIS

includes questions at the beginning of the interview that will capture the age, sex, active duty military status, race, and ethnicity of everyone who usually lives or stays in the household. Some content from the family questionnaire (*e.g.*, family income, financial burden of medical care, housing tenure) will be moved into the two remaining questionnaires.

Public comment on the first draft of these questionnaires will be critical as we continue to revise and improve the content and question text during the redesign process. The first draft of the questionnaires may be found in the docket under Supporting and Related Materials.

Dated: October 4, 2016.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2016–24348 Filed 10–6–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10605, CMS–R–5, CMS–10311, and CMS–10242]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by November 7, 2016.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806, *OR* Email: *OIRA_submission@omb.eop.gov*.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of the following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*.

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* The Health Insurance Enforcement and Consumer Protections Grant Program; *Use:* Section 1003 of the Affordable Care Act (ACA) adds a new section 2794 to the PHS Act entitled, ''Ensuring That Consumers Get Value for Their Dollars.'' Specifically, section 2794(a) requires the Secretary of the Department of Health and Human Services (the Secretary) (HHS), in conjunction with the States, to establish a process for the annual review of health insurance premiums to protect consumers from unreasonable rate increases. Section 2794(c) directs the Secretary to carry out a program to award grants to States. Section 2794(c)(2)(B) specifies that any appropriated Rate Review Grant funds that are not fully obligated by the end of FY 2014 shall remain available to the Secretary for grants to States for planning and implementing the insurance market reforms and consumer protections under Part A of title XXVII of the Public Health Service Act (PHS Act). States that apply for funds are required to complete the grant application. States that are awarded funds under this funding opportunity are required to provide the CMS with four quarterly reports, and one annual report per year (except for the last year of the grant) until the end of the grant period detailing the state's progression towards planning and/or implementing the market reforms under Part A of Title XXVII of the PHS Act. A final report is due at the end of the grant period. *Form Number:* CMS–10605 (OMB control number: 0938—NEW); *Frequency:* Annually and Quarterly; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 23; *Total Annual Responses:* 115; *Total Annual Hours:* 2,898. (For policy questions regarding this collection contact Jim Taing at 301–492–4182.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Physician Certification/Recertification in Skilled Nursing Facilities (SNFs) Manual Instructions; *Use:* Section 1814(a) of the Social Security Act (the Act) requires specific certifications in order for Medicare payments to be made for certain services. Before the enactment of the Omnibus Budget Reconciliation Act of 1989 (OBRA1989, Public Law 101–239), section 1814(a)(2) of the Act required that, in the case of post hospital extended care services, a physician certify that the services are or were required to be given because the individual needs or needed, on a daily basis, skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services that, as a practical matter, can only be provided in a SNF on an inpatient basis. The

physician certification requirements were included in the law to ensure that patients require a level of care that is covered by the Medicare program and because the physician is a key figure in determining the utilization of health services. *Form Number:* CMS–R–5 (OMB control number: 0938–0454); *Frequency:* Occasionally; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 2,711,136; *Total Annual Responses:* 2,711,136; *Total Annual Hours:* 624,515. (For policy questions regarding this collection contact Kia Sidbury at 410–786–7816.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Program/Home Health Prospective Payment System Rate Update for Calendar Year 2010: Physician Narrative Requirement and Supporting Regulation; *Use:* Section (o) of the Act (42 U.S.C. 1395x) specifies certain requirements that a home health agency must meet to participate in the Medicare program. To qualify for Medicare coverage of home health services a Medicare beneficiary must meet each of the following requirements as stipulated in § 409.42: Be confined to the home or an institution that is not a hospital, SNF, or nursing facility as defined in sections 1861(e)(1), 1819(a)(1) or 1919 of Act; be under the care of a physician as described in § 409.42(b); be under a plan of care that meets the requirements specified in § 409.43; the care must be furnished by or under arrangements made by a participating HHA, and the beneficiary must be in need of skilled services as described in § 409.42(c). Subsection 409.42(c) of our regulations requires that the beneficiary need at least one of the following services as certified by a physician in accordance with § 424.22: Intermittent skilled nursing services and the need for skilled services which meet the criteria in § 409.32; Physical therapy which meets the requirements of § 409.44(c), Speech-language pathology which meets the requirements of § 409.44(c); or have a continuing need for occupational therapy that meets the requirements of § 409.44(c), subject to the limitations described in § 409.42(c)(4). On March 23, 2010, the Affordable Care Act of 2010 (Pub. L. 111–148) was enacted. Section 6407(a) (amended by section 10605) of the Affordable Care Act amends the requirements for physician certification of home health services contained in Sections 1814(a)(2)(C) and 1835(a)(2)(A) by requiring that, prior to certifying a patient as eligible for Medicare's home health benefit, the physician must document that the physician himself or herself or a permitted non-physician practitioner has had a face-to-face encounter (including through the use of tele-health services, subject to the requirements in section 1834(m) of the Act)'', with the patient. The Affordable Care Act provision does not amend the statutory requirement that a physician must certify a patient's eligibility for Medicare's home health benefit, (see Sections 1814(a)(2)(C) and 1835(a)(2)(A) of the Act. *Form Number:* CMS–10311 (OMB control number: 0938–1083); *Frequency:* Yearly; *Affected Public:* Business or other for-profits; *Number of Respondents:* 345,600; *Total Annual Responses:* 345,600; *Total Annual Hours:* 28,800. (For policy questions regarding this collection contact Hillary Loeffler at 410–786–0456.)

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Documentation Requirements Concerning Emergency and Nonemergency Ambulance Transports Described in the Beneficiary Signature Regulations in 42 CFR 424.36(b); *Use:* The statutory authority requiring a beneficiary's signature on a claim submitted by a provider is located in section 1835(a) and in 1814(a) of the Social Security Act (the Act), for Part B and Part A services, respectively. The authority requiring a beneficiary's signature for supplier claims is implicit in sections 1842(b)(3)(B)(ii) and in 1848(g)(4) of the Act. Federal regulations at 42 CFR 424.32(a)(3) state that all claims must be signed by the beneficiary or on behalf of the beneficiary (in accordance with 424.36). Section 424.36(a) states that the beneficiary's signature is required on a claim unless the beneficiary has died or the provisions of 424.36(b), (c), or (d) apply. We believe that for emergency and nonemergency ambulance transport services, where the beneficiary is physically or mentally incapable of signing the claim (and the beneficiary's authorized representative is unavailable or unwilling to sign the claim), that it is impractical and infeasible to require an ambulance provider or supplier to later locate the beneficiary or the person authorized to sign on behalf of the beneficiary, before submitting the claim to Medicare for payment. Therefore, we created an exception to the beneficiary signature requirement with respect to emergency and nonemergency ambulance transport services, where the beneficiary is physically or mentally incapable of signing the claim, and if certain documentation requirements are met. Thus, we added subsection (6) to paragraph (b) of 42 CFR 424.36. The information required in this ICR is needed to help ensure that services were in fact rendered and were rendered as billed. *Form Number:* CMS–10242 (OMB control number: 0938–1049); *Frequency:* Yearly; *Affected Public:* Business or other for-profits, Not-for-profit institutions); *Number of Respondents:* 10,402; *Total Annual Responses:* 14,155,617; *Total Annual Hours:* 1,180,578. (For policy questions regarding this collection contact Martha Kuespert at 410–786–4605.)

Dated: October 4, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–24341 Filed 10–6–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–2872]

Medical Device User Fee Amendments; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled ''Medical Device User Fee Amendments.'' The purpose of the meeting is to discuss proposed recommendations for the reauthorization of the Medical Device User Fee Amendments (MDUFA) for fiscal years (FYs) 2018 through 2022. MDUFA authorizes FDA to collect fees and use them for the process for the review of medical device applications. The current legislative authority for MDUFA expires October 1, 2017. At that time, new legislation will be required for FDA to continue collecting medical device user fees in future fiscal years. Following discussions with the device industry and periodic consultations with public stakeholders, the Federal Food, Drug, and Cosmetic Act (the FD&C Act) directs FDA to publish the recommendations for the reauthorized program in the **Federal Register,** hold a meeting at which the public may present its views on such recommendations, and provide for a period of 30 days for the public to provide written comments on such recommendations. FDA will then

consider such public views and comments and revise such recommendations as necessary.

DATES: The public meeting will be held on November 2, 2016, from 9 a.m. to 5 p.m. Submit electronic or written comments to the public docket by November 14, 2016. When the materials are available, they will be in the docket and posted on this Web site at: *http://www.fda.gov/ForIndustry/UserFees/MedicalDeviceUserFee/ucm454039.htm.* See REGISTRATION section below regarding how to register for this public meeting.

ADDRESSES: The public meeting will be held at FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

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–N–2872 for ''Medical Device User Fee Amendments; Public Meeting.'' The commitment letter and proposed statutory changes are expected to be made public in mid-October. At that time, the materials will be posted in the docket and on this Web site at: *http://www.fda.gov/ForIndustry/UserFees/MedicalDeviceUserFee/ucm454039.htm.* The docket will close on November 14, 2016. Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly available at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Aaron Josephson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5449, Silver Spring, MD 20993, 301–796–5178, *Aaron.Josephson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing its intention to hold a public meeting to discuss proposed recommendations for the reauthorization of MDUFA, which authorizes FDA to collect user fees and use them for the process for the review of device applications until September 30, 2017. Without new legislation, FDA will no longer be able to collect user fees for future fiscal years to provide funds for the process for the review of device applications. As required by section 738A(b)(2), (3), and (6) of the FD&C Act (21 U.S.C. 379j-1(b)(2), (3), and (6)), FDA obtained prior public input and negotiated an agreement with regulated industry while periodically consulting with patient and consumer advocacy groups and making minutes of negotiation and stakeholder meetings publicly available. Section 738A(b)(4) of the FD&C Act requires that, after holding negotiations with regulated industry and before transmitting the Agency's final recommendations to Congress for the reauthorized program (MDUFA IV), we do the following: (1) Present the draft recommendations to the Committee on Energy and Commerce of the U.S. House of Representatives and the Committee on Health, Education, Labor, and Pensions of the U.S. Senate; (2) publish the draft recommendations in the **Federal Register;** (3) provide a period of 30 days for the public to submit written comments on the draft recommendations; (4) hold a meeting at which the public may present its views on the draft recommendations; and (5) after consideration of public views and comments, revise the draft recommendations as necessary. This notice, the 30-day comment period, and the public meeting will satisfy certain of

these requirements. After the public meeting, we will revise the draft recommendations as necessary. In addition, the Agency will present the draft recommendations to the Congressional committees.

The purpose of the meeting is for the public to present its views on the draft recommendations for the reauthorized program (MDUFA IV). In general, the meeting format will include a brief presentation by FDA, but will focus on hearing from different stakeholder interest groups (such as patient advocates, consumer advocates, industry, health care professionals, and scientific and academic experts). The Agency will also provide an opportunity for individuals to make presentations at the meeting and for organizations and individuals to submit written comments to the docket before and after the meeting. The following information is provided to help potential meeting participants better understand the history and evolution of the medical device user fee program and the current status of the MDUFA IV draft recommendations.

II. What is MDUFA and what does it do?

MDUFA is the law that authorizes FDA to collect fees from device companies that register their establishments, submit applications to market devices, and make other types of submissions. In the years preceding enactment of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Pub. L. 107–250), FDA's medical device program suffered a long-term, significant loss of resources that undermined the program's capacity and performance. MDUFMA was enacted ''in order to provide FDA with the resources necessary to better review medical devices, to enact needed regulatory reforms so that medical device manufacturers can bring their safe and effective devices to the American people at an earlier point in time, and to ensure that reprocessed medical devices are as safe and effective as original devices.'' H.R. Rep. 107–728 at p. 21 (Oct. 7, 2002). MDUFMA was authorized for 5 years and contained two important features that relate to reauthorization:

- User fees for the review of medical device premarket applications, reports, supplements, and premarket notification submissions provided additional resources to make FDA reviews more timely, predictable, and transparent to applicants. User fees and appropriations for the medical device program helped FDA expand available expertise, modernized its information management systems, provided new review options, and provided more guidance to prospective submitters. The ultimate goal was for FDA to clear and approve safe and effective medical devices more rapidly, benefiting applicants, the health care community, and most importantly, patients.
- Negotiated performance goals for many types of premarket reviews provided FDA with benchmarks for measuring review improvements. These quantifiable goals became more demanding each year and included FDA decision goals and cycle goals (cycle goals refer to FDA actions prior to a final action on a submission). Under MDUFMA, FDA also agreed to several other commitments that did not have specific timeframes or direct measures of performance, such as expanding the use of meetings with industry, maintenance of current performance in review areas where specific performance goals had not been identified, and publication of additional guidance documents.

Medical device user fees and increased appropriations were viewed by FDA, Congress, and industry stakeholders as essential to support high-quality, timely medical device reviews, and other activities critical to the device review program.

MDUFMA provided for—and reauthorizations have maintained—fee discounts and waivers for qualifying small businesses. Small businesses make up a large proportion of the medical device industry, and these discounts and waivers helped reduce the financial impact of user fees on this sector of the device industry, which plays an important role in fostering innovation.

Since MDUFMA was first enacted in 2002, it has been reauthorized twice (the 2007 Medical Device User Fee Amendments (MDUFA II) and the 2012 Medical Device User Fee Amendments (MDUFA III)). Under MDUFA III, which has been in effect since 2012 and will expire on October 1, 2017, FDA has met or exceeded nearly all submission performance goals while implementing program enhancements designed to ensure more timely access to safe and effective medical devices. Information about FDA's performance is available in the yearly and quarterly MDUFA performance reports, which are online at: *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/UserFeeReports/PerformanceReports/UCM2007450.htm and http://www.fda.gov/ForIndustry/UserFees/MedicalDeviceUserFee/ucm452535.htm.*

User fees and related performance goals have played an important role in providing resources and supporting the management systems for ensuring that safe and effective medical devices are available to patients in a timely manner.

III. Proposed MDUFA IV Recommendations

In preparing the proposed recommendations to Congress for MDUFA reauthorization, FDA conducted discussions with the device industry and consulted with stakeholders, as required by the FD&C Act. The Agency began the MDUFA reauthorization process by publishing a notice in the **Federal Register** requesting public input on the reauthorization and announcing a public meeting that was held on July 13, 2015. The meeting included presentations by FDA and a series of panels with representatives of different stakeholder groups, including patient and consumer advocacy groups, regulated industry, and health care professionals. The materials from the meeting, including a transcript and Webcast recording, can be found at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm445541.htm.*

From September 2015 through August 2016, FDA conducted negotiations with representatives of the device industry: The Advanced Medical Technology Association; the Medical Device Manufacturers Association; the Medical Imaging and Technology Alliance; and, the American Clinical Laboratory Association. During its negotiations with the regulated industry, FDA also held monthly consultations with stakeholders representing patient and consumer interests. As directed by Congress, FDA posted minutes of these meetings on its Web site at: *http://www.fda.gov/ForIndustry/UserFees/MedicalDeviceUserFee/ucm454039.htm.*

The proposed recommendations for MDUFA IV address many priorities identified by public stakeholders, the device industry, and FDA. While some of the proposed recommendations are new, many either build on successful enhancements or refine elements from the existing program. FDA intends to post the full text of the proposed MDUFA IV commitment letter and proposed statutory changes at: *http://www.fda.gov/ForIndustry/UserFees/MedicalDeviceUserFee/ucm454039.htm* before the public meeting. Each recommendation is briefly described with reference to the applicable section of the draft commitment letter.

A. Shared Outcome Goals

FDA and representatives of the device industry believe that the process

improvements outlined in the draft commitment letter, when implemented by all parties as intended, should further reduce the average Total Time to Decision for PMA applications and 510(k) submissions, provided that the total funding of the device review program adheres to the assumptions underlying the agreement. Reducing average Total Time to Decision is an important aspect of the ultimate goal of the user fee program, so that safe and effective devices reach patients and health care professionals more quickly. FDA will continue reporting, on an annual basis, the average Total Time to Decision, as defined in the draft commitment letter, for PMA and 510(k) submissions, with shared outcome goals for FDA and industry that reach 290 calendar days for PMAs and 108 calendar days for 510(k)s by FY 2022. Additional details regarding the shared outcome goals can be found in section I of the draft commitment letter.

B. Pre-Submissions

FDA will improve the pre-submission process and ramp up to a performance goal for written feedback on at least 1,950 pre-submissions within 70 days or 5 calendar days prior to the scheduled meeting, whichever comes sooner, in FY2022 (which is equivalent to meeting the stated timeline for at least 83 percent of an assumed 2,350 pre-submissions). Industry will be responsible for providing draft meeting minutes within 15 days of the meeting. Additional details regarding pre-submissions can be found in section II.A. of the draft commitment letter.

C. PMAs

FDA will maintain MDUFA III performance goals for all PMA submissions, including supplements. Additionally, as resources permit, FDA will issue a MDUFA decision within 60 days of an advisory committee recommendation and will issue a decision within 60 days of an applicant's response to an approvable letter. Additional details regarding PMAs can be found in sections II.B.-D. of the draft commitment letter.

D. De Novos

FDA will ramp up to a performance goal for reaching a decision on 70 percent of de novo submissions within 150 days in FY2022. Additional details regarding de novo submissions can be found in section II.E. of the draft commitment letter.

E. 510(k)s

FDA will maintain MDUFA III performance goals for all 510(k) submissions. Additionally, FDA will report performance separately for those reviewed by accredited Third Parties. Additional details regarding 510(k)s can be found in section II.F. of the draft commitment letter.

F. Clinical Laboratory Improvement Amendments (CLIA) Waiver by Application Submissions

FDA will improve the CLIA waiver by application process by establishing a centralized program management group within the Office of In Vitro Diagnostics and Radiological Health, implementing a Missed MDUFA Decision provision, hosting CLIA Waiver vendor days, and further reducing review times for CLIA Waiver by Application Submissions. Additional resources have not been included in the MDUFA agreement for CLIA Waiver applications. Additional details regarding CLIA Waiver by Application Submissions can be found in section II.G. of the draft commitment letter.

G. Quality Management

FDA will establish a dedicated premarket Quality Management team, which will be responsible for establishing a quality management framework for the premarket submission process in the Center for Devices and Radiological Health (CDRH) and conducting routine quality audits. Additional details regarding Quality Management can be found in section III.A. of the draft commitment letter.

H. Employee Recruitment and Retention

FDA will implement a more effective recruiting and hiring strategy and will improve employee retention by applying user fee revenues to retain high performing supervisors. Additional details regarding recruitment and retention can be found in section III.B. of the draft commitment letter.

I. Information Technology (IT)

FDA will implement IT improvements that correspond to new performance goals and reporting, enhance IT infrastructure to enable collection and reporting on structured data, develop and maintain a secure Web-based application that allows sponsors to view individual submission status in near real time, and develop structured electronic submission templates as a tool to guide industry's preparation of premarket submissions. Additional details regarding IT can be found in section III.C. of the draft commitment letter.

J. Enhanced Use of Consensus Standards

FDA and industry will establish a conformity assessment program for accredited testing laboratories that evaluate medical devices according to certain FDA-recognized standards. Additional details regarding the enhanced use of consensus standards can be found in section IV.D. of the draft commitment letter.

K. Third Party Premarket Review Program

FDA will strengthen the accredited person (Third Party) Premarket Review Program by offering improved training to Third Party review entities, redacting predicate review memos for use by third parties during their reviews, conducting audits of Third Party review quality, and publishing performance of individual Third Party entities, with the goal of eliminating routine re-review by FDA of Third Party reviews. Additional details regarding the Third Party Premarket Review Program can be found in section IV.E. of the draft commitment letter.

L. Patient Engagement

FDA will develop internal expertise on patient preference information and patient reported outcomes (PROs) to enhance the utility of such information in premarket submissions, publish a PRO validation guidance, and hold one or more public meetings. Additional details regarding patient engagement can be found in section IV.F. of the draft commitment letter.

M. Real World Evidence (RWE)

FDA will provide funding for the National Evaluation System for Health Technology to conduct pilots to establish the value of real RWE in the premarket program. Additional details regarding RWE can be found in section IV.H. of the draft commitment letter.

N. Digital Health

FDA will establish a centralized Digital Health unit to improve consistency in review of software as a medical device and software in a medical device, streamline and align FDA review processes with software life cycles, continue engagement in international harmonization efforts related to software review, and conduct other activities related to Digital Health. Additional details regarding Digital Health can be found in section IV.I. of the draft commitment letter.

O. Independent Assessment

FDA and industry will participate in an independent assessment of the CDRH

process for the review of device applications, including a more complete assessment of MDUFA III improvements and outcomes as well as an assessment of the effectiveness of the MDUFA IV programs. Additional details regarding the Independent Assessment can be found in section V. of the draft commitment letter.

P. Performance Reports

FDA will continue to report quarterly on performance against commitments. Additionally, FDA will separately report the number and percent of laboratory developed test (LDT) marketing applications completed within the performance goal for 510(k), de novo, and PMA submissions. FDA committed to treating LDTs no less favorably than other devices to which MDUFA performance goals apply. Additional details regarding performance reporting can be found in section VI. of the draft commitment letter.

In conjunction with the proposed enhancements and performance goals outlined in the draft commitment letter, FDA and industry agreed to the following proposed changes to the FD&C Act to ensure that FDA has the statutory authorities needed to implement the negotiated programmatic enhancements:

- FDA and industry are proposing to modify section 738(a)(2)(A) of the FD&C Act (21 U.S.C. 379j(a)(2)(A)) to allow for fees to be collected for de novo submissions and exempting de novo submissions from fees when solely for pediatric conditions for use (section 738(a)(2)(B)(v)(I)).
- FDA and industry are proposing to modify section 738(c) of the FD&C Act to reflect the negotiated fee setting structure. This negotiated structure allows FDA to collect inflation-adjusted base fee amounts without any reduction in fees in the event that submission or registration volumes are higher than planned. Any further adjustments beyond inflation would only be necessary if projected submission or registration volumes are lower than planned such that base fee amounts would need to be increased in order to generate the authorized total fee revenue in a given year.
- The statutory total revenue amounts and base fee amounts are proposed in FY2015 dollars such that annual inflation adjustments will be used to inflate FY2015 dollars to the appropriate amounts for each fiscal year in MDUFA IV.
- FDA is proposing to modify section 738(h)(1)(A) of the FD&C Act to update the appropriations trigger to provide assurance to industry that user fees will be additive to budget authority appropriations.
- FDA and industry are proposing to delete section 738(i)(4) of the FD&C Act to eliminate the fifth-year fee offset because the negotiated fee setting structure allows FDA to collect and use inflation-adjusted base fee amounts each year without any reduction in fees due to increased submission volume. Deleting the fee offset provision (section 738(i)(4)) is necessary to implement the negotiated fee setting structure.
- FDA and industry are proposing to add a subsection (d) to section 514 of the FD&C Act (21 U.S.C. 360d) (Performance standards) to provide authority for FDA to establish a conformity assessment program and per the agreements made during the user fee reauthorization negotiations. FDA and industry are proposing to amend section 523 of the FD&C Act (21 U.S.C. 360m) (Accredited persons) to provide FDA authority to tailor the scope of the Third Party review program per the agreements made during the user fee reauthorization negotiations.
- FDA and industry are proposing to amend section 741 of the FD&C Act (21 U.S.C. 379k–1) (Electronic format for submissions) to provide FDA the authority to develop and implement electronic submissions per the agreements made during the user fee reauthorization negotiations.

FDA will post the agenda approximately 5 days before the meeting at: *http://www.fda.gov/ForIndustry/UserFees/MedicalDeviceUserFee/ucm454039.htm.*

Registration: Registration is free and available on a first-come, first-served basis. Persons interested in attending the MDUFA meeting must register online by 4 p.m. October 26, 2016. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permit onsite registration on the day of the meeting, it will be provided beginning at 8 a.m.

If you need special accommodations because of a disability, please contact Joshua St. Pierre, 301–796–9587 or *Joshua.StPierre@fda.hhs.gov* no later than October 19, 2016.

To register for the meeting, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this meeting/public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, email, and telephone number. Those without Internet access should contact Aaron Josephson to register (see **FOR FURTHER INFORMATION CONTACT**). Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

Streaming Webcast of the meeting: This meeting will also be Webcast. The Webcast link will be available on the registration Web page after October 26, 2016. Organizations are requested to register all participants, but to view using one connection per location. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *http://www.adobe.com/go/connectpro_overview.* FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register,** but Web sites are subject to change over time.

Requests to Present: This meeting includes a public comment session and topic-focused sessions. During online registration you may indicate if you wish to present and which topics you wish to address during the public comment session. FDA has included general topics in this document. FDA will do its best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation. Following the close of registration, FDA will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and notify participants by October 28, 2016. All requests to make oral presentations must be received by the close of registration on October 26, 2016, at 4 p.m. No commercial or promotional material will be permitted to be presented or distributed at the meeting.

FDA is holding this meeting to provide information on the proposed recommendations for the reauthorization of the MDUFA for FYs 2018 through 2022. In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of the meeting topics. The docket will open when the draft commitment letter and proposed statutory changes are made public, which is expected to be in mid-October. The materials will be posted on this Web site at: *http://www.fda.gov/ForIndustry/UserFees/MedicalDeviceUserFee/ucm454039.htm.*

The docket will close 30 days after those documents are posted.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at in the docket at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see **ADDRESSES**). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. The Freedom of Information office address is available on the Agency's Web site at *http://www.fda.gov.* A link to the transcripts will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/ForIndustry/UserFees/MedicalDeviceUserFee/ucm454039.htm.* (Select this meeting from the posted events list).

Dated: October 3, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–24237 Filed 10–6–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Data Use Agreement and Supplement for 2014 Health Center Patient Survey

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than November 7, 2016.

ADDRESSES: Submit your comments, including the ICR title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Data Use Agreement and Supplement for 2014 Health Center Patient Survey.

OMB No.: 0906–xxxx—NEW.

Abstract: The Health Center Patient Survey (HCPS), sponsored by HRSA's Bureau of Primary Health Care (BPHC), surveyed patients who use health centers funded under Section 330 of the Public Health Service Act. HCPS collects data on health center patients' sociodemographic characteristics, health conditions, health behaviors, access to and utilization of health care services, and satisfaction with health care. Survey results come from in-person, one-on-one interviews with patients and are nationally representative of the Health Center program patient population. To inform BPHC and HHS policy, funding, and planning decisions, the survey investigated how well HRSA-supported sites meet health care needs of the medically underserved and assessed how patients perceive the quality of their care.

The HCPS is unique because it focuses on comprehensive patient-level data. These and other features of the data will provide researchers and policymakers the capacity to empirically explore policy relevant topics relevant to the Health Center program using up-to-date information.

Prior to releasing this information, BPHC will request prospective users to fill out a ''Data Use Agreement'' (DUA). BPHC uses DUAs as legal binding agreements when an external entity (*e.g.,* contractor, private industry, academic institution, other federal government agency, or state agency) requests the use of BPHC personally/organizationally identifiable data that is covered by the Privacy Act of 1974. The agreement delineates the confidentiality requirements of the Privacy Act, security safeguards, and BPHC's data use policies and procedures. The DUA will serve as both a means of informing data users of these requirements and a means of obtaining their agreement to abide by these requirements.

Need and Proposed Use of the Information: Before allowing access to unrestricted data that contains sensitive grantee and patient information that is protected by the Privacy Act of 1974, prospective users will submit a signed DUA and describe what proposed research they intend to undertake in using the dataset. A BPHC workgroup will determine whether the project is an appropriate and legitimate use of the data. The criteria to determine admissible projects will include: (1) Relevance of the topic of study to BPHC/HHS policy; (2) feasibility of the project given the parameters described in DUA supplemental; and (3) the proposed end-use of the research that will be undertaken.

Likely Respondents: Prospective researchers in academia, private contractors, and Primary Care Associations/Health Center grantee organizations.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
DUA	20	1	20	0.25	5
DUA Supplemental	20	1	20	1.25	25
Total	40	.....	40	.....	30

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–24300 Filed 10–6–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR13–309–311: Translational Research in Pediatric and Obstetric Pharmacology and Therapeutics.

Date: November 1, 2016.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA AI016–025: Non-vaccine Biomedical Prevention (nBP) of HIV Acquisition/Transmission.

Date: November 1, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jingsheng Tuo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, Bethesda, MD 20892, 301–451–8754, *tuoj@nei.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biomedical Research Shared Instrumentation.

Date: November 1, 2016.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kathryn Kalasinsky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158 MSC 7806, Bethesda, MD 20892, 301–402–1074, *kalasinskyks@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Infectious Diseases.

Date: November 1, 2016.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John C Pugh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Small Business: Serious STEM Games for Pre-College and Informational Science Education Audiences.

Date: November 2, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–379–9351, *allen.richon@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict Bioengineering Sciences #2.

Date: November 2, 2016.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph Thomas Peterson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9694, *petersonjt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: Confocal Microscopy and Imaging.

Date: November 3–4, 2016.

Time: 8:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Thomas Beres, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr. Rm. 5201, MSC 7840, Bethesda, MD 20892, 301–435–1175, *berestm@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: Electron Microscopy.

Date: November 4, 2016.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Thomas Beres, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr. Rm. 5201, MSC 7840, Bethesda, MD 20892, 301–435–1175, *berestm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 3, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24254 Filed 10–6–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the NIH Clinical Center Research Hospital Board scheduled for October 21, 2016, 9:00 a.m. to 5:00 p.m., in Conference Room 6C6, Building 31, National Institutes of Health, Bethesda, MD 20892, which was published in the **Federal Register** on September 16, 2016, 81 FR 63778.

A discussion of the reports from the Anonymous Safety Hotline developed by NIH for Clinical Center staff, patients, or visitors to report any concerns about care or unsafe conditions has been added to the closed portion of the meeting. This portion will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B) and 552b(c)(6), Title 5 U.S.C., as amended. The premature disclosure of the laboratories or units and staff involved in the individual reports could significantly limit the Hotline's purpose by compromising anonymity. These actions would frustrate NIH's use of this resource as it strives to improve the overall safety and quality of care at the Clinical Center.

There are no changes for the open portion of the meeting that was advertised on September 16, 2016.

Dated: October 3, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24257 Filed 10–6–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: November 22, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6710 B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, Md 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 3, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24255 Filed 10–6–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel; F30 Review.

Date: November 7, 2016.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division Of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *ana.aolariu@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 3, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24256 Filed 10–6–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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.

Proposed Project: Services Accountability Improvement System—(OMB No. 0930–0208)—Revision

The Services Accountability Improvement System (SAIS) is a real-time, performance management system that captures information on the substance abuse treatment and mental health services delivered in the United States. A wide range of client and program information is captured through SAIS for approximately 650 grantees. Continued approval of this information collection will allow SAMHSA to continue to meet Government Performance and Results Modernization Act of 2010 (GPRMA) reporting requirements that quantify the effects and accomplishments of its discretionary grant programs which are consistent with OMB guidance.

Based on current funding and planned fiscal year 2016 notice of funding announcements (NOFA), the CSAT programs that will use these measures in fiscal years 2016 through 2018 include: Access to Recovery (ATR) 3 and 4; Adult Treatment Court Collaborative (ATCC); Enhancing Adult Drug Court Services, Coordination and Treatment (EADCS); Offender Reentry Program (ORP); Treatment Drug Court (TDC); Office of Juvenile Justice and Delinquency Prevention-Juvenile Drug Courts (OJJDP-JDC); HIV/AIDS Outreach Program; Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services (TCE-HIV); Addictions Treatment for the Homeless (AT-HM); Cooperative Agreements to Benefit Homeless Individuals (CABHI); Cooperative Agreements to Benefit

Homeless Individuals-States (CABHI-States); Recovery-Oriented Systems of Care (ROSC); Targeted Capacity Expansion- Peer to Peer (TCE-PTP); Pregnant and Postpartum Women (PPW); Screening, Brief Intervention and Referral to Treatment (SBIRT); Targeted Capacity Expansion (TCE); Targeted Capacity Expansion-Health Information Technology (TCE-HIT); Targeted Capacity Expansion Technology Assisted Care (TCE-TAC); Addiction Technology Transfer Centers (ATTC); International Addiction Technology Transfer Centers (I-ATTC); State Adolescent Treatment Enhancement and Dissemination (SAT-ED); Grants to Expand Substance Abuse Treatment Capacity in Adult Tribal Healing to Wellness Courts and Juvenile Drug Courts; and Grants for the Benefit of Homeless Individuals-Services in Supportive Housing (GBHI). Grantees in the Adult Treatment Court Collaborative program (ATCC) will also provide program-level data using the CSAT Aggregate Instrument.

SAMHSA and its Centers will use the data for annual reporting required by GPRA and for NOMs comparing baseline with discharge and follow-up data. GPRA requires that SAMHSA's report for each fiscal year include actual results of performance monitoring for the three preceding fiscal years. The additional information collected through this process will allow SAMHSA to report on the results of these performance outcomes as well as be consistent with the specific performance domains that SAMHSA is implementing as the NOMs, to assess the accountability and performance of its discretionary and formula grant programs.

Note changes have been made to add the recovery measure questions to the instrument from the previous OMB approval. The recovery measure questions are:

- How satisfied are you with the conditions of your living space?
- Have you enough money to meet your needs?
- How would you rate your quality of life?
- How satisfied are you with your health?
- Do you have enough energy for everyday life?
- How satisfied are you with your ability to perform your daily activities?
- How satisfied are you with yourself?
- How satisfied are you with your personal relationships?

ESTIMATES OF ANNUALIZED HOUR BURDEN CSAT GPRA CLIENT OUTCOME MEASURES FOR DISCRETIONARY PROGRAMS

SAMHSA Program title	Number of respondents	Responses per respondent	Total number of responses	Burden hours per response	Total burden hours
Baseline Interview Includes SBIRT Brief TX and Referral to TX	179,668	1	179,668	0.52	75,460
Follow-Up Interview [1]	132,954	1	143,734	0.52	60,386
Discharge Interview [2]	93,427	1	94,720	0.52	39,782
SBIRT Program—Screening Only [3]	594,192	1	594,192	0.13	77,244
SBIRT Program—Brief Intervention Only [4] Baseline	111,411	1	111,411	.20	22,282
SBIRT Program—Brief Intervention Only Follow-Up [1]	82,444	1	82,444	.20	16,489
SBIRT Program—Brief Intervention Only Discharge [2]	57,934	1	57,934	.20	11,587
CSAT Total	1,252,030		1,252,030		338,748

NOTES:
1. It is estimated that 80% of baseline clients will complete this interview.
2. It is estimated that 52% of baseline clients will complete this interview.
3. The estimated number of SBIRT respondents receiving screening services is 80% of the total number SBIRT participants. No further data is collected from these participants.
4. The estimated number of SBIRT respondents receiving brief intervention services is 15% of the total number SBIRT participants.
Note: Numbers may not add to the totals due to rounding and some individual participants completing more than one form.

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, Maryland 20857, *OR* email a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received by December 6, 2016.

Summer King,

Statistician.

[FR Doc. 2016–24264 Filed 10–6–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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.

Proposed Project: Minority AIDS Initiative—Survey of Grantee Project Directors—NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting approval to

conduct online surveys of grantee Project Directors. This is a new project request targeting the collection of primary, organizational-level data through an online survey with grantee Project Directors. The grantee programs that will be involved are focused on integrating HIV and Hepatitis primary care, substance abuse, and behavioral health services and include: (1) TI–12–007 Targeted Capacity Expansion HIV Program: Substance Abuse Treatment for Racial/Ethnic Minority Populations at High-Risk for HIV/AIDS (TCE–HIV) grantees; (2) TI–14–013 Minority AIDS Initiative—Continuum of Care (MAI-CoC) grantees; (3) TI–13–011 Targeted Capacity Expansion HIV Program: Substance Abuse Treatment for Racial/Ethnic Minority Women at High Risk for HIV/AIDS (TCE–HIV: Minority Women) grantees; and (4) TI–15–006 Targeted Capacity Expansion: Substance Use Disorder Treatment for Racial/Ethnic Minority Populations at High-Risk for HIV/AIDS (TCE–HIV: High Risk Populations) grantees.

The goals of the grantee programs are to integrate behavioral health treatment, prevention, and HIV medical care services for racial/ethnic minority populations at high risk for behavioral health disorders and at high risk for or living with HIV. The grantee programs serve many different populations including African American, Hispanic/Latina and other racial/ethnic minorities, young men who have sex with men (YMSM), men who have sex with men (MSM) and bisexual men, adult heterosexual women and men, transgender persons, and people with substance use disorder. Project Director Surveys conducted with grantees are an integral part of evaluation efforts to: (1) Assess the impact of the SAMHSA-funded HIV programs in: Reducing behavioral health disorders and HIV infections; increasing access to substance use disorder (SUD) and mental disorder treatment and care; improving behavioral and mental health outcomes; and reducing HIV-related disparities in four specific grant programs; (2) Describe the different integrated behavioral health and medical program models; and (3) Determine which program types or models are most effective in improving behavioral health and clinical outcomes. SAMHSA will request one web-based survey to be completed by each of the 152 grantee Project Directors. Project Directors may request assistance from another project administrator to help them complete the survey. The web-based survey will be conducted once for grantees in each grant program, in the grantee organization's final year of TCE–HIV (TI–12–007, TI–13–011, TI–15–006) or MAI CoC (TI–14–013) funding, with an annual average of 50 grantees/100 respondents per year. Project Directors will provide information on their program's integration of HIV and Hepatitis medical and primary care into behavioral health services and project implementation. While participating in the evaluation is a condition of the grantees' funding, participating in the survey process is voluntary. The questionnaire is designed to collect information about: Grantee organizational structure, outreach and engagement, services provided through the grant-funded project, coordination of care, behavioral health/medical care integration, funding and project sustainability, staffing and staff development.

The table below is the annualized burden hours:

ESTIMATE OF ANNUAL AVERAGE REPORTING BURDEN: PROJECT DIRECTOR SURVEY

Data collection tool	Number of respondents	Responses per respondent	Hour per response	Total burden hours
Project Director Survey	100	1	1	100

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, Maryland 20857, *OR* email a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received by December 6, 2016.

Summer King,

Statistician.

[FR Doc. 2016–24266 Filed 10–6–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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.

Proposed Project: SAMHSA Transformation Accountability (TRAC) Data Collection Instrument (OMB No. 093–0285)—Revised

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS) is proposing to modify one of its current Transformation Accountability (TRAC) system data collection tools to include previously piloted recovery measures. Specifically, this revision entails the incorporation of twelve recovery measures into the current CMHS NOMs Adult Client-level Measures for Discretionary Programs Providing Direct Services data collection tool. As part of its strategic initiative to support recovery from mental health and substance use disorders, SAMHSA has been working to develop a standard measure of recovery that can be used as part of its grantee performance reporting activities.

This revision will add eight questions from the World Health Organization's (WHO) Quality of Life (QOL) to SAMHSA's existing set of Government

Performance and Results Act (GPRA) measures along with four additional measures that support the WHO QOL–8. Data will be collected at two time points—at client intake and at six months post-intake. These are two points in time during which SAMHSA grantees routinely collect data on the individuals participating in their programs.

The WHO QOL–8 will assess the following domains using the items listed below:

Question number	Item	Domain
1	How would you rate your quality of life?	Overall quality of life.
2	How satisfied are you with your health?	Overall quality of life.
3	Do you have enough energy for everyday life?	Physical health.
4	How satisfied are you with your ability to perform your daily living activities?	Physical health.
5	How satisfied are you with yourself?	Psychological.
6	How satisfied are you with your personal relationships?	Social relationships.
7	Have you enough money to meet your needs?	Environment.
8	How satisfied are you with the conditions of your living place?	Environment.

The revision also includes the following recovery-related performance measures:

Question number	Item
9	During the past 30 days, how much have you been bothered by these psychological or emotional problems? (This question will be placed in the instrument following the K6 questions for proper sequence).
10	I have family or friends that are supportive of my recovery.
11	I generally accomplish what I set out to do.
12	I feel capable of managing my health care needs.

Approval of these items by the Office of Management and Budget (OMB) will allow SAMHSA to further refine the Recovery Measure developed for this project. It will also help determine whether the Recovery Measure is added to SAMHSA's set of required performance measurement tools designed to aid in tracking recovery among clients receiving services from the Agency's funded programs.

Table 1 below indicates the annualized respondent burden estimate.

TABLE 1—ANNUALIZED RESPONDENT BURDEN HOURS, 2016–2019

Type of response	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Client-level baseline interview	55,744	1	55,744	0.58	32,332
Client-level 6-month reassessment interview [1]	44,595	1	44,595	0.58	25,865
Client-level discharge interview [2]	16,723	1	16,723	0.58	9,699
PBHCI—Section H Form Only Baseline	14,000	1	14,000	.08	1,120
PBHCI—Section H Form Only Follow-Up [3]	9,240	1	9,240	.08	739
PBHCI—Section H Form Only Discharge [4]	4,200	1	4,200	.08	336
HIV Continuum of Care Specific Form Baseline	200	1	200	0.33	66
HIV Continuum of Care Follow-Up [5]	148	1	148	0.33	49
HIV Continuum of Care Discharge [6]	104	1	104	0.33	34
Subtotal	144,954		144,954		70,240
Infrastructure development, prevention, and mental health promotion quarterly record abstraction [7]	982	4.0	3,928	2.0	7,856
Total	145,936		148,882		78,096

[1] It is estimated that 66% of baseline clients will complete this interview.
[2] It is estimated that 30% of baseline clients will complete this interview.
[3] It is estimated that 74% of baseline clients will complete this interview.
[4] It is estimated that 52% of baseline clients will complete this interview.
[5] It is estimated that 52% of baseline clients will complete this interview.
[6] It is estimated that 30% of baseline clients will complete this interview.
[7] Grantees are required to report this information as a condition of their grant. No attrition is estimated.
Note: Numbers may not add to the totals due to rounding and some individual participants completing more than one form.

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, Maryland 20857, *OR* email comments to *summer.king@samhsa.hhs.gov.* Written comments should be received by December 6, 2016.

Summer King,

Statistician.

[FR Doc. 2016–24265 Filed 10–6–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0022]

Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) Technical Mapping Advisory Council (TMAC) will meet via conference call on October 26 and 27, 2016. The meeting will be open to the public.

DATES: The TMAC will meet via conference call on Wednesday, October 26, 2016 from 10:00 a.m. to 5:00 p.m. Eastern Daylight Time (EDT), and on Thursday, October 27, 2016 from 10:00 a.m. to 5:00 p.m. EDT. Please note that the meeting will close early if the TMAC has completed its business.

ADDRESSES: For information on how to access to the conference call, information on services for individuals with disabilities, or to request special assistance for the meeting, contact the person listed in **FOR FURTHER INFORMATION CONTACT** below as soon as possible. Members of the public who wish to dial in for the meeting must register in advance by sending an email to *FEMA-TMAC@fema.dhs.gov* (attention Kathleen Boyer) by 11 a.m. EDT on Friday, October 21, 2016.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the TMAC, as listed in the **SUPPLEMENTARY INFORMATION** section below. The Agenda and other associated material will be available for review at *www.fema.gov/TMAC* by Wednesday, October 19, 2016. Written comments to be considered by the committee at the time of the meeting must be received by Friday, October 21, 2016, identified by Docket ID FEMA–2014–0022, and submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email:* Address the email TO: *FEMA-RULES@fema.dhs.gov* and CC: *FEMA-TMAC@fema.dhs.gov*. Include the docket number in the subject line of the message. Include name and contact detail in the body of the email.
- *Mail:* Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472–3100.

Instructions: All submissions received must include the words ''Federal Emergency Management Agency'' and 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 docket access to read background documents or comments received by the TMAC, go to *http://www.regulations.gov* and search for the Docket ID FEMA–2014–0022.

A public comment period will be held on October 26, 2016 and October 27, 2016. Speakers are requested to limit their comments to no more than two minutes. Each public comment period will not exceed 20 minutes. Please note that the public comment periods may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker by close of business on Friday, October 21, 2016.

FOR FURTHER INFORMATION CONTACT: Kathleen Boyer, Designated Federal Officer for the TMAC, FEMA, 500 C St. SW., Washington, DC 20024, telephone (202) 646–4023, and email *kathleen.boyer@fema.dhs.gov*. The TMAC Web site is: *http://www.fema.gov/TMAC*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix.

As required by the *Biggert-Waters Flood Insurance Reform Act of 2012,* the TMAC makes recommendations to the FEMA Administrator on: (1) How to improve, in a cost-effective manner, the (a) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and (b) performance metrics and milestones required to effectively and efficiently map flood risk areas in the United States; (2) mapping standards and guidelines for (a) flood insurance rate maps, and (b) data accuracy, data quality, data currency, and data eligibility; (3) how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification; (4) procedures for delegating mapping activities to State and local mapping partners; and (5) (a) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination, and (b) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies. Furthermore, the TMAC is required to submit an Annual Report to the FEMA Administrator that contains: (1) A description of the activities of the Council; (2) an evaluation of the status and performance of flood insurance rate maps and mapping activities to revise and update Flood Insurance Rate Maps; and (3) a summary of recommendations made by the Council to the FEMA Administrator.

Agenda: On October 26, 2016, the TMAC will introduce and welcome new TMAC members, and will discuss contextual report language to support the TMAC 2016 Annual Report recommendations discussed at the September 23–26, 2016 virtual public meeting. On October 27, 2016, the TMAC will continue to discuss contextual report language to support the TMAC 2016 Annual Report recommendations. A brief public comment period will take place prior to any votes and at least one comment period will occur on each day. A more detailed agenda will be posted by Wednesday, October 19, 2016, at *http://www.fema.gov/TMAC*.

Dated: September 12, 2016.

Roy E. Wright,

Deputy Associate Administrator, for Insurance and Mitigation, Federal Emergency Management Agency.

[FR Doc. 2016–24339 Filed 10–6–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0007]

Public Assistance Program Minimum Standards

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability.

SUMMARY: This document provides notice of the availability of the final policy *Public Assistance Program Minimum Standards.* The Federal Emergency Management Agency (FEMA) published a notice of

availability and request for comment on the proposed policy in the April 21, 2016 **Federal Register** (81 FR 23503), and requested public comments no later than May 23, 2016. The comment period was then reopened on June 8, 2016 (81 FR 36940) and public comments were requested no later than July 8, 2016.

DATES: This policy is effective September 30, 2016.

ADDRESSES: The final policy is available online at *http://www.regulations.gov* and on FEMA's Web site at *http://www.fema.gov*. The proposed and final policy, all related **Federal Register** notices, and all public comments received during the comment period are available at *http://www.regulations.gov* under Docket ID FEMA–2016–0007. Hard copies of the final policy are available at the Office of Chief Counsel, Federal Emergency Management Agency, 8NE, 500 C St. SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Christopher Logan, Acting Director, Public Assistance Division, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202–212–2340.

SUPPLEMENTARY INFORMATION: The purpose of the policy is to establish minimum standards for Public Assistance projects in order to promote resiliency and achieve risk reduction under the authority of the Stafford Act §§ 323 and 406(e) (42 U.S.C. 5165a and 5172) and 44 CFR part 206, subpart M. When using Public Assistance funds to repair, replace, or construct buildings located in hazard-prone areas, applicants will use, at a minimum, the hazard-resistant design standards in or referenced in the International Building Code (IBC), the International Existing Building Code (IEBC), and/or the International Residential Code (IRC). Costs associated with meeting these standards are eligible for Public Assistance funding.

FEMA revised the policy content in response to public comments received as follows:

- To clarify that FEMA will evaluate more stringent, locally adopted codes or standards as described in 44 CFR part 206.226(d),
- To clarify that the most recent edition of the IBC, IEBC, or IRC as of the disaster declaration date will be used as the new Federal minimum design standard,
- To clarify that the policy only applies to the standards of the IBC, IEBC, and IRC related to hazard-resistant designs, and
- To provide information regarding how the policy will interact with floodplain management minimization standards as described in 44 CFR part 9.11(d) as well as with the calculation for repair versus replacement described in 44 CFR part 206.226(f).

The final policy does not have the force or effect of law.

Authority: 42 U.S.C. 5165a, 5172; 44 CFR 206.226, 206.400.

Matthew Payne,

Director, Policy Division, Office of Policy and Program Analysis, Federal Emergency Management Agency.

[FR Doc. 2016–24340 Filed 10–6–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5858–N–03]

Announcement of the Housing Counseling Federal Advisory Committee Appointment of Members and Notice of Public Meeting

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of Housing Counseling Federal Advisory Committee (HCFAC) Members, and Public Meeting.

SUMMARY: This notice announces the appointment of HCFAC members, gives notice of a one-day meeting and sets forth the proposed agenda of the Housing Counseling Federal Advisory Committee (HCFAC) first Committee meeting. The Committee meeting will be held on Tuesday, November 1, 2016. The meeting is open to the public and is accessible to individuals with disabilities.

DATES: The in-person meeting will be held on Tuesday, November 1, 2016 from 8:30 a.m. to 5:30 p.m. Eastern Daylight Time (EDT) at HUD Headquarters, 451 7th Street SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Marjorie George, Housing Program Technical Specialist, Office of Housing Counseling, U.S. Department of Housing and Urban Development, 200 Jefferson Avenue, Suite 300, Memphis, TN 38103; telephone number (901) 544–4228 (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. Individuals may also email *HCFACCommittee@hud.gov*.

SUPPLEMENTARY INFORMATION:

I. HCFAC Appointees

The U.S. Department of Housing and Urban Development (HUD) announces the appointment of 12 individuals to the Housing Counseling Federal Advisory Committee (HCFAC). The HCFAC was established on April 14, 2015 pursuant to Subtitle D of title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376 (July 21, 2010)) (Dodd-Frank Act), which mandates that the Secretary appoint an advisory committee to provide advice to the Office of Housing Counseling (OHC). The Dodd-Frank Act also mandated that the HCFAC should equally represent the mortgage and real estate industry, consumers and HUD -approved housing counseling agencies. A **Federal Register** Notice was published on April 14, 2015, (80 FR 20005) soliciting the nomination of individuals via an application.

Selection of the HCFAC members was made by the Secretary based on the candidate's qualifications, expertise and diversity of viewpoints that are necessary to effectively address the matters before the HCFAC. Membership on the Committee is personal to the appointee and committee members serve at the discretion of the Secretary for a 3-year term, except the first appointed members consist of at a minimum 4 appointees that serve for a 2-year term and 4 appointees that serve for a 1-year term.

The initial HCFAC appointees effective June 1, 2016 are:

Mortgagor Sector:
- Pamela Marron—3-year appointment
- Jose' Larry Garcia—2-year appointment
- Linda Ayres—1-year appointment

Real Estate Sector:
- E.J. Thomas—3-year appointment
- Cassie Hicks—2-year appointment
- Alejandro Becerra—1-year appointment

Consumer Sector:
- Afreen Alam—3-year appointment
- Meg Burns—2-year appointment
- Ellie Pepper—1-year appointment

Housing Counseling Sector:
- Judy Hunter—3-year appointment
- Arthur Zeman—2-year appointment
- Terri Redmond—1-year appointment

II. Meeting and Agenda

HUD is convening the first meeting of the HCFAC on Tuesday, November 1, 2016 from 8:30 a.m. to 5:30 p.m. The meeting will be held at HUD Headquarters, 451 7th Street SW., Washington, DC 20410 and via conference phone. This meeting notice is provided in accordance with the Federal Advisory Committee Act, 5. U.S.C. App. 10(a)(2).

Draft Agenda—Housing Counseling Federal Advisory Committee Meeting—November 1, 2016

I. Welcome
II. Introduction of Members
III. Presentations by Industry Experts
IV. Discussion of Issues Facing the Housing Counseling Industry
  A. Increasing Consumer Awareness of Housing Counseling Services
  B. Achieving Greater Financial Sustainability for Housing Counseling Services
  C. Measuring Demand for Housing Counseling
V. Public Comment
VI. Next Steps
VII. Adjourn

With advance registration, the public is invited to attend this one-day meeting in-person or by phone. To register to attend, please visit the Web page at: *https://www.huduser.gov/portal/event/Housing-Counseling.html.*

In-person attendees will receive details about the meeting location and how to access the building after completing the pre-registration process at the above link. The meeting is also open to the public with limited phone lines available on a first-come, first-served basis. Phone attendees can call-in to the one-day meeting by using the following toll-free number in the United States: (800) 230–1059. An operator will ask callers to provide their names and their organizational affiliations (if applicable) prior to placing callers into the conference line to ensure they are part of the pre-registration list. Callers can expect to incur charges for calls they initiate over wireless lines and HUD will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free phone number. Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS): (800) 977–8339 and providing the FRS operator with the conference call toll-free number: (800) 230–1059.

Also, with advance registration, members of the public will have an opportunity to provide oral and written comments. The total amount of time for oral comments will be limited to three minutes per commenter to ensure pertinent Committee business is completed. Written comments must be provided no later than October 24, 2016 to *HCFACCommittee@hud.gov*. If the number of registered commenters for the meeting exceeds the available time, HUD will initiate a lottery to select commenters. In order to pre-register to provide comments, please visit the Web page at: *https://www.huduser.gov/portal/event/Housing-Counseling.html.*

Records and documents discussed during the meeting, as well as other information about the work of this Committee, will be available for public viewing as they become available at: *http://www.facadatabase.gov/committee/committee.aspx?cid=2492&aid=77* by clicking on the ''Committee Meetings'' link.

Dated: October 3, 2016.

Genger Charles,

General Deputy Assistant, Secretary for Housing.

[FR Doc. 2016–24336 Filed 10–6–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5907–N–41]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), call the toll-free Title V information line at 800–927–7588 or send an email to *title5@hud.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 12–07, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301)–443–2265 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–

800–927–7588 or send an email to *title5@hud.gov* for detailed instructions, or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*e.g.,* acreage, floor plan, condition of property, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501–0084; NASA: Mr. William Brodt, National Aeronautics AND Space Administration, 300 E Street SW., Room 2P85, Washington, DC 20546, (202)–358–1117; (These are not toll-free numbers).

Dated: September 29, 2016.

Brian Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 10/07/2016

Suitable/Unavailable Properties

Building

California

Alameda Federal Center
Northern Parcel
620 Central Ave.
Alameda CA 94501
Landholding Agency: GSA
Property Number: 54201630019
Status: Excess
GSA Number: 9–G–CA–1604–AD
Directions: Building 1 (Lab/Office) 26,412.44 sq. ft.; Building 2A (Office) 8,672.86 sq. ft.; Building 2B (Office) 8,754.67 sq. ft.; Building 2C (Office) 9, 119.7 sq. ft.; Building 2D (Storage/Workshop/Storage) 24,082.18 sq. ft.; Building 8 (Storage) 817.68 sq. ft.; Building 10 (storage) 776.55 sq. ft.; Building 9 (Trash Facilities) 254.58 sq. ft.; Building 12 (Sewage Pumping Station) 695.32 sq. ft.; Building 13 (Hydraulic Elevator Equipment) 75.04 sq. ft.
Comments: 10 Buildings; square footage varies; poor conditions; major repairs needed; <1% asbestos in one bldg.; contact GSA for more conditions and info. on a specific property

Unsuitable Properties

Building

Mississippi

Bldg. 1208 Outdoor Stage
Stennis Space Center
SSC MS 39529
Landholding Agency: NASA
Property Number: 71201630015
Status: Unutilized
Comments: Public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

Bldg. 1207 Restroom
Stennis Space Center
SSC MS 39529
Landholding Agency: NASA
Property Number: 71201630016
Status: Unutilized
Reasons: Secured Area
Comments: Public access denied and no alternative method to gain access without compromising national security

[FR Doc. 2016–23980 Filed 10–6–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–FAC–2016–N054; FXFR133609ANS09–FF09F14000–134]

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public meeting of the Aquatic Nuisance Species (ANS) Task Force. The ANS Task Force's purpose is to develop and implement a program for U.S. waters to prevent introduction and dispersal of aquatic invasive species (AIS); to monitor, control, and study such species; and to disseminate related information.

DATES: The ANS Task Force will meet from 8 a.m. to 5 p.m. on Wednesday, November 9, 2016, and 8 a.m. to 5 p.m. on Thursday, November 10, 2016. For more information, contact the ANS Task Force Executive Secretary (see **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: The ANS Task Force meeting will take place at the U.S. Fish and Wildlife Headquarters, 5275 Leesburg Pike, Falls Church, VA 22041

FOR FURTHER INFORMATION CONTACT: Susan Pasko, Executive Secretary, ANS Task Force, by telephone at 703–358–2466, or by email at *Susan_Pasko@fws.gov*. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the ANS Task Force will hold a meeting.

Background

The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Act) (Pub. L. 106–580, as amended), and is composed of 13 Federal and 15 ex-officio members, and co-chaired by the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration. The ANS Task Force provides advice on AIS infesting waters of the United States and other nations, among other duties as specified in the Act.

Meeting Agenda

- New Species Occurrences
- Update on Policy and Planning from the National Invasive Species Council
- Session on Developing Effective Outreach Programs
- Updates from the Stop Aquatic Hitchhikers! and Habitattitude Campaigns
- Update on Ballast Water Legislation and Management Technologies
- Session on Organisms in Trade
- Update from the Arctic Council
- Discussion on ANS Task Force Member Reporting and Strategic Planning
- Updates from ANS Task Force Members, Regional Panels, and Committees

The final agenda and other related meeting information will be posted on the ANS Task Force Web site at *http://anstaskforce.gov*.

Meeting Minutes

Summary minutes of the meeting will be maintained by the Executive Secretary (see **FOR FURTHER INFORMATION CONTACT**). The minutes will be available for public inspection within 60 days after the meeting and will be posted on the ANS Task Force Web site at *http://anstaskforce.gov*.

Dated: September 9, 2016.

David W. Hoskins,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director for Fish and Aquatic Conservation.

[FR Doc. 2016–24324 Filed 10–6–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–ES–2016–N164; FXES11130700000–167–FF07C00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application to conduct activities intended to enhance the survival of endangered or threatened species.

DATES: To ensure consideration, please send your written comments by November 7, 2016.

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. Alternatively, you may use one of the following methods to request hard copies or a CD–ROM of the documents.

- *Email: permitsR7ES@fws.gov.* Please refer to the respective permit number (*e.g.,* Permit No. TE–778102) in the subject line of the message.
- *U.S. Mail:* U.S. Fish and Wildlife Service, MS 361, 1011 East Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Drew Crane, Endangered Species Coordinator, Ecological Services, (907) 781–3323 (phone); *permitsR7ES@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. Along with our implementing regulations at 50 CFR 17, the Act provides for permits and requires that we invite public comment before issuing these permits for endangered species.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittees to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Application Available for Review and Comment

We invite local, State, and Federal agencies and the public to comment on the following application. Documents and other information the applicants have submitted with their applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Application Number TE778102

Applicant: Assistant Regional Director, U.S. Fish and Wildlife Service, Anchorage, AK

The applicant requests renewal of an existing permit to purposefully take (display, photograph, harass by survey, capture, handle, weigh, measure, mark, obtain biological samples, breed in captivity, reintroduce, relocate, remove from the wild, kill, and, for plant species only, remove and reduce to possession) all threatened and endangered species listed in the State of Alaska for recovery or scientific purposes or for the enhancement of propagation or for enhancing the species' survival. This permit will allow Fish and Wildlife Service employees and volunteers to lawfully conduct threatened and endangered species activities, in conjunction with recovery activities throughout the species' range, as outlined in Fish and Wildlife Service employees' and volunteers' position descriptions.

National Environmental Policy Act

The proposed activities in the requested permits qualify as categorical exclusions under the National Environmental Policy Act, as provided by Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215).

Public Availability of Comments

All comments and materials we receive in response to these requests will be available for public inspection, by appointment, during normal business hours at the address listed in **ADDRESSES**.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: September 21, 2016.

Mary Colligan,

Assistant Regional Director, Alaska Region.

[FR Doc. 2016–24253 Filed 10–6–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[16XD4523WS\DS10100000\ DWSN00000.000000\DP10020]

Statement of Findings: Taos Pueblo Indian Water Rights Settlement Act

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior (Secretary) is publishing this notice in accordance with section 509(f) of the Taos Pueblo Indian Water Rights Settlement Act, Public Law 111–291 (Settlement Act). Congress enacted the Settlement Act as Title V of the Claims Resolution Act of 2010. The publication of this notice causes the Settlement Agreement entered in accordance with Section 509 of the Settlement Act to become enforceable and causes certain waivers and releases of claims executed pursuant to sections 510 and 511(a) of the Settlement Act to become effective.

DATES: This notice is effective October 7, 2016.

FOR FURTHER INFORMATION CONTACT: Address all comments and requests for additional information to Mr. John E. Peterson II, Chair, Taos Pueblo Water Rights Settlement Implementation Team, Department of the Interior, Bureau of Reclamation, Native American and International Affairs Office, Denver Federal Center, P.O. Box 25007 (86–43200), Denver, Colorado 80225–0007, (303) 445–2122.

SUPPLEMENTARY INFORMATION: The Settlement Act was enacted to resolve the water rights claims of Taos Pueblo (Pueblo) on the Rio Pueblo de Taos and Rio Hondo stream systems and interrelated groundwater and tributaries in the State of New Mexico subject to an adjudication in the U.S. District Court (Court) in *State of New Mexico ex rel. State Engineer* v. *Abeyta and Arellano,* Nos. 69cv07896 BB and 69cv07939 BB

(D.N.M. filed Feb. 4, 1969). The Settlement Parties include the Pueblo; Taos Valley Acequia Association (representing 55 historic community ditches); Town of Taos; El Prado Water and Sanitation District; 12 Mutual Domestic Water Consumers Associations; the State of New Mexico (State); and the United States (Settlement Parties). The non-federal Settlement Parties submitted a signed Settlement Agreement to Congress prior to enactment of the Settlement Act. As described in section 502 of the Settlement Act, the purposes of the Settlement Act are:

(1) To approve, ratify, and confirm the Settlement Agreement;

(2) to authorize and direct the Secretary to execute the Settlement Agreement and to perform all obligations of the Secretary under the Settlement Agreement and the Settlement Act; and

(3) to authorize all actions and appropriations necessary for the United States to meet its obligations under the Settlement Agreement and the Settlement Act.

Statement of Findings

In accordance with section 509(f) of the Settlement Act, I find as follows:

(1) The President has signed into law the Settlement Act;

(2) to the extent that the Settlement Agreement conflicted with the Settlement Act, the Settlement Agreement has been revised to conform with the Settlement Act;

(3) the Settlement Agreement, so revised, including waivers and releases pursuant to section 510 of the Settlement Act, has been executed by the Settlement Parties and the Secretary prior to the Settlement Parties' motion for entry of the Partial Final Decree;

(4) Congress has fully appropriated all funds made available under paragraphs (1) and (2) of section 509(c) of the Settlement Act;

(5) the State Legislature has fully appropriated the funds for the State contributions as specified in the Settlement Agreement, and those funds have been deposited in appropriate accounts;

(6) the State has enacted legislation that amends New Mexico Statutes Annotated (NMSA) 1978, section 72–6–3 to state that a water use due under a water right secured to the Pueblo under the Settlement Agreement or the Partial Final Decree may be leased for a term, including all renewals, not to exceed 99 years; and

(7) a Partial Final Decree that sets forth the water rights and contract rights to water to which the Pueblo is entitled under the Settlement Agreement and the Settlement Act and that substantially conforms to the Settlement Agreement and Attachment 5 of the Settlement Agreement has been approved by the Court and has become final and non-appealable.

Sally Jewell,

Secretary of the Interior.

[FR Doc. 2016–24416 Filed 10–6–16; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14400000.BJ0000 17X]

Notice of Filing of Plats of Survey; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey; Colorado.

SUMMARY: The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the intent to officially file the survey plats listed below and afford a proper period of time to protest this action prior to the plat filing. During this time, the plats will be available for review in the BLM Colorado State Office.

DATES: Unless there are protests of this action, the filing of the plats described in this notice will happen on November 7, 2016.

ADDRESSES: BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plat and field notes of the dependent resurvey and survey in Township 16 South, Range 72 West, Sixth Principal Meridian, Colorado, were accepted on August 26, 2016.

The plat and field notes of the dependent resurvey and survey in Township 49 North, Range 9 West, New Mexico Principal Meridian, Colorado, were accepted on September 8, 2016.

The plat, in 2 sheets, and field notes of the dependent resurvey and survey in Township 49 North, Range 8 West, New Mexico Principal Meridian, Colorado, were accepted on September 20, 2016.

The supplemental plat of section 7 in Township 7 South, Range 73 West, Sixth Principal Meridian, Colorado, was accepted on September 27, 2016.

The plat and field notes of the dependent resurvey and survey in Township 36 North, Range 7 West, New Mexico Principal Meridian, Colorado, were accepted on September 28, 2016.

The plat and field notes of the dependent resurvey and survey in Township 37 North, Range 7 West, New Mexico Principal Meridian, Colorado, were accepted on September 28, 2016.

Randy A. Bloom,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 2016–24326 Filed 10–6–16; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[16XL LLWY920000.L51010000.ER0000. LVRWK09K0990.241A00; 4500099288; IDI–35849–01]

Notice of Availability of the Final Supplemental Environmental Impact Statement and Proposed Land Use Plan Amendments for Segments 8 and 9 of the Gateway West 500-kV Transmission Line Project, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a Final Supplemental Environmental Impact Statement (EIS) and Proposed Resource Management Plan (RMP)/Management Framework Plan (MFP) Amendments for the right-of-way (ROW) application for Segments 8 and 9 of the Gateway West 500-kilovolt (kV) Transmission Line Project in Idaho. By this notice the BLM is announcing its availability and the opening of a protest period concerning the proposed RMP/MFP amendments.

DATES: A person who meets the conditions for protesting an RMP/MFP amendment outlined in 43 CFR 1610.5–2 and wishes to file a protest must do so within 30 days of the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: Interested persons may review the Final Supplemental EIS and Proposed RMP/MFP Amendments online at *http://on.doi.gov/1sExPBP.* Copies of the Final Supplemental EIS and Proposed RMP/MFP Amendments and other documents pertinent to this project may also be examined at several BLM offices and public libraries, as described in the Supplementary Information section of this notice.

All protests must be in writing and mailed to one of the following addresses:

U.S. Postal Service Mail: BLM Director (210), Attention: Protest Coordinator, P.O. Box 71383, Washington, DC 20024–1383.

Overnight Delivery: BLM Director (210), Attention: Protest Coordinator, 20 M Street SE., Room 2134LM, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Heather Feeney, Public Affairs Specialist, telephone 208–373–4060; email *hfeeney@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mrs. Feeney. The Service is available 24 hours a day, 7 days a week, to leave a message or question with Mrs. Feeney. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: PacifiCorp, dba Rocky Mountain Power, and Idaho Power (Applicants) have submitted a ROW application to construct, operate, and maintain two 500-kV electric transmission lines on Federal lands as part of the Gateway West project. The initial application proposed to construct electric transmission lines from the Windstar Substation near Glenrock, Wyoming, to the Hemingway Substation near Melba, Idaho, approximately 20 miles southwest of Boise, Idaho. The original project comprised 10 transmission line segments with a total length of approximately 1,000 miles and was analyzed in a Final EIS published in April 2013. The BLM issued a Record of Decision (ROD) in November 2013 that authorized routes on Federal lands for Segments 1 through 7 and Segment 10 but deferred a decision for Segments 8 and 9.

In August 2014, the BLM received from the Applicants a revised ROW application for Segments 8 and 9 and a revised Plan of Development (POD) for the project. The BLM determined that new information in the revised ROW application and POD, including revised proposed routes for Segments 8 and 9 of the transmission lines and several modified design features, required additional analysis of potential environmental effects to supplement the analysis presented in the 2013 Final EIS.

A Notice of Intent to prepare a Supplemental EIS was published in the **Federal Register** on September 19, 2014 (79 FR 56399), initiating a 45-day scoping period that included four open house-style public meetings in communities in the project area. The Notice of Availability for the Draft Supplemental EIS was published on March 11, 2016, and the BLM accepted public comments on the range of alternatives, effects analysis and draft RMP/MFP amendments for 90 days, ending on June 9, 2016. During the public comment period, five open house-style public meetings were held in Hagerman, Boise, Kuna, Twin Falls and Murphy, Idaho. An online open house that displayed information presented at the in-person public meetings provided an additional means for the public to submit comments and questions during the public comment period.

Both the Draft and Final Supplemental EISs incorporate information contained in two reports developed in 2014 by the BLM Boise District Resource Advisory Council (RAC) subcommittee on Gateway West. One report identified and evaluated route options in the Boise District portions of Segments 8 and 9, and the second report examined potential mitigation and resource enhancement for impacts in the Morley Nelson Snake River Birds of Prey National Conservation Area (SRBOP).

The BLM must determine whether to grant, grant with modifications, or deny the ROW application to use public lands for Segments 8 and 9 of the Gateway West project. In accordance with 43 CFR 1610.0–5(b), the BLM must consider existing RMPs and MFPs in the decision on whether or not to issue a ROW grant. Portions of the proposed transmission line are not in conformance with several BLM land management plans, and therefore, amendments to these plans are analyzed as part of the Supplemental EIS. The BLM will decide whether to approve land use plan amendments for non-conforming elements. In addition, the BLM must ensure that the authorized project would be compatible with the purposes for which Congress designated the SRBOP in Public Law 103–64 and with current policy for managing units of the BLM's National Conservation Lands.

The BLM is the lead Federal agency for the NEPA analysis and preparation of the Supplemental EIS. The State of Idaho, Twin Falls County, and Federal agencies with specialized expertise and/or jurisdictional responsibilities in the area of Segments 8 and 9 are participating as cooperating agencies. These include the U.S. Fish and Wildlife Service (USFWS); National Park Service; U.S. Army Corps of Engineers; Idaho State Historic Preservation Office; Idaho Department of Fish and Game; the Idaho Governor's Office of Energy Resources; the City of Kuna, Idaho; and Twin Falls County, Idaho.

Comments on the Draft Supplemental EIS/Draft RMP Amendments received from the public and during internal BLM review were considered and incorporated as appropriate into the Final Supplemental EIS/Proposed RMP/MFP amendments. Comments on the Draft Supplemental EIS/Draft RMP/MFP Amendments resulted in the addition of clarifying text but did not significantly change proposed land use plan decisions.

The BLM is also engaging in government-to-government consultations on the Supplemental EIS with the Shoshone-Bannock Tribes of Fort Hall and the Shoshone-Paiute Tribes of Duck Valley, under Federal laws and policies including but not limited to the National Historic Preservation Act, NEPA, Archaeological Resources Protection Act, American Indian Religious Freedom Act, Native American Graves Protection and Repatriation Act, and Executive Orders 12875, 12898, 13007, 13084, and 13175.

Relevant issues and concerns that influenced the scope of the environmental analysis in the Draft Supplemental EIS but which were not addressed in the original EIS were identified during scoping. Alternatives presented in the Final Supplemental EIS are analyzed based on all the issues included in the 2013 Final EIS (refer to Section 1.10 of the Final EIS), as well as in response to new issues, direction in agency handbooks, and requirements of Federal and State laws and regulations. The following issue categories were identified from public and internal scoping conducted for the Supplemental EIS:

- National Historic Trails
- Visual resources
- Cultural resources
- Socioeconomics
- Environmental justice
- Vegetation
- Special status plants
- Invasive plant species
- Wetlands/Riparian areas
- Wildlife and fish (General)
- Special status wildlife and fish
- Minerals

- Paleontological resources
- Geologic hazards
- Soils
- Water resources
- Land use and recreation
- Agriculture
- Transportation
- Air quality
- Electrical environment
- Public safety
- Noise
- SRBOP resources and values

The Final Supplemental EIS analyzes in detail seven pairings of route alternatives for Segments 8 and 9 as Action Alternatives. Analysis of the No Action Alternative, under which the ROW application would be denied and Segments 8 and 9 would not be constructed on public lands, is included in the 2013 Final EIS for the original Gateway West project and is incorporated by reference in the Final Supplemental EIS.

Alternative 1 is the pair of revised proposed routes for Segments 8 and 9, as presented by the Applicants. Alternative 2 pairs the revised proposed route for Segment 8 and the Final EIS proposed route for Segment 9. Alternative 3 is the revised proposed route for Segment 8 and a route designated 9K, which was developed as a result of scoping for the Draft Supplemental EIS. Alternative 4 pairs the Final EIS proposed route for Segment 9 and a route designated as 8G, which was developed as a result of scoping for the Draft Supplemental EIS. Alternative 5 pairs routes 8G and 9K. Alternative 6 consists of the Final EIS proposed route for Segment 9 and a Draft Supplemental EIS route 8H. Alternative 7 is routes 8H and 9K. The ROW width requested for all segments is 250 feet, except for Alternative 5, where a 500-foot ROW is required to accommodate two lines at the minimum separation distance. Portions of all route alternatives would cross the SRBOP.

Both segments terminate at the Hemingway substation under all action alternatives. Segments are separated at distances of 250 feet to more than 30 miles, varying within routes and/or across alternatives. Analysis of several other routes for Segments 8 and 9 in the 2013 Final EIS are incorporated by reference into the Draft and Final Supplemental EISs. The Final Supplement EIS identifies Alternative 5 as the preferred Alternative.

Mitigation

The Final Supplemental EIS incorporates by reference the analysis related to Segments 8 and 9 in the Gateway West 2013 Final EIS, including relevant Proposed Environmental Protection Measures identified in Table 2.7–1 of that document. The Final Supplemental EIS supplements the analysis in that Final EIS by assessing new information that has become available since the Final EIS and ROD were published, including the identification of new routes and route variations for Segments 8 and 9. All of those new routes and route variations would have some impact on the SRBOP, a National Conservation Area, whose enabling statute directs that the area be managed ''to provide for the conservation, protection and enhancement of raptor populations and habitats and the natural and environmental resources and values associated therewith, and of the scientific, cultural, and educational resources and values of the public lands in the conservation area.'' Public Law 103–64, at section 3(2).

The Final Supplemental EIS includes new information and analyses regarding mitigation and enhancement of resource impacts, especially within the SRBOP. This mitigation is consistent with the Presidential Memorandum on Mitigation (November 3, 2015) which requires that agencies ''[e]stablish a net benefit goal or, at a minimum, a no net loss goal for natural resources the agency manages that are important, scarce, or sensitive . . .''. The Memorandum further provides that: ''[w]hen a resource's value is determined to be irreplaceable, the preferred means of achieving either of these goals is through avoidance, consistent with applicable legal authorities.'' Memorandum at section 3(a). Department of the Interior policy calls for applying a mitigation hierarchy—a sequence of approaches—to develop appropriate actions to address project impacts: Avoid, mitigate, compensate. Department Manual at 600 DM 6.

As part of their revised POD, the Applicants proposed a mitigation and enhancement portfolio (MEP) with design features specific to the SRBOP, aimed at mitigating the effects of project-related impacts within the SRBOP, as well as complying with the resource enhancement goal in the SRBOP's enabling statute. The Draft Supplemental EIS found that the MEP did not provide sufficient details or specifics for development of mitigation actions to allow the BLM to determine how the MEP goals for SRBOP would be achieved.

Appendix K in the Final Supplemental EIS presents a Framework the BLM has developed for assessing compensatory mitigation for SRBOP consistent with FLPMA, the Department policy, and the Presidential Memorandum as they relate to impacts on National Historic Trails, cultural resources, wildlife habitat, and recreation and visitor services in the SRBOP. The Framework supersedes the MEP and is scalable. It discusses compensatory mitigation measures that would be required under each alternative to address impacts to the resources warranting mitigation, including each SRBOP resource category. The Framework describes three categories of mitigation actions that would address residual impacts to SRBOP resources: Preservation and Protection, Restoration, and Establishment (including Science and Education). If the BLM grants a ROW within the SRBOP, the BLM will require the Applicant to meet the mitigation requirements before the BLM issues a Notice to Proceed.

Impacts to Greater sage-grouse (GRSG) and migratory birds, wetlands, and cultural resources and National Historic Trails outside the SRBOP are addressed in the 2013 Final EIS for the entire 10-segment project, and the 2013 ROD contains compensatory mitigation frameworks for each of these resources. The Final Supplemental EIS finds that the 2013 GRSG Habitat Mitigation Plan does not address all potential indirect effects, and as a result, the BLM will require the applicants to develop a proposal and final plan that fully compensates for all potential indirect and direct impacts to GRSG, using methods outlined in the August 2016 white paper authored by the BLM and USFWS.

The Final Supplemental EIS sets the standard for compensatory mitigation to address impacts to GRSG as a net conservation gain for the species. The standard for compensatory mitigation that addresses impacts in the SRBOP is enhancement of resources, consistent with the enabling statute for the SRBOP (Pub. L. 103–64). In the ROD, the Authorized Officer, taking into consideration the totality of the analysis and available information, will determine whether the requirements in the Framework will meet the statute's enhancement standard. For impacts to important, scarce or sensitive resources on BLM-managed lands outside the SRBOP and which are not identified as GRSG habitat, compensatory mitigation will be required to achieve a minimum of no net loss or where required or appropriate, a net benefit to impacted resources. Compensatory mitigation for all important scarce or sensitive resources will be designed to ensure durability, effectiveness, timeliness, commensurability, additionality and

governance. Department Manual at 600 DM 6.

Agency Preferred Alternative

In accordance with the Department's NEPA regulations (43 CFR 46.425), the BLM identifies Alternative 5 as the Preferred Alternative. This alignment minimizes crossing of the SRBOP to a total of 17.6 miles, 8.8 miles per segment in parallel, separated by 250 feet. The alternative avoids all GRSG Priority Habitat Management Areas, the Hagerman Fossil Beds National Monument, the historic Toana Freight Road, and Balanced Rock natural landmark in Twin Falls County. The distance separating the segments (250 feet) meets WECC planning criteria, while minimizing the project footprint by reducing the need to construct new access roads to build and service the lines. The alignments in this alternative also avoid primary agricultural lands in Owyhee County and in general, impacts the least amount of private lands of any alternative analyzed in detail in the Supplemental EIS. Residential areas of Kuna and Melba are also avoided.

Alternative 5 would require five plan amendments to three current BLM land use plans so that the project would conform to the respective plans. The following land use plans would be amended in a decision selecting Alternative 5:

Twin Falls MFP

Snake River Birds of Prey RMP

Bruneau MFP

In order to authorize the Segment 8 alignment in this alternative, two land use plans would need to be amended. The SRBOP RMP would require an amendment to allow an additional ROW and designate an additional corridor for two 500-kV lines, as well as an amendment to allow the project within 0.5 mile of sensitive plant habitat. The Bruneau MFP would need to be amended to change the classification for a VRM Class II parcel near Castle Creek to VRM Class III. These same amendments to the SRBOP RMP and Bruneau MFP would be needed for Segment 9 in this alternative, as the routes would parallel each other in these planning areas. Authorizing the Segment 9 alignment in this alternative would also require two additional amendments. The Twin Falls MFP would need amendments to allow the ROW outside of existing corridors, and to reclassify VRM Class I and II areas adjacent to the Roseworth corridor to VRM class III, while allowing a 500-kV line to cross the Salmon Falls Creek Area of Critical Environmental Concern.

Environmentally Preferable Alternative

For Gateway West, the environmentally preferable alternative is the No Action Alternative. Under the No Action Alternative, Gateway West Segments 8 and 9 would not be constructed, no RMPs or MFPs would need to be amended, and the objectives of the project as described in Section 1.4 of the Supplemental EIS would not be met.

Protesting Proposed Land Use Plan Amendments

Pursuant to 43 CFR 1610.5–2, a person may protest the Proposed RMP/MFP amendments. Instructions for filing a protest with the Director of the BLM regarding the Proposed RMP/MFP Amendments may be found online at *http://www.blm.gov/wo/st/en/prog/planning/planning_overview/protest_resolution/filinginstructions.html* and in the ''Dear Reader'' Letter of the Gateway West Final Supplemental EIS and Proposed RMP/MFP Amendments. All protests must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above. Emailed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular mail or overnight delivery postmarked by the close of the protest period. Under these conditions, the BLM will consider the email as an advance copy, and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct emails to *protest@blm.gov.*

Copies of the Final Supplemental EIS and Proposed RMP/MFP Amendments have been sent to cooperating agencies; other affected Federal, State, and local government agencies; the Shoshone-Paiute Tribes of Duck Valley; the Shoshone-Bannock Tribes of Fort Hall; and other stakeholders.

Copies of the Final Supplemental EIS and Proposed RMP/MFP Amendments and other documents pertinent to this project may also be examined at:

- Bureau of Land Management, Idaho State Office, Public Room, 1387 South Vinnell Way, Boise, ID 83709, Telephone: 208–373–3863
- Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, ID 83705, Telephone: 208–384–3300
- Bureau of Land Management, Twin Falls District Office, 2878 Addison Avenue East, Twin Falls, ID 83301, Telephone: 208–735–2060
- Bureau of Land Management, Owyhee Field Office, 20 First Avenue West, Marsing, ID 83639, Telephone: 208–896–5912
- The following public libraries:
  Ada Community Library, Victory Branch (Boise)
  Boise Public Library
  Boise State University, Albertsons Library
  Bruneau Valley District Library (Bruneau)
  College of Idaho, N.L. Terteling Library (Caldwell)
  College of Southern Idaho Library (Twin Falls)
  College of Western Idaho Library (Nampa)
  Gooding Public Library
  Kuna Library
  Meridian Library, (Cherry Lane)
  Mountain Home Public Library
  Nampa Public Library
  Northwest Nazarene University, John E. Riley Library (Nampa)
  State Law Library (Boise)
  Twin Falls Public Library.

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2; 43 CFR 1610.5.

Timothy M. Murphy,

BLM Idaho State Director.

[FR Doc. 2016–24354 Filed 10–6–16; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–21933; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before September 10, 2016, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by October 24, 2016.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National

Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before September 10, 2016. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

ILLINOIS

Cook County

Ebenezer Missionary Baptist Church, 4501 S. Vincennes Ave., Chicago, 16000734

Third Church of Christ, Scientist, 2151 W. Washington Blvd., Chicago, 16000733

Kane County

Middle Avenue Historic District, Bounded by S. Lake, Cross, S. River & Gale Sts., Aurora, 16000735

MISSOURI

Jackson County

Stevens, Edward A., House, 3223 Gladstone Blvd., Kansas City, 16000736

NEW JERSEY

Warren County

St. James Lutheran Church and Cemetery, 1213 US 22, Pohatcong Township, 16000737

TENNESSEE

Davidson County

Federal Office Building, 801 Broadway, Nashville, 16000739

WISCONSIN

Dane County

Madison Brass Works, 206–214 Waubesa St., Madison, 16000738

Ozaukee County

Vocke, Frank, Octagonal Barn, 1901 W. Pioneer Rd., Mequon, 16000740

Polk County

Lindstrom, John, Round Barn, 1311 120th Ave., Balsam Lake, 16000741

Authority: 60.13 of 36 CFR part 60.

Dated: September 13, 2016.

Christopher Hetzel,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2016–24259 Filed 10–6–16; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–22047; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before September 17, 2016, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by October 24, 2016.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th Floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before September 17, 2016. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

CALIFORNIA

Shasta County

Twin Lakes Fire Tool Cache, (Lassen Volcanic National Park MPS) Lassen Volcanic National Park, Mineral, 16000745

GEORGIA

Fulton County

Island Ford Lodge, 1978 Island Ford Parkway, Sandy Springs, 16000747

MINNESOTA

Otter Tail County

Fergus Falls State Hospital (Boundary Increase), 1400 Union Ave. N. and bounded by Fir Ave. and Park St., Fergus Falls, 16000746

MISSOURI

Franklin County

Twelker, Christopher and Johanna, Farm, 4749 MO 185, New Haven, 16000748

Greene County

Bailey School, 501 W. Central St., Springfield, 16000749

St. Louis Independent City

Century Electric Foundry Complex, 3711–3739, 3815R Market St., 3700–3800 Forest Park Ave., St. Louis (Independent City), 16000750

NEW YORK

Albany County

St. Paul's Evangelical Lutheran Church, 1728 Helderberg Trail, Berne, 16000751

Rensselaer County

Newton-Taber-Martin Farm, 149 Clarks Chapel Rd., Nassau, 16000752

OHIO

Butler County

Morgan Township House, 6464 Okeana Drewersburg Rd., Okeana, 16000753

Franklin County

Franklin Park Medical Center, 1829 East Long St., Columbus, 16000754

OREGON

Multnomah County

Holden, William R., House (Boundary Decrease), 6353 SE. Yamill St., Portland, 16000755

SOUTH CAROLINA

Richland County

Melrose Heights-Oak Lawn-Fairview Historic District, Bounded by Butler and Princeton Sts., Maiden Ln., Michigan St. and Millwood Ave., Woodrow and King Sts., Kirby, Trenhol, Columbia, 16000756

WISCONSIN

Sheboygan County

Sheboygan Valley Land and Lime Company, W6631 County Road MM, Town of Rhine, 16000757

Authority: 60.13 of 36 CFR part 60.

Dated: September 22, 2016.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2016–24260 Filed 10–6–16; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR02013000, XXXR5537F3, RX.19871110.1000000]

National Park Service

[PPIMIMRO3L, PPMRSNR1Y.AR0000, FPDEFAULT]

Notice of Availability for the Final Environmental Impact Statement for the Long-Term Experimental and Management Plan for the Operation of Glen Canyon Dam, Page, Arizona

AGENCY: Bureau of Reclamation and National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Department of the Interior, through the Bureau of Reclamation and National Park Service, has prepared a Final Environmental Impact Statement (FEIS) for the Long-Term Experimental and Management Plan (LTEMP) for the operation of Glen Canyon Dam and related non-flow actions. The LTEMP would provide a framework for adaptively managing Glen Canyon Dam operations over the next 20 years consistent with the Grand Canyon Protection Act of 1992 and other provisions of applicable Federal law.

DATES: The Department of the Interior will not issue a final decision on the proposed action for a minimum of 30 days after the date that the Environmental Protection Agency publishes its Notice of Availability of Weekly Receipt of Environmental Impact Statements in the **Federal Register**. After the 30-day public review period, the Department of the Interior will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and discuss all factors leading to that decision.

ADDRESSES: Electronic copies of the FEIS are available at the Glen Canyon Dam LTEMP EIS Web site located at*: http://ltempeis.anl.gov/.* See the **SUPPLEMENTARY INFORMATION** section for a list of locations where compact disc copies of the FEIS are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Ms. Katrina Grantz, Chief, Adaptive Management Group, Bureau of Reclamation, *kgrantz@usbr.gov,* 801–524–3635; or Mr. Rob Billerbeck, Colorado River Coordinator, National Park Service, *Rob_P_Billerbeck@nps.gov,* 303–987–6789.

Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1–800–877–8339 to contact the above individuals during normal business hours. The Service is available 24 hours a day, 7 days a week, in order to leave a message or question with the above named individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) and the National Park Service (NPS) jointly prepared the FEIS for the LTEMP in cooperation with 15 cooperating agencies including three Federal agencies, six non-Federal agencies, and six American Indian tribes. A primary function of the LTEMP will be the implementation of monthly, daily, and hourly releases from Glen Canyon Dam and related non-flow actions as part of an experimental adaptive management program in accordance with the Grand Canyon Protection Act of 1992 (GCPA) and in coordination with the Glen Canyon Dam Adaptive Management Program. This will be the first EIS completed on the monthly, daily, and hourly operations of Glen Canyon Dam since 1995, which was a major point of demarcation in attempting to achieve a balance between project purposes and natural resources protection.

The Draft Environmental Impact Statement (DEIS) for the LTEMP was filed with the Environmental Protection Agency and issued to the public on January 8, 2016, and a Notice of Availability of the DEIS was published in the **Federal Register** on that same date (81 FR 963). A 122-day public review and comment period for the DEIS ended on May 9, 2016 (extended 32 days from the original 90-day comment period which ended on April 7, 2016). During the public comment period, two public meetings and two public web-based meetings were held to present information and answer any clarifying questions. Public reaction determined through the scoping process and subsequent outreach efforts has been instrumental in assuring a full range of alternatives. The FEIS contains responses to all comments received on the DEIS.

Proposed Federal Action

The proposed Federal action is the development and implementation of a structured, long-term experimental and management plan for operations of Glen Canyon Dam. The LTEMP and the Secretary of the Interior's (Secretary) decision would provide a framework for adaptively managing Glen Canyon Dam operations and other management and experimental actions over the next 20 years consistent with the GCPA and other provisions of applicable Federal law.

The LTEMP would determine specific options for dam operations (including hourly, daily, and monthly release patterns), non-flow actions, and appropriate experimental and management actions that will meet the GCPA's requirements, maintain or improve hydropower production to the greatest extent practicable, consistent with improvement of downstream resources, including those of importance to American Indian tribes.

Purpose and Need for the Proposed Federal Action

The proposed Federal action will help determine specific dam operations and actions that could be implemented to improve conditions and continue to meet the GCPA's requirements and to minimize—consistent with law—adverse impacts on the downstream natural, recreational, and cultural resources in Glen Canyon National Recreation Area and Grand Canyon National Park, including resources of importance to American Indian tribes.

The need for the proposed Federal action stems from the need to use scientific information developed since the 1996 ROD to better inform the public of Department of the Interior decisions on dam operations and other management and experimental actions so that the Secretary may continue to meet statutory responsibilities for protecting downstream resources for future generations, conserving species listed under the Endangered Species Act, avoiding or mitigating impacts on *National Register of Historic Places*—eligible historic properties, and protecting the interests of American Indian tribes, while meeting obligations for water delivery and the generation of hydroelectric power.

The FEIS Analyzes Seven Alternatives

The FEIS assesses the potential environmental effects of seven alternatives being considered: The No-Action Alternative (Alternative A) and six Action Alternatives (Alternatives B, C, D, E, F, and G), which are described below. There are a number of experimental and management actions that would be incorporated into all of

the LTEMP Action Alternatives, except where noted:

• High-flow experimental releases for sediment conservation—Implementation of high-flow experiments (HFEs) under all alternatives are patterned after the current HFE Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) (adopted in 2012), but some alternatives include specific modifications related to the frequency of spring and fall HFEs, the duration of fall HFEs, the triggers for HFEs, and the overall process for implementation of HFEs, including implementation considerations and conditions that would result in discontinuing specific experiments.

• Non-native fish control actions—Implementation of control actions for non-native brown trout (*Salmo trutta*) and rainbow trout (*Oncorhynchus mykiss*) are patterned after those identified in the Non-native Fish Control EA and FONSI (adopted in 2012), but some alternatives include specific modifications related to the area where control actions would occur, the specific actions to be implemented, and the overall process for implementation of control actions, including implementation considerations and conditions that would result in discontinuing specific experiments. Non-native fish control actions are not included in Alternative F. For Alternative D, components of the Non-native Fish Control EA and FONSI were modified and integrated with other actions in a tiered approach for humpback chub (*Gila cypha*) conservation.

• Conservation measures established by the U.S. Fish and Wildlife Service in previous biological opinions—Conservation measures identified in the 2011 Biological Opinion on operations of Glen Canyon Dam included the establishment of a humpback chub refuge, evaluation of the suitability of habitat in the lower Grand Canyon for the razorback sucker (*Xyrauchen texanus*), and establishment of an augmentation program for the razorback sucker, if appropriate. Other measures include humpback chub translocation; Bright Angel Creek brown trout and rainbow trout control; Kanab ambersnail (*Oxyloma haydeni kanabensis*) monitoring; determination of the feasibility of flow options to control trout including increasing daily down-ramp rates to strand or displace age-0 trout, and high flow followed by low flow to strand or displace age 0 trout; assessments of the effects of actions on humpback chub populations; sediment research to determine effects of equalization flows; and Asian tapeworm (*Bothriocephalus acheilognathi)* monitoring. Most of these conservation measures are ongoing and are elements of existing management practices, while others are being considered for further action under the LTEMP. Additional conservation measures were developed for the preferred alternative during Endangered Species Act Section 7 consultation with the U.S. Fish and Wildlife Service.

• Non-flow experimental and management actions at specific sites such as non-native plant removal, revegetation with native species, and mitigation at specific and appropriate cultural sites. These actions would also have involvement from tribes to capture concerns regarding culturally significant native plants, and would provide an opportunity to integrate Traditional Ecological Knowledge in a more applied manner into the long-term adaptive management program.

• Preservation of historic properties through a program of research, monitoring, and mitigation to address erosion and preservation of archeological and ethnographic sites and minimize loss of integrity at National Register historic properties.

• Continued adaptive management under the Glen Canyon Dam Adaptive Management Program, including a research and monitoring component.

Alternative A: The No-Action Alternative

Alternative A represents continued operation of Glen Canyon Dam as guided by the 1996 ROD for operations of Glen Canyon Dam: Modified low fluctuating flow, as modified by recent Department of the Interior decisions, including those specified in the 2007 ROD on Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for lakes Powell and Mead (Interim Guidelines) (until 2026), the HFE EA, and the Non-native Fish Control EA (both expiring in 2020). As is the case for all alternatives, Alternative A also includes implementation of existing and planned NPS management activities, with durations as specified in NPS management documents.

Under Alternative A, daily flow fluctuations would continue to be determined according to monthly volume brackets as follows: 5,000 cubic feet per second (cfs) daily range for monthly volumes less than 600 thousand acre-feet (kaf); 6,000 cfs daily range for monthly volumes between 600 kaf and 800 kaf; and 8,000 cfs for monthly volumes greater than 800 kaf.

Under Alternative A, the current HFE protocol would be followed until it expired in 2020. Under this protocol, high-flow releases may be made in spring (March and April) or fall (October and November). HFE magnitude would range from 31,500 cfs to 45,000 cfs. The duration would range from less than 1 hour to 96 hours. Frequency of HFEs would be determined by tributary sediment inputs, resource conditions, and a decision process carried out by the Department of the Interior. The HFE protocol uses a ''store and release'' approach in which sediment inputs are tracked over two accounting periods, one for each seasonal HFE: Spring (December through June) and fall (July through November). Under the protocol, the maximum possible magnitude and duration of HFE that would achieve a positive sand mass balance in Marble Canyon, as determined by modeling, would be implemented.

Under Alternative A, the current non-native fish control protocol would be followed until it expired in 2020. Mechanical removal would primarily consist of the use of boat-mounted electrofishing equipment to remove all non-native fish captured. Captured non-native fish would be removed alive and potentially stocked into areas that have an approved stocking plan, unless live removal fails, in which case fish would be euthanized and used for later beneficial use.

Alternative B

The objective of Alternative B is to increase hydropower generation while limiting impacts on other resources and relying on flow and non-flow actions to the extent possible to mitigate impacts of higher fluctuations. Alternative B focuses on non-flow actions and experiments to address sediment resources, non-native fish control, and on native and non-native fish communities.

Under Alternative B, monthly volumes would be the same as under current operations, but daily flow fluctuations would be higher than under current operations in most months. Compared to current operations, the hourly up-ramp rate would remain unchanged at 4,000 cfs/hour, but the hourly down-ramp rate would be increased to 4,000 cfs/hour in November through March and 3,000 cfs/hour in other months.

Alternative B includes implementation of the non-native fish control protocol and HFE protocol through the entire LTEMP period, but HFEs would be limited to a maximum of one in spring or fall every other year.

In addition to these experimental actions, Alternative B would test trout management flows and hydropower improvement flows. With trout management flows, high flows (*e.g.,* 20,000 cfs) would be maintained for 2 or 3 days followed by a very sharp drop in flows to a minimum level (*e.g.,* 5,000 cfs) for the purpose of reducing annual recruitment of trout. Hydropower improvement experiments would test maximum powerplant capacity flows up to four times during the LTEMP period, but only in years with annual volumes ≤8.23 million acre-feet (maf).

Alternative C

The objective of Alternative C is to adaptively operate Glen Canyon Dam to achieve a balance of resource objectives with priorities placed on humpback chub, sediment, and minimizing impacts on hydropower. Alternative C features a number of condition-dependent flow and non-flow actions that would be triggered by resource conditions. The alternative uses decision trees to identify when experimental changes in base operations or other planned action is needed to protect resources. Operational changes or implementation of non-flow actions could be triggered by changes in sediment input, humpback chub numbers and population structure, trout numbers, and water temperature.

Monthly release volumes under Alternative C in August through November would be lower than those under most other alternatives to reduce sediment transport rates during the monsoon period. Release volumes in the high power demand months of December, January, and July would be increased to compensate for water not released in August through November, and volumes in February through June would be patterned to follow the monthly hydropower demand as defined by the contract rate of delivery. Under Alternative C, the allowable within-day fluctuation range from Glen Canyon Dam would be proportional to monthly volume (7 × monthly volume in kaf). The down-ramp rate would be increased to 2,500 cfs/hour, but the up-ramp rate would remain unchanged at 4,000 cfs/hour.

Experimentation under Alternative C includes testing the effects of the following actions: (1) Sediment-triggered spring and fall HFEs through the entire 20-year LTEMP period, (2) 24-hour proactive spring HFEs in high volume years (≥10 maf release volume), (3) extension of the possible duration of fall HFEs while maintaining a maximum total volume of a 96-hour 45,000 cfs release, (4) reducing fluctuations before and after HFEs, (5) mechanical removal of trout near the Little Colorado River confluence, (6) trout management flows, and (7) low summer flows during the entire LTEMP period to allow greater warming.

Alternative D: The Preferred Alternative

Alternative D is the preferred alternative for the LTEMP. The objective of Alternative D is to adaptively operate Glen Canyon Dam to best meet the resource goals of the LTEMP. Like Alternative C, Alternative D features a number of condition-dependent flow and non-flow actions that would be triggered by resource conditions.

Under Alternative D, the total monthly release volume of October, November, and December would be equal to that under Alternative A to avoid the possibility of the operational tier differing from that of Alternative A, as established in the 2007 Interim Guidelines. The August volume was set to a moderate volume level (800 kaf in an 8.23 maf release year) to balance sediment conservation prior to a potential HFE and to address power production and capacity concerns. January through July monthly volumes were set at levels that roughly track Western Area Power Administration's contract rate of delivery. This produced a redistribution of monthly release volumes under Alternative D that would result in the most even distribution of flows of any alternative except for Alternative G. The allowable within-day fluctuation range from Glen Canyon Dam would be proportional to the volume of water scheduled to be released during the month (10 × monthly volume in kaf in the high-demand months of June, July, and August and 9 × monthly volume in kaf in other months). The down-ramp rate under Alternative D would be limited to no greater than 2,500 cfs/hour, which is 1,000 cfs/hour greater than what is allowed under Alternative A. The up-ramp rate would be 4,000 cfs/hour, and this is the same as what is allowed under Alternative A.

Experimentation under Alternative D includes testing the effects of the following actions: (1) Sediment-triggered spring and fall HFEs through the entire 20-year LTEMP period, (2) 24-hour proactive spring HFEs in high volume years (≥10 maf release volume), (3) extension of the duration of up to 45,000 cfs fall HFEs for as many as 250 hours depending on sediment availability, (4) mechanical removal of trout near the Little Colorado River confluence, (5) trout management flows, (6) low summer flows in the second 10 years of the LTEMP period to allow greater warming, and (7) sustained low flows to improve the aquatic food base.

Alternative E

The objective of Alternative E is to provide for recovery of the humpback chub while protecting other important resources including sediment, the rainbow trout fishery at Lees Ferry, aquatic food base, and hydropower resources. Alternative E features a number of condition-dependent flow and non-flow actions that would be triggered by resource conditions.

Under Alternative E, monthly volumes would closely follow the monthly hydropower demand as defined by the contract rate of delivery. The total monthly release volume of October, November, and December, however, would be equal to that under Alternative A to minimize the possibility of the operational tier differing from that of Alternative A as established in the Interim Guidelines. In addition, lower monthly volumes (relative to Alternative A) would be targeted in August and September to reduce sediment transport during the monsoon period, when most sediment is delivered by the Paria River. The allowable within-day fluctuation range from Glen Canyon Dam would be proportional to the volume of water scheduled to be released during the month (12 × monthly volume in kaf in high power demand months of June, July, and August, and 10 × monthly volume in kaf in other months).

Experimentation under Alternative E includes testing the effects of the following actions: (1) Sediment-triggered fall HFEs through the entire 20-year LTEMP period, (2) sediment-triggered spring HFEs only in the second 10 years of the LTEMP period, (3) 24-hour proactive spring HFEs in high volume years (≥10 maf release volume), (4) reducing fluctuations before fall HFEs, (5) mechanical removal of trout near the Little Colorado River confluence, (6) trout management flows, and (7) low summer flows in the second 10 years of the LTEMP period to allow greater warming.

Alternative F

The objective of Alternative F is to provide flows that follow a more natural pattern of high spring, and low summer, fall, and winter flows while limiting sediment transport and providing for warming in summer months. In keeping with this objective, Alternative F does not feature some of the flow and non-flow actions of the other alternatives.

Under Alternative F, peak flows would be lower than pre-dam

magnitudes to reduce sediment transport and erosion given the reduced sand supply downstream of the dam. Peak flows would be provided in May and June, which corresponds well with the timing of the pre-dam peak. The overall peak flow in an 8.23 maf year would be 20,000 cfs (scaled proportionately in drier and wetter years), and would include a 24 hour 45,000 cfs flow at the beginning of the spring peak period (*e.g.,* on May 1) if there was no triggered spring HFE in same year, and a 168 hour (7 day) 25,000 cfs flow at the end of June. Following this peak, there would be a rapid drop to the summer base flow. The initial annual 45,000 cfs flow would serve to store sediment above the flows of the remainder of the peak, thus limiting sand transport further downstream and helping to conserve sandbars. The variability in flows within the peak would also serve to water higher elevation vegetation. There would be no within-day fluctuations in flow under Alternative F.

Low base flows would be provided from July through January. These low flows would provide for warmer water temperatures, especially in years when releases are warm, and would also serve to reduce overall sand transport during the remainder of the year.

Other than testing the effectiveness of sediment-triggered HFEs, which would continue through the entire LTEMP period, there would be no explicit experimental or condition-dependent triggered actions under Alternative F.

Alternative G

The objective of Alternative G is to maximize the conservation of sediment, in order to maintain and increase sandbar size. Under Alternative G, flows would be delivered in a steady pattern throughout the year with no monthly differences in flow other than those needed to adjust operations in response to changes in forecast and other operating requirements such as equalization. In an 8.23 maf year, steady flow would be approximately 11,400 cfs.

Experimentation under Alternative G includes testing the effects of the following actions: (1) Sediment-triggered spring and fall HFEs through the entire 20-year LTEMP period, (2) 24-hour proactive spring HFEs in high volume years (≥10 maf release volume), (3) extension of the duration of up to 45,000 cfs fall HFEs for as many as 250 hours depending on sediment availability, (4) mechanical removal of trout near the Little Colorado River confluence, and (5) trout management flows.

Locations To Inspect Copies of the FEIS

Compact disc copies of the FEIS are available for public inspection at the following locations:

- J. Willard Marriott Library, University of Utah, 295 South 1500 East, Salt Lake City, Utah 84112.
- Cline Library, Northern Arizona University, 1001 S. Knoles Drive, Flagstaff, Arizona 86011–6022.
- Burton Barr Central Library, 1221 North Central Avenue, Phoenix, Arizona 85004.
- Page Public Library, 479 South Lake Powell Boulevard, Page, Arizona 86040.
- Grand County Library, Moab Branch, 257 East Center Street, Moab, Utah 84532.
- Sunrise Library, 5400 East Harris Avenue, Las Vegas, Nevada 89110.
- Denver Public Library, 10 West 14th Avenue Parkway, Denver, Colorado 80204.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW., Main Interior Building, Washington, DC 20240–0001.

Dated: October 3, 2016.

Thomas M. Iseman,

Principal Deputy Assistant Secretary, Water and Science.

Michael J. Bean,

Principal Deputy Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 2016–24338 Filed 10–6–16; 8:45 am]

BILLING CODE 4332–90–P; 4312–CB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1023]

Certain Memory Modules and Components Thereof, and Products Containing Same; Institution of Investigation

AGENCY: U.S. International Trade Commission

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 1, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Netlist, Inc. of Irvine, California. Supplements to the Complaint were filed on September 22, 2016 and September 23, 2016. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain memory modules and components thereof, and products containing same by reason of infringement of certain claims of U.S. Patent No. 8,756,364 (''the '364 patent''); U.S. Patent No. 8,516,185 (''the '185 patent''); U.S. Patent No. 8,001,434 (''the '434 patent''); U.S. Patent 8,359,501 (''the '501 patent''); U.S. Patent No. 8,689,064 (''the '064 patent''); and U.S. Patent 8,489,837 (''the '837 patent''). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2016).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 30, 2016, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain memory modules and components thereof, and products

containing same by reason of infringement of one or more of claims 1–4, 6, 7, 10, 13, 17, and 23 of the '364 patent; claims 1–3, 7, 8, and 10–12 of the '185 patent; claims 2, 3, and 5–7 of the '434 patent; claim 4 of the '501 patent; claim 16 of the '064 patent; and claims 1–3, 5, and 6 of the '837 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Netlist, Inc., 175 Technology Drive, Suite 150, Irvine, CA 92618

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

SK hynix Inc., 2091, Gyeongchung-daero, Bubal-eub, Icheon-si, Gyeonggi-do, Republic of Korea

SK hynix America Inc., 3101 N. First Street, San Jose, CA 95134

SK hynix memory solutions Inc., 3103 N. First Street, San Jose, CA 95134

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: October 3, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–24247 Filed 10–6–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Agreement and Order Regarding Modification of the Consent Decree With Respect to TESI Under the Clean Water Act

On September 30, 2016, the Department of Justice lodged a proposed *Agreement and Order Regarding Modification of the Consent Decree With Respect to TESI* (''Consent Decree Modification'') with the United States District Court for the Western District of Louisiana in the lawsuit entitled *United States and the State of Louisiana* v. *Acadia Woods Add. #2 Sewer Co., et al.,* Civil Action No. 6:98–cv–0687.

In its Second Amended Complaint, the United States alleged claims related to violations of the Clean Water Act and applicable discharge permits at sewage treatment plants in Louisiana owned and operated by Johnson Properties, Inc. and its subsidiaries. Subsequently, the sewage treatment plants were sold to Intervening Defendant Total Environmental Solutions, Inc. (''TESI''). The United States, Louisiana, and TESI agreed to the Consent Decree with Respect to TESI (''the Consent Decree'') which was entered by the Court on December 21, 2000. In the Consent Decree, TESI committed to operate the sewage treatment plants without service interruption and implement compliance measures intended to cause the sewage treatment plants to achieve compliance with the requirements of the CWA and the applicable discharge permits. The proposed Consent Decree Modification would modify the Consent Decree by requiring TESI to achieve compliance with the requirements of the Clean Water Act and the applicable discharge permits by implementing additional compliance measures. The Modified Consent Decree also specifies procedures and a schedule pursuant to which TESI, after it implements the additional compliance measures, will request removal of STPs from the Modified Consent Decree. Finally, the proposed Consent Decree Modification would revised the stipulated penalty provisions.

The publication of this notice opens a period for public comment on the proposed Consent Decree Modification. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the State of Louisiana* v. *Acadia Woods Add. #2 Sewer Co.,* D.J. Ref. No. 90–5–1–1–4375. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree Modification 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 proposed Consent Decree Modification 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 $62.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy of the proposed Consent Decree Modification without appendices, the cost is $8.75.

Thomas P. Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–24258 Filed 10–6–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0001]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection Procedures for the Administration of Section 5 of the Voting Rights Act of 1965

AGENCY: Civil Rights Division, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Civil Rights Division, Voting Section 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 December 6, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Robert S. Berman, Deputy Chief, Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Avenue, 7243 NWB, (phone: 202–514–8690).

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 Civil Rights Division, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None (Civil Rights Division).

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: None. Abstract: Jurisdictions specially covered under the Voting Rights Act are required to comply with Sections 3 or 5 of the Act before they may implement any change in a standard, practice, or procedure affecting voting. One option for such compliance is to submit that change to Attorney General for review and establish that the proposed voting changes are not racially discriminatory. The procedures facilitate the provision of information that will enable the Attorney General to make the required determination.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1 respondent will complete each form within approximately 3.0 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 3.0 total hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: October 4, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–24301 Filed 10–6–16; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

On September 30, 2016, the Department of Justice lodged a proposed Consent Decree and Judgment (''Consent Decree'') with the United States District Court for the Eastern District of New York in the lawsuit entitled *United States* v. *The New York Racing Association, Inc.,* Civil Action No. CV–16–5442.

The United States filed a complaint in this action on the same day that the consent decree was lodged with the Court. The defendant is The New York Racing Association, Inc. (''Defendant''), located at 110–00 Rockaway Boulevard, Jamaica, New York, 11417. The complaint arises out of Defendant's operation of Aqueduct Racetrack in Ozone Park, New York, where it races, boards and feeds horses. The complaint alleges that Defendant, in the course of operation of Aqueduct Racetrack, violated the Clean Water Act (''CWA''), 33 U.S.C. 1311, 1319(b) and (d), and 33 U.S.C. 1342, as well as the conditions of Defendant's concentrated animal feeding operations General Permit issued under New York's State Pollutant Discharge Elimination System (''SPDES'') by discharging process wastewater, including animal wash water containing detergent, manure, and feed waste, into New York City's and New York State's storm sewer systems, which then flowed to tributaries of Jamaica Bay, which are navigable waters of the United States. The Complaint alleges claims for relief based on the following violations: (1) Unauthorized discharges of pollutants in violation of the CWA, 33 U.S.C. 1311(a); (2) unauthorized discharge of process wastewater to surface waters in violation of the CWA, 33 U.S.C. 1311(a), and Defendant's SPDES Permit; and (3) insufficient action to ensure clean water was excluded from concentrated waste areas in violation of the CWA, 33 U.S.C. 1311(a), and Defendant's SPDES and Concentrated Animal Feed Operations General Permits.

The Consent Decree provides for Defendant to pay a $150,000 civil penalty and to perform injunctive relief, including: (1) Implementing procedures to ensure that no discharges occur; (2) installing a ''telemetry'' system in manholes to alert employees of dry weather flows in the sewer system; and (3) creating a Web site page that makes stormwater-related information available to the public. Defendant implemented some injunctive relief prior to the lodging of the Consent Decree, including construction of special horse wash stalls that are connected to the sanitary sewer, and capping and disabling external hydrants that are located near storm drains. The Consent Decree further requires Defendant to implement a Supplemental Environmental Project at Defendant's

Belmont Park Racetrack, comprising planting 62 trees, which will reduce future impacts of stormwater to Jamaica Bay, the same waterbody affected by Defendant's violations at Aqueduct Racetrack. The Consent Decree resolves the civil claims of the United States for the violations alleged in the complaint through the date of lodging of the Consent Decree.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *The New York Racing Association, Inc.* D.J. Ref. No. 90–5–1–1–11540. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
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 $21.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $10.25.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–24292 Filed 10–6–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On September 30, 2016, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of Virginia in the lawsuit entitled *United States, et al.* v. *Southern Coal Corporation, et al.,* Civil Action No. 7:16–cv–00462–GEC.

The United States' Complaint (which was joined by Alabama, Kentucky, Tennessee, and Virginia) alleges, *inter alia,* that Southern Coal Corporation and twenty-six other related companies violated the Clean Water Act by failing to comply with effluent limitations in their permits, failing to report results for all the required sampling data, failing to submit complete data in quarterly discharge monitoring reports, and failing to submit quarterly discharge monitoring reports.

The principal elements of the injunctive relief in the decree include an Environmental Management System; audits of mining operations, outfalls and treatment systems; a violation response procedure; a new compliance tracking database; training for its employees and contractors; and the establishment and maintenance of a publicly available Web site or portal that provides permit and violation information to the general public. Defendants must also establish a $4.5 million letter of credit and a standby trust that will guarantee funding for, and a mechanism to accomplish, compliance with the Clean Water Act and the work required by the settlement, should the companies fail to do so. Finally, Defendants must pay a civil penalty of $900,000.

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, et al.* v. *Southern Coal Corporation, et al.,* D.J. Ref. No. 90–5–1–1–10974. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
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 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 $27.50 for the Consent Decree and Appendices A–E, and a check for $183.75 for Appendix F (735-page table of violations), if this appendix is desired, (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. 2016–24306 Filed 10–6–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Native American Employment and Training Council

AGENCY: Employment and Training Administration, U.S. Department of Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to of the Federal Advisory Committee Act (FACA), as amended, and of the Workforce Innovation and Opportunity Act (WIOA), notice is hereby given of the next meeting of the Native American Employment and Training Council (Council), as constituted under WIOA.

DATES: The meeting will begin at 9:00 a.m., (Eastern Daylight Time) on Tuesday, October 25, 2016, and continue until 5:00 p.m. that day. The meeting will reconvene at 9:00 a.m., on Wednesday, October 26, 2016, and adjourn at 5:00 p.m. that day. The period from 3:00 p.m. to 5:00 p.m. on October 25, 2016, will be reserved for participation and comment by members of the public.

ADDRESSES: The meeting will be held at the U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW., Room C–5525, Washington, DC 20210.

SUPPLEMENTARY INFORMATION: Council members and 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 Native American Employment and Training Council (NAETC).

Visitor badges are issued by the security officer at the visitor entrance located at 3rd and C Streets NW after the visitor proceeds through the security screening. 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. Laptops and other electronic devices may be inspected and logged for identification purposes. Due to limited parking options, DC Metro's Judiciary Square station is the easiest way to access the Frances Perkins Building. The meeting will be open to the public.

Members of the public not present may submit a written statement on or before October 17, 2016, to be included in the record of the meeting. Statements are to be submitted to Athena R. Brown, Designated Federal Officer (DFO), U.S. Department of Labor, 200 Constitution Avenue NW., Room S–4209, Washington, DC, 20210 or by email at *brown.athena@dol.gov.* Persons who need special accommodations should contact Craig Lewis at (202) 693–3384, at least two business days before the meeting. The formal agenda will focus on the following topics: (1) WIOA Performance Indicators; (2) Information Technology and Reporting and Information Collection Request; (3) Training and Technical Assistance; (4) Workgroup Updates and Recommendations; (5) New Business and Next Steps; and (6) Public Comment.

FOR FURTHER INFORMATION CONTACT: Athena R. Brown, DFO, Division of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room S–4209, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number (202) 693–3737 (VOICE) (this is not a toll-free number).

Authority: Pub. L. 92–463 Section 10(a)(2); 29 U.S.C. 3221(i)(4) Section 166(i)(4).

Portia Wu,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2016–24295 Filed 10–6–16; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice Requirements of the Health Care Continuation Coverage Provisions

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Notice Requirements of the Health Care Continuation Coverage Provisions,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before November 7, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201609-1210-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Notice Requirements of the Health Care Continuation Coverage Provisions information collection. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) provides that, under certain circumstances, a group health plan participant or beneficiary who meets the COBRA qualified beneficiaries definition may elect to continue group health coverage temporarily following a qualifying event that would otherwise result in loss of coverage. This ICR covers the information collection requirements for plan administrators to distribute notices as follows: A general notice to be distributed to all participants in group health plans subject to the COBRA; an employer notice that must be completed by the employer upon the occurrence of a qualifying event; a notice and election form to be sent to a participant upon the occurrence of a qualifying event that might cause the participant to lose group health coverage; an employee notice that may be completed by a qualified beneficiary upon the occurrence of certain qualifying events such as divorce or disability; and, two other notices, one of early termination and the other a notice of unavailability. Also included in the ICR are two model notices that the Department believes will help reduce costs for service providers in preparing and delivering notices to comply with the regulations. Employee Retirement Income Security Act sections 606 and 608 authorize this information collection. *See* 29 U.S.C. 1166 and 1168.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0123.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on October 31, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing

requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 26, 2016 (81 FR 33550).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0123. The OMB is particularly interested in comments that:

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

Agency: DOL–EBSA.

Title of Collection: Notice Requirements of the Health Care Continuation Coverage Provisions.

OMB Control Number: 1210–0123.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 605,869.

Total Estimated Number of Responses: 16,052,495.

Total Estimated Annual Time Burden: 0 hours.

Total Estimated Annual Other Costs Burden: $30,490,898.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: October 3, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–24294 Filed 10–6–16; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application for a Permit To Fire More Than 20 Boreholes and/or for the Use of Nonpermissible Blasting Units, Explosives, and Shot-Firing Units; Posting Notices of Misfires

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Application for a Permit to Fire More than 20 Boreholes and/or for the Use of Nonpermissible Blasting Units, Explosives, and Shot-firing Units; Posting Notices of Misfires,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before November 7, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201604-1219-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Application for a Permit to Fire More than 20 Boreholes and/or for the Use of Nonpermissible Blasting Units, Explosives, and Shot-firing Units; Posting Notices of Misfires information collection. More specifically, this ICR pertains to the process by which a coal mine operator applies for a permit to fire more than 20 shots and to use nonpermissible explosives and/or shot-firing units. An application contains the safeguards the mine operator will employ to protect miners while using requested blasting items. Federal Mine Safety and Health Act of 1977 sections 101(a) and 103(h) authorize this information collection. *See* 30 U.S.C. 811(a) and 813(h).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0025.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on December 31, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 20, 2016 (81 FR 31967).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of

publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0025. The OMB is particularly interested in comments that:

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

Agency: DOL–MSHA.

Title of Collection: Application for a Permit to Fire More than 20 Boreholes and/or for the Use of Nonpermissible Blasting Units, Explosives, and Shot-firing Units; Posting Notices of Misfires.

OMB Control Number: 1219–0025.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 91.

Total Estimated Number of Responses: 91.

Total Estimated Annual Time Burden: 77 hours.

Total Estimated Annual Other Costs Burden: $455.

Dated: October 3, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–24293 Filed 10–6–16; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Data Users Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Data Users Advisory Committee will meet on Thursday, November 10, 2016. The meeting will be held in the Postal Square Building, 2 Massachusetts Avenue NE., Washington, DC.

The Committee provides advice to the Bureau of Labor Statistics from the points of view of data users from various sectors of the U.S. economy, including the labor, business, research, academic, and government communities, on technical matters related to the collection, analysis, dissemination, and use of the Bureau's statistics, on its published reports, and on the broader aspects of its overall mission and function.

The meeting will be held in Meeting Rooms 1, 2, and 3 of the Janet Norwood Conference and Training Center. The schedule and agenda for the meeting are as follows:

8:30 a.m. Registration
9:00 a.m. Commissioner's welcome and review of agency developments
9:45 a.m. Changing the sequence of news releases in the Price Programs
10:30 a.m. Redesigning the BLS Web site
1:00 p.m. Web scraping and a timely repository for fatality data
2:00 p.m. Possible new data products in the Consumer Expenditure (CE) and American Time Use Surveys (ATUS)
3:15 p.m. Program update: Occupational Employment Statistics (OES)
4:00 p.m. Meeting wrap-up

The meeting is open to the public. Any questions concerning the meeting should be directed to Kathy Mele, Data Users Advisory Committee, on 202.691.6102. Individuals who require special accommodations should contact Ms. Mele at least two days prior to the meeting date.

Signed at Washington, DC, this 4th day of October 2016.

Kimberley D. Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2016–24319 Filed 10–6–16; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2016–0001]

National Advisory Committee on Occupational Safety and Health (NACOSH); Charter Renewal

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Renewal of the NACOSH charter.

SUMMARY: The Secretary of Labor (Secretary) will renew the charter for NACOSH.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle Walker, OSHA Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (TTY (877) 889-5627); email *walker.michelle@dol.gov.*

SUPPLEMENTARY INFORMATION: The Secretary will renew the NACOSH charter. The charter will expire two years from the date it is filed.

NACOSH was established by Section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656) to advise, consult with and make recommendations to the Secretary and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a non-discretionary advisory committee of indefinite duration.

NACOSH operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), its implementing regulations (41 CFR part 102–3), and OSHA's regulations on NACOSH (29 CFR part 1912a). Pursuant to FACA (5 U.S.C. App. 2, 14(b)(2)), the NACOSH charter must be renewed every two years.

The new charter increases the estimated annual operational costs for NACOSH by approximately 3 percent (to $186,500 from $181,000).

The new NACOSH charter is available to read or download at *http://www.regulations.gov* (Docket No. OSHA–2016–0001), the federal eRulemaking portal. The charter also is available on the NACOSH page on OSHA's Web page at *http://www.osha.gov* and at the OSHA Docket Office, N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350. In addition, the charter is available for viewing or download at the Federal Advisory Committees Database at *http://www.facadatabase.gov.*

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by 29 U.S.C. 656; 5 U.S.C. App. 2; 29 CFR part 1912a; 41 CFR part 102–3; and Secretary of Labor's Order No. 1–2012 (77 FR 3912 (1/25/2012)).

Signed at Washington, DC, on October 4, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–24320 Filed 10–6–16; 8:45 am]

BILLING CODE 4510–26–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Category Management

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Proposed new Office of Management and Budget Circular No. A–XXX, ''Implementing Category Management for Common Goods and Services.''

SUMMARY: The Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB) is proposing to issue a new OMB Circular, Implementing Category Management for Common Goods and Services, to codify category management, a strategic practice where Federal contracting for common goods and services is managed by categories of spending across the Government and supported by teams of experts. The Circular establishes key principles, and strategies and policies, roles and responsibilities, and metrics to measure success.

DATES: Interested parties should submit comments in writing to the address below on or before November 7, 2016.

ADDRESSES: Comments may be submitted by any of the following methods: Online at *http://www.regulations.gov*, Facsimile: 202–395–5105, Mail: Darbi Dillon, Office of Federal Procurement Policy, 1800 G Street NW., Washington, DC 20006.

Instructions: Please submit comments only and cite ''Proposed New OMB Circular A-xxx'' in all correspondence. All comments received will be posted, without change or redaction, to *www.regulations.gov,* so commenters should not include information that they do not wish to be posted (for example because they consider it personal or business confidential).

FOR FURTHER INFORMATION CONTACT: Darbi Dillon, Office of Federal Procurement Policy, 1800 G Street NW., Washington, DC 20006, at 202–395–1008.

SUPPLEMENTARY INFORMATION: Category management is an effective business practice for reducing duplication in contracting, better leveraging the government's buying power, and promoting the use of best in class solutions government-wide. Historically, the vast majority of common agency needs—such as for information technology, professional services, medical supplies, human capital, security and protection, and transportation and logistics—have been acquired in a disaggregated manner resulting in a sub-optimization of the Government's buying power and diminished Federal Government's market profile. Category management provides a pathway for agencies to move away from managing purchases and prices individually across thousands of procurement units and towards managing entire categories of common spend with collaborative decision-making. As a result, institutionalizing category management as the principal way in which all Executive Branch agencies acquire and manage the roughly $270B in annual spending on common goods and services will help taxpayers realize better value from their acquisition investments in every day needs and, equally important, allow contracting offices to give greater attention to their agency's mission critical acquisitions.

For more than a decade, the Office of Management and Budget (OMB) has worked with agencies on government-wide initiatives to promote strategic sourcing—*i.e.,* the collaborative and structured process of critically analyzing an organization's spending and using this information to make business decisions about acquiring commodities and services more effectively and efficiently. These efforts have evolved and matured as OMB has formalized the requirements for strategic sourcing development, governance, and oversight. Since 2010, strategic sourcing efforts have helped agencies save more than $500 million by reducing unit prices, applying effective demand management strategies, and avoiding duplicative administrative costs. While these accomplishments are impactful and will continue, a broader organizational vision is needed to accelerate and successfully manage the many dimensions of interagency collaboration that must occur for the federal government to buy as one.

In December 2014, the Office of Federal Procurement Policy (OFPP) announced category management as the new broader model for organizing how the Federal Government manages the acquisition of commonly acquired goods and services. The memo outlined a series of specific actions to enable the identification of best in class vehicles within each common spending area as well as opportunities to change inefficient consumption patterns. The Category Management Leadership Council (CMLC), comprised of the largest buying agencies, divided the government's common spending into 10 categories and assisted OMB in appointing recognized market experts to serve as category managers. Noteworthy progress has already been made in breaking down agency silos and acting as the world's largest buyer. For example, in the Information Technology category 45% of spend on workstations has been directed to three identified best in class solutions with a goal to reduce the number of contracts for workstations by 20% by the end of fiscal year 2016. Furthermore, government-wide buying events for laptops and desktops resulted in more than 15% savings on average. In addition, consistent with the direction in the Federal Information Technology Acquisition Reform Act, two new government-wide software agreements were established to increase agency use of enterprise license agreements and help agencies move away from the tens of thousands of agreements that have been traditionally negotiated to meet these needs.

This proposed OMB Circular brings together and builds on these efforts and expands upon their concepts of economy and efficiency by establishing category management as the principal way in which the government acquires and manages its common requirements. The circular addresses (1) key principles, (2) strategies and policies, (3) governance structures, and (4) metrics to measure success.

Of particular note, the proposed Circular would:

Establish a government-wide approach to acquiring common goods and services. The proposed Circular would be applicable to all Executive Agencies with Chief Financial Officer (CFO) Act agencies and those represented on the CMLC having additional responsibilities. Recognizing the unique characteristics and requirements of each agency, all Executive Branch Agencies would be required to promote, to the fullest extent possible, maximum adoption of the category management principles, strategies and requirements.

Emphasize the potential to achieve greater economy and efficiency across the Federal Government by implementing the category management key principles. The proposed Circular focuses on collaboration and coordinated management of the common goods and services in the

development of requirements and use of best in class vehicles and practices, reduction of duplicate contract vehicles, improved mission value and total cost of ownership, and strengthened demand management practices, while advancing Federal policy objectives, such as inclusion of small business, competition, and strengthening sustainability, and improving supplier relationships.

Define the strategies and policies agencies would follow to execute category management. The proposed Circular establishes the practice of using existing contracting sourcing solutions prior to executing new contracts, with a priority given to mandatory sources as defined in the Federal Acquisition Regulation, and then category management best in class contract sourcing solutions, distinguishing between 'best in class preferred' and 'best in class mandatory' contract sourcing solutions. The proposal institutes policies to seek and share information and to monitor and measure progress of category management using defined core metrics.

Outline the governance, and roles and responsibilities for all of the key players and stakeholders. The proposed Circular institutionalizes the CMLC, chaired by the OFPP Administrator, as the governing body, and further defines roles and responsibilities for the General Services Administration, the government-wide and agency-level category managers, the lead agencies for each category (Centers of Excellence), the Chief Financial Officer Act Agencies, and other stakeholders critical to the success of category management.

Stress the importance of data analytics and information sharing—outlining the criticality of the Acquisition Gateway as a key enabler in this process. The proposed Circular designates the Acquisition Gateway as the central repository for data and information necessary to support the execution of category management.

Identify the core metrics by which category management success will be measured with an emphasis on Spend under Management. The proposed Circular establishes core metrics against which the government's category management success will be measured: Increasing savings, reducing duplication, increasing spend under management, achieving small business goals, and other relevant measures that may be identified in the future. These metrics will help to ensure that Government's continued commitment to maximizing opportunities for small business contractors and strengthened sustainability and accessibility.

Anne E. Rung,

Administrator for Federal Procurement Policy.

Circular No. A–XXX

To the Heads of Executive Departments and Establishments

Subject: Implementing Category Management for Common Goods and Services

1. *Purpose.* This Circular establishes Category Management (CM) as the principal way in which all Executive Branch agencies must acquire and manage common goods and services [1] spend to drive greater economy and efficiency. Agencies must use the CM principles and practices articulated in this Circular to reduce duplication, better leverage the government's buying power, and promote the use of effective, best in class solutions. Government-wide. Agencies designated as Centers of Excellence (CoE) [2] and individuals having supporting roles in the implementation of CM must manage their responsibilities in accordance with this Circular.

2. *Authority.* This Circular is issued pursuant to 31 U.S.C. 1111, the OFPP Act, 41 U.S.C. 1121 et seq.; the Clinger-Cohen Act, 40 U.S.C. 11101, et seq.; the Federal Information Technology Acquisition Reform Act (Title VIII, Subtitle D of the National Defense Authorization Act for FY 2015, Pub. L. 113–291, §§ 833, 836); the National Defense Authorization Act for FY 2009 (Pub. L. 110–417, § 865(b)(2)), and Government Performance and Results Modernization Act of 2010 (Pub. L. 111–352).

3. *Applicability.* This policy is applicable to all Executive Agencies.[3] All Executive Agencies must have a CM program in place that promotes maximum adoption of the key principles, strategies and requirements of CM described below. Chief Financial Officer (CFO) Act agencies [4] and those represented on the Category Management Leadership Council (CMLC) have additional responsibilities, as enumerated in sections 9–12 of this Circular.

4. *Rescission.* This Circular rescinds and replaces Office of Management and Budget (OMB) Memorandum M–13–02, *Improving Acquisition through Strategic Sourcing,* dated December 5, 2012; and OMB Memorandum, *Implementing Strategic Sourcing,* dated May 20, 2005.[5]

5. *Background.* The Office of Federal Procurement Policy (OFPP) is responsible for promoting economy, efficiency, and effectiveness in the Federal acquisition process,[6] and regularly implements policies and initiatives to better leverage Government's buying power to ensure taxpayer dollars are spent efficiently and effectively. For example, in 2005, OMB formally launched strategic sourcing—an acquisition approach focused on aggregating demand—and expanded it in 2012, as a Government-wide initiative focused on reducing unit pricing and total life cycle management costs for common needs. On 29 September 2011, OFPP issued OMB Memo, *Development, Review and Approval of Business Cases for Certain Interagency and Agency-Specific Acquisitions,* directing Agencies to develop business cases for certain types of awards to reduce contract duplication. In December 2014, OFPP released ''Transforming the Marketplace: Simplifying Federal Procurement to Improve Performance, Drive Innovation, and Increase Savings,'' [7] which cites a critical need for the Federal Government to fundamentally shift away from managing purchases and evaluating prices individually across thousands of procurement units to more directly managing entire categories of common spend in order to deliver better value—a strategy known as Category Management.

This Circular brings together these earlier policies and expands upon their concepts of economy and efficiency to establish the key principles, strategies, policies, processes, governance structure, and roles and responsibilities to implement CM fully as the principal

[1] Common goods and services refer to those items and services that all or most federal agencies procure and are not unique to the mission of an individual agency. These goods and services are interchangeable between agencies and are generally available commercially.

[2] The CoE is the lead agency or organization for each category or sub-category, which, due to its subject matter expertise, experience, and other category unique qualifications, retains the Government-wide CMX for level 1 categories, or level 2 and lower subcategory leads.

[3] Executive agency is defined in 41 U.S.C. 133.

[4] Agencies listed in *31 U.S.C. 901(b)(1) and (b)(2).*

[5] OMB Memo M–13–02, *Improving Acquisition through Strategic Sourcing,* December 5, 2012, *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-02_0.pdf* and OMB Memorandum, *Implementing Strategic Sourcing,* dated May 20, 2005, *https://www.whitehouse.gov/sites/default/files/omb/assets/omb/procurement/comp_src/implementing_strategic_sourcing.pdf; established and evolved the framework and governance for Strategic Sourcing.*

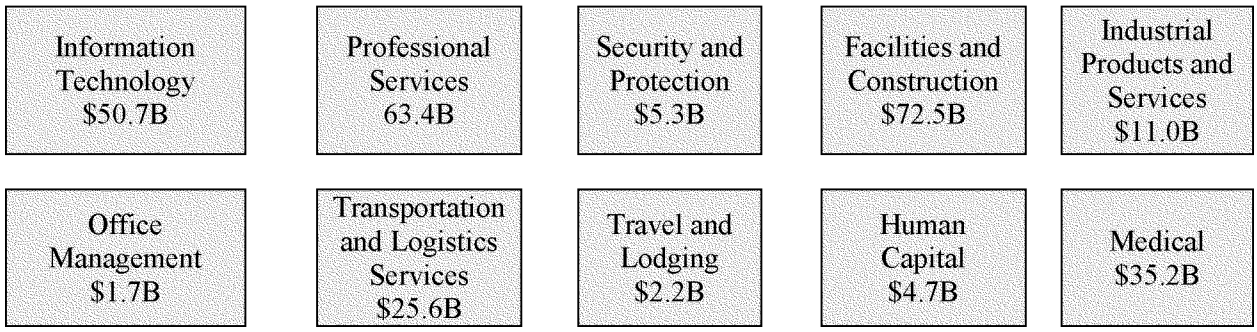
[6] The OFPP Act, *41 U.S.C. 1101(b)(2).*

[7] OFPP Memo, ''*Transforming the Marketplace: Simplifying Federal Procurement to Improve Performance, Drive Innovation, and Increase Savings,*'' December 4, 2014.

way in which the government acquires and manages its common requirements.

6. *Common Categories of Goods and Services.* Based on fiscal year 2015 data from the Federal Procurement Data System, agencies spent over $270 billion—over half of all federal contract spending—on common requirements like information technology (IT) hardware, office supplies, and other basic needs. As further detailed in Attachment 1, the ten core (Level 1) categories are shown below. The acquisition and management of requirements in these ten CM categories are subject to this Circular. This Circular does not address unique, agency/mission-specific requirements determined by the appropriate agency leadership to fall outside the scope of this directive. OMB category-specific policies (CM policies) will include instructions for making these determinations, as category strategies are developed (see section 8(a) below). The CMLC will approve significant changes to the scope, leadership, or definition of the core categories (to include adding, deleting, or restructuring categories) and update the categories as needed. The most current list is available on the Acquisition Gateway.[8]

Government-wide Category Structure
Total FY15 Common Spend - $272B



7. *Key Principles.* CM applies the following key principles to acquire and manage an organization's common requirements in a more collaborative and coordinated way:

a. Development of requirements that address the majority of common end-user needs through the use of data analytics, application of best in class practices, and understanding of both industry and end-user customer need;

b. reduction in number of duplicate contract vehicles for the same, or similar, requirements;

c. improvement of mission value and total cost of ownership through activities like better requirements definition, demand aggregation to reduce unit pricing where appropriate, improved asset management, and greater visibility of pricing, usage, and performance data;

d. strengthened demand management practices to reduce inefficient buying;

e. advancement of statutory, regulatory, and Federal policy objectives, such as increasing the use of small business, competition, strengthening sustainability and accessibility requirements, maximizing the use of procurement preference programs, and supporting other policies required by statute and the Federal Acquisition Regulation (FAR); and

f. improved supplier relationship management.

8. *Strategies and Policies.* Each approved level 1 core category of common goods and services will be led by an expert government-wide Category Manager (CMX) (see section 9 below) who will be responsible for developing strategies to drive Government-wide economy and efficiency in that area. Examples of strategies include, but are not limited to, strategic sourcing, demand management, vendor management and total cost management. The strategy, or combination of strategies, selected by the CMX will vary depending on the type of good or service, the market trends in that category, the Government's current and future demand, and the maturity level of the specific category. The CMLC must approve all category strategies. In addition, the CMX will continually review and refine strategies, as necessary, informed by experience and feedback from government customers, contractors, industry experts and other interested stakeholders.

a. *Best in class solutions.* CMXs shall use the strategic planning process to identify best in class (BIC) sourcing solutions, which may involve contract solutions, demand management strategies or both.

(1) *BIC contract sourcing solution.*

(a) A BIC contract sourcing solution is one that:

(i) Has been developed by cross-functional teams using rigorous requirements definition and planning processes;

(ii) enables customers to take advantage of effective pricing strategies;

(iii) follows category management principles (outlined in section 7), including data driven demand management practices; and

(iv) has had its performance independently validated.

(b) To help the workforce understand the intended use of the contract sourcing solution, the CMX shall assign each one of the following two designations:

(i) BIC preferred contract sourcing solution—This designation is designed to encourage, but not compel, agency use of an identified contract solution. The CMX must assign this designation to a BIC solution except where OMB has determined, after considering the recommendations of the CMX and CMLC, that mandatory use of the solution is more appropriate and in the best interest of the government.

The CMX may require agencies to provide information and analysis, such as comparisons of pricing, terms and condition, or vendor performance, to explain when they do not use a BIC

[8] The current Government-wide Category Structure is accessible via the following link: *https://hallways.cap.gsa.gov/faq, ''Where can I learn more about the government's plan to adopt category management?''*

preferred solution. This information can help to ensure active agency consideration of the preferred solution. The CMX must post instructions for the submission of any requested information or analysis on the Acquisition Gateway. The CMX should use the input received from agencies to inform future data analytics and strategic planning, with the goal of improving the solution, where appropriate, to be more responsive to customer needs, and to determine whether the solution may be suitable to serve as a mandatory solution.

(ii) BIC mandatory contract sourcing solution—This designation is designed to support a Government-wide migration to a solution that is mature and market-proven, such as a previously designated BIC preferred sourcing solution with a demonstrated record of success. This designation must be approved by OMB. In addition, OMB will issue appropriate management policy that explains the agency migration process to the mandatory solution and provides an exception process for agencies to justify deviations from the mandatory policy.

(c) To reduce contract duplication and take advantage of existing BIC contract sourcing solutions, agencies must take the following steps:

(i) After first considering required sources of supplies and services, which are set forth in FAR 8.002 and FAR 8.003, and determining such sources do not satisfy their requirements, agencies must review information on the Acquisition Gateway to determine if there are BIC preferred or BIC mandatory contract sourcing solutions to address their requirements.

(ii) If the requirement may be met by a mandatory BIC contract sourcing solution, agencies must review the applicable OMB management policy and follow the migration process or, if necessary, exception process to justify deviations from the policy.

(iii) If the requirement may be met by a preferred BIC contract sourcing solution, the agency must determine if any information or analysis is required where the agency does not plan to use the preferred solution and follow the instructions provided by the CMX on the Gateway for submitting the analysis.

(iv) If there are no BIC solutions identified on the Gateway, and the agency is seeking to establish a Government-wide, multi-agency or agency-wide vehicles, the agency must follow any policy OMB has issued to address the establishment of business cases.

(d) To support the use of BIC contract sourcing solutions, and to facilitate awareness by the acquisition workforce, the GSA Government-wide Program Management Office (PMO) will post information on BIC contract sourcing solutions on the Acquisition Gateway. In addition, the PMO will ensure, to the maximum extent practicable, that information on BIC sourcing solutions is accessible in a consistent and clear manner with a common look and feel that will facilitate easy understanding and application by the acquisition workforce. The PMO will work with the CMLC, OMB, CMXs and other stakeholders to provide templates, as necessary, to support the submission of agency information required in connection with a BIC preferred or mandatory contract sourcing solution.

(2) *BIC demand management strategy.* The CMX must also use the strategic planning process to identify BIC demand management strategies. A BIC demand management strategy is one that standardizes requirements, specifications, or configurations, or eliminates inefficient purchasing and management behaviors using category management principles. The CMX must work with the CMLC and OMB in developing appropriate instructions to support agency adoption of BIC demand management strategies and with the GSA PMO regarding posting of such instructions on the Acquisition Gateway.

(3) *Other actions.* In addition to leveraging existing BIC solutions, agencies must take the following steps to help reduce duplication and promote greater economy, efficiency and effectiveness.

(a) Seek data and information—Contracting officers, program managers, and other acquisition officials must routinely use the Acquisition Gateway and other designated sources to seek data such as prices paid, terms and conditions, best practices, sustainability requirements, past performance, competition rates, small business goals, and other information that will help them conduct thorough analyses and negotiate the best deal for the taxpayer (see section 10 below);

(b) Share data and information—Program managers, contracting professionals, requiring officials, and contracting officer representatives must have access to relevant information and data to plan for and manage solutions and needs. Consistent with applicable law, agencies shall not enter into any contractual agreement that restricts the Federal Government's ability to share, within the Government, relevant contract costs and prices, terms and conditions, and other information needed to conduct adequate market research. Agencies should use best practices in crafting appropriate contract language to ensure non-proprietary pricing and terms and conditions are made available to other Government agencies in order to ensure implementation of category management principles in leveraging the Government's buying power.

(c) Monitor and Measure progress—CMXs, agencies, and OMB must track implementation and long-term execution success through the assessment of metrics, including the approved Category Management Cross-Agency Priority Goals of savings, reduced duplication, Spend Under Management (SUM), and small business goals, as well as other relevant category measures, like green procurement goals and/or impacts to the small business industrial base (see section 11).

9. *Governance, Roles and Responsibilities.*

a. *The Category Management Leadership Council (CMLC)*—The Administrator for Federal Procurement Policy shall establish and chair a Category Management Leadership Council (CMLC) to serve as the governing body for category management activities conducted in connection with this Circular. The Council shall be comprised of interdisciplinary representatives from the largest buying agencies, including the Departments of Defense, Energy, Health and Human Services, Homeland Security, Veterans Affairs, the General Services Administration (GSA), the National Aeronautics and Space Administration, as well as the Small Business Administration, and other agencies designated by the Administrator. The government-wide CMXs and a representative from the Unified Shared Services Management Office in GSA shall participate as non-voting members along with other appropriate individuals identified by the Administrator. The CMLC shall be responsible for core implementation and execution functions, including:

(1) Approval of Government-wide strategies for core categories and certain subcategories, as appropriate;

(2) approval of over-arching Best in Class criteria and procedures, and any subsequent changes;

(3) provide advice to OMB on recommendations by CMX to designate BIC contract sourcing solution as mandatory and on policy for agency migrations and exceptions to use of such solutions;

(4) assessment of the performance of Government-wide strategies and solutions—to include small business

participation—(not less than annually); and

(5) approval of any changes to the Government-wide category structure and governance.

b. *The Office of Federal Procurement Policy (OFPP)*—The OFPP in the Office of Management and Budget is responsible for providing overall direction of Government-wide procurement policy and for promoting economy, efficiency, and effectiveness in all Federal procurement.[9] In this role, OFPP will:

(1) Set the CM strategic policy direction;

(2) issue CM policies, guidance, instructions and directives to Federal agencies,[10] in consultation with CFO Act agencies and in partnership with other relevant oversight offices (for example, IT acquisition policies co-signed by the United States Chief Information Officer);

(3) appoint CMLC members and chair the CMLC;

(4) nominate lead agencies for each category to be the Government-wide Category Center of Excellence (CoE), in consultation with the CMLC (reference CoE roles and responsibilities in this section);

(5) review the CoE recommendations for CMXs and upon CMLC approval, formally designate the Government-wide CMXs;

(6) develop reporting requirements to assess agencies' progress toward increasing their Spend Under Management (see section 11 below);

(7) determine and measure supporting Cross-Agency Priority Goals or other Governmentwide goals and metrics; [11] and

(8) otherwise shape and monitor the government's efforts to implement CM effectively.

c. *The General Services Administration (GSA)*—In addition to GSA's general leadership role in the acquisition and management of goods and services across the government, the agency also serves as the Government-wide program management office (PMO) for category management. The GSA PMO for category management provides direct support to the CMXs, to include:

(1) Development and management of the tools and resources to support CM to include the Acquisition Gateway (see section 10 below);

(2) creation, in consultation with OMB, and maintenance of Category Management instructions and standard procedures;

(3) maintain the category structure and taxonomy;

(4) analysis of Government-wide spending data and other core support for all Government-wide common spend categories;

(5) sharing training and educational materials regarding category management;

(6) collaboration with Federal agencies, vendors, and other stakeholders to facilitate feedback on customer satisfaction on Government-wide common category solutions and generate ideas for continuous improvement; and

(7) coordination for the delegations of procurement authority for Government-wide category sourcing

The GSA voting member on the CMLC represents the interests of GSA as an organization, and is responsible for communicating and coordinating all relevant CM information to the GSA stakeholders.

d. *Center of Excellence (CoE)*—The CoE is the lead agency or organization for each category or sub-category, which, due to its subject matter expertise, experience, and other category unique qualifications, retains the Government-wide CMX for level 1 categories, or level 2 and lower category leads. The OFPP, in consultation with the CMLC, will nominate agencies to serve as the CoE. The CoE must:

(1) In consultation with the CMLC and OFPP, nominate a category subject matter expert to serve as the Government-wide CMX;

(2) when appropriately delegated authority, serve as the executive agent for sourcing requirements approved in the category strategic plan; and

(3) manage all aspects of the category strategic plan, including conducting all reviews, and obtaining all approvals required by law, regulation, and policy prior to awarding any Government-wide contract sourcing solutions.

e. *Government-wide Category Managers (CMX)*—The Category CoE must nominate the Government-wide CMX for that category, in consultation with the CMLC and OFPP. CMXs serve as the Government-wide leaders that lead interagency teams of subject matter experts, analyze data, work with industry, develop and promote strategies, and drive the adoption of CM principles and practices throughout the Government. CMXs must assess customer and stakeholder satisfaction, and small business participation on a continuous basis to ensure efficacy of the strategies and solutions. Small business participation will include strategies to meet or exceed small business goals, including consideration of small business set-asides, regionalization, or easier access to federal contracts, on-ramp or off-ramp opportunities and corrective action if participation falls below expectations. The Government-wide CMXs will review all agency requests for exception to OMB CM policy and forward the requests, for information, to the Administrator for Federal Procurement Policy. The GSA PMO will maintain the current list of CMXs on the Acquisition Gateway.[12]

f. *CFO Act Agencies*—The Agency's CAO or SPE is responsible for establishing efficient processes and policies that will ensure this Circular, and the principles of CM, are applied throughout their agency, while ensuring agency mission and small business goals are met. In order to drive implementation and ensure Government-wide CM strategies and solutions meet agency needs and are informed, the CAO or SPE shall:

(1) *Designate a Category Management Accountable Official (CMAO)*—The agency Chief Acquisition Officer or Senior Procurement Executive are most likely in the best position to assume the CMAO role, but may delegate operational duties as needed. Among other duties, the CMAO is responsible for:

(a) Establishing processes and policies that will ensure this Circular and the principles of CM are applied throughout their agency;

(b) submitting to OMB the agency's SUM analysis (see section 11) in accordance with section 13 below; and

(c) coordinating with OMB, the relevant Government-wide and agency-level CMX's, and other interested parties on category management issues.

(2) *Designate Agency-level Category Managers (CMX)*—To better align the development and implementation of CM strategies, agencies must designate agency-level CMXs for, at a minimum, those Government-wide common categories that represent key areas of spend for the agency, or when requested by OMB or the Government-wide CMX. The agency CMXs will work closely with the Government-wide CMXs to develop and implement category-specific strategies, such as gathering agency sales and pricing data, and developing teams of experts. The agency-level CMX and will most likely be a member of the Government-wide

[9] OFPP Act, 41 U.S.C. 1101.

[10] Policies and guidance will be posted at *www.whitehouse.gov/omb/procurement.* Instructions and directives will be posted on the Acquisition Gateway, *https://hallways.cap.gsa.gov.*

[11] Public Law 111–352, 1(a), Jan. 4, 2011, 124 Stat. 3866, GPRA Modernization Act of 2010;

[12] The current list of CMX is accessible via the following link: *https://hallways.cap.gsa.gov/faq, ''Where can I learn more about the government's plan to adopt category management?''*

category team, led by the Government-wide CMX.

g. *Supporting Roles and Responsibilities*—The CM infrastructure depends on the work of interagency category teams, category leads, and other key personnel and groups. Attachment 2 contains a depiction of the Federal Government's CM governance structure, including supporting roles.

h. *Category Teams.* Category Teams are formed by the Category Manager and are led by either the Category Manager for Level 1 core categories, or a Category Lead for Level 2 or lower core subcategories. These teams are the primary collaborative bodies where the daily category management activities occur. The teams include participants from multiple Federal agencies, generally subject matter experts that understand the Government's requirements as well as the industry and market dynamics surrounding a category.

i. *Category Leads.* Category Leads are responsible for the development and execution of category strategies for a single, specific Level 2 category. The Level 1 CoE nominates the category leads and the CMX approves their designation. Category leads build and lead cross-functional Level 2 Government category teams. In consultation with the category manager, establish the strategic direction, lead efforts to gather, aggregate and analyze market, industry, supply chain, demand management, user profiles and other information to improve category performance.

j. *Other team participants.* The success of CM depends on getting the right people to work together toward a common solution. Agencies are expected to support CMXs by providing team participants, either directly, through the GSA PMO, or at OMB's request. Team participants will be determined by such considerations as the magnitude of agency spend or access to subject matter expertise.

Many agencies have CM and related management structures already in place, and they are encouraged to leverage these in identifying their CMAOs, agency-level CMXs, and team members, as needed.

10. *Increasing the Visibility of Data and Information—Building an Acquisition Gateway.* Core tenets of CM are data analytics and information sharing. Visibility into prices paid, best practices in building or managing solutions/policies, and other key information are needed to negotiate in the best interest of the taxpayer. The central repository of this information is the Acquisition Gateway, which GSA manages in accordance with the Acquisition Gateway Community governance structure. GSA will develop and maintain the IT infrastructure to ingest, manage, and share prices paid and other data and information (as appropriate—refer to Section 8.d above) to avoid duplicate or manual data entry. CMXs, working with the CMLC and OMB, must prioritize areas for which Government-wide, agency-wide, and other high-performing, BIC vehicles, including prices paid, will be made available via the Acquisition Gateway.

The Acquisition Gateway will support the Federal acquisition workforce by housing the best practices, contracts, community and other tools to aid the workforce in the implementation of the category strategies. To ensure the Acquisition Gateway continues to meet the demands of the acquisition workforce in response to the implementation of CM, GSA will develop a process for soliciting regular feedback, input, and suggestions from users of the Gateway in order to maintain the relevance of the tool.

11. *Measuring CM Success.* The Government's CM success must be measured through the assessment of metrics, including increasing savings, reducing duplication, increasing spend under management, achieving Government-wide small business goals, and other relevant measures (see section 7 above). OMB will report these metrics publicly as part of the Category Management Cross-Agency Priority Goal.[13] See section 13 for reporting requirements.

a. Spend Under Management (SUM): SUM is an overall measure of the Federal Government's CM maturity, designed to highlight successes at both the Government-wide and agency-wide level, as well as identify areas for development that will bring more agency spend under management. *SUM is the principal measure by which OMB will measure the adoption of CM.* The SUM model provides an assessment of CM maturity for each of the ten Government-wide categories and the CFO Act Federal Agencies using a three-tiered maturity model that evaluates CM against five attributes: Leadership, strategy, data, tools, and metrics (reference attachment 3). As the government gains experience, the model will be updated and made available on the Acquisition Gateway, as needed.

OMB will assess the 24 Agencies subject to the CFO Act on their SUM progress not less than annually in accordance with the requirements outlined in OMB Circular A–11 and associated budget guidance. Agencies' SUM maturity assessments will be used to engage agency leaders in regularly reviewing progress toward their goals. Additionally, CMXs will use this information to develop strategies to bring more agency dollars within their category under management.

b. *Small Business:* Increasing the participation of small businesses in the government's CM initiative is a top priority. Proposed solutions must baseline small business use under current strategies and set goals to meet or exceed that baseline participation under any new solutions. The CMLC will review each proposed strategy to ensure competitive small businesses have a high degree of participation to the maximum extent practicable, and will monitor actual small business participation by category. In developing strategies, CMXs will comply with the small business reservation requirement for purchases between the micro-purchase threshold and the simplified acquisition threshold, increase access to Federal procurement opportunities for small businesses, and use all authorities available to maximize small business participation. CMXs will take corrective action if participation falls below expectations.

c. *Savings:* Savings in Category Management refer to reductions in cost that allow the Federal Government to make better use of resources. Savings generally can be derived from three principles: (1) Reduced unit prices based on increased volume or other strategy; (2) changes in behavior resulting from improved commodity management and access to data/information; and (3) administrative savings, *e.g.,* based on reducing the number of duplicative vehicles. OMB will review agency savings figures in the context of instructions given by the CMLC to ensure consistent savings principles are applied in these estimates.

12. *Workforce Category Management Training.* Successful implementation of CM is dependent upon the acquisition workforce, including program managers, contracting professionals, requirements owners, contracting officer's representatives and other Federal officials involved in meeting mission needs. These critical members of the Federal workforce need the right training, tools, and information to enable effective CM execution as required in this Circular. Agencies should consider including CM competencies in CM stakeholders' Individual Development Plan, as

[13] Public Law 111–352, 1(a), Jan. 4, 2011, 124 Stat. 3866, *GPRA Modernization Act of 2010;*

appropriate. To support the workforce, the Federal Acquisition Institute and Defense Acquisition University, in collaboration with GSA's CM PMO, will develop CM competencies for various levels and functional areas, as directed by OFPP in coordination with the Secretary of Defense.

13. *Reports to OMB.* Each of the Government-wide CMXs must submit quarterly reports to be shared via the Acquisition Gateway. These reports will include, at a minimum, savings, reduced duplication, SUM (which might not apply quarterly), small business participation, and any other category-specific metrics that OMB requires. OFPP may adjust this cadence and these requirements as needed.

Agencies must provide contact information for the CMAO and the agency CMXs to the GSA PMO at (insert generic email box) and provide updates as personnel change. While Agencies that are not subject to the CFO Act are not required to have identified CMAOs, they are encouraged to identify accountable officials who can increase the use of existing contracts, contribute subject matter experts, and drive the adoption of CM principles in their agencies.

14. *Effective date and implementation.* October 1, 2016.

15. *Inquiries.* OFPP staff TBD.

Attachments

1. Government-wide Category Structure
2. Category Management Governance Structure
3. Spend Under Management (SUM)

BILLING CODE P

Attachment #1

Government-Wide Category Structure

(total FY 2015 spend $272B)

*General Government Categories

1. IT – $50.7B
CM: OMB

1.1 IT Software
1.2 IT Hardware
1.3 IT Consulting
1.4 IT Security
1.5 IT Outsourcing
1.6 Telecommunications

2. Professional Services – $63.4B
CM: GSA

2.1 Business Administration Services
2.2 Legal Services
2.3 Management Advisory Services (Excludes R&D 17.0)
2.4 Marketing and Distribution
2.5 Public Relations and Professional Communications Services
2.6 Real Estate Services
2.7 Trade Policy and Services
2.8 Technical and Engineering Services (non-IT) (Excludes 1.0)
2.9 Financial Services
2.10 Social Services

3. Security and Protection – $5.3B
CM:

3.1 Security Animals & Related Services
3.2 Security Systems
3.3 Security Services

4. Facilities & Construction - $72.5B
CM: GSA

4.1 Construction Related Materials
4.2 Construction Related Services
4.3 Facility Related Materials
4.4 Facility Related Services
4.5 Facilities Purchase & Lease

5. Industrial Products and Services - $11.0B
CM: GSA

5.1 Machinery & Components
5.2 Fire/Rescue/Safety/Environmental Protection Equipment
5.3 Hardware & Tools
5.4 Test & Measurement Supplies
5.5 Industrial Products Install/Maintenance/Repair/Rebuild
5.6 Basic Materials
5.7 Oils, Lubricants, and Waxes

6. Office Management - $1.7B
CM: GSA

6.1 Office Management Products
6.2 Office Management Services
6.3 Furniture

7. Transportation and Logistics Services – $25.6B
CM: DoD

7.1 Package Delivery & Packaging
7.2 Logistics Support Services
7.3 Logistics Civil Augmentation Program
7.4 Transportation of Things
7.5 Motor Vehicles (non-combat)
7.6 Transportation Equipment
7.7 Fuels

8. Travel and Lodging - $2.2B
CM: GSA

8.1 Passenger Travel
8.2 Lodging
8.3 Travel Agent & Misc. Services

9. Human Capital - $4.7B
CM: OPM

9.1 Alternative Educational Systems
9.2 Educational Facilities
9.3 Educational Institutions
9.4 Specialized Educational Services
9.5 Vocational Training
9.6 Human Resources Services

10. Medical - $35.2B
CM: DoD/VA

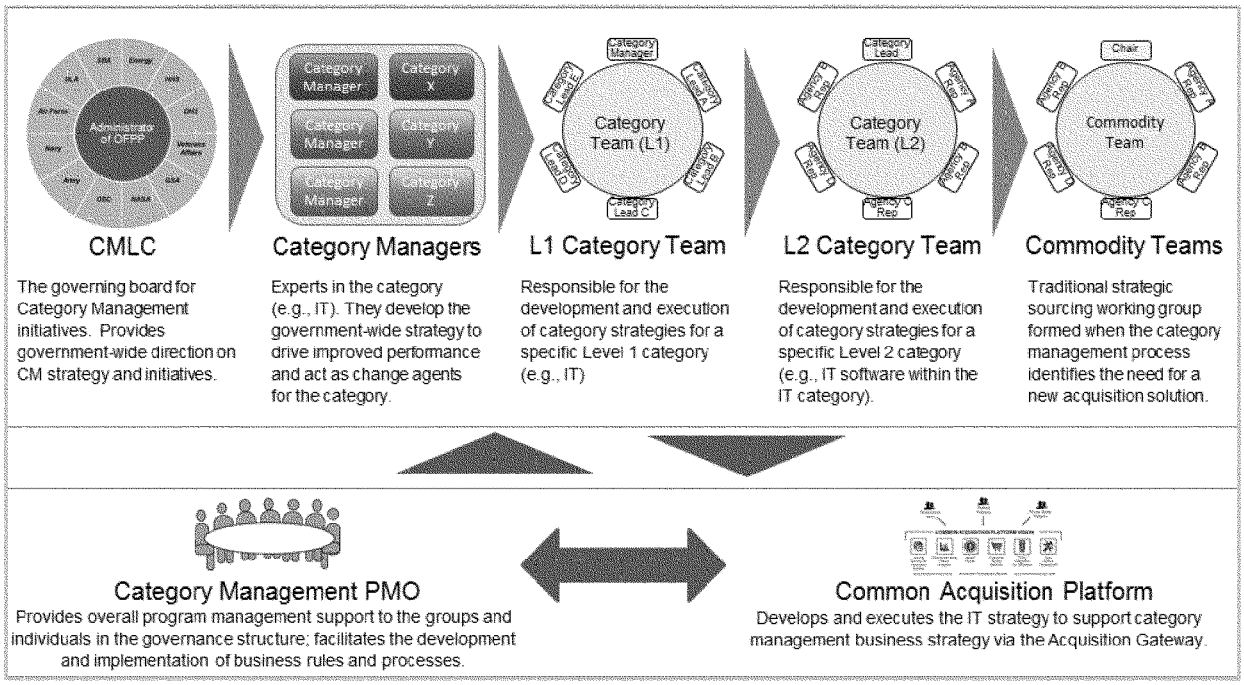
10.1 Drugs and Pharmaceutical Products
10.2 Medical Equipment & Accessories & Supplies
10.3 Healthcare Services

*This Category Structure is approved by the Category Management Leadership Council (CMLC) and may be modified with CMLC approval.

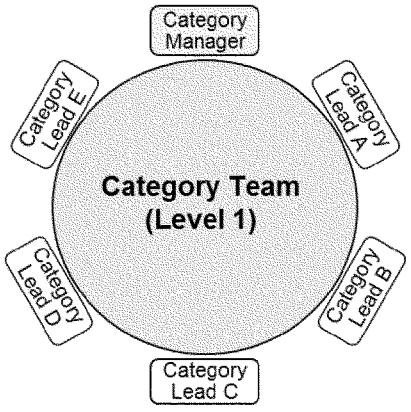
As of 20 January 2016

SPEND UNDER MANAGEMENT
Tiered Maturity Model

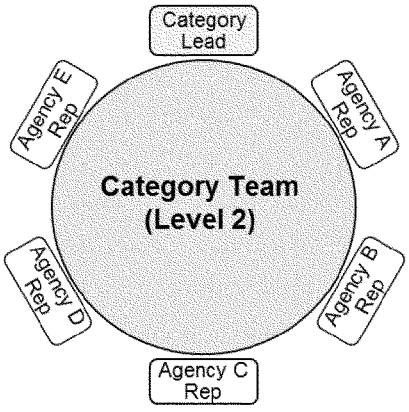
Overarching Category Management Governance Structure



Level 1 and Level 2 Category Team Detail



Level 1 (e.g., IT) Category Team includes the Category Manager and all approved Category Leads



Level 2 (e.g., IT Software) Category Team includes the Category Lead and agency representatives

Attributes	Tier 1 Agency-wide Strategies	Tier 2 Cross-Agency Collaboration	Tier 3 Adherence to Government-wide Strategies
Background: *Category Management is a management concept the Federal government is applying to buy smarter and more like a single enterprise. It involves identifying commonly purchased areas of spend, collectively developing heightened levels of expertise, leveraging shared best practices, and providing acquisition, supply and demand management solutions. The overarching goals are to increase efficiency and effectiveness, increase savings, meet small business goals, and reduce contract duplication.* *One key metric in evaluating success of Category Management efforts is "Spend Under Management." By bringing common "Spend Under Management," which includes collecting and sharing prices paid and other key performance information, agencies will get the same competitive price and quality of performance when they are buying similar commodities and services under similar circumstances.* ***Definition:*** *OMB defines "Spend Under Management" according to a tiered maturity model. The tiered maturity model includes three tiers and each tier includes the same five attributes: leadership, strategy, data, tools, and metrics. This approach will assign credit for the tremendous work done by agencies individually and collectively in the past, while tracking progress toward more government-wide spend under management solutions. Tier 1 and Tier 2 are geared toward assessing SUM at the agency level. Tier 3 is meant to assess the maturity of the government-wide category.*			
Leadership: Do individuals and organizations have clear category management responsibilities?	• Designated Agency Category Lead with specific category expertise and day-to-day management and oversight responsibility (i.e. Program Manager for IT software contract; this is not agency CIO). • Clear understanding of Category Manager (Government-wide and Agency-wide), and Category Lead roles.	• Designated Part-Time Government-wide Category Manager (approved by OMB); and/or • Designated Agency Category Lead • Active participation on Interagency Category teams or Commodity Teams.	• Designated Full-Time Government-wide Category Manager (appointed by OMB) • Government-wide Category Management Council Staffed by Senior Level Agency Staff (endorsed by Category Manager) • Active Category Teams • Government-wide PMO support.
Strategy: Are category management practices in place?	• Existing agency-wide solutions are being used, per mandatory use or consideration policies. and/or • Policies are implemented and adopted that drive behavior changes (e.g., adopted uniform refresh cycles for laptops and desktops[14]).	• Meets One of Three Criteria: ✓Government-wide solutions in use, per mandatory use or consideration policies in place; and/or ✓Implements government-wide policies that drive behavior changes; and/or ✓Agency-wide strategic sourcing solutions in place in accordance with legacy CMLC-approved Strategic Sourcing Key Decision Point Process or the OMB Best in Class instructions.	• CMLC approved category management strategy that endorses a limited number of "Best In Class" solutions in accordance with Best in Class instructions provided by OMB.

[14] OMB Memo M-16-02, *Category Management Policy 15-1: Improving the Acquisition and Management of Common Information Technology: Laptops and Desktops, October 16, 2016,* https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-02.pdf.

Attributes	Tier 1 Agency-wide Strategies	Tier 2 Cross-Agency Collaboration	Tier 3 Adherence to Government-wide Strategies
Data: Is analysis conducted and shared?	• Conducted and documented high-level analysis, which includes elements required by the legacy CMLC-approved Strategic Sourcing Key Decision Point Process or the OMB Best in Class instructions for establishing a baseline assessment, including total spend, vendors, market dynamics, small business participation[15]. • When requested by the Category Manager, agency shares relevant contract terms, condition, saving methodologies, and pricing data across government, preferably via the Common Acquisition Gateway[16], within 90 days.	In addition to meeting Tier 1 criteria: • Agency collects data on contract administration performance and benchmarks other internal/external processes, including pricing, agency use, solution performance; and other appropriate elements if solution is demand management policy • Agency collects customer feedback data on vendor performance, offerings, value, and customer support[17].	In addition to meeting Tier 1 and 2 criteria: • Active commodity management analysis: pricing, supply chain analysis, market information, agency use, solution performance, validated savings,[18] demand management strategies, other activities to drive better acquisition • Vendors analysis: prices paid data collected in a way that supports comparative analytics (i.e., normalizes for quantity or delivery term variances); feedback on modification time, terms and condition issues, and customer service • Customer analysis: customer profiles to understand what is being purchased, from whom, when and why; and customer/user feedback on vendor performance, offerings, value, and customer support. • Analysis of outstanding opportunity spend relative to actual spend.
Tools: Are tools in place to share information and reduce duplication?	• Tools (e.g., DHS Connect, DoD eMall, GSAdvantage!) are in place and shared to capture and share information on the category, such as contract vehicles, availability, terms/conditions, pricing, etc.	• Agency meets one of the following: ✓ Worked with Category Manager to populate the Common Acquisition Gateway with relevant information, including: - Best in Class agency solutions; and/or - Government-wide strategic sourcing solutions (FSSI), GWAC, MAS, or MAC that are in place;. and/or	• Acquisition Gateway includes only solutions (acquisition vehicles and/or policies) that are endorsed by Government-wide Category Manager as "Best in Class"

[15] Compliance with Federal Acquisition Regulations on bundling and consolidation. https://www.acquisition.gov/?q=/browse/far/7

[16] The Acquisition Gateway is accessible via the following link: https://hallways.cap.gsa.gov/

[17] Data reported via the Past Performance Information Retrieval System. https://www.ppirs.gov/

[18] As the government implements Category Management, prior to Tier 3 designation, OMB will validate savings and performance of servicing agency..

Attributes	Tier 1 Agency-wide Strategies	Tier 2 Cross-Agency Collaboration	Tier 3 Adherence to Government-wide Strategies
		- Government-wide policies (e.g., demand management) that drive behavior changes. ✓ Agency has developed a plan and milestone schedule, in coordination with the Category Manager, for providing data under items above.	
Metrics: Are metrics defined, tracked, and publicized?	• Metrics are in place, including at a minimum, savings and small business participation; • Agency has a documented methodology for tracking these metrics (internal or at servicing agency).	In Addition to Meeting Tier 1 Criteria: • Agency tracks metrics quarterly on duplication reduction, adoption, savings, and small business participation for "Best in Class" FSSI, GWAC, MAS, or MAC solutions.	In Addition to Meeting Tier 1 and 2 Criteria: • Duplication reduction, adoption, savings, and government-wide small business goals are tracked on a quarterly basis.

[FR Doc. 2016–24054 Filed 10–6–16; 8:45 am]
BILLING CODE C

OFFICE OF MANAGEMENT AND BUDGET

Request for Comments on Proposed OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication Under the Privacy Act''

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of availability and request for comments.

SUMMARY: The Office of Management and Budget (OMB) is requesting comments on proposed Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.'' The proposed Circular is available at *http://www.whitehouse.gov/omb/inforeg_infopoltech.*

DATES: Comments are requested on the proposed Circular no later than October 28, 2016.

ADDRESSES: All comments should be submitted via *http://www.regulations.gov.* Please submit comments only and include your name, company name (if any), and cite ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act'' in all correspondence. All comments received will be posted, without change or redaction, to *www.regulations.gov,* so commenters should not include information they do not wish to be posted (*e.g.,* personal or confidential business information).

FOR FURTHER INFORMATION CONTACT: Jasmeet Seehra, Office of Management and Budget, Office of Information and Regulatory Affairs, at *jseehra@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: This OMB Circular describes agency responsibilities for implementing the review, reporting, and publication requirements of the Privacy Act of 1974 and related OMB policies. This Circular supplements and clarifies existing OMB guidance, including OMB Circular No. A–130, *Managing Information as a Strategic Resource, Privacy Act Implementation: Guidelines and Responsibilities, Implementation of the Privacy Act of 1974: Supplementary Guidance,* and *Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988.* All OMB guidance is available on the OMB Web site at *https://www.whitehouse.gov/omb/inforeg_infopoltech.*

Howard Shelanski,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2016–24239 Filed 10–6–16; 8:45 am]
BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[16–071]

Notice of Centennial Challenges 3D-Printed Habitat Structural Member Challenge

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: This notice is issued in accordance with 51 U.S.C. 20144(c). The 3D-Printed Habitat Challenge (3DP), Structural Member Competition is open and teams that wish to compete may now register. Centennial Challenges is a program of prize competitions to stimulate innovation in technologies of interest and value to NASA and the nation. The 3D-Printed Habitat Challenge Phase 2 Structural Member is a prize competition with a $1,100,000 total prize purse to develop the fundamental technologies necessary to manufacture an off-world habitat using

mission recycled materials and/or local indigenous materials.

DATES: Challenge registration opens October 7, 2016, and will remain open until January 31, 2017.

Other important dates:

March 31, 2017—*Level 1:* Truncated Cone Slump Test and Cylinder ASTM C39 Compression Results due to Judges

May 31, 2017—*Level 2:* Beam Member ASTM C78 Flexure Test Results due to Judges

August 24–27, 2017—*Level 3:* Structural Member Competition

ADDRESSES: The challenge competition will take place at: Caterpillar Edwards Demonstration and Learning Center, 5801 N. Smith Road, Edwards, IL 61528.

FOR FURTHER INFORMATION CONTACT: To register for or get additional information regarding the 3D Printed Habitat Challenge, please visit: *http://bradley.edu/challenge.*

For general information on the NASA Centennial Challenges Program please visit: *http://www.nasa.gov/challenges.* General questions and comments regarding the program should be addressed to Monsi Roman, Centennial Challenges Program, NASA Marshall Space Flight Center Huntsville, AL 35812. Email address: *hq-stmd-centennialchallenges@mail.nasa.gov.*

SUPPLEMENTARY INFORMATION:

Summary

The goal of the 3D-Printed Habitat Challenge is to foster the development of new technologies necessary to additively manufacture a habitat using local indigenous materials with, or without, recyclable materials. The Challenge is broken into three parts as described below.

- *Design Competition*—focused on developing innovative habitat architectural concepts that take advantage of the unique capabilities that 3D-Printing offers (completed in 2015).
- *Structural Member Competition (Phase 2)*—will focus on the core 3D-Printing fabrication technologies and materials properties needed to manufacture structural components from indigenous materials combined with recyclables, or indigenous materials alone; serves as a qualifier for participation in Phase 3.
- *On-Site Habitat Competition (Phase 3)*—(to be announced at a later date) will focus on the 3D-Printing fabrication of a scaled habitat design, using indigenous materials combined with recyclables, or indigenous materials alone, and will have a prize purse of $1.4 million.

I. Prize Amounts

The 3D Printed Habitat Structural Member Competition purse is $1,100,000 (one million one hundred thousand dollars) to be disbursed as follows:

Level 1 Prize

$100,000 total prize money to be awarded to top 10 qualifiers based on scores.

Level 2 Prize

$500,000 total prize money to be awarded to top 10 qualifiers based on scores.

Level 3 Prize

$250,000 to first place
$150,000 to second place
$100,000 to third place

II. Eligibility

To be eligible to win a prize, competitors must:

(1) Register and comply with all requirements in the rules and Team Agreement;

(2) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(3) Not be a Federal entity or Federal employee acting within the scope of their employment.

III. Rules

The complete rules for the 3D-Printed Habitat Challenge can be found at: *http://bradley.edu/challenge.*

Cheryl Parker,

NASA Federal Register Liaison Officer.

[FR Doc. 2016–24299 Filed 10–6–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Fidelity Bond and Insurance Coverage for Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (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 revision 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 December 6, 2016 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Troy Hillier, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314; 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: 3133–0170.

Title: Fidelity Bond and Insurance Coverage for Federal Credit Unions 12 CFR part 713.

Abstract: The Federal Credit Union Act (at 12 U.S.C. 1761(b)(2)) requires that the boards of federal credit unions (FCU) arrange for adequate fidelity coverage for officers and employees having custody of or responsibility for handling funds.

The regulation contains a number of reporting requirements where a credit union seeks to exercise flexibility under the regulations. These requirements enable NCUA to monitor the FCU's financial condition for safety and soundness purposes and helps to assure that FCUs are properly and adequately protected against potential losses due to insider abuse such as fraud and embezzlement.

Type of Review: Extension of a previously approved collection.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Number of Respondents: 7.

Estimated Number of Responses per Respondent: 1.

Estimated Annual Responses: 7.

Estimated Burden Hours per Response: 1.

Estimated Total Annual Burden Hours: 7.

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 execution 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 John H. Brolin, Acting Secretary of the Board, the National Credit Union Administration, on October 3, 2016.

Dated: October 3, 2016.

Troy S. Hillier,

NCUA PRA Clearance Officer.

[FR Doc. 2016–24267 Filed 10–6–16; 8:45 am]

BILLING CODE 7535–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Cancellation of Upcoming Meeting

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Federal Prevailing Rate Advisory Committee is issuing this notice to cancel the October 20, 2016, public meeting scheduled to be held in Room 5A06A, U.S. Office of Personnel Management Building, 1900 E Street NW., Washington, DC. The original **Federal Register** notice announcing this meeting was published Wednesday, November 25, 2015, at 80 FR 73839.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, 202–606–2838, or email *pay-leave-policy@opm.gov*.

U.S. Office of Personnel Management.

Sheldon Friedman,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 2016–24325 Filed 10–6–16; 8:45 am]

BILLING CODE 6325–49–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Supplement to Claim of Person Outside the United States; OMB 3220–0155.

Under the Social Security Amendments of 1983 (Pub. L. 98–21), which amends Section 202(t) of the Social Security Act, effective January 1, 1985, the Tier I or the overall minimum (O/M) portion of an annuity, and Medicare benefits payable under the Railroad Retirement Act to certain beneficiaries living outside the U.S., may be withheld. The benefit withholding provision of Public Law 98–21 applies to divorced spouses, spouses, minor or disabled children, students, and survivors of railroad employees who (1) initially became eligible for Tier I amounts, O/M shares, and Medicare benefits after December 31, 1984; (2) are not U.S. citizens or U.S. nationals; and (3) have resided outside the U.S. for more than six consecutive months starting with the annuity beginning date. The benefit withholding provision does not apply, however to a beneficiary who is exempt under either a treaty obligation of the U.S., in effect on August 1, 1956, or a totalization agreement between the U.S. and the country in which the beneficiary resides, or to an individual who is exempt under other criteria specified in Public Law 98–21.

RRB Form G–45, *Supplement to Claim of Person Outside the United States,* is currently used by the RRB to determine applicability of the withholding provision of Public Law 98–21. Completion of the form is required to obtain or retain a benefit. One response is requested of each respondent. The RRB proposes no changes to Form G–45.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–45	100	10	17

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV*. Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or emailed to *Charles.Mierzwa@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Associate Chief Information Officer for Policy and Compliance.

[FR Doc. 2016–24323 Filed 10–6–16; 8:45 am]

BILLING CODE 7905–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Data Portability

ACTION: Request for information.

SUMMARY: Many modern service providers give people access to their own data in machine readable format to download and use as they see fit. Proponents of increased data portability point to numerous, significant benefits for users, service providers, and the broader public. For users, perhaps the most important benefits are the ability to create backups of their most important data, like photographs, tax returns, and other financial information while reducing the danger of becoming locked-in to a single service provider, especially in a world where service providers may change business models or discontinue products.

Consumers may also benefit from increased competition. If consumers cannot switch easily between platforms, then it may be difficult for would-be services to enter the market, potentially resulting in less innovation or higher prices. Increasing data portability may induce businesses to compete with one another to offer better prices and higher quality services so as to win or retain a customer's business. Service providers, meanwhile, can benefit from offering data portability to increase user trust through the transparency and ease of switching data portability provides, and to help manage the termination of services. Finally, the public benefits when data portability increases competition, provides some sense of accountability, and promotes transparency as to what information a provider is holding.

Others may point to potential private and public downsides. With lower switching costs, businesses might adjust their business models and become more selective in their initial customer acquisition strategy or invest less in their customer relationships, which might leave some sets of customers worse off than before. Some privacy and security advocates also worry that the strength of data portability—easier sharing of information—could encourage more information sharing, including when it might be inadvisable from a privacy perspective or when a criminal successfully breaks into an unsecured service.

The Office of Science and Technology Policy (OSTP) is interested in understanding the benefits and drawbacks of increased data portability as well as potential policy avenues to achieve greater data portability. The views of the American people, including stakeholders such as consumers, academic and industry researchers, and private companies, are important to inform an understanding of these questions.

DATES: Responses must be received by November 23, 2016 to be considered.

ADDRESSES: You may submit responses by any of the following methods (online is preferred):

- *Online:* You may submit via the web form at: *https://www.whitehouse.gov/webform/request-information-regarding-data-portability.*
- *Email: USCTO@ostp.eop.gov.* Include [*Data Portability*] in the subject line of the message.
- *Mail:* Data Portability RFI, c/o Alexander Macgillivray, Eisenhower Executive Office Building (Office 437), 1650 Pennsylvania Ave NW., Washington, DC 20502. If submitting a response by mail, please allow sufficient time for mail processing.

Instructions: Response to this RFI is voluntary. Responses exceeding 5,000 words will not be considered. Respondents need not comment on all topics; however, they should clearly indicate the number of each topic to which they are responding (please see Supplementary Information for list of topics). Brevity is appreciated. Responses to this RFI may be posted without change online. OSTP therefore requests that no business proprietary information or personally identifiable information be submitted in response to this RFI. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

Disclaimer: Responses to this RFI will not be returned. The Office of Science and Technology Policy is under no obligation to acknowledge receipt of the information received, or to provide feedback to respondents with respect to any information submitted under this RFI.

FOR FURTHER INFORMATION CONTACT: Alexander Macgillivray (202) 494–0085.

SUPPLEMENTARY INFORMATION: OSTP is particularly interested in responses related to the following topics: (1) The potential benefits and drawbacks of increased data portability; (2) the industries or types of data that would most benefit or be harmed by increased data portability; (3) the specific steps the Federal Government, private companies, associations, or others might take to encourage or require greater data portability (and the important benefits or drawbacks of each approach); (4) best practices in implementing data portability; and (5) any additional information related to data portability policy making, not requested above, that you believe OSTP should consider with respect to data portability.

Ted Wackler,

Deputy Chief of Staff and Assistant Director.

[FR Doc. 2016–24246 Filed 10–6–16; 8:45 am]

BILLING CODE 3270–F6–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79029; File No. SR–NYSEMKT–2016–83]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Partial Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Partial Amendment No. 2, To Amend Rule 67—Equities Relating to the Tick Size Pilot Program

October 3, 2016.

I. Introduction

On August 25, 2016, NYSE MKT LLC (''Exchange'' or ''NYSE MKT'') 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 (1) change system functionality to implement the Plan to Implement a Tick Size Pilot Program (''Plan'' or ''Pilot'') [3] submitted to the Commission pursuant to Rule 608 of Regulation NMS [4] under the Act, (2) clarify the operation of certain exceptions to the Trade-at Prohibition [5] on Pilot Securities in the Test Group Three, (3) amend the Limit Up/Limit Down (''LULD'' price controls set forth in Exchange Rule 80C—Equities regarding the Regulation NMS Plan to Address Extraordinary Market Volatility (''LULD Plan''),[6] and (4) amend the Exchange's Trading Collars calculation in Exchange Rule 1000-Equities. The proposed rule change was published for comment in the **Federal Register** on September 15, 2016.[7] The Commission received two comment letters on the proposal.[8] On September 27, 2016, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (''Approval Order''). Unless otherwise specified, capitalized terms used in this order are defined as set forth in the Plan.

[4] 17 CFR 242.608.

[5] Exchange Rule 67(e)(4)(A)—Equities defines the ''Trade-at Prohibition'' to mean the prohibition against executions by a Trading Center of a sell order for a Pilot Security at the price of a Protected Bid or the execution of a buy order for a Pilot Security at the price of a Protected Offer during regular trading hours. *See also* Plan Section I(LL) and Plan Section VI(D).

[6] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631).

[7] *See* Securities Exchange Act Release No. 78803 (September 9, 2016), 81 FR 63552.

[8] *See* Letters from Eric Swanson, EVP, General Counsel, Bats Global Markets, Inc., Elizabeth K. King, General Counsel and Corporate Secretary, New York Stock Exchange; and Thomas A. Wittman, EVP, Global Head of Equities, Nasdaq,

Exchange filed Partial Amendment No. 1 to the proposed rule change (''Amendment No. 1''). On September 30, 2016, the Exchange withdrew Amendment No. 1 and filed Partial Amendment No. 2 to the proposed rule change (''Amendment No. 2'').[9]

This order provides notice of Amendment No. 2 and approves the proposal, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Amended Proposal

The Exchange proposes to amend Exchange Rule 67—Equities to (1) change system functionality to implement the Plan; (2) clarify the operation of certain exceptions to the Trade-at Prohibition on Pilot Securities in Test Group Three; (3) amend the LULD price controls set forth in Exchange Rule 80C—Equities; and (4) amend the Exchange's trading collar calculation set forth in Exchange Rule 1000 Equities.

A. Amendments to Exchange Systems Functionality To Implement the Plan

1. Trade-at Intermarket Sweep Orders [10]

The Exchange proposes to accept Trade-at Intermarket Sweep Orders (''TAISO'') in all securities, and that TAISOs must be designated as immediate or cancel (''IOC''), may include a minimum trade size, and do not route. The Exchange would immediately and automatically execute a TAISO against the displayed and non-displayed bid (offer) up to its full size in accordance with and to the extent provided by Exchange Rules 1000—Equities—1004—Equities and will then sweep the Exchange's book as provided in Rule 1000(e)(iii)—Equities. Any portion of the TAISO that is not executed would be immediately and automatically cancelled. The Exchange proposes to accept TAISOs before the Exchange opens and they would be eligible to participate in the opening transaction at its limit price. TAISOs would not be accepted during a trading halt or pause for participation in a reopening transaction. Finally, the Exchange would not allow TAISOs to be entered as e-Quotes, d-Quotes, or g-Quotes.

2. Pilot Securities in Test Groups One, Two, and Three [11]

The Exchange proposes that references in Exchange rules to the minimum price variation (''MPV'') would mean the quoting minimum price variation specified in paragraphs (c), (d), and (e) of Exchange Rule 67.[12] The Exchange proposes that pre-opening indications,[13] would be published in $0.05 pricing increments for Pilot Securities in Test Groups One, Two, and Three.[14] Mid-Point Passive Liquidity (''MPL'') Orders, which are undisplayed limit orders that automatically execute at the mid-point of the protected best bid (''PBB'') and the protected best offer (''PBO''),[15] must be entered with a limit price in a $0.05 pricing increment.[16] Trading collars that are not in the trading MPV for the security would be moved to the nearest price in the trading MPV for the security.[17]

3. Pilot Securities in Test Groups Two and Three [18]

The Exchange proposes that Retail Price Improvement Orders (''RPI'') for Pilot Securities in Test Groups Two and Three must be entered with a limit price and an offset in a $0.005 pricing increment.

4. Pilot Securities in Test Group Three [19]

The Exchange proposes procedures for handling, executing, re-pricing and displaying of certain order types and order type instructions applicable to Pilot Securities in Test Group Three.

a. Change in Priority [20]

The Exchange proposes that an incoming automatically executing order to sell (buy) will trade with displayable bids (offers) and route to protected bids (offers) before trading with an unexecuted Market Order held undisplayed at the same price. After trading or routing, or both, any remaining balance of such an incoming automatically executing order would satisfy any unexecuted Market Orders in time priority before trading with non-displayable interest on parity.

b. ISOs [21]

The Exchange proposes that, on entry, Day ISOs would be eligible for the TAISO exception set forth in proposed Rule 67(e)(4)(C)(ix). In addition, an IOC ISO to buy (sell) would not trade with non-displayed interest to sell (buy) that is the same price as a protected offer (bid) unless the limit price of such IOC ISO is higher (lower) than the price of the protected offer (bid).

c. Non-Displayed Resting Orders [22]

The Exchange proposes restrictions applicable to resting non-displayed interest, *i.e.*, a resting order to buy (sell) that is not displayed at the price at which it is eligible to trade. Resting non-displayed interest on the Exchange could include Non-Display Reserve Orders,[23] Non-Display Reserve e-Quotes,[24] the reserve interest of Minimum Display Reserve Orders and Minimum Display Reserve e-Quotes,[25] and pegging interest that is not displayed.[26] The proposed rule changes are intended to assure that these orders would not price match a protected quotation.

First, the Exchange proposes that resting non-displayed interest to buy (sell) would not trade at the price of a protected offer (bid). Second, a resting non-displayed order to buy (sell) would not trade at the price of a protected bid (offer) unless the incoming order to sell (buy) is a TAISO, Day ISO, or IOC ISO that has a limit price lower (higher) than the price of the non-displayed interest. Finally, the Exchange proposes that resting non-displayed interest will be either routed, cancelled, or re-priced, consistent with the terms of the order.

Inc., dated September 9, 2016 (''Comment Letter No. 1''); and Eric Swanson, EVP, General Counsel, Bats Global Markets, Inc., dated September 12, 2016 (''Comment Letter No. 2'').

[9] In Amendment No. 2, the Exchange proposes to: (1) Specify that in all Pilot Securities, d-Quotes to buy (sell) would not exercise discretion if (A) exercising discretion would result in an execution equal to or higher (lower) than the price of a protected offer (bid) or (B) the price of a protected bid (offer) is equal to or higher (lower) than the filed price of the d-Quote; and (2) correct cross references.

[10] *See* proposed Exchange Rule 67(f)(1).

[11] *See* proposed Exchange Rule 67(f)(2).

[12] *See* proposed Exchange Rule 67(f)(2)(A).

[13] Rule 15(a)—Equities provides that pre-opening indications will include the security and the price range within which the opening price is anticipated to occur and will be published via the securities information processor and proprietary data feeds.

[14] *See* proposed Exchange Rule 67(f)(2)(B).

[15] *See* Rule 13(d)(1)(A)—Equities.

[16] *See* proposed Exchange Rule 67(f)(2)(C).

[17] *See* proposed Exchange Rule 67(f)(2)(D).

[18] *See* proposed Exchange Rule 67(f)(3).

[19] *See* proposed Exchange Rule 67(f)(4).

[20] *See* proposed Exchange Rule 67(f)(4)(A).

[21] *See* proposed Exchange Rule 67(f)(4)(B).

[22] *See* proposed Exchange Rule 67(f)(4)(C).

[23] A ''Non Displayed Reserve Order'' is a Limit Order that is not displayed, but remains available for potential execution against all incoming automatically executing orders until executed in full or cancelled. *See* Rule 13(d)(1)(A)—Equities.

[24] *See* Rule 70(f)(ii)—Equities.

[25] A ''Minimum Display Reserve Order'' is a Limit Order that will have a portion of the interest displayed when the order is or becomes the Exchange BBO and a portion of the interest (''reserve interest'') that is not displayed. *See* Rules 13(d)(2)(C)—Equities and 70(f)(i)—Equities.

[26] *See* Rule 13(f)(1)(A)—Equities (Pegging interest includes non-displayable interest to buy or sell at a price to track the same-side PBBO). d-Quotes enable Floor brokers to enter discretionary instructions as to the price at which the d-Quote may trade and the number of shares to which the discretionary price instructions apply. Executions of d-Quotes within a discretionary pricing instruction range are considered non-displayable interest for purposes of Rule 72—Equities. *See* Rule 70.25(a)(ii)—Equities.

d. Block Size Exception to the Trade-at Prohibition [27]

The Exchange proposes that only buy and sell orders that are entered into the Cross Function pursuant to Supplementary Material .10 to Rule 76—Equities and that satisfy the Block Size definition would be eligible for the Block Size exception to the Trade-at Prohibition.

e. Self-Trade Prevention Modifiers [28]

The Exchange proposes that incoming orders designated with a specific self-trade prevention (''STP'') Modifier, STPN, would cancel before routing or trading with non-displayed orders if the opposite-side resting interest marked with an STP modifier with the same market participant identifier (''MPID'') is a displayed order.

f. G-Quotes and Buy Minus/Zero Plus Orders [29]

The Exchange proposes to reject g-Quotes and Buy Minus/Zero Plus Orders.

5. d-Quotes [30]

The Exchange proposes that in all Pilot Securities, d-Quotes to buy (sell) would not exercise discretion if (i) exercising discretion would result in an execution equal to or higher (lower) than the price of a protected offer (bid), or (ii) the price of a protected bid (offer) is equal to or higher (lower) than the filed price of the d-Quote.

B. Operation of Certain Exceptions to the Trade-at Prohibition on Pilot Securities in Test Group Three

1. TAISOs [31]

The Exchange proposes to add the phrase ''or Intermarket Sweep Orders'' to the definition of TAISO as well as to the TAISO exception to the Trade-at Prohibition to clarify that ISOs may be routed to execute against the full displayed size of the Protected Quotation that was traded at.[32]

2. Block Size Exemption to Trade-at Prohibition [33]

The Exchange proposes to amend the Block Size exception to the Trade-at Prohibition to allow execution on multiple Trading Centers to comply with Regulation NMS.

C. LULD Price Bands

The Exchange proposes to add a new subsection (8) to Rule 80C(a)—Equities that would specify that, after the Exchange opens or reopens an Exchange-listed security but before receiving Price Bands from the Securities Information Processor (''SIP'') under the LULD Plan, the Exchange would calculate Price Bands based on the first Reference Price provided to the SIP and, if such Price Bands are not in the MPV for the security, round such Price Bands to the nearest price at the applicable MPV.

D. Trading Collars Rounding [34]

The Exchange proposes that Trading Collars for both buy and sell orders that are not in the MPV for the security would be rounded down to the nearest price at the applicable MPV.

III. Summary of Comment Letters

Both comment letters express support for the proposed rule change and suggest that the Commission should approve the proposal. In Comment Letter No. 1, the commenters stated that if the proposal is approved as proposed, then NYSE would be able to meet the October 3, 2016 implementation date. Further, in Comment Letter No. 1, the commenters stated their belief that the requirements from the Commission have been unclear. In Comment Letter No. 2, the commenter questioned Commission staff's authority.

IV. Discussion and Commission's Findings

After careful review of the proposed rule change, as modified by Amendment No. 2, and the comment letters, the Commission finds that the proposal, as modified by Amendment No. 2, is consistent with the requirements of the Act, Rule 608 of Regulation NMS,[35] and the rules and regulations thereunder that are applicable to a national securities exchange.[36] Specifically, the Commission finds that the rule change is consistent with Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As noted in the Approval Order, the Plan is by design, an objective, data-driven test to evaluate how a wider tick size would impact trading, liquidity, and market quality of securities of smaller capitalization companies. In addition, the Plan is designed with three Test Groups and a Control Group, to allow analysis and comparison of incremental market structure changes on the Pilot Securities and is designed to produce empirical data that could inform future policy decisions. As such, any proposed changes targeted at particular Test Groups during the Pilot Period should be necessary for compliance with the Plan.

The Exchange proposes changes to modify how the Exchange will handle orders during the Pilot Period. Specifically, the Exchange proposes to accept TAISOs in all securities. In addition, the Exchange proposes to make changes to d-Quotes for all Pilot Securities by limiting instances when d-Quotes would exercise discretion.[37] Further, for Pilot Securities in the Test Groups, the Exchange proposes to specify references to the MPV, provide that pre-opening indications would be published in $0.05 increments, require that MPL Orders with a limit price must be entered in a $0.05 increment, and clarify how Trading Collars that are not in the trading MPV would be handled. The Exchange also proposes to specify that Retail Price Improvement Orders must be entered with a limit price and an offset in a $0.005 pricing increment in Test Groups Two and Three.

The Exchange proposes changes for Pilot Securities in Test Group Three to comply with the Trade-at Prohibition, including a different priority for execution of resting orders, how certain ISOs would be handled in Test Group

[27] *See* proposed Exchange Rule 67(f)(4)(E).

[28] *See* proposed Exchange Rule 67(f)(4)(F).

[29] *See* proposed Exchange Rule 67(f)(4)(G).

[30] *See* proposed Exchange Rule 67(f)(5). *See also* Amendment No. 2.

[31] *See* proposed Exchange Rule 67(a)(1)(D) and proposed Exchange Rule 67(e)(4)(C)(x).

[32] The Exchange also proposes to add the word ''display'' to Exchange Rule 67(a)(1)(D) to correct a previous omission.

[33] *See* proposed Exchange Rule 67(e)(4)(C)(iii).

[34] *See* proposed Exchange Rule 1000—Equities (c)(i).

[35] 17 CFR 242.608.

[36] In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[37] *See* Amendment No. 2. The Exchange originally proposed to limit d-Quotes from exercising discretion only in Test Group Three. In Amendment No. 2, the Exchange proposes to apply the proposed limitation of discretion to all Pilot Securities. The Commission believes that the amendment to apply the proposed changes to the exercise of discretion by d-Quotes to all Pilot Securities modifies the proposal so that it does not have an unnecessary disparate impact on the different Test Groups and the Control Group. Thus, the Commission believes that the Exchange's proposal is consistent with the Pilot. The Exchange has committed to make the systems changes necessary to implement Amendment No. 2 no later than November 7, 2016. *See* Email from Clare Saperstein, Exchange to Kelly Riley, SEC date October 2, 2016.

Three, how resting non-displayed orders would trade, how order with a STPN Modifier would be handled, and that g-Quotes and Buy Minus/Zero Plus orders will be rejected. The Exchange also proposes to only permit buy and sell orders that are entered into the Cross Function pursuant to Supplementary Material .10 to Rule 76 to be eligible for the Block Size order exception to the Trade-at Prohibition.[38]

In addition, the Exchange proposes to amend provisions related to two exceptions to the Trade-at Prohibition. First, the Exchange proposes amend the TAISO definition to reflect that ISOs may be routed to the full displayed size of a Protected Quotation that is traded-at and to make the corresponding change to the specific trade-at exception. Second, the Exchange proposes to amend the exception for Block Size orders to allow an order of Block Size to be executed on multiple Trading Centers.

The Commission believes that these changes are reasonably designed to comply with the Plan. Further, the Commission believes that the proposed changes that are targeted at particular Test Groups are necessary for compliance with the Plan. Accordingly, the Commission finds that these changes are consistent with Section 6(b)(5) of the Act [39] and Rule 608 of Regulation NMS [40] because they implement the Plan and clarify Exchange Rules.

In addition, the Exchange proposes to adopt a rule to specify how the Exchange will calculate LULD Price Bands after the Exchange opens or reopens. The Commission believes that this change should help to ensure that trading does not occur outside of Price Bands when LULD is in effect.

Finally, the Exchange proposes to specify that Trading Collars that are not in the MPV would be rounded down to the nearest price. The Commission believes that this change should provide clarity in the Exchange's rules.

For these reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and Rule 608 of Regulation NMS.

[38] The Commission notes that the orders entered into the Cross Function for purposes of relying on the Block Size exception must satisfy the provisions of the exception, including that it may not be an aggregation of non-block orders, or broken into orders smaller than Block Size prior to submitting the order the Trading Center for execution. *See* Exchange Rule 67(e)(4)(C)(iii).

[39] 15 U.S.C. 78f(b)(5).

[40] 17 CFR 242.608.

V. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Exchange 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–NYSEMKT–2016–83 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–NYSEMKT–2016–83. 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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–83 and should be submitted on or before October 28, 2016.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of notice of Amendment No. 2 in the **Federal Register**. As described above, the Exchange proposes to amend its rules to comply with the Plan and clarify other rules related to LULD and Trading Collars.

The Commission believes that the proposals related to LULD Price Bands and Trading Collars should provide clarity on instances where they are not in the MPV. The Commission believes that the proposals related to the Pilot are designed to ensure compliance with the Plan. The Commission notes that the Pilot is scheduled to start on October 3, 2016, and accelerated approval would ensure that the rules of the Exchange would be in place for the start of the Pilot. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[41] to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

VII. Conclusion

It is therefore ordered that, pursuant to Section 19(b)(2) of the Act,[42] the proposed rule change (SR–NYSEMKT–2016–83), as modified by Amendment No. 2, be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24283 Filed 10–6–16; 8:45 am]

BILLING CODE 8011–01–P

[41] 15 U.S.C. 78s(b)(2).

[42] *Id.*

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79023; File No. SR–Phlx–2016–82]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Adopt a New Exception in Exchange Rule 1000(f) for Sub-MPV Split-Priced Orders

October 3, 2016.

On August 3, 2016, NASDAQ PHLX LLC (the ''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

[1] 15 U.S.C. 78s(b)(1).

thereunder,[2] a proposed rule change to provide an exception to the mandatory use of the Floor Broker Management System pursuant to Rule 1000(f)(iii) to permit Floor Brokers to execute certain sub-minimum price variation (''sub-MPV'') split-priced orders in the options trading crowd rather than electronically. The proposed rule change was published for comment in the **Federal Register** on August 22, 2016.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of the notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is October 6, 2016.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider and take action on the Exchange's proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act[5] and for the reasons stated above, the Commission designates November 20, 2016, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–Phlx–2016–82).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24277 Filed 10–6–16; 8:45 am]

BILLING CODE 8011–01–P

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78593 (August 16, 2016), 81 FR 56724.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79030; File No. SR–NYSE–2016–62]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Partial Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Partial Amendment No. 2, To Amend Rule 67 Relating to the Tick Size Pilot Program

October 3, 2016.

I. Introduction

On August 25, 2016, New York Stock Exchange LLC (''NYSE'' or ''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: (1) Change system functionality to implement the Plan to Implement a Tick Size Pilot Program (''Plan'' or ''Pilot'')[3] submitted to the Commission pursuant to Rule 608 of Regulation NMS[4] under the Act; (2) clarify the operation of certain exceptions to the Trade-at Prohibition[5] on Pilot Securities in Test Group Three; (3) amend the Limit Up/Limit Down (''LULD'') price controls set forth in Exchange Rule 80C regarding the Regulation NMS Plan to Address Extraordinary Market Volatility (''LULD Plan'');[6] and (4) amend the Exchange's trading collar calculation in Exchange Rule 1000. The proposed rule change was published for comment in the **Federal Register** on September 15, 2016.[7] The Commission received two comments letter on the proposal.[8] On September 27, 2016, the Exchange filed Partial Amendment No. 1 to the proposed rule change (''Amendment No. 1''). On September 30, 2016, the Exchange withdrew Amendment No. 1 and filed Partial Amendment No. 2 to the proposed rule change (''Amendment No. 2'').[9]

This order provides notice of Amendment No. 2, and approves the proposal, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Amended Proposal

The Exchange proposes to amend Exchange Rule 67 to: (1) Change system functionality to implement the Plan; (2) clarify the operation of certain exceptions to the Trade-at Prohibition on Pilot Securities in Test Group Three; (3) amend the LULD price controls set forth in Exchange Rule 80C; and (4) amend the Exchange's trading collar calculation set forth in Exchange Rule 1000.

A. Amendments to Exchange Systems Functionality To Implement the Plan

1. Trade-at Intermarket Sweep Order[10]

The Exchange proposes to accept Trade-at Intermarket Sweep Orders (''TAISO'') in all securities, and that TAISOs must be designated as immediate or cancel (''IOC''), may include a minimum trade size, and do not route. The Exchange would immediately and automatically execute a TAISO against the displayed and non-displayed bid (offer) up to its full size in accordance with and to the extent provided by Exchange Rules 1000—1004 and will then sweep the Exchange's book as provided in Rule 1000(e)(iii), and the portion not so executed will be immediately and automatically cancelled. The Exchange would accept TAISOs before the Exchange opens and would allow TAISOs to be eligible to participate in the opening transaction at its limit price, but would not be accept TAISOs during a trading halt or pause for participation in a reopening transaction. Finally, the Exchange would not allow TAISOs to be entered as e-Quotes, d-Quotes, or g-Quotes.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (''Approval Order''). Unless otherwise specified, capitalized terms used in this order are defined as set forth in the Plan.

[4] 17 CFR 242.608.

[5] Exchange Rule 67(e)(4)(A) defines the ''Trade-at Prohibition'' as the prohibition against executions by a Trading Center of a sell order for a Pilot Security at the price of a Protected Bid or the execution of a buy order for a Pilot Security at the price of a Protected Offer during regular trading hours. *See also* Plan Section I(LL) and Plan Section VI(D).

[6] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631).

[7] *See* Securities Exchange Act Release No. 78802 (September 9, 2016), 81 FR 63515.

[8] *See* Letters from Eric Swanson, EVP, General Counsel, Bats Global Markets, Inc., Elizabeth K. King, General Counsel and Corporate Secretary, New York Stock Exchange; and Thomas A. Wittman, EVP, Global Head of Equities, Nasdaq, Inc., dated September 9, 2016 (''Comment Letter No. 1''); and Eric Swanson, EVP, General Counsel, Bats Global Markets, Inc., dated September 12, 2016 (''Comment Letter No. 2'').

[9] In Amendment No. 2, the Exchange proposes to: (1) Specify that in all Pilot Securities, d-Quotes to buy (sell) would not exercise discretion if (A) exercising discretion would result in an execution equal to or higher (lower) than the price of a protected offer (bid) or (B) the price of a protected bid (offer) is equal to or higher (lower) than the filed price of the d-Quote; and (2) correct cross references.

[10] *See* proposed Exchange Rule 67(f)(1).

2. Pilot Securities in Test Groups One, Two, and Three [11]

The Exchange proposes that references in Exchange rules to the minimum price variation (''MPV'') would mean the quoting minimum price variation as specified in Exchange Rule 67 (c), (d), and (e). Pre-opening indications [12] would be published in $0.05 pricing increments for Pilot Securities in Test Groups One, Two, and Three. Mid-Point Passive Liquidity (''MPL'') Orders, which are undisplayed limit orders that automatically execute at the mid-point of the protected best bid (''PBB'') and the protected best offer (''PBO'') (''PBBO''),[13] must be entered with a limit price in a $0.05 pricing increment. Trading collars that are not in the trading MPV for the security would be moved to the nearest price in the trading MPV for that security.

3. Retail Price Improvement Orders in Test Groups Two and Three [14]

The Exchange proposes that Retail Price Improvement orders must be entered with a limit price and an offset in a $0.005 increment.

4. Pilot Securities in Test Group Three

The Exchange proposes procedures for handling, executing, re-pricing and displaying of certain order types and order type instructions applicable to Pilot Securities in Test Group Three.

a. Change in Priority [15]

The Exchange proposes that incoming automatically executing order to sell (buy) will trade with displayable bids (offers) and route to protected bids (offers) before trading with an unexecuted Market Order held undisplayed at the same price. After trading or routing, or both, any remaining balance of such an incoming automatically executing order would satisfy any unexecuted Market Orders in time priority before trading with non-displayable interest on parity.

b. ISOs [16]

The Exchange proposes that on entry, Day ISOs will be eligible for the TAISO exception to the Trade-at Prohibition. In addition, an IOC ISO to buy (sell) would not trade with non-displayed interest to sell (buy) that is the same price as a protected offer (bid) unless the limit price of such IOC ISO is higher (lower) than the price of the protected offer (bid).

c. Non-Displayed Resting Orders [17]

The Exchange proposes restrictions applicable to resting non-displayed interest, *i.e.,* a resting order to buy (sell) that is not displayed at the price at which it is eligible to trade. Resting non-displayed interest on the Exchange could include Non-Display Reserve Orders,[18] Non-Display Reserve e-Quotes,[19] the reserve interest of Minimum Display Reserve Orders and Minimum Display Reserve e-Quotes,[20] and pegging interest that is not displayed.[21] The proposed rule changes are intended to assure that these orders would not price match a protected quotation.

First, the Exchange proposes that a resting non-displayed order to buy (sell) will not trade at the price of a protected offer (bid). Second, a resting non-displayed order to buy (sell) will not trade at the price of a protected bid (offer) unless the incoming order to sell (buy) is a TAISO, Day ISO, or IOC ISO that has a limit price lower (higher) than the price of the non-displayed orders. Finally, the Exchange proposes that resting non-displayed interest will be either routed, cancelled, or re-priced, consistent with the terms of the order.

d. Block Size Exception to the Trade-at Prohibition [22]

The Exchange proposes that only buy and sell orders that are entered into the Cross Function pursuant to Supplementary Material .10 to Exchange Rule 76 and that satisfy the Block Size definition would be eligible for the Block Size exception to the Trade-at Prohibition.

e. Self-Trade Prevention Modifiers [23]

The Exchange proposes that incoming orders designated with a certain self-trade prevention (''STP'') Modifier, STPN, would cancel before routing or trading with non-displayed orders if the opposite-side resting interest marked with an STP modifier with the same market participant identifier (''MPID'') is a displayed order.

f. g-Quotes and Buy Minus/Zero Plus Orders [24]

The Exchange proposes that g-Quotes and Buy Minus/Zero Plus Orders would be rejected.

5. d-Quotes [25]

The Exchange proposes that in all Pilot Securities, d-Quotes to buy (sell) would not exercise discretion if (i) exercising discretion would result in an execution equal to or higher (lower) than the price of a protected offer (bid), or (ii) the price of a protected bid (offer) is equal to or higher (lower) than the filed price of the d-Quote.

B. Operation of Certain Exceptions to the Trade-At Prohibition on Pilot Securities in Test Group Three

1. Trade-At Intermarket Sweep Orders [26]

The Exchange proposes to add phrase ''or Intermarket Sweep Orders'' (''ISO'') to the definition of TAISO as well as to the TAISO exception to the Trade-At Prohibition to clarify that ISOs may be routed to execute against the full displayed size of the Protected Quotation that was traded at.[27]

2. Block Size Exception to the Trade-At Prohibition [28]

The Exchange proposes to amend the Block Size Exception to the Trade-at Prohibition to allow execution on multiple Trading Centers to comply with Regulation NMS.

C. LULD Price Bands [29]

The Exchange proposes that after the Exchange opens or reopens an Exchange-listed security but before receiving Price Bands from the Securities Information Processor (''SIP'') under the LULD Plan, the Exchange would calculate Price Bands based on the first Reference Price provided to the

[11] *See* proposed Exchange Rule 67(f)(2).

[12] *See* Exchange Rule 15(a) (providing that pre-opening indications will include the security and the price range within which the opening price is anticipated to occur and will be published via the securities information processor and proprietary data feeds).

[13] *See* Exchange Rule 13(d)(1)(A).

[14] *See* proposed Exchange Rule 67(f)(3).

[15] *See* proposed Exchange Rule 67(f)(4)(A).

[16] *See* proposed Exchange Rule 67(f)(4)(B).

[17] *See* proposed Exchange Rule 67(f)(4)(C).

[18] A ''Non Displayed Reserve Order'' is a Limit Order that is not displayed, but remains available for potential execution against all incoming automatically executing orders until executed in full or cancelled. *See* Rule 13(d)(1)(A).

[19] *See* Rule 70(f)(ii).

[20] A ''Minimum Display Reserve Order'' is a Limit Order that will have a portion of the interest displayed when the order is or becomes the Exchange BBO and a portion of the interest (''reserve interest'') that is not displayed. *See* Rules 13(d)(2)(C) and 70(f)(i).

[21] *See* Rule 13(f)(1)(A) (Pegging interest includes non-displayable interest to buy or sell at a price to track the same-side PBBO). d-Quotes enable Floor brokers to enter discretionary instructions as to the price at which the d-Quote may trade and the number of shares to which the discretionary price instructions apply. Executions of d-Quotes within a discretionary pricing instruction range are considered non-displayable interest for purposes of Rule 72. *See* Rule 70.25(a)(ii).

[22] *See* proposed Exchange Rule 67(f)(4)(E).

[23] *See* proposed Exchange Rule 67(f)(4)(F).

[24] *See* proposed Exchange Rule 67(f)(4)(G).

[25] See proposed Exchange Rule 67(f)(5). *See also* Amendment No. 2.

[26] *See* proposed Exchange Rule 67(a)(1)(D) and proposed Exchange Rule 67(e)(4)(C)(x).

[27] The Exchange also proposes to add the word ''display'' to Exchange Rule 67(a)(1)(D) to correct a previous omission.

[28] *See* proposed Exchange Rule 67(e)(4)(C)(iii).

[29] *See* proposed Exchange Rule 80C(a)(8).

SIP and, if such Price Bands are not in the MPV for the security, round such Price Bands to the nearest price at the applicable MPV.

D. Trading Collars Rounding [30]

The Exchange proposes that Trading Collars for both buy and sell orders that are not in the MPV for the security would be rounded down to the nearest price at the applicable MPV.

III. Summary of Comment Letters

Both comment letters express support for the proposed rule change and suggest that the Commission should approve the proposal. In Comment Letter No. 1, the commenters stated that if the proposal is approved as proposed, then NYSE would be able to meet the October 3, 2016 implementation date. Further, in Comment Letter No. 1, the commenters stated their belief that the requirements from the Commission have been unclear. In Comment Letter No. 2, the commenter questioned Commission staff's authority.

IV. Discussion and Commission's Findings

After careful review of the proposed rule change, as modified by Amendment No. 2, and the comment letters, the Commission finds that the proposal, as modified by Amendment No. 2, is consistent with the requirements of the Act, Rule 608 of Regulation NMS,[31] and the rules and regulations thereunder that are applicable to a national securities exchange.[32] Specifically, the Commission finds that the rule change is consistent with Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As noted in the Approval Order, the Plan is by design, an objective, data-driven test to evaluate how a wider tick size would impact trading, liquidity, and market quality of securities of smaller capitalization companies. In addition, the Plan is designed with three Test Groups and a Control Group, to allow analysis and comparison of incremental market structure changes on the Pilot Securities and is designed to produce empirical data that could inform future policy decisions. As such, any proposed changes targeted at particular Test Groups during the Pilot Period should be necessary for compliance with the Plan.

The Exchange proposes changes to modify how the Exchange will handle orders during the Pilot Period. Specifically, the Exchange proposes to accept TAISOs in all securities. In addition, the Exchange proposes to make changes to d-Quotes for all Pilot Securities by limiting instances when d-Quotes would exercise discretion.[33] Further, for Pilot Securities in the Test Groups, the Exchange proposes to specify references to the MPV, provide that pre-opening indications would be published in $0.05 increments, require that MPL Orders with a limit price must be entered in a $0.05 increment, and clarify how Trading Collars that are not in the trading MPV would be handled. The Exchange also proposes to specify that Retail Price Improvement Orders must be entered with a limit price and an offset in a $0.005 pricing increment in Test Groups Two and Three.

The Exchange proposes changes for Pilot Securities in Test Group Three to comply with the Trade-at Prohibition, including a different priority for execution of resting orders, how certain ISOs would be handled in Test Group Three, how resting non-displayed orders would trade, how order with a STPN Modifier would be handled, and that g-Quotes and Buy Minus/Zero Plus orders will be rejected. The Exchange proposes to only permit buy and sell orders that are entered into the Cross Function pursuant to Supplementary Material .10 to Rule 76 to be eligible for the Block Size order exception to the Trade-at Prohibition.[34]

In addition, the Exchange proposes to amend provisions related to two exceptions to the Trade-at Prohibition. First, the Exchange proposes amend the TAISO definition to reflect that ISOs may be routed to the full displayed size of a Protected Quotation that is traded-at and to make the corresponding change to the specific trade-at exception. Second, the Exchange proposes to amend the exception for Block Size orders to allow an order of Block Size to be executed on multiple Trading Centers.

The Commission believes that these changes are reasonably designed to comply with the Plan. Further, the Commission believes that the proposed changes that are targeted at particular Test Groups are necessary for compliance with the Plan. Accordingly, the Commission finds that these changes are consistent with Section 6(b)(5) of the Act [35] and Rule 608 of Regulation NMS [36] because they implement the Plan and clarify Exchange Rules.

In addition, the Exchange proposes to adopt a rule to specify how the Exchange will calculate LULD Price Bands after the Exchange opens or reopens. The Commission believes that this change should help to ensure that trading does not occur outside of Price Bands when LULD is in effect.

Finally, the Exchange proposes to specify that Trading Collars that are not in the MPV would be rounded down to the nearest price. The Commission believes that this change should provide clarity in the Exchange's rules.

For these reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and Rule 608 of Regulation NMS.

V. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Exchange 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–2016–62 on the subject line.

[30] *See* proposed Exchange Rule 1000(c)(i).

[31] 17 CFR 242.608.

[32] In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[33] *See* Amendment No. 2. The Exchange originally proposed to limit d-Quotes from exercising discretion only in Test Group Three. In Amendment No. 2, the Exchange proposes to apply the proposed limitation of discretion to all Pilot Securities. The Commission believes that the amendment to apply the proposed changes to the exercise of discretion by d-Quotes to all Pilot Securities modifies the proposal so that it does not have an unnecessary disparate impact on the different Test Groups and the Control Group. Thus, the Commission believes that the Exchange's proposal is consistent with the Pilot. The Exchange has committed to make the systems changes necessary to implement Amendment No. 2 no later than November 7, 2016. *See* Email from Clare Saperstein, Exchange to Kelly Riley, SEC date October 2, 2016.

[34] The Commission notes that the orders entered into the Cross Function for purposes of relying on the Block Size exception must satisfy the provisions of the exception, including that it may not be an aggregation of non-block orders, or broken into orders smaller than Block Size prior to submitting the order the Trading Center for execution. *See* Exchange Rule 67(e)(4)(C)(iii).

[35] 15 U.S.C. 78f(b)(5).

[36] 17 CFR 242.608.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–62. 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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–62 and should be submitted on or before October 28, 2016.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of notice of Amendment No. 2 in the **Federal Register**. As described above, the Exchange proposes to amend its rules to comply with the Plan and clarify other rules related to LULD and Trading Collars.

The Commission believes that the proposals related to LULD Price Bands and Trading Collars should provide clarity on instances where they are not in the MPV. The Commission believes that the proposals related to the Pilot are designed to ensure compliance with the Plan. The Commission notes that the Pilot is scheduled to start on October 3, 2016, and accelerated approval would ensure that the rules of the Exchange would be in place for the start of the Pilot. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[37] to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

VII. Conclusion

It is therefore ordered that, pursuant to Section 19(b)(2) of the Act,[38] the proposed rule change (SR–NYSE–2016–62), as modified by Amendment No. 2, be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24284 Filed 10–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79025; File No. SR–NASDAQ–2016–106]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify Rule IM–5900–7 To Adjust the Entitlement to Services of Acquisition Companies

October 3, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 22, 2016, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, 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 modify the treatment of acquisition companies under IM–5900–7.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to modify IM–5900–7 to change the treatment of acquisition companies under that rule.

Nasdaq offers complimentary services under IM–5900–7 to companies listing on the Nasdaq Global and Global Select Markets in connection with an initial public offering, upon emerging from bankruptcy, or in connection with a spin-off or carve-out from another company (''Eligible New Listings'') and to companies that switch their listing from the New York Stock Exchange (''NYSE'') to the Global or Global Select Markets (''Eligible Switches'').[4]

Nasdaq believes that the complimentary service program offers valuable services to newly listing companies, designed to help ease the transition of becoming a public company or switching markets, makes listing on Nasdaq more attractive to these companies, and also provides Nasdaq Corporate Solutions the opportunity to demonstrate the value of its services and forge a relationship with the company. The services offered include a whistleblower hotline, investor relations Web site, disclosure services for earnings or other press releases, webcasting, market analytic tools, and may include market advisory

[37] 15 U.S.C. 78s(b)(2).

[38] *Id.*

[39] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Exchange Act Release No. 65963 (December 15, 2011), 76 FR 79262 (December 21, 2011) (SR–NASDAQ–2011–122) (adopting IM–5900–7); Exchange Act Release No. 72669 (July 24, 2014), 79 FR 44234 (July 30, 2014) (SR–NASDAQ–2014–058) (adopting changes to IM–5900–7); Exchange Act Release No. 78806 (September 9, 2016), 81 FR 63523 (September 15, 2016) (SR–NASDAQ–2016–098). These adopting releases are collectively referred to as the ''Prior Filings.''

tools such as stock surveillance. Depending on a company's market capitalization and whether it is an Eligible New Listing or an Eligible Switch, the value of the services provided range from $141,000 to $754,000, and one-time development fees of approximately $3,500 are waived.[5] In addition, all companies listed on Nasdaq receive services from Nasdaq, including Nasdaq Online and the Market Intelligence Desk.

Generally, Nasdaq will not permit the initial or continued listing of a company that has no specific business plan or that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies. However, in the case of a company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time (an ''Acquisition Company''), Nasdaq will permit the listing if the company meets all applicable initial listing requirements, as well as the additional conditions described in IM–5101–2. These additional conditions generally require, among other things, that at least 90% of the gross proceeds from the initial public offering must be deposited in a ''deposit account,'' as that term is defined in the rule, and that the company complete within 36 months, or a shorter period identified by the company, one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account at the time of the agreement to enter into the initial combination.

Acquisition Companies do not have operating businesses and tend to trade infrequently and in a tight range until the company completes an acquisition. In addition, Acquisition Companies issue few press releases and frequently do not have detailed Web sites. Therefore, upon listing, these companies do not generally need shareholder communication services, market analytic tools or market advisory tools, and generally would only benefit from the complimentary whistleblower hotline provided under IM–5900–7.[6] Accordingly, Nasdaq proposes to provide that an Acquisition Company listing on the Global Market[7] before it has satisfied the requirement of IM–5101–2(b), whether as an Eligible New Listing or an Eligible Switch, will not receive complimentary services under IM–5900–7.[8]

However, once an Acquisition Company completes a business combination with an operating company, the combined company is much like any other newly public company and could benefit from the complimentary services Nasdaq offers other newly public companies. Accordingly, Nasdaq proposes to include in the definition of an ''Eligible New Listing'' that receives complimentary services under IM–5900–7 an Acquisition Company that completes a business combination that satisfies the conditions in IM–5101–2(b) and that lists on the Global or Global Select Market in conjunction with that business combination.[9]

For purposes of IM–5900–7, Nasdaq will treat a company previously listed on the Capital Market as listing on the Global or Global Select Market in conjunction with a business combination that satisfies the conditions in IM–5101–2(b) if it files an application to list on the Global or Global Select Market before completing the combination and demonstrates compliance with all applicable criteria within 60 days of completing the business combination. This additional time may be required, in some cases, to allow the issuance of shares in the transaction and then for the newly formed entity to obtain information from third parties to demonstrate compliance with the shareholder and public float requirements.

If the Acquisition Company is listed on the Global Market at the time it completes a business combination that satisfies the conditions in IM–5101–2(b) and remains listed on the Global Market or transfers to the Global Select Market, the complimentary period will commence on the date of such business combination.[10] If the Acquisition Company is listed on the Capital Market at the time it completes the business combination that satisfies the conditions in IM–5101–2(b), the complimentary period will commence on the date of listing on the Global or Global Select Market.[11] In either case, however, if the company lists on the Global or Global Select Market and begins to use a particular service provided under IM–5900–7 within 30 days after the date of the business combination, the complimentary period for that service will begin on the date of first use.

Nasdaq also proposes to delete a reference in the existing rule text to ''NASDAQ'' when referring to the Global and Global Select Markets, to conform to other references to the Global and Global Select Markets within the rule. Finally, Nasdaq proposes to update the introductory note in IM–5900–7 to include the specific date that a prior change to the rule was approved. This change is designed to ease understanding of the rule and eliminate the need to cross-reference the approval order for that prior change.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[12] in general, and Section 6(b)(4), in particular, in that the proposal is designed, among other things, to provide for the equitable allocation of reasonable dues, fees, and other charges among Nasdaq members and issuers and other persons using its facilities. Nasdaq also believes that the proposed rule change is consistent with Section 6(b)(5) in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq faces competition in the market for listing services,[13] and competes, in part, by offering valuable services to companies. Nasdaq believes that it is reasonable to offer complimentary services to attract and retain listings as part of this competition. All similarly situated companies are eligible for the same package of services.

Nasdaq also believes it is reasonable, and not unfairly discriminatory, to offer

[5] The exact values are set forth in IM–5900–7 and no change to these services or their values is proposed in this filing.

[6] It typically takes more than two years for an Acquisition Company to identify a target and complete an acquisition. As a result, the term of any complimentary services offered to an Acquisition Company under IM–5900–7 as an Eligible New Listing would usually expire before the company acquired a target and began operating as an operating company that could benefit from the services.

[7] Rule 5310(i) provides that a company subject to IM–5101–2 is not eligible to list on the Global Select Market.

[8] To date, all companies listing under IM–5101–2 have listed on the Capital Market. The services described in IM–5900–7 are not available to companies listing on the Capital Market.

[9] The company would receive the same services under IM–5900–7, with the same value, as any other Eligible New Listing.

[10] An Acquisition Company must meet the initial listing requirements at the time of its business combination even if it is already listed on the Global Market. *See* IM–5101–2(d).

[11] An Acquisition Company that was listed on the Capital Market before the business combination would remain on the Capital Market until it demonstrates compliance with the applicable Global or Global Select Market initial listing criteria.

[12] 15 U.S.C. 78f.

[13] The Justice Department has noted the intense competitive environment for exchange listings. *See* ''NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandon Their Proposed Acquisition of NYSE Euronext After Justice Department Threatens Lawsuit'' (May 16, 2011), available at *http://www.justice.gov/atr/public/press_releases/2011/271214.htm.*

complimentary services to a company described in IM–5101–2 that acquires an operating business, ceases to be an Acquisition Company, and lists (or remains listed) on the Global or Global Select Market. When a company described in IM–5101–2 acquires an operating business and ceases to be an Acquisition Company, the company is similar to other Eligible New Listings, such as initial public offerings, and will have increased need to focus on identifying and communicating with its shareholders. Like the other Eligible New Listings that receive complimentary services under the existing rule, these companies are transitioning to the traditional public company model and the complimentary services provided will help ease that transition. In addition, these companies will be purchasing many of these services for the first time, and offering complimentary services will provide Nasdaq Corporate Solutions the opportunity to demonstrate the value of its services and forge a relationship with the company at a time when it is choosing its service providers. For these reasons, Nasdaq believes it is not an inequitable allocation of fees nor unfairly discriminatory to offer the services to a company described in IM–5101–2 when it completes a business combination satisfying IM–5101–2(b).

In addition, because Acquisition Companies described in IM–5101–2 have little use for services upon listing, and because they will be eligible to receive services if they complete a business combination satisfying IM–5101–2(b), Nasdaq does not think it is unfairly discriminatory to modify the rule so that a company described in IM–5101–2 does not receive services upon listing.

An Acquisition Company could list on the Global Market at the time of its initial public offering, but never complete an acquisition that satisfies the requirements of IM–5101–2(b). While under the proposed rule change such a company would never receive complimentary services, Nasdaq does not believe that the services generally would be useful to the Acquisition Company and the Acquisition Company therefore would not suffer any meaningful detriment as a consequence.

Allowing an Acquisition Company up to 30 days after completing a business combination to start using the complimentary services reflects Nasdaq's experience that it can take companies a period of time to review and complete necessary contracts and training following their becoming eligible for those services. Allowing this modest 30-day period, if the company needs it, helps ensure that the company will have the benefit of the full period permitted under the rule to actually use the services, thus giving companies the full intended benefit.

Defining a company to be listing in conjunction with a business combination that satisfies the conditions in IM–5101–2(b) to include a company listed on the Capital Market that both filed an application to list on the Global or Global Select Market before completing the business combination and demonstrated compliance with all applicable criteria for the Global or Global Select Market within 60 days of completing the business combination reflects Nasdaq's experience that such a company may need a period of as long as 60 days to obtain information from third parties to demonstrate compliance with the listing requirements. Beginning the complimentary period for a company in this situation on the date of its listing on the Global or Global Select Market is consistent with the period provided to other Eligible New Listings and Eligible Switches, which begins on the date of listing. Moreover, prior to that point, there is no certainty as to whether the company will qualify for the Global or Global Select Market and be eligible to receive the services and, as a result, complimentary services could not be provided prior to that date. Nasdaq believes that this 60-day period appropriately recognizes the practical problem that a company may have with demonstrating compliance with the initial listing requirements for the Global or Global Select Market at exactly the time of its business combination. However, a company that takes advantage of this time period cannot further extend the start of the complimentary period by using an additional 30-day period to start using the complimentary services.

Nasdaq further believes that it is not unfairly discriminatory to limit this 60-day period to Acquisition Companies transitioning from the Capital Market to the Global or Global Select Market and to not also extend it to Acquisition Companies already listed on the Global Market. An Acquisition Company that is listed on the Global Market was required to have 400 round lot holders upon initially listing and is required to have 400 total holders for continued listing. As a result, Nasdaq expects it would be rare for a company already on the Global Market to need additional time to demonstrate compliance with this, or other, initial listing requirement. Nasdaq believes that this is a non-discriminatory reason to distinguish between these types of companies.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change reflects Nasdaq's ongoing assessment of the competitive market for listings and does not place any unnecessary burden on that competition. In many cases, an Acquisition Company will consider transferring to a new listing venue when it completes a business combination. The proposed rule change will allow Nasdaq to compete to retain these companies by offering them a package of complimentary services that assists their transition to being a traditional public company.

Nasdaq believes that when the complimentary period ends, a former Acquisition Company that had acquired an operating business will be more likely to continue to use the Nasdaq Corporate Solutions service or a competing service, whereas otherwise they may not be exposed to the value of these services and therefore may not purchase any. This will create additional users of the service class and enhance competition among service providers.

In addition, other service providers can also offer similar services to companies, thereby increasing competition to the benefit of those companies and their shareholders. Accordingly, Nasdaq does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 60 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–106 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–106. 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–NASDAQ–2016–106 and should be submitted on or before October 28, 2016.

[14] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24279 Filed 10–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32–300; File No. 812–14583]

Legg Mason Global Asset Management Trust, et al.; Notice of Application

October 3, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order pursuant to: (a) Section 6(c) of the Investment Company Act of 1940 (''Act'') granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint arrangements and transactions. Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: Legg Mason Global Asset Management Trust, Legg Mason Global Asset Management Variable Trust, Legg Mason Partners Income Trust, Legg Mason Partners Institutional Trust, Legg Mason Partners Money Market Trust, Legg Mason Partners Premium Money Market Trust, Legg Mason Partners Variable Income Trust, Master Portfolio Trust, and Western Asset Funds, Inc., registered under the Act as open-end management investment companies with one or more series, and Legg Mason Partners Fund Advisor, LLC (the ''Adviser''), registered as an investment adviser under the Investment Advisers Act of 1940.

FILING DATES: The application was filed on November 27, 2015, and amended on May 5, 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 October 28, 2016 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, c/o: Bryan Chegwidden, Esq., Rope & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036, and Robert I. Frenkel, Legg Mason & Co., LLC, 100 First Stamford Place, Stamford, CT 06902.

FOR FURTHER INFORMATION CONTACT: Judy T. Lee, Senior Special Counsel, at (202) 551–6259 or Sara Crovitz, Assistant Chief Counsel, at (202) 551–6720 (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 an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would permit the applicants to participate in an interfund lending facility where each Fund could lend money directly to and borrow money directly from other Funds to cover unanticipated cash shortfalls, such as unanticipated redemptions or trade fails.[1] The Funds will not borrow under the facility for leverage purposes and the loans' duration will be no more than 7 days.[2]

2. Applicants anticipate that the proposed facility would provide a borrowing Fund with a source of

[1] Applicants request that the order apply to the applicants and to any existing or future registered open-end management investment company or series thereof for which the Adviser or any successor thereto or an investment adviser controlling, controlled by, or under common control with the Adviser or any successor thereto serves as investment adviser (each a ''Fund'' and collectively the ''Funds'' and each such investment adviser an ''Adviser''). For purposes of the requested order, ''successor'' is limited to any entity that results from a reorganization into another jurisdiction or a change in the type of a business organization.

[2] Any Fund, however, will be able to call a loan on one business day's notice.

liquidity at a rate lower than the bank borrowing rate at times when the cash position of the Fund is insufficient to meet temporary cash requirements. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or certain other short term money market instruments. Thus, applicants assert that the facility would benefit both borrowing and lending Funds.

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the Application. Among others, the Adviser, through a designated committee, would administer the facility as a disinterested fiduciary as part of its duties under the investment management and administrative agreements with the Funds and would receive no additional fee as compensation for its services in connection with the administration of the facility. The facility would be subject to oversight and certain approvals by the Funds' Board, including, among others, approval of the interest rate formula and of the method for allocating loans across Funds, as well as review of the process in place to evaluate the liquidity implications for the Funds. A Fund's aggregate outstanding interfund loans will not exceed 15% of its net assets, and the Fund's loan to any one Fund will not exceed 5% of the lending Fund's net assets.[3]

4. Applicants assert that the facility does not raise the concerns underlying section 12(d)(1) of the Act given that the Funds are part of the same group of investment companies and there will be no duplicative costs or fees to the Funds.[4] Applicants also assert that the proposed transactions do not raise the concerns underlying sections 17(a)(1), 17(a)(3), 17(d) and 21(b) of the Act as the Funds would not engage in lending transactions that unfairly benefit insiders or are detrimental to the Funds. Applicants state that the facility will offer both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and each Fund would have an equal opportunity to borrow and lend on equal terms based on an interest rate formula that is objective and verifiable. With respect to the relief from section 17(a)(2) of the Act, applicants note that any collateral pledged to secure an interfund loan would be subject to the same conditions imposed by any other lender to a Fund that imposes conditions on the quality of or access to collateral for a borrowing (if the lender is another Fund) or the same or better conditions (in any other circumstance).[5]

5. Applicants also believe that the limited relief from section 18(f)(1) of the Act that is necessary to implement the facility (because the lending Funds are not banks) is appropriate in light of the conditions and safeguards described in the application and because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of a Fund, including combined interfund loans and bank borrowings, have at least 300% asset coverage.

6. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Rule 17d–1(b) under the Act provides that in passing upon an application filed under the rule, the Commission will consider whether the participation of the registered investment company in a joint enterprise, joint arrangement or profit sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of the other participants.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24285 Filed 10–6–16; 8:45 am]

BILLING CODE 8011–01–P

[3] Under certain circumstances, a borrowing Fund will be required to pledge collateral to secure the loan.

[4] Applicants state that the obligation to repay an interfund loan could be deemed to constitute a security for the purposes of sections 17(a)(1) and 12(d)(1) of the Act.

[5] Applicants state that any pledge of securities to secure an interfund loan could constitute a purchase of securities for purposes of section 17(a)(2) of the Act.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79028; File No. SR–OCC–2016–012]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise The Options Clearing Corporation's Schedule of Fees

October 3, 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 September 30, 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. OCC filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder [4] so that the proposal was effective upon filing with the Commission. 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

The proposed rule change by OCC would revise OCC's Schedule of Fees effective December 1, 2016, to implement an increase in clearing fees in accordance with OCC's Fee Policy.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] OCC's Fee Policy was adopted as part of OCC's plan for raising additional capital (''Capital Plan''), which was put in place in light of proposed regulatory capital requirements applicable to systemically important financial market utilities, such as OCC. *See* Securities Exchange Act Release No. 74452 (March 6, 2015) 80 FR 13058 (March 12, 2015) (SR–OCC–2015–02). OCC also filed proposals in the Capital Plan Filing as an advance notice under Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010. 12 U.S.C. 5465(e)(1). On February 26, 2015, the Commission issued a notice of no objection to the advance notice filing. *See* Exchange Act Release No. 74387 (February 26, 2015), 80 FR 12215 (March 6, 2015) (SR–OCC–2014–813). BATS Global Markets, Inc., BOX Options Exchange LLC, KCG Holdings, Inc.,

Continued

The proposed changes to the Schedule of Fees can be found in Exhibit 5 to the proposed rule change. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[6]

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 revise OCC's Schedule of Fees in accordance with its Fee Policy to set OCC's fees at a level designed to cover OCC's operating expenses and maintain a Business Risk Buffer of 25%.[7] The revised fee schedule would become effective on December 1, 2016.

By way of background, OCC implemented its Capital Plan in 2015,[8] which was put in place in light of proposed regulatory capital requirements applicable to systemically important financial market utilities, such as OCC. As part of OCC's Capital Plan, OCC adopted a Fee Policy whereby OCC would set clearing fees at a level that covers OCC's operating expenses plus a Business Risk Buffer of 25%.[9] The purpose of the Business Risk Buffer is to ensure that OCC accumulates sufficient capital to cover unexpected fluctuations in operating expenses, business capital needs, and regulatory capital requirements.

OCC recently reviewed its current Schedule of Fees [10] against actual and projected revenues and expenses for 2016 in accordance with its Fee Policy to determine whether the Schedule of Fees was sufficient to cover OCC's anticipated operating expenses and achieve a Business Risk Buffer of 25%. In reviewing the Schedule of Fees, OCC analyzed: (i) Clearing fee revenues charged on a year-to-date basis, (ii) projected volume for the remainder of the year, (iii) the anticipated ''mix'' of volume among the various fee levels set forth in the Schedule of Fees, (iv) operating expenses incurred to date, and (v) operating expenses projected for the remainder of the year. Based on the foregoing analysis, OCC determined that the current fee schedule is set at a level that would be insufficient to ensure that OCC achieves its Business Risk Buffer of 25% as required under the Fee Policy. OCC arrived at the proposed fee schedule presented herein by determining the figures that provide the best opportunity for OCC to achieve coverage of its anticipated operating expenses plus a Business Risk Buffer of 25%.

As a result of the aforementioned analysis, OCC proposes to revise its Schedule of Fees as set forth below.[11]

Current fee schedule		Proposed fee schedule	
Trades with contracts of:	Proposed fee	Trades with contracts of:	Proposed fee
1–1370	$0.041	1–1100	$0.050/contract.
>1370	$55/trade	>1100	$55/trade.

In accordance with its Fee Policy, OCC will continue to monitor cleared contract volume and operating expenses in order to determine if further revisions to OCC's Schedule of Fees are required so that monies received from clearing fees cover OCC's operating expenses plus a Business Risk Buffer of 25%.[12]

(2) Statutory Basis

Section 17A(b)(3)(D) of the Securities Exchange Act of 1934, as amended (''Act''), requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.[13] The proposed fee schedule was set in accordance with the criteria set forth in OCC's Capital Plan, which was approved by the Commission [14] and requires that OCC's fees be set at a level designed to cover OCC's operating expenses and maintain a Business Risk Buffer of 25%. OCC believes the proposed fee change is reasonable because the fee increase would be set at a level intended only to facilitate the maintenance of OCC's Business Risk Buffer of 25%, which is designed to ensure that OCC accumulates sufficient capital to cover unexpected fluctuations in operating expenses, business capital needs, and regulatory capital requirements. Moreover, OCC believes that the proposed fee change would result in an equitable allocation of fees among its participants because it would be equally applicable to all market participants. As

Miami International Securities Exchange, LLC, and Susquehanna International Group, LLP (collectively ''Petitioners'') each filed petitions for review of the Approval Order, challenging the action taken by delegated authority. The filing of the petitions automatically stayed the Approval Order. OCC filed a Motion to Lift the Stay on April 2, 2015, and the Petitioners responded. The Commission subsequently determined that the automatic stay of delegated action should be discontinued, and the Commission granted OCC's Motion to Lift Stay of the staff's action in approving by delegated authority File No. SR–OCC–2015–02. On February 11, 2016, the Commission issued an order setting aside the approval order issued under delegated authority and approved the proposed rule change to implement the Capital Plan. *See* Securities Exchange Act Release No. 77112 (February 11, 2016) 81 FR 8294 (February 18, 2016) (SR–OCC–2015–02).

[6] OCC's By-Laws and Rules can be found on OCC's public Web site: *http://optionsclearing.com/about/publications/bylaws.jsp*.

[7] The Business Risk Buffer is equal to net income before refunds, dividends, and taxes divided by total revenue.

[8] *See supra* note 5.

[9] OCC's Schedule of Fees must also meet the requirements set forth in Article IX, Section 9 of OCC's By-Laws. In general, Article IX, Section 9 of OCC's By-Laws requires that OCC's fee structure be designed to: (1) Cover OCC's operating expenses plus a business risk buffer; (2) maintain reserves deemed reasonably necessary by OCC's Board of Directors; and (3) accumulate an additional surplus deemed advisable by the Board of Directors to permit OCC to meet its obligations to its clearing members and the public. Clauses 2 and 3 above will only be invoked at the discretion of OCC's Board of Directors and in extraordinary circumstances.

[10] OCC previously revised its Schedule of Fees effective March 1, 2016, to implement a reduction of clearing fees in accordance with the Fee Policy. *See* Securities Exchange Act Release No. 77041 (February 3, 2016), 81 FR 6917 (February 9, 2016), (SR–OCC–2016–001). OCC subsequently amended its Schedule of Fees to simplify its fee structure through: (i) The adoption of a flat clearing fee per contract with a fixed dollar cap and (ii) the elimination of the ''scratch'' fee. The revised fee structure, which became effective May 2, 2016, was designed to be revenue neutral when compared to the previous fee structure. *See* Securities Exchange Act Release No. 77336 (March 10, 2016), 81 FR 14153 (March 16, 2016), (SR–OCC–2016–005).

[11] These changes are also reflected in Exhibit 5.

[12] Any subsequent changes to OCC's Schedule of Fees would be the subject of a subsequent proposed rule change filed with the Commission.

[13] 17 U.S.C. 78q–1(b)(3)(D).

[14] *See supra* note 5.

a result, OCC believes that the proposed fee schedule provides for the equitable allocation of reasonable fees in accordance with Section 17A(b)(3)(D) of the Act.[15] The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act [16] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule change would have any impact or impose a burden on competition. Although this proposed rule change affects clearing members, their customers, and the markets that OCC serves, OCC believes that the proposed rule change would not disadvantage or favor any particular user of OCC's services in relationship to another user because the proposed clearing fees apply equally to all users of OCC. Accordingly, OCC does not believe that the proposed rule change would 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

Pursuant to Section 19(b)(3)(A)(ii) [17] of the Act, and Rule 19b–4(f)(2) thereunder,[18] the proposed rule change is filed for immediate effectiveness as it constitutes a change in fees charged to OCC clearing members. 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.[19]

[15] 17 U.S.C. 78q–1(b)(3)(D).

[16] 15 U.S.C. 78q–1(b)(3)(I).

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4(f)(2).

[19] Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation § 40.6.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2016–012 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–OCC–2016–012. 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 (*http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_16_012.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–2016–012 and should be submitted on or before October 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24282 Filed 10–6–16; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32300; File No. 812–14583]

Legg Mason Global Asset Management Trust, et al.; Notice of Application

October 3, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order pursuant to: (a) Section 6(c) of the Investment Company Act of 1940 (''Act'') granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements and transactions. Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: Legg Mason Global Asset Management Trust, Legg Mason Global Asset Management Variable Trust, Legg Mason Partners Income Trust, Legg Mason Partners Institutional Trust, Legg Mason Partners Money Market Trust, Legg Mason Partners Premium Money Market Trust, Legg Mason Partners Variable Income Trust, Master Portfolio Trust, and Western Asset Funds, Inc., registered under the Act as open-end management investment companies with one or more series, and Legg Mason Partners Fund Advisor, LLC (the ''Adviser''), registered as an investment adviser under the Investment Advisers Act of 1940.

FILING DATES: The application was filed on November 27, 2015, and amended on May 5, 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 October 28, 2016 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, c/o: Bryan Chegwidden, Esq., Rope & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036, and Robert I. Frenkel, Legg Mason & Co., LLC, 100 First Stamford Place, Stamford, CT 06902.

FOR FURTHER INFORMATION CONTACT: Judy T. Lee, Senior Special Counsel, at (202) 551–6259 or Sara Crovitz, Assistant Chief Counsel, at (202) 551–6720 (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 an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would permit the applicants to participate in an interfund lending facility where each Fund could lend money directly to and borrow money directly from other Funds to cover unanticipated cash shortfalls, such as unanticipated redemptions or trade fails.[1] The Funds will not borrow under the facility for leverage purposes and the loans' duration will be no more than 7 days.[2]

2. Applicants anticipate that the proposed facility would provide a borrowing Fund with a source of liquidity at a rate lower than the bank borrowing rate at times when the cash position of the Fund is insufficient to meet temporary cash requirements. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or certain other short term money market instruments. Thus, applicants assert that the facility would benefit both borrowing and lending Funds.

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the Application. Among others, the Adviser, through a designated committee, would administer the facility as a disinterested fiduciary as part of its duties under the investment management and administrative agreements with the Funds and would receive no additional fee as compensation for its services in connection with the administration of the facility. The facility would be subject to oversight and certain approvals by the Funds' Board, including, among others, approval of the interest rate formula and of the method for allocating loans across Funds, as well as review of the process in place to evaluate the liquidity implications for the Funds. A Fund's aggregate outstanding interfund loans will not exceed 15% of its net assets, and the Fund's loan to any one Fund will not exceed 5% of the lending Fund's net assets.[3]

4. Applicants assert that the facility does not raise the concerns underlying section 12(d)(1) of the Act given that the Funds are part of the same group of investment companies and there will be no duplicative costs or fees to the Funds.[4] Applicants also assert that the proposed transactions do not raise the concerns underlying sections 17(a)(1), 17(a)(3), 17(d) and 21(b) of the Act as the Funds would not engage in lending transactions that unfairly benefit insiders or are detrimental to the Funds. Applicants state that the facility will offer both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and each Fund would have an equal opportunity to borrow and lend on equal terms based on an interest rate formula that is objective and verifiable. With respect to the relief from section 17(a)(2) of the Act, applicants note that any collateral pledged to secure an interfund loan would be subject to the same conditions imposed by any other lender to a Fund that imposes conditions on the quality of or access to collateral for a borrowing (if the lender is another Fund) or the same or better conditions (in any other circumstance).[5]

5. Applicants also believe that the limited relief from section 18(f)(1) of the Act that is necessary to implement the facility (because the lending Funds are not banks) is appropriate in light of the conditions and safeguards described in the application and because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of a Fund, including combined interfund loans and bank borrowings, have at least 300% asset coverage.

6. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Rule 17d–1(b) under the Act provides that in passing upon an application filed under the rule, the Commission will consider whether the participation of the registered investment company in a joint enterprise, joint arrangement or profit sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such

[1] Applicants request that the order apply to the applicants and to any existing or future registered open-end management investment company or series thereof for which the Adviser or any successor thereto or an investment adviser controlling, controlled by, or under common control with the Adviser or any successor thereto serves as investment adviser (each a ''Fund'' and collectively the ''Funds'' and each such investment adviser an ''Adviser''). For purposes of the requested order, ''successor'' is limited to any entity that results from a reorganization into another jurisdiction or a change in the type of a business organization.

[2] Any Fund, however, will be able to call a loan on one business day's notice.

[3] Under certain circumstances, a borrowing Fund will be required to pledge collateral to secure the loan.

[4] Applicants state that the obligation to repay an interfund loan could be deemed to constitute a security for the purposes of sections 17(a)(1) and 12(d)(1) of the Act.

[5] Applicants state that any pledge of securities to secure an interfund loan could constitute a purchase of securities for purposes of section 17(a)(2) of the Act.

participation is on a basis different from or less advantageous than that of the other participants.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24286 Filed 10–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79027; File No. SR–CHX–2016–19]

Self Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rules To Describe Changes Necessary To Implement the Tick Size Pilot Program

October 3, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on September 30, 2016, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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

CHX proposes to amend the Rules of the Exchange (''CHX Rules'') to describe changes to CHX Matching System [3] functionality necessary to implement the quoting and trading provisions of the Regulation NMS Plan to Implement a Tick Size Pilot Program (''Plan'' or ''Pilot'').[4]

The Exchange has designated this proposal as ''non-controversial'' and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[5]

The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes 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 CHX 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 Changes

1. Purpose

On August 25, 2014, NYSE Group, Inc., on behalf of the Exchange, Bats BZX Exchange, Inc. f/k/a BATS Z-Exchange, Inc., Bats BYX Exchange, Inc. f/k/a BATS Y-Exchange, Inc., Bats EDGA Exchange, Inc. f/k/a EDGA Exchange, Inc., Bats EDGX Exchange, Inc. f/k/a EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. (''FINRA''), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC, and NYSE Arca, Inc. (collectively ''Plan Participants''),[6] filed with the Commission, pursuant to Section 11A of the Act [7] and Rule 608 of Regulation NMS [8] thereunder, the Plan.[9] The Plan Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[10] The Plan [11] was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[12]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Plan Participant is required to comply with, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

The Pilot will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Pilot will consist of a control group of approximately 1400 Pilot Securities and three test groups (''Test Groups'') with 400 Pilot Securities in each selected by a stratified sampling.[13] During the Pilot, Pilot Securities in the control group will be quoted and traded at the currently permissible increments. Pilot Securities in the first test group (''Test Group One'') will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[14] Pilot Securities in the second test group (''Test Group Two'') will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[15] Pilot Securities in the third test group (''Test Group Three'') will be subject to the same restrictions as Test Group Two and also will be subject to the ''trade-at'' requirement to prevent price matching by a market participant that is not displaying at a price of a trading center's [16] best protected bid or best protected offer (''Trade-at Prohibition''), unless an enumerated exception applies.[17] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Matching System is an automated order execution system, which is a part of the Exchange's ''Trading Facilities,'' as defined under CHX Article 1, Rule 1(z).

[4] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (''Approval Order'').

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] A ''Participant'' is a ''member'' of the Exchange for purposes of the Act. *See* CHX Article 1, Rule 1(s). For clarity, the Exchange proposes to utilize the term ''CHX Participant'' when referring to members of the Exchange and the term ''Plan Participant'' when referring to Participants of the Plan.

[7] 15 U.S.C. 78k–1.

[8] 17 CFR 242.608.

[9] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[10] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[11] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Plan.

[12] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27514 (May 13, 2015) (''Approval Order'').

[13] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[14] *See* Section VI(B) of the Plan.

[15] *See* Section VI(C) of the Plan.

[16] The Plan incorporates the definition of ''trading center'' from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a ''trading center'' as ''a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.''

[17] *See* Section VI(D) of the Plan.

611 of Regulation NMS [18] will apply to the Trade-at Prohibition.

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. Accordingly, the Exchange adopted Article 20, Rule 13(a) to require CHX Participants to comply with the quoting and trading provisions of the Plan.[19] The Exchange also adopted Article 20, Rule 13(b) to require CHX Participants to comply with the data collection provisions under Appendix B and C of the Plan.[20]

Proposed Operation of Certain Order Types and Modifiers for Pilot Securities

Current Article 20, Rule 13(a)(2) provides that the Matching System will not display, quote or trade in violation of the applicable quoting and trading requirements for a Pilot Security specified in the Plan and Article 20, Rule 13, unless such quotation or transaction is specifically exempted under the Plan. The Exchange now proposes to adopt Article 20, Rule 13(c) (Operation of Certain Order Types and Modifiers for Pilot Securities) to describe specific changes to existing Matching System functionality necessary to implement the applicable quoting and trading requirements of the Plan or to clarify the operation of certain functionality in light of the Plan.[21]

Initially, the Exchange proposes to amend current CHX Article 20, Rule 13(a)(2) to adopt an additional sentence that provides that ''The operation of certain order types and modifiers applicable to the Pilot Securities are set forth under paragraph (c) below.''

CHX Only [22]

The CHX Only modifier is a limit order modifier that instructs the Exchange to reprice the CHX Only order pursuant to the CHX Only Price Sliding Processes [23] under certain circumstances, including for Rule 610(d) of Regulation NMS [24] (NMS Price Sliding [25]) and Rule 201 of Regulation SHO [26] (Short Sale Price Sliding [27]) compliance purposes.[28] Pursuant to NMS Price Sliding, a CHX Only order that, at the time of entry, would lock or cross a protected quotation of an external market in violation of Rule 610(d) would be repriced to be executable at the locking price in the Matching System and, if not marked Do Not Display,[29] displayable at one minimum price variation below the current NBO (for bids) or at one minimum price variation above the current NBB (for offers).[30] CHX Only orders subject to the CHX Only Price Sliding Processes may be price slid once or multiple times depending on changes to the prevailing NBBO.[31]

Assuming no changes to the CHX Only modifier, the Trade-at Prohibition would result in CHX Only price slid orders in Test Group 3 securities to only be executable at the locking price pursuant to an exception or exemption to the Trade-at Prohibition. In order to avoid the order cancellations that could result from CHX Only price slid orders being ranked at the locking price, the Exchange now proposes to adopt proposed paragraph (c)(1) to adopt a modification to the current CHX Only Price Sliding processes for Test Group Three securities (''Trade-at price sliding'') which provides as follows:

> In Test Group Three, an incoming CHX Only buy order priced at or through the current NBO shall be price slid to be executable and displayable at one minimum price variation below the current NBO and an incoming CHX Only sell order priced at or through the current NBB shall be price slid to be executable and displayable at one minimum price variation above the current NBB. Thereafter, in Test Group Three, a price slid CHX Only order shall continue to be price slid and executable at its displayed price pursuant to Article 1, Rule 2(b)(1)(C)(i)(b) or Rule 2(b)(1)(C)(ii)(b), as applicable.

The result of Trade-at price sliding is that the executable and displayable price of a CHX Only order that is price slid upon initial receipt and continually thereafter will always be the same.[32]

CHX Only orders in non-Test Group Three securities that would lock or cross a protected quotation of an external market in violation of Rule 610(d) would continue to be repriced pursuant to Article 1, Rule 2(b)(1)(C), as described above.

Cross Orders [33]

The Exchange proposes the following amendments regarding the operation of cross orders in certain Pilot Securities.

Block Size Exception for Cross Orders Only

Section VI(D)(2) of the Plan provides that trading centers will be permitted to execute Block Size [34] orders for a Pilot Security at a price equal to a protected bid or protected offer (''Block Size exception''). The Exchange now proposes to adopt paragraph (c)(2), which provides that only cross orders received by the Matching System shall be eligible for the Block Size exception to the Trade-at Prohibition.[35] Thus, limit [36] and market [37] orders for Test Group Three securities shall not be eligible for the Block Size exception at CHX. In the event the Exchange receives a limit or market order of Block Size that is subject to the Trade-at Prohibition, the Exchange will either (1) price slide the order if it is marked CHX Only, as described above, or (2) cancel the order.

Cross Order Exemption From Minimum Increment Requirement

Section VI(B) of the Plan prohibits the Exchange from, among other things, accepting orders in any Pilot Security in Test Group One in price increments other than $0.05 (''$0.05 minimum order increment requirement''); provided that orders priced to execute at the midpoint and orders entered in a Plan Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05. The $0.05 minimum order increment requirement and related exceptions also apply to Pilot Securities in Test Group Two and Test Group Three.[38]

---

[18] 17 CFR 242.611.

[19] *See* Securities Exchange Act Release No. 78146 (June 23, 2016), 81 FR 42380 (June 29, 2016) (SR–CHX–2016–09).

[20] *See* Exchange Act Release No. 78812 (September 12, 2016) (SR–CHX–2016–17); *see also* Exchange Act Release No. 77469 (March 29, 2016), 81 FR 19275 (April 4, 2016) (SR–CHX–2016–03).

[21] The Exchange notes that, in connection with this proposed rule change, the Exchange intends to file an exemptive request seeking relief from certain of the Plan's trading and quoting requirements.

[22] *See* CHX Article 1, Rule 2(b)(1)(C).

[23] *See id.*

[24] 17 CFR 242.610(d).

[25] *See* CHX Article 1, Rule 2(b)(1)(C)(i).

[26] *See* 17 CFR 242.201.

[27] *See* CHX Article 1, Rule 2(b)(1)(C)(ii).

[28] *See* CHX Article 1, Rule 2(b)(1)(C).

[29] *See* CHX Article 1, Rule 2(c)(2). Price slid undisplayed CHX Only orders (*i.e.,* CHX Only orders marked Do Not Display) would only be executable at the locking price and not displayable at any price.

[30] *See* CHX Article 1, Rule 2(b)(1)(C).

[31] *See* CHX Article 1, Rule 2(b)(1)(D).

[32] CHX Only sell orders subject to Short Sale Price Sliding are similarly repriced to one minimum price variation above the current NBB. *See* CHX Article 1, Rule 2(b)(1)(C)(ii).

[33] *See* CHX Article 1, Rule 2(a)(2) defining ''cross order.''

[34] ''Block Size'' is defined in the Plan as an order (1) of at least 5,000 shares or (2) with a market value of at least $100,000.

[35] Given that cross orders are always handled IOC, cross orders can never be routed away and can never be ranked on the CHX book. Moreover, cross orders can only execute as a clean cross and cannot execute against resting orders on the CHX book. *See id.*

[36] *See* CHX Article 1, Rule 2(a)(1) defining ''limit orders.''

[37] *See* CHX Article 1, Rule 2(a)(3) defining ''market orders.''

[38] Section VI(C) of the Plan provides that Pilot Securities in Test Group Two will be subject to the

Following the adoption of Rule 612 of Regulation NMS,[39] the Commission granted the national securities exchanges a limited exemption from Rule 612 to permit the exchanges to accept cross orders priced in sub-penny increments if (1) the orders are immediately executed against each other and (2) the cross transaction is effected in accordance with exchange rules approved or established pursuant to Section 19(b) of the Exchange Act[40] (''cross order exemption'').[41] This exception is not set forth in the Plan, and thus does not currently apply to cross orders for securities in the Test Groups (''Test Groups securities''). The Exchange has determined that it is appropriate to incorporate the cross order exemption to the $0.05 minimum order increment requirement, as this exemption is equally applicable to cross orders for Test Groups securities. Accordingly, the Exchange is proposing to adopt CHX Article 20, Rule 13(c)(4), which provides as follows:

In Test Group One, the Exchange shall accept cross orders in increments less than $0.05, subject to Article 20, Rule 4(a)(7)(B).[42] In Test Groups Two and Three, the Exchange shall accept cross orders in increments less than $0.05 only if the cross orders would qualify as Negotiated Trades, subject to Article 20, Rule 4(a)(7)(B).

In connection with this proposed amendment, the Exchange is seeking exemptive relief from complying with the $0.05 minimum order increment requirement as currently set forth in the Plan, which does not contain this exception.[43] [44]

Special Handling of Certain Intermarket Sweep Orders (''ISOs'')[45]

The Exchange proposes to clarify how it will handle certain ISOs received by the Exchange in Test Group Three securities. Specifically, in Test Group Three, the Exchange proposes to handle an ISO with a Time-In-Force of Day[46] or GTD[47] (''Day ISO'') as a Trade-at ISO,[48] as an order sender that submits a Day ISO to the Exchange would be representing that it has swept protected quotations priced better than or equal to the limit price of the Day ISO,[49] which would be the same representation made by an order sender submitting a Trade-at ISO to the Exchange.[50] However, an ISO with a Time-In-Force of IOC[51] (''IOC ISO'') would not be handled as a Trade-at ISO (*i.e.,* the Exchange will not ignore protected quotations priced at the limit price of the IOC ISO when processing the IOC ISO), as the sender of an IOC ISO would only be representing that it has swept protected quotations priced better than the limit price of the IOC ISO.

Thus, proposed paragraph (c)(3) provides that in Test Group Three, an Intermarket Sweep Order with a Time-In-Force of Day or GTD shall be treated as a Trade-at Intermarket Sweep Order. Moreover, as the Trade-at Prohibition does not apply to non-Test Group Three securities, proposed paragraph (c)(3) also provides that in non-Test Group Three securities, a Trade-at Intermarket Sweep Order shall be treated as an Intermarket Sweep Order.

Proposed CHX Routing Services Changes

Currently, the Exchange routes away Routable Orders[52] received by the Exchange that trigger a Routing Event, which are listed and described under Article 19, Rule 3(a). For example, Article 19, Rule 3(a)(1) (''Routing Event #1'') provides that the Exchange will route away orders to the extent necessary to permit the display and/or execution of an incoming Routable Order on the Exchange in compliance with Rules 610(d) and 611.

In light of the Trade-at Prohibition, the Exchange proposes to amend Article 19, Rule 3(a)(1) to provide that that the Exchange will route away orders to the extent necessary to permit the display and/or execution of an incoming Routable Order on the Exchange in compliance with Rules 610(d) and 611 and, for the duration of the pilot period to coincide with the pilot period for the Plan, the Trade-at Prohibition described under the Plan. The Exchange will continue to route orders pursuant to amended Routing Event #1 as IOC ISOs.

For example, assume that the NBBO for security XYZ, a Test Group Three security, is 20.00—20.05. Assume that the CHX has one undisplayed buy order for 100 shares of security XYZ priced at 20.00. Assume that two away markets are displaying protected bids for security XYZ at the NBB, each for 100 shares. Assume then that the Exchange receives a Routable Order to sell 300 shares of security XYZ at 20.00/share. Pursuant to amended Routing Event #1, the Exchange would route away two IOC ISOs, each for 100 shares of security XYZ priced at 20.00, to satisfy the full displayed size of the two protected bids at the NBB. The Exchange would then fully execute the remaining 100 shares of the incoming sell order against the resting undisplayed order at 20.00/share.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[53] in general, and furthers the objectives of Section 6(b)(5) of the Act[54]

same quoting requirements as Test Group One. Moreover, Section VI(D) of the Plan provides that Pilot Securities in Test Group Three will be subject to the same quoting and trading requirements as Test Group Two, along with the applicable quoting and trading exceptions.

[39] 17 CFR 242.612.

[40] 15 U.S.C. 78s(b)(1).

[41] Currently, the Exchange permits any type of cross order in any security, whether the order is priced less than or at or above $1.00, to be submitted in an increment as small as $0.000001. *See* CHX Article 20, Rule 4(a)(7)(B). This rule is based on exemptive relief from Rule 612 granted by the Commission to the national securities exchanges in 2006. *See* Securities Exchange Act Release No. 54714 (November 6, 2006), 71 FR 66352 (November 14, 2006) (''Rule 612 Exemptive Relief Order'').

[42] *See id.*

[43] *See supra* note 21.

[44] The Exchange notes that cross orders in Test Group Two and Three securities would continue to be subject to the $0.05 minimum trading increment requirement set forth under Section VI(C) of the Plan.

[45] *See* 17 CFR 242.600(b)(30); *see also* CHX Article 1, Rule 2(b)(3)(B) defining ''ISO.'' The Exchange recently amended the operation of the Exchange's various ISO modifiers and thus changes to CHX Article 1, Rule 2(b)(3)(B) are currently effective, but not yet operative. *See* Securities Exchange Act Release No. 78684 (August 25, 2016), 81 FR 60034 (August 31, 2016) (SR–CHX–2016–15). Changes effected pursuant to SR–CHX–2016–15 will be operative upon, or prior to, the commencement of the Pilot Period.

[46] *See* CHX Article 1, Rule 2(d)(1) defining ''Day.''

[47] *See* CHX Article 1, Rule 2(d)(3) defining ''GTD.''

[48] CHX Article 20, Rule 13(a)(7)(A)(i) defines ''Trade-at Intermarket Sweep Order'' as follows:

(i) '' Trade-at Intermarket Sweep Order'' means a limit order for a Pilot Security that meets the following requirements: (1) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and (2) Simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any Protected Bid, in the case of a limit order to sell, or the full displayed size of any Protected Offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders.

[49] *See* CHX Article 20, Rule 6(c)(3); *see also* Question 5.02 of ''Division of Trading and Markets: Responses to Frequency Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS.'' U.S. Securities and Exchange Commission, 4 April 2008. Web. 21 May 2015. *http://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm*

[50] *See id.; see also* CHX Article 20, Rule 6(c)(3).

[51] *See* CHX Article 1, Rule 2 (d)(4) defining ''IOC.''

[52] *See* CHX Article 1, Rule 1(oo) defining ''Routable Order.''

[53] 15 U.S.C. 78f(b).

[54] 15 U.S.C. 78f(b)(5).

in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that this proposal is consistent with the Act because it implements, interprets, and clarifies the provisions of the Plan and CHX Rules, and is designed to assist the Exchange and CHX Participants in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. To the extent that this proposal implements, interprets, and clarifies the Plan and applies specific requirements to CHX Participants, the Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the quoting and trading requirements of the Plan will apply equally to all CHX Participants that trade Pilot Securities.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [55] of the Act and Rule 19b–4(f)(6) [56] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b–4(f)(6) [57] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[58] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that so that the proposed rule change can become operative on September 30, 2016.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement the proposed rules immediately thereby preventing delays in the implementation of the Plan. The Commission notes that the Plan is scheduled to start on October 3, 2016. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[59]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CHX–2016–19 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 No. SR–CHX–2016–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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 changes 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 CHX. 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–CHX–2016–19 and should be submitted on or before October 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24281 Filed 10–6–16; 8:45 am]

BILLING CODE 8011–01–P

[55] 15 U.S.C. 78s(b)(3)(A).

[56] 17 CFR 240.19b–4(f)(6).

[57] 17 CFR 240.19b–4(f)(6).

[58] 17 CFR 240.19b–4(f)(6)(iii).

[59] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[60] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79024; File No. SR–Phlx–2016–79]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Rule 1017, Openings in Options

October 3, 2016.

On August 4, 2016, NASDAQ PHLX 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 amend Rule 1017, Openings in Options. The proposed rule change was published for comment in the **Federal Register** on August 22, 2016.[3] The Commission received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is October 6, 2016.

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 November 20, 2016, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–Phlx–2016–79).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24278 Filed 10–6–16; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78588 (August 16, 2016), 81 FR 56733.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79026; File No. SR–FINRA–2016–038]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 6191 To Modify the Quoting and Trading Requirements Relating to the Block Size Exception and the Use of Intermarket Sweep Orders and Trade-at Intermarket Sweep Orders

October 3, 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 September 30, 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 and II 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 amend FINRA Rule 6191 (Compliance with Regulation NMS Plan to Implement a Tick Size Pilot Program) to modify the quoting and trading requirements relating to the block size exception and the use of Intermarket Sweep Orders (''ISOs'') and Trade-at Intermarket Sweep Orders (''TAISOs'').[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.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, FINRA and several other self-regulatory organizations (''Participants'') filed with the Commission, pursuant to Section 11A of the Act [5] and Rule 608 of SEC Regulation NMS [6] thereunder, the Regulation NMS Plan to Implement a Tick Size Pilot Program (''Plan'').[7] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[8] The Plan was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[9] The Commission approved the Plan on a two-year pilot basis.[10] On November 6, 2015, the SEC exempted the Participants from implementing the pilot until October 3, 2016.[11]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan. The Plan provides for the creation of a group of Pilot Securities, which shall be placed in a control group and three separate test groups, with each subject to varying quoting and trading increments. Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in

[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, capitalized terms used in this rule filing are defined as set forth in the Plan.

[5] 15 U.S.C. 78k–1.

[6] 17 CFR 242.608.

[7] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[8] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[9] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27514 (May 13, 2015) (''Approval Order'').

[10] *See* Approval Order.

[11] *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

the first test group will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[12]

Pilot Securities in the second test group (''Test Group Two'') will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, a negotiated trade exception, and an exception for certain executions to comply with FINRA Rule 5320.[13] Pilot Securities in the third test group (''Test Group Three'') will be subject to the same quoting and trading increments as Test Group Two, and also will be subject to the ''Trade-at'' requirement to prevent price matching by a market participant that is not displaying at the price of a Trading Center's ''Best Protected Bid'' or ''Best Protected Offer,'' unless an enumerated exception applies.[14] On November 13, 2015, FINRA filed with the Commission a proposed rule change to adopt Rule 6191(a) to implement the quoting and trading requirements of the Plan,[15] which was approved, as amended, on February 23, 2016.[16]

FINRA is now proposing to amend Rule 6191(a) to make refinements to the operation of the Block Size and TAISO exceptions to the Trade-at requirement. With respect to the Block Size exception, FINRA is filing the proposed rule change to eliminate the condition that, to be eligible for the Block Size exception, the order may not be executed on multiple Trading Centers.[17] FINRA also is amending provisions relating to the TAISO exceptions of Rule 6191(a)(6)(D) by amending the definition of ''Trade-at Intermarket Sweep Order'' in Rule 6191(a)(7)(C) to clarify that a Trading Center can simultaneously route TAISOs or ISOs to execute against the full ''displayed'' size of the Protected Quotation that was traded at and to amend Rule 6191(a)(6)(D)(i) to provide that additional limit orders routed simultaneously with a TAISO can be routed as either TAISOs or ISOs, as further discussed below.[18]

Block Size Exception

FINRA is proposing to amend Rule 6191(a)(6)(D)(ii)b. to clarify the operation of the Block Size exception to the Trade-at requirement. Specifically, FINRA is deleting current prong three of the Block Size exception, which provides that orders executed on multiple Trading Centers do not qualify for the Block Size exception. By deleting this requirement, the Block Size exception to the Trade-at requirement would apply to an order, irrespective of whether the member routes out a portion of the Block Size order to another Trading Center to comply with Rule 611.[19]

As stated in FAQ # 170 in the Tick Size Pilot Program Trading and Quoting FAQs,[20] an over-the-counter (''OTC'') Trading Center may rely on the Block Size exception irrespective of whether it routes an ISO, as required by Rule 611, to execute against the full displayed size of any Protected Quotation with a price superior to the price at which the Block Size order was executed.[21] The instant amendment to the Block Size exception provision of Rule 6191(a) aligns the rule text with the guidance provided by FINRA and the other Participants in the Tick Size Pilot Program Trading and Quoting FAQs. The proposed amendment is designed to accommodate activity resulting from member compliance obligations under Rule 611 while remaining consistent with the Plan. FINRA notes that the multiple trading center condition to the use of the Block Size exception is not required by the Plan; thus, the proposed rule change remains consistent with the terms of the Plan.

Trade-at Intermarket Sweep Orders

The Plan defines a ''Trade-At Intermarket Sweep Order'' as a limit order for a Pilot Security that, when routed to a Trading Center, is identified as an ISO, and simultaneous with the routing of the limit order identified as an ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is equal to the limit price of the limit order identified as an ISO.[22] The Plan states that these additional routed orders also must be marked as ISOs.[23]

FINRA clarified the use of ISOs in connection with the Trade-at requirement by adopting a definition of ''Trade-at Intermarket Sweep Order.'' [24] FINRA is proposing to further clarify that, when a TAISO is routed to a Trading Center, when simultaneously routing additional limit orders to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, such additional limit orders can be routed as either TAISOs or ISOs. Therefore, FINRA is proposing to distinguish TAISOs from ISOs by adding the phrase ''or Intermarket Sweep Orders'' to the end of FINRA Rule 6191(a)(7)(C)(ii), so that any such additional routed orders sent to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a TAISO, may be marked as either TAISOs or ISOs.

Likewise, FINRA is proposing to amend Rule 6191(a)(6)(D)(i) to add the

[12] *See* Section VI(B) of the Plan.

[13] *See* Section VI(C) of the Plan; *See also* FINRA Rule 6191(a)(5)(C).

[14] *See* Section VI(D) of the Plan.

[15] *See* Securities Exchange Act Release No. 76483 (November 19, 2015), 80 FR 73853 (November 25, 2015) (Notice of Filing of File No. SR–FINRA–2015–047).

[16] *See* Securities Exchange Act Release No. 77218 (February 23, 2016), 81 FR 10290 (February 29, 2016) (Order Approving File No. SR–FINRA–2015–047).

[17] The Plan incorporates the definition of a ''Trading Center'' from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a ''Trading Center'' as ''a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.'' *See* 17 CFR 242.600(b).

[18] FINRA understands that other Participants have filed (or intend to file) amendments to their rules regarding the operation of the TAISO and Block Size exceptions consistent to the changes being proposed by FINRA in the instant filing. *See e.g.,* Securities Exchange Act Release No. 78802 (September 9, 2016), 81 FR 63515 (September 15, 2016) (Notice of Filing of File No. SR–NYSE–2016–62).

[19] 17 CFR 242.611.

[20] *See* Tick Size Pilot Program Trading and Quoting FAQs, available at: *http://www.finra.org/sites/default/files/TSPP-Trading-and-Quoting-FAQs.pdf.*

[21] The FAQ also provides, among other things that, in all cases, an OTC Trading Center may avail itself of the Block Size exception only where it has committed to execute the order in Block Size, irrespective of whether or not the outbound ISOs required pursuant to Regulation NMS Rule 611 were fully executed. *See* FAQ #170, Tick Size Pilot Program Trading and Quoting FAQs.

[22] *See* Section I(MM) of the Plan.

[23] *Id.*

[24] Rule 6191(a)(7)(C) (''Trade-at Requirement'') provides that ''Trade-at Intermarket Sweep Order'' means a limit order for a Pilot Security that meets the following requirements: (i) When routed to a Trading Center, the limit order is identified as a TAISO; and (ii) simultaneously with the routing of the limit order identified as a TAISO, one of more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a TAISO. These additional routed orders also must be marked as TAISO.

phrase ''or Intermarket Sweep Orders'' to the TAISO exception to the Trade-at requirement, to clarify that a Trading Center can simultaneously route TAISOs or ISOs to execute against the full displayed size of the Protected Quotation that was traded at. FINRA believes that this amendment is consistent with the Plan and preserves the intended operation of the exception, while providing members with additional flexibility when availing themselves of the TAISO exception to the Trade-at requirement.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA has requested that the SEC waive the 30-day operative period so that the proposed rule change can become operative on October 3, 2016.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[25] 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, and Section 15A(b)(9) of the Act,[26] which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

The Plan requires FINRA to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. FINRA believes that this proposal is consistent with the Act because it is designed to assist FINRA in meeting its regulatory obligations pursuant to the Plan and is in furtherance of the objectives of the Plan.

FINRA believes that this proposal will clarify the permissible parameters around members' use of the Block Size exception by taking into account the possibility that a member may be required to route an ISO in compliance with Rule 611. Thus, FINRA believes that the proposed rule change better accommodates activity resulting from member compliance obligations under Rule 611, while remaining consistent with the Plan. FINRA also believes that the proposed changes to the operation of the TAISO exception to the Trade-at requirement is consistent with the Act in that it provides members with additional flexibility in using the TAISO exception while preserving the intended operation of the exception, consistent with the Plan.

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. FINRA notes that the proposed rule change implements the provisions of the Plan, and is designed to assist FINRA in meeting its regulatory obligations pursuant to the Plan. FINRA also notes that the quoting and trading requirements of the proposal will apply equally to all members that trade Pilot Securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [27] and Rule 19b–4(f)(6) thereunder.[28]

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.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA has requested that the SEC waive the 30-day operative period so that the proposed rule change can become operative on October 3, 2016.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow FINRA to implement the proposed rules immediately thereby preventing delays in the implementation of the Plan. The Commission notes that the Plan is scheduled to start on October 3, 2016. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[29]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2016–038 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR- FINRA–2016–038. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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 FINRA. All comments received will be posted without change; the Commission does not edit personal

[25] 15 U.S.C. 78*o*–3(b)(6).

[26] 15 U.S.C. 78*o*–3(b)(9).

[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f)(6).

[29] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2016–038, and should be submitted on or before October 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24280 Filed 10–6–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before November 7, 2016.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: Small Business Administration (SBA) regulations require that we determine that a participating Certified Development Company's Non-Bank Lender Institutions or Microlender's management, ownership, etc. is of ''good character''. To do so requires the information requested on the Form 1081. This form also provides data used to determine the qualifications and capabilities of the lenders key personnel.

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

Solicitation of Public Comments

Title: Statement of Personal History.
Description of Respondents: Small Business Lending Companies.
Form Number: 1081.
Estimated Annual Responses: 151.
Estimated Annual Hour Burden: 108.

Authority: 44 U.S.C. 35.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2016–24236 Filed 10–6–16; 8:45 am]

BILLING CODE 8025–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36061]

Arkansas Southern Railroad, L.L.C.—Lease Exemption Containing Interchange Commitment—The Kansas City Southern Railway Company

Arkansas Southern Railroad, L.L.C. (ARS), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to continue to lease and operate from The Kansas City Southern Railway Company (KCS) approximately 61 miles of rail lines in Arkansas and Oklahoma.[1] The rail lines are located between milepost 4.0 near Heavener, Okla., and milepost 33.0 at Waldron, Ark., and between milepost 32.0 at Ashdown, Ark., and milepost 0.0 at Nashville, Ark., not including the 601 track switch at Ashdown, Ark.

ARS states that it entered into lease agreements with KCS in 2005.[2] ARS recently entered into two amended and restated lease agreements, which, among other things, extend the term of the lease to August 30, 2026. As required by 49 CFR 1150.43(h)(1), ARS has disclosed in its verified notice that the amended lease agreements contain an interchange agreement that affects the interchange point at Nashville, Ark. In addition, ARS has provided additional information regarding the interchange commitment as required by 49 CFR 1150.43(h). ARS states that it will continue to be the operator of the lines.

ARS certifies that its projected revenues as a result of the proposed transaction will not result in ARS's becoming a Class II or Class I rail carrier and that its annual revenues will not exceed $5 million.

ARS states that it intends to consummate the transaction on or shortly after October 21, 2016, the effective date of the exemption (30 days after the verified notice of exemption was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than October 14, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36061, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on applicant's representative, Karl Morell, Karl Morell & Associates, Suite 225, 655 Fifteenth Street NW., Washington, DC 20005.

According to ARS, this action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available on our Web site at *WWW.STB.GOV*.

Decided: October 4, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2016–24314 Filed 10–6–16; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 337 (Sub-No. 9X)]

Dakota, Minnesota & Eastern Railroad Corporation—Abandonment Exemption—in Scott County, Iowa

Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific (DM&E) has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments* to abandon a 1.95-mile rail line referred to as the Eldridge Line, between milepost 7.52 +/− and milepost 9.47 +/− in Scott County, Iowa (the Line). The Line traverses United States Postal Service Zip Code 52748.

DM&E has certified that: (1) No local freight traffic has moved over the Line for at least two years; (2) because the Line is not a through route, no overhead

[30] 17 CFR 200.30–3(a)(12).

[1] Pursuant to 49 CFR 1150.43(h)(1), ARS filed a confidential, complete version of the lease agreement to be kept confidential by the Board without need for the filing of an accompanying motion for protective order.

[2] *See Ark. S. R.R.—Lease Exemption—Kan. City S. Ry.,* FD 34760 (STB served Oct. 26, 2005).

traffic has operated; and, therefore, none needs to be rerouted over other lines; (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 is either pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of 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 November 10, 2016, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 17, 2016. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 27, 2016, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.[3]

A copy of any petition filed with the Board should be sent to DM&E's representative: W. Karl Hansen, Stinson Leonard Street LLP, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

If the verified notice contains false or misleading information, the exemption is void ab initio.

DM&E has filed environmental and historic reports that address the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by October 14, 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), CSXT 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 DM&E's filing of a notice of consummation by October 7, 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.GOV*.''

Decided: October 4, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Rena Laws-Byrum,

Clearance Clerk.

[FR Doc. 2016–24330 Filed 10–6–16; 8:45 am]

BILLING CODE 4915–01–P

[1] 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.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

[3] DM&E states that the Line may be suitable for other public purposes or trail use, and is not aware of any restriction on title to the property, including any reversionary interest which would affect the transfer of title or the use of the property for non-rail purposes.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36057]

Cedar Rapids and Iowa City Railway Company—Change in Operator Exemption—Iowa Interstate Railroad, Ltd.

Cedar Rapids and Iowa City Railway Company (CRANDIC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to assume operations over a line of railroad known as the Hills Line extending from milepost 25.0 near Burlington Street in Iowa City, Iowa, to the end of the track at milepost 33.4 in Hills, Iowa, a distance of approximately 8.4 miles. CRANDIC states that it owns the Hills Line, which is currently leased to and operated by Iowa Interstate Railroad, Ltd. (IAIS).[1]

CRANDIC notes that CRANDIC and IAIS have agreed that the lease of the Hills Line by IAIS will terminate on October 26, 2016, under the terms of the governing lease agreement and that, as of that date, IAIS will relinquish to CRANDIC (and CRANDIC alone will assume) the legal obligation to provide common carrier rail service over the Hills Line.

CRANDIC states that the proposed change in operator does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier. CRANDIC certifies that its projected annual revenues as a result of this transaction will not result in CRANDIC's becoming a Class II or Class I rail carrier. However, because its projected annual revenues exceed $5 million, CRANDIC certifies that, pursuant to 49 CFR 1150.42(e), it provided notice on August 18, 2016, to employees on the Hills Line and on the national offices of the labor unions for those employees' unions. Additionally, under 49 CFR 1150.42(b), a change in operator requires that notice be given to shippers. CRANDIC certifies that it has provided notice of the proposed change in operator to shippers on the Hills Line.

The earliest this transaction can be consummated is October 23, 2016, the effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than October 14, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36057, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at *WWW.STB.GOV*.

Decided: October 4, 2016.

[1] *See Iowa Interstate R.R.—Lease Exemption—Line of Cedar Rapids & Iowa City Ry.,* FD 35562 (STB served Jan. 25, 2012).

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2016–24322 Filed 10–6–16; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway Project in Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA.

SUMMARY: This notice announces actions taken by FHWA that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, Interstate 94 (I–94) East-West Corridor, 70th Street to 16th Street, in Milwaukee County, Wisconsin. Those actions grant approvals for the project.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before March 6, 2017. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Michael Davies, Division Administrator, FHWA Wisconsin Division Office, 525 Junction Road Suite 8000, Madison, Wisconsin 53717; telephone: (608) 829–7500; email: *Wisconsin.FHWA@dot.gov.* The FHWA Wisconsin Division's normal office hours are 7 a.m. to 4 p.m. central time. For the Wisconsin Department of Transportation (WisDOT): Jason Lynch, PE, Wisconsin Department of Transportation, Southeast Region, 141 NW Barstow Street, Waukesha, Wisconsin 53187; telephone: (414) 750–1803; email: *jason.lynch@dot.wi.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing approval for the following highway project: Interstate 94 (I–94) East-West Corridor, 70th Street to 16th Street, in Milwaukee County, Wisconsin, Wisconsin DOT Project I.D. 1060–27–00. The purpose of the project is to address the deteriorated condition of I–94, obsolete roadway and bridge design, existing and future traffic demand, and high crash rates along approximately 3.5 miles of I–94. The project includes reconstructing and adding a through lane along I–94 in each direction along its existing alignment; reconstructing the 68th/70th Street interchange; reconstructing the Hawley Road interchange as a partial interchange; closure of the Mitchell Boulevard interchange; reconfiguring the system interchange at I–94/WIS 175/Miller Park Way (Stadium Interchange) as a hybrid between a service interchange and a system interchange (including a local road connection to Mitchell Boulevard and modifying the WIS 175 interchange ramps at Wisconsin Avenue); reconstructing the 35th Street and 27th Street interchanges; and local roadway improvements to offset impacts to local traffic from interchange modifications.

The actions taken by FHWA on this project, and laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS), approved on January 29, 2016, in the Record of Decision (ROD) issued on September 9, 2016, and in other documents in the FHWA or WisDOT project records. The FEIS, ROD, and other project records are available by contacting FHWA or WisDOT at the addresses provided above. The FEIS and ROD can also be viewed on the project Web site: *http://wisconsindot.gov/Pages/projects/by-region/se/94stadiumint/default.aspx.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109, 23 U.S.C. 128, and 23 U.S.C 139].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act of 1973 [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001 *et seq.*].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d) et. seq.]; Americans with Disabilities Act [42 U.S.C. 12101]; Uniform Relocation Assistance and Real Property Acquisition Act of 1970 [42 U.S.C. 4601 *et seq.* as amended by the Uniform Relocation Act Amendments of 1987 [Pub. L. 100–17].

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]; Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99–499]; Resource Conservation and Recovery Act [42 U.S.C. 6901 et. seq.].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management as amended by E.O. 12148 and E.O. 13690; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: September 23, 2016.

Michael Davies,

Division Administrator, FHWA Wisconsin Division, Madison, Wisconsin.

[FR Doc. 2016–23785 Filed 10–6–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016 0095]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel Southern Cross; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized

to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 7, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0095. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov*.

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel *Southern Cross* is:

Intended Commercial Use of Vessel: ''Coastal Sailing, San Diego Coastline. Carry passengers for Day sailing and overnight excursions. Primarily sight seeing but also will offer beginning sailing lessons.''

Geographic Region: ''California''.

The complete application is given in DOT docket MARAD–2016–0095 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: September 22, 2016.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–24305 Filed 10–6–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016 0096]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel Salty Dawg; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 7, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0096. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *Salty Dawg* is:

Intended Commercial Use of Vessel: '': Intend to use for charter fishing (OUPV 6 passenger) on near coastal waters (within 100 miles) of east coast US and Chesapeake Bay and its tributaries''.

Geographic Region: ''MD, DE, VA, NC, NJ, SC, FL''.

The complete application is given in DOT docket MARAD–2016–0096 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: September 22, 2016.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–24304 Filed 10–6–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016 0094]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel Between Shores; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 7, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0094. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *Between Shores* is:

Intended Commercial Use of Vessel: ''Harbor Tours''.

Geographic Region: ''California''.

The complete application is given in DOT docket MARAD–2016–0094 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator

Dated: September 22, 2016.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–24303 Filed 10–6–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0089]

Model Minimum Uniform Crash Criteria

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments .

SUMMARY: The National Highway Traffic Safety Administration (NHTSA), in coordination with the Governors Highway Safety Association (GHSA), the Federal Highway Administration (FHWA), and the Federal Motor Carrier Safety Administration (FMCSA), is in the process of reviewing the Guidelines for the Model Minimum Uniform Crash Criteria (MMUCC) Fourth Edition, December 2012, and requests comments to determine appropriate improvements to address stakeholder concerns. The MMUCC provides States with a dataset for describing crashes of motor vehicles in transport that generates the information necessary to improve highway safety within each State and nationally. NHTSA and GHSA established an expert panel to review the proposed changes and comments received from **Federal Register** Notice FR Doc. 2016–09231. On July 27–28, 2016, the MMUCC expert panel met and decided on initial changes to MMUCC based on input from the subject matter experts in attendance and written comments submitted in response to a April 21, 2016 request for comments. The MMUCC panel will meet again on October 27–28, 2016, to continue deliberating changes to MMUCC and is seeking public input on additional changes. Crash data users may comment on the utility of the current MMUCC guidelines, the draft changes to MMUCC, and suggest additional changes for the next update to MMUCC. Based on the input received in response to this notice, NHTSA and GHSA anticipate issuing changes to the Guidelines in 2017.

DATES: Comments must be received on or before October 28, 2016.

ADDRESSES: You may submit comments identified by DOT Docket ID number NHTSA–2016–0089 or by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30 U.S. Department of Transportation, West Building, Ground floor, Room W12–140, 1200 New Jersey Ave. SE., Washington, DC 20590.
- *Hand Delivery or Courier:* Docket Management Facility, M–30 U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., Washington, DC 20590, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.
- *Governors Highway Safety Association Web site:* Go to *www.ghsa.org.* Follow the online instructions for submitting comments.

Regardless of how you submit your comments, you should identify the Docket number of this notice. Note that all comments received in response to this notice at *www.regulations.gov* or *www.ghsa.org* will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please read the ''Privacy Act'' heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association,

business, labor union, etc.). You may review DOT's complete Privacy Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://docketsInfo.dot.gov.*

Confidential Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

Docket: For access to the docket to read the proposed changes to MMUCC, background documents, or comments received, go to *http://www.regulations.gov* at any time or to West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For programmatic issues: John Siegler, Office of Traffic Records and Analysis, NSA–221, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone (202) 366–1268.

SUPPLEMENTARY INFORMATION: The Model Minimum Uniform Crash Criteria (MMUCC) provides data elements for describing crashes of motor vehicles in transport that generates the information necessary to improve highway safety within each State and nationally. Statewide motor vehicle traffic crash data systems provide the basic information necessary for effective highway and traffic safety efforts at any level of government—local, State, or Federal. State crash data are used to perform problem identification, establish goals and performance measures, allocate resources, determine the progress of specific programs, and support the development and evaluation of highway and vehicle safety countermeasures. The use of State crash data can be hindered by the lack of uniformity between and within States.

MMUCC represents a voluntary and collaborative effort to generate uniform crash data that are accurate, reliable, and credible for data-driven highway safety decisions within a State, between States, and at the national level. MMUCC was originally developed in response to requests by States interested in improving and standardizing their State crash data. Lack of uniform reporting made the sharing and comparison of State crash data difficult. Different elements and definitions resulted in incomplete data and misleading results. MMUCC recommends voluntary implementation of a ''minimum set'' of standardized data elements to promote comparability of data within the highway safety community. It serves as a foundation for State crash data systems. The next planned update of the MMUCC Guideline is scheduled for 2017.

Implementation of MMUCC is an ongoing and collaborative effort. Changes to MMUCC approved during the first panel meeting on July 27–28, 2016, included creating new subsections for crashes involving (a) fatalities, (b) large vehicles/hazardous materials, and (c) non motorists; and modifications to existing crash, vehicle and person data elements. This second request for information will provide additional input to the MMUCC expert panel on a number of stakeholders' proposals including the addition of a new data element for ''Motor Vehicle Automation Equipped and Use.'' These topics will be discussed during the second meeting on October 27–28, 2016, after which, NHTSA, in collaboration with GHSA, FHWA, and FMCSA, will review and finalize the MMUCC 5th edition for publication in 2017. Additional information about the MMUCC update can be found on the Governor's Highway Safety Association Web site *www.ghsa.org.* Full text of the draft revised version of MMUCC can be viewed in the docket. The MMUCC 4th edition can be viewed on the National Highway Traffic Safety Administration's Web site at *http://www-nrd.nhtsa.dot.gov/Pubs/811631.pdf.*

Steven K. Smith,

Acting Associate Administrator for NHTSA's National Center for Statistics and Analysis.

[FR Doc. 2016–24288 Filed 10–6–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Agreement and Request for Disposition of a Decedent's Treasury Securities

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Special Bond of Indemnity to the United States of America.

DATES: Written comments should be received on or before December 6, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Agreement and Request for Disposition of a Decedent's Treasury Securities.

OMB Number: 1530–0046.

Transfer of OMB Control Number: The Bureau of Public Debt (BPD) and the Financial Management Service (FMS) have consolidated to become the Bureau of the Fiscal Service (Fiscal Service). Information collection requests previously held separately by BPD and FMS will now be identified by a 1530 prefix, designating Fiscal Service.

Form Number: FS Form 5394.

Abstract: The information is necessary for the disposition of Treasury securities and/or payments to the entitled person(s) when the decedent's estate was formally administered through the court and has been closed, or the estate is being settled in accordance with State statute without the necessity of the court appointing a legal representative.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 18,500.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 9,250.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 4, 2016.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2016–24351 Filed 10–6–16; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Offering of U.S. Mortgage Guaranty Insurance Company Tax and Loss Bonds

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Offering of U.S. Mortgage Guaranty Insurance Company Tax and Loss Bonds.

DATES: Written comments should be received on or before December 6, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Offering of U.S. Mortgage Guaranty Insurance Company Tax and Loss Bonds.

OMB Number: 1530–0051.

Transfer of OMB Control Number: The Bureau of Public Debt (BPD) and the Financial Management Service (FMS) have consolidated to become the Bureau of the Fiscal Service (Fiscal Service). Information collection requests previously held separately by BPD and FMS will now be identified by a 1530 prefix, designating Fiscal Service.

Form Number: FS Form 5394.

Abstract: The information is requested to establish an investor account, issue and redeem securities.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or Other For-Profit Organizations.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 13.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 4, 2016.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2016–24352 Filed 10–6–16; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Special Bond of Indemnity to the United States of America

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Special Bond of Indemnity to the United States of America.

DATES: Written comments should be received on or before December 6, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Special Bond of Indemnity to the United States of America.

OMB Number: 1530–0030.

Transfer of OMB Control Number: The Bureau of Public Debt (BPD) and the Financial Management Service (FMS) have consolidated to become the Bureau of the Fiscal Service (Fiscal Service). Information collection requests previously held separately by BPD and FMS will now be identified by a 1530 prefix, designating Fiscal Service.

Form Number: FS Form 2966.

Abstract: The information is requested to support a request for refund of the purchase price of savings bonds purchased in a chain letter scheme.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 2,400.

Estimated Time per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 320.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the

request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 4, 2016.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2016–24350 Filed 10–6–16; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is updating the identifying information for one entity and one individual that was previously designated pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act) (21 U.S.C. Sections 1901–1908, 8 U.S.C. Section 1182).

DATES: The update to the list of Specially Designated Nationals and Blocked Persons (SDN List) of the individual and entity identified in this notice whose property and interests in property are blocked pursuant to the Kingpin Act, is effective on October 4, 2016.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac.*

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Kingpin Act provides that the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security, may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On October 4, 2016, the Associate Director of the Office of Global Targeting updated the SDN List for the entity and individual listed below, whose property and interests in property are blocked pursuant to the Kingpin Act:

Entity and Individual

1. AVICAL S.A., Transversal 72 No. 16–11, Glorieta de Milan, Manizales, Caldas, Colombia; Carrera 18 No. 30–65, Manizales, Caldas, Colombia; Calle 161 No. 91A–53, Bogota, Cundinamarca, Colombia; Medellin, Antioquia, Colombia; Dosquebradas, Risaralda, Colombia; NIT # 810006566–9 (Colombia) [SDNTK].

—to—

AVICAL S.A., Transversal 72 No. 16–11, Glorieta de Milan, Manizales, Caldas, Colombia; Carrera 18 No. 30–65, Manizales, Caldas, Colombia; Calle 161 No. 91A–53, Bogota, Cundinamarca, Colombia; Medellin, Antioquia, Colombia; Dosquebradas, Risaralda, Colombia; 810006556–9 (Colombia) [SDNTK].

2. MURILLO SALAZAR, Claudia Julieta, Colombia; Mexico; DOB 29 Jul 1975; POB Manizales, Caldas, Colombia; nationality Colombia; Cedula No. 30335610 (Colombia); C.U.R.P. MUSC750729MNERU04 (Mexico) (individual) [SDNTK] (Linked To: AVICAL S.A.; Linked To: MUNSA INTERNATIONAL INVESMENTS S.A.).

—to—

MURILLO SALAZAR, Claudia Julieta, Colombia; Mexico; DOB 29 Jul 1975; POB Manizales, Caldas, Colombia; nationality Colombia; Cedula No. 30335610 (Colombia); C.U.R.P. MUSC750729MNERLL04 (Mexico) (individual) [SDNTK] (Linked To: AVICAL S.A.; Linked To: MUNSA INTERNATIONAL INVESMENTS S.A.).

Dated: October 4, 2016.

Gregory T. Gatjanis,

Associate Director, Office of Global Targeting, Office of Foreign Assets Control.

[FR Doc. 2016–24332 Filed 10–6–16; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0554]

Proposed Information Collection (VA Homeless Providers Grant and Per Diem Program)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice; Activity: Comment request.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to identify areas for improvement in clinical training programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 6, 2016.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System

(FDMS) at *www.Regulations.gov*; or to Brian McCarthy, Office of Regulatory and Administrative Affairs, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *Brian.McCarthy4@va.gov.* Please refer to ''OMB Control No. 2900–0554'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy at (202) 461–6345.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA Homeless Providers Grant and Per Diem Program.

OMB Control Number: 2900–0554.

Type of Review: Reinstatement with change of a currently expired collection.

Summary of collection of information: The proposed rule at §§ 61.33 and 61.80, contains compliance reporting provisions for capital grants, per diem, and special needs grants.

Description of the need for information and proposed use of information: Determine eligibility for capital grants and per diem and reporting requirements to determine grant compliance.

Description of likely respondents: Grant Applicants—Non-Profit Agencies, State and Local Governments, and Indian Tribal Governments.

Estimated number of respondents per year: 650.

Estimated frequency of responses per year: 1 per year.

Estimated average burden per response: 18.98 hours.

Estimated total annual reporting and recordkeeping burden: 12,337 hours.

By direction of the Secretary,

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–24243 Filed 10–6–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0793]

Proposed Information Collection (VA Health Professional Scholarship and Visual Impairment and Orientation and Mobility Professional Scholarship Programs) Activity: Comment Request.

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to identify areas for improvement in clinical training programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 6, 2016.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Brian McCarthy, Office of Regulatory and Administrative Affairs, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *Brian.McCarthy4@va.gov.* Please refer to ''OMB Control No. 2900–0793'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy at (202) 461–6345.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

1. Academic Verification, VA Form 10–0491.
2. Addendum to Application, VA Form 10–0491a.
3. Annual VA Employment Deferment Verification, VA Form 10–0491c.
4. Education Program Completion Notice Service Obligation Placement, VA Form 10–0491d.
5. Evaluation Recommendation Form, VA Form 10–0491e.
6. HPSP Agreement, VA Form 10–0491f.
7. HPSP/OMPSP Application, VA Form 10–0491g.
8. Notice of Approaching Graduation, VA Form 10–0491h.
9. Notice of Change and/or Annual Academic Status Report, VA Form 10–0491i.
10. Request for Deferment for Advanced Education, VA Form 10–0491j.
11. VA Scholarship Offer Response, VA Form 10–0491k.
12. VIOMPSP Agreement, VA Form 10–0491l.

OMB Control Number: 2900–0793.

Type of Review: Revision of a currently approved collection.

Abstract: The information required determines the eligibility or suitability of an applicant desiring to receive an award under the provisions of 38 U.S.C. 7601 through 7619, and 38 U.S.C. 7501 through 7505. The information is needed to apply for the VA Health Professional Scholarship Program or Visual Impairment and Orientation and Mobility Professional Scholarship Program. The VA Health Professional Scholarship Program awards scholarships to students receiving education or training in a direct or indirect healthcare services discipline to assist in providing an adequate supply of such personnel for VA and for the United States. The Visual Impairment

and Orientation and Mobility Professional Scholarship Program awards scholarships to students pursuing a program of study leading to a degree in visual impairment or orientation and mobility in order to increase the supply of qualified blind rehabilitation specialists for VA and the Nation.

Affected Public: Individuals or households.

ESTIMATE OF THE HOUR BURDEN FOR THE COLLECTION OF INFORMATION

VA forms:	Number of respondents	× Number of responses	Equals	× Number of minutes	Equals (minutes)	÷ by 60 =	Number of hours
Applicants:							
10–0491g—Application	1,500	1	1,500	60	90,000	.....	1,500
10–0491—Academic Verification	1,500	1	1,500	60	90,000	.....	1,500
10–0491e—Evaluations & Recommendations (2)	1,500	2	3,000	50	150,000	.....	2,500
10–0491a—Addendum to Application	450 (30%)	1	450	10	4,500	.....	75
Total	.....	.....	.....	.....	.....	.....	5,575
Applicants Selected to Receive a Scholarship:							
10–0491L—Agreement for the VIOMPSP	30	1	30	15	450	.....	8
10–0491k—VA Scholarship Offer Response	30	1	30	10	300	.....	5
10–0491i—Notice of Change and/or Annual Academic Status Report	30	1	30	20	600	.....	10
10–0491h—Notice of Approaching Graduation	30	1	30	10	300	.....	5
10–0491d—Education Program Completion Notice/Service Obligation Placement	30	1	30	20	600	.....	10
10–0491j—Request for Deferment for Advanced Education	6	1	6	10	60	.....	1
10–0491c—Annual VA Employment/Deferment Verification	30	1	24	10	240	.....	4
Total	.....	.....	.....	.....	.....	.....	43
Grand Total for VIOMPSP	.....	.....	.....	.....	.....	.....	5,618
Health Professional Scholarship Program (HPSP)							
Applicants:							
10–0491g—Application	5,000	1	5,000	60	300,000	.....	5,000
10–0491—Academic Verification	5,000	1	5,000	60	300,000	.....	5,000
10–0491e—Evaluations & Recommendations (2)	5,000	2	10,000	50	500,000	.....	8,333
10–0491a—Addendum to Application	1500 (30%)	1	1500	10	15,000	.....	250
Total	.....	.....	.....	.....	.....	.....	18,583
Applicants Selected to Receive a Scholarship:							
10–0491f—Agreement for the HPSP	100	1	100	15	1,500	.....	25
10–0491k—VA Scholarship Offer Response	100	1	100	10	1,000	.....	17
10–0491i—Notice of Change and/or Annual Academic Status Report	100	1	100	20	2,000	.....	33
10–0491h—Notice of Approaching Graduation	100	1	100	10	1,000	.....	17
10–0491d—Education Program Completion Notice/Service Obligation Placement	100	1	100	20	2,000	.....	33
10–0491j—Request for Deferment for Advanced Education	20	1	20	10	200	.....	3
10–0491c—Annual VA Employment/Deferment Verification	80	1	80	10	800	.....	13
Total	.....	.....	.....	.....	.....	.....	141
Grand Total for HPSP	.....	.....	.....	.....	.....	.....	18,724
Grand Total for Both VIOMPSP and HPSP	.....	.....	.....	.....	.....	.....	24,342

Frequency of Response: Annually.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–24244 Filed 10–6–16; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 81 Friday,
No. 195 October 7, 2016

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 91, 121, et al.
Pilot Professional Development; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 91, 121, and 135

[Docket No.: FAA–2014–0504; Notice No. 16–06]

RIN 2120–AJ87

Pilot Professional Development

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration proposes to modify the requirements primarily applicable to air carriers conducting domestic, flag and supplemental operations to enhance the professional development of pilots in those operations. The proposal would require air carriers conducting domestic, flag and supplemental operations to provide new-hire pilots with an opportunity to observe flight operations (operations familiarization) to become familiar with procedures before serving as a flightcrew member in operations; revise the upgrade curriculum; provide leadership and command and mentoring training for all pilots in command (PICs); and establish Pilot Professional Development Committees (PPDC). This proposal is responsive to a statutory requirement for the Federal Aviation Administration to convene an aviation rulemaking committee (ARC) to develop procedures for air carriers pertaining to pilot mentoring, professional development, and leadership and command training and to issue an NPRM and final rule based on these recommendations. The proposal also includes a number of additional conforming changes related to flight simulation training devices and second in command (SIC) pilot training and checking, and other miscellaneous changes. The FAA believes that this proposed rule would mitigate incidents of unprofessional pilot behavior which would reduce pilot errors that can lead to a catastrophic event.

DATES: Send comments on or before January 5, 2017.

ADDRESSES: Send comments identified by docket number FAA–2014–0504 using any of the following methods:

- *Federal eRulemaking 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: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. 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.*

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 the 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: For technical questions concerning this action, contact Sheri Pippin, Air Transportation Division (AFS–200), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8166; email: *sheri.pippin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The Federal Aviation Administration's (FAA) authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the FAA's authority.

This rulemaking is promulgated under the general authority described in 49 U.S.C. 106(f) and 44701(a) and the specific authority found in section 206 of Public Law 111–216, the Airline Safety and Federal Aviation Administration Extension Act of 2010 (Aug. 1, 2010) (49 U.S.C. 44701 note), which directed the FAA to convene an ARC and conduct a rulemaking proceeding based on the ARC's recommendations pertaining to mentoring, professional development, and leadership and command training for pilots serving in part 121 operations. Section 206 further required that the FAA include in leadership and command training instruction on compliance with flightcrew member duties under 14 CFR 121.542 (sterile flight deck rule).[1]

List of Abbreviations and Acronyms Frequently Used in This Document

AC Advisory Circular
ACSPT ARC Air Carrier Safety and Pilot Training Aviation Rulemaking Committee
ARC Aviation Rulemaking Committee
ATP Airline Transport Pilot
ATP–CTP Airline Transport Pilot Certification Training Program
CAMI FAA Civil Aerospace Medical Institute
CFR Code of Federal Regulations
CRM Crew Resource Management
FFS Full Flight Simulator
FSTD Flight Simulation Training Device
InFO Information for Operators
LOFT Line-Oriented Flight Training
MLP ARC Flight Crewmember Mentoring, Leadership, and Professional Development Aviation Rulemaking Committee
NPRM Notice of Proposed Rulemaking
PIC Pilot in Command
PDSC Professional Development Steering Committee
PPDC Pilot Professional Development Committee
PTS Practical Test Standards
SAFO Safety Alert for Operators
SIC Second in Command
THRR ARC Flightcrew Member Training Hours Requirement Review Aviation Rulemaking Committee
91K Part 91, subpart K

Table of Contents

[1] 14 CFR 121.542 has commonly been referred to as the sterile cockpit rule. (46 FR 5500, January 19, 1981) Throughout this NPRM, it will be referred as the sterile flight deck rule consistent with updated terminology.

I. Executive Summary

A. Purpose of the Regulatory Action

Although the overall safety and reliability of the National Airspace System (NAS) demonstrates that most pilots conduct operations with a high degree of professionalism, a problem still exists in the aviation industry with some pilots acting unprofessionally and not adhering to standard operating procedures, including the sterile flight deck rule. The National Transportation Safety Board (NTSB) has continued to cite inadequate leadership in the flight deck, pilots' unprofessional behavior, and pilots' failure to comply with the sterile flight deck rule as factors in multiple accidents and incidents including Pinnacle Airlines flight 3701 (October 14, 2004) and Colgan Air, Inc. flight 3407 (February 12, 2009).

The Colgan Air accident focused public and Congressional attention on multiple aspects of air carrier training requirements, including issues pertaining to pilot leadership and command and mentoring. The accident also raised questions about pilot adherence to the sterile flight deck rule.

The Airline Safety and Federal Aviation Administration Extension Act of 2010 (Public Law 111–216), was enacted following the Colgan Air accident. Section 206 of Public Law 111–216 directed the FAA to convene an ARC to develop procedures for each part 121 air carrier pertaining to mentoring, professional development, and leadership and command training for pilots serving in part 121 operations and to issue an NPRM and final rule based on the ARC recommendations. Accordingly, this rulemaking is promulgated under the general authority described in 49 U.S.C. 106(f) and 44701(a) and the specific authority found in section 206 of Public Law 111–216.

B. Summary of the Major Provisions of the Regulatory Action

This rulemaking proposes to modify requirements for air carriers and pilots operating under part 121 to enhance the professional development of part 121 pilots. The proposed requirements would most affect air carrier training for pilots in command. The proposed requirements would also affect air carrier qualification for newly employed pilots. Additionally, this proposed rule would require air carriers to establish and maintain a pilot professional development committee to develop, administer, and oversee formal pilot mentoring programs. Table 1 provides additional detail regarding the proposed amendments.

TABLE 1—SUMMARY OF PROPOSED AMENDMENTS

Proposed provision	Summary of proposed provision
Operations familiarization for new-hire pilots (§ 121.432(d)).	• Operations familiarization must include a minimum of 2 operating cycles. A new-hire pilot completing operations familiarization must occupy the flight deck observer seat.
Upgrade training curriculum requirements (§§ 121.420 and 121.426).	• Upgrade ground and flight training requirements have been updated based on the qualification and experience that all upgrading pilots now have as a result of the Pilot Certification and Qualification Requirements for Air Carrier Operations rule requirements. • Leadership and command and mentoring training must be included in the upgrade curriculum. Leadership and command and mentoring training are required subjects for upgrade ground training. Leadership and command training must also be incorporated into flight training through scenario-based training. (Note: For those air carriers that use an initial curriculum to qualify pilots to serve as PICs, leadership and command and mentoring training must be provided as part of that initial curriculum (§§ 121.419 and 121.424)).
Leadership and command and mentoring ground training for pilots currently serving as PIC (§ 121.429).	• All pilots currently serving as PIC must complete ground training on leadership and command and mentoring. • The Administrator may credit previous training completed by the pilot at that air carrier.
Recurrent PIC leadership and command and mentoring training (§§ 121.409(b) and 121.427).	• PICs must complete recurrent leadership and command and mentoring ground training every 36 months. • Recurrent Line-Oriented Flight Training (LOFT) must provide an opportunity for PICs to demonstrate leadership and command.
Pilot professional development committee (PPDC) (§ 121.17).	• Air carriers must establish and maintain a PPDC to develop, administer, and oversee formal pilot mentoring programs. The PPDC must consist of at least one management representative and one pilot representative. The PPDC must meet on a regular basis. The frequency of such meetings would be determined by the air carrier, but must occur at least annually.
Pilot recurrent ground training content and programmed hours (§ 121.427).	• Pilot recurrent ground training has been aligned with the pilot initial ground training requirements for pilots who have completed the Airline Transport Pilot Certification Training Program (ATP–CTP). As a result, the existing content and corresponding programmed hours for recurrent ground training have been reduced.
Part 135 Operators and Part 91 Subpart K Program Managers Complying with Part 121, Subparts N and O.	• Part 135 operators and part 91 subpart K (91K) program managers complying with part 121 subparts N and O would continue to use the existing upgrade curriculum requirements and the proposed leadership and command and mentoring training would only apply to PICs serving in operations that use two or more pilots.

TABLE 1—SUMMARY OF PROPOSED AMENDMENTS—Continued

Proposed provision	Summary of proposed provision
Flight Simulation Training Device (FSTD) Conforming Changes (Part 121, subparts N and O and appendices E, F, and H).	• Part 121, subparts N and O and appendices E, F, and H are updated as follows: (1) Reflect the terminology currently used to identify FSTDs approved for use in part 121 training programs; (2) Remove references to simulation technology that no longer exists; and (3) Remove requirement for FAA certification of training and remove pilot experience prerequisites for using a Level C full flight simulator (FFS) to reflect advances in current FSTD technology.
SIC Training and Checking Conforming Changes (Part 121 appendices E and F).	• Part 121 appendices E and F are updated to align with the current 14 CFR 61.71 requirements for SICs to obtain a type rating in a part 121 training program. Initial, conversion, and transition SIC training and checking must include the few training and checking maneuvers and procedures formerly designated in appendices E and F as PIC-only.
Other Conforming and Miscellaneous Changes.	• Pilot transition ground training has been aligned with the pilot initial ground training for pilots who have completed the ATP–CTP. • The term used to identify the training provided to flight engineers qualifying as SICs on the same airplane type has been changed from ''upgrade'' to ''conversion.'' • Conversion ground training for flight engineers who have completed the ATP–CTP has been aligned with the pilot initial ground training for pilots who have completed the ATP–CTP. • Part 121 appendices E and F and § 121.434 are amended to allow for pictorial means for the training and checking of preflight visual inspections of the exterior and interior of the airplane.

C. Costs and Benefits

The FAA believes the proposed rule would generate safety benefits and address both the statutory requirement for this rulemaking and the NTSB recommendations. Additionally, the proposed rule contains cost saving benefits to operators of $72 million over a 10-year period based on changes to ground training in this proposal that are possible due to changes already implemented in the Pilot Certification and Qualification Requirements for Air Carrier Operations final rule (the Pilot Certification rule) (78 FR 42324, July 15, 2013).[2] These changes would lead to a reduction in the time required to complete recurrent and upgrade training and would not compromise safety. When discounted using a 7 percent discount rate, the proposed rule would result in cost saving benefits of $46 million over a 10-year period.

The FAA estimates that the proposed rule would result in costs to operators of approximately $68 million over a 10-year period. When discounted using a 7 percent discount rate, the proposed rule would result in costs of $47 million over a 10-year period. In undiscounted terms, benefits in future years outweigh costs; however, when discounting benefits using the 7% discount rate, future benefits do not outweigh upfront costs.

The benefits and costs, by provision, of the proposed rule are seen in Table 2 below.

TABLE 2—NET BENEFITS BY PROVISION

[7% Present value, millions of 2013 dollars, 2015–2024]*

Provision	Cost saving benefits	Compliance costs	Net benefits
Recurrent Ground Training (§ 121.427)	$34.424	$0	$34.424
Upgrade Ground Training (§ 121.420)	$11.839	0	11.839
New-Hire SIC Operations Familiarization (§ 121.432(d))	Not Quantified	2.855	−2.855
Upgrade Training (Mentoring, Leadership, and Command) (§§ 121.420 and 121.426)	Not Quantified	6.304	−6.304
One-Time and Recurrent PIC Training (Mentoring, Leadership, and Command) (§§ 121.409(b), 121.427 and 121.429).	Not Quantified	37.037	−37.037
PPDC Annual Meeting (§ 121.17)	Not Quantified	0.572	−0.572
Recordkeeping	Not Quantified	0.006	−0.006
Total	46.263	46.774	−0.511

*Table values have been rounded. Totals may not add due to rounding.

II. Background

A. Statement of the Problem

As recognized by the NTSB, the overall safety and reliability of the NAS demonstrates that most pilots conduct operations with a high degree of professionalism.[3] Nevertheless, a problem still exists in the aviation industry with some pilots acting unprofessionally and not adhering to standard operating procedures, including the sterile flight deck rule.[4] The NTSB has continued to cite inadequate leadership in the flight deck, pilots' unprofessional behavior, and pilots' failure to comply with the sterile flight deck rule as factors in multiple accidents and incidents, including Pinnacle Airlines flight 3701 and Colgan Air,[5] Inc., flight 3407.

[2] RIN 2120–AJ67.

[3] *See* Crash of Pinnacle Airlines Flight 3701, Bombardier CL–600–2B19, N8396A, Jefferson City, Missouri, October 14, 2004, Aircraft Accident Report NTSB/AAR–07/01 (Washington, DC: NTSB, 2007) (hereinafter ''Aircraft Accident Report NTSB/AAR–07/01'').

[4] *See* Loss of Control on Approach, Colgan Air, Inc., Operating as Continental Connection Flight 3407, Bombardier DHC–8–400, N200WQ, Clarence Center, New York, February 12, 2009, Aircraft Accident Report NTSB/AAR–10/01 (Washington, DC: NTSB, 2010) (hereinafter ''Aircraft Accident Report NTSB/AAR–10/01'').

[5] Some contributing factors to this accident were also mitigated by the following rules: Flightcrew Member Duty and Rest Requirements (77 FR 330, January 4, 2012, RIN 2120–AJ58) with a .5 effective mitigation, Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers with a .2 effective mitigation, the Pilot Certification Rule

On October 14, 2004, a Pinnacle Airlines Bombardier CL–600–2B19, operating as Northwest Airlink flight 3701, crashed into a residential area about 2.5 miles from the Jefferson City Memorial Airport, Jefferson City, Missouri. During the flight, both engines flamed out after a pilot-induced aerodynamic stall and were unable to be restarted. Both pilots were killed and the airplane was destroyed.

The NTSB determined the probable causes of this accident were (1) the pilots' unprofessional behavior, deviation from standard operating procedures, and poor airmanship, which resulted in an in-flight emergency from which the pilots were unable to recover, in part because of their inadequate training; (2) the pilots' failure to prepare for an emergency landing in a timely manner; and (3) the pilots' improper management of the double engine failure checklist.

The NTSB noted that at the time of the accident, Pinnacle Airlines provided 2 hours of leadership training during SIC to PIC upgrade training with topics covering leadership authority, responsibility, and leadership styles. The NTSB also noted that after the accident and as a result of a high initial failure rate for pilots upgrading to PIC (22% failure rate in July 2004), Pinnacle revised the leadership training to 8 hours with modules on leadership, authority, and responsibility; briefing and debriefing scenarios; decision-making processes, including those during an emergency; dry run line-oriented flight training scenarios; and risk management and resource utilization. In October 2006, Pinnacle reported to the NTSB that the pass rate for pilots upgrading to PIC had improved to 92% first attempt and 95% overall.

On the evening of February 12, 2009, a Colgan Air, Inc., Bombardier DHC–8–400, operating as Continental Connection flight 3407, was on approach to Buffalo-Niagara International Airport, Buffalo, New York, when it crashed into a residence in Clarence Center, New York, about 5 nautical miles northeast of the airport. The 2 pilots, 2 flight attendants, all 45 passengers aboard the airplane, and 1 person on the ground were killed, and the airplane was destroyed by impact forces and a post-crash fire. The NTSB determined that the probable cause of this accident was the PIC's inappropriate response to the stall warning which eventually led to a stall from which the airplane did not recover. Contributing to the accident were (1) the pilots' failure to monitor airspeed; (2) the pilots' failure to adhere to sterile flight deck procedures; (3) the PIC's failure to effectively manage the flight; and (4) Colgan Air's inadequate procedures for airspeed selection and management during approaches in icing conditions.

The NTSB noted that at the time of the accident, although the Colgan Air crew resource management (CRM) training was consistent with Advisory Circular (AC) 120–51E, Crew Resource Management Training, it only included 5 slides that addressed command, leadership, and leadership styles. The NTSB also noted that the Colgan Air SIC to PIC upgrade training included a one day course on leadership; however, the training focused on the administrative duties associated with becoming a PIC and did not contain significant content applicable to developing leadership skills, management oversight, and command authority. The NTSB concluded that specific leadership training for pilots upgrading to PIC would help standardize and reinforce the critical command authority skills needed by a PIC during air carrier operations.

The Colgan Air accident focused public and Congressional attention on multiple aspects of air carrier training requirements, including (1) whether air carriers were providing PICs with the appropriate training to successfully execute the required PIC responsibilities while exhibiting effective leadership to promote professionalism and adherence to standard operating procedures, (2) whether pilots have access to individuals, such as more experienced pilots, who could serve as mentors, and (3) pilot adherence to the sterile flight deck rule.

The Airline Safety and Federal Aviation Administration Extension Act of 2010 (Public Law 111–216), enacted August 1, 2010, included a number of requirements to convene advisory groups and conduct rulemakings related to the results of the NTSB investigation of the Colgan Air accident. Section 206 directed the FAA to convene an ARC to develop procedures for each part 121 air carrier pertaining to mentoring, professional development, and leadership and command training for pilots serving in part 121 operations and to issue a NPRM and final rule based on the ARC recommendations.

In accordance with sections 204, 206, and 209 of Public Law 111–216, the FAA chartered the Air Carrier Safety and Pilot Training (ACSPT) ARC, the Flight Crewmember Mentoring, Leadership, and Professional Development (MLP) ARC and the Flightcrew Member Training Hours Requirement Review (THRR) ARC, respectively, in September 2010. The MLP ARC completed its work and provided recommendations in November 2010. At the same time as the MLP ARC worked to develop its recommendations, a number of related rulemakings required by Public Law 111–216 were already underway, including the Pilot Certification and Qualification Requirements for Air Carrier Operations rulemaking [6] and the Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers rulemaking.

This proposal is the culmination of the FAA's analysis of (1) the rulemaking requirements of section 206 of Public Law 111–216; (2) the recommendations provided by the MLP ARC, the THRR ARC, and the ACSPT ARC; (3) the part 121 pilot qualification and experience requirements provided in the Pilot Certification rule; (4) the Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers final rule (78 FR 67800, November 12, 2013),[7] and (5) the current part 121 PIC role and responsibilities. This comprehensive analysis resulted in this proposal that furthers the FAA's safety mission, satisfies the requirement for rulemaking in section 206 of Public Law 111–216 and accounts for the recent changes to pilot certification and qualifications to serve as a PIC in part 121 operations. The FAA believes that this proposed rule can be effectively implemented by air carriers and would mitigate unprofessional pilot behavior which would reduce pilot errors that can lead to a catastrophic event.[8]

with a .2 effective mitigation, and Safety Management Systems for Domestic, Flag, and Supplemental Operations Certificate Holders with a .05 effective mitigation.

[6] In early 2010, the FAA published an advance notice of proposed rulemaking (ANPRM) entitled New Pilot Certification Requirements for Air Carrier Operations (75 FR 6164, February 8, 2010) asking for input on current part 121 pilot eligibility, training, and qualification requirements for SICs. In July 2010, as a result of the public response to the ANPRM, the FAA chartered the First Officer Qualification ARC (FOQ ARC). The FAA subsequently asked the FOQ ARC to consider the provisions in §§ 216 and 217 of Public Law 111–216 in developing its recommendations. The FOQ ARC submitted its recommendations to the FAA in September 2010. The FAA issued the Pilot Certification and Qualification Requirements for Air Carrier Operations NPRM on February 29, 2012 (77 FR 12374).

[7] RIN 2120–AJ00.

[8] The FAA notes that section 206 of Public Law 111–216 references both ''flight crewmembers'' and ''pilots.'' Section 201 of Public Law 111–216 states, ''The term 'flight crewmember' has the meaning given the term 'flightcrew member' in part 1 of title 14, Code of Federal Regulations.'' Part 1 defines ''flightcrew member'' as ''a pilot, flight engineer, or flight navigator assigned to duty in an aircraft

Continued

B. National Transportation Safety Board (NTSB) Recommendations

This proposed rule addresses the following NTSB recommendations from Aircraft Accident Report NTSB/AAR–07/01 and Aircraft Accident Report NTSB/AAR–10/01 for air carriers operating under part 121:

- A–07–6: Require regional air carriers operating under 14 CFR part 121 to provide specific guidance on expectations for professional conduct to pilots who operate nonrevenue flights.
- A–10–13: Issue an advisory circular with guidance on leadership training for upgrading captains at 14 CFR part 121, 135, and 91K operators, including methods and techniques for effective leadership; professional standards of conduct; strategies for briefing and debriefing; reinforcement and correction skills; and other knowledge, skills, and abilities that are critical for air carrier operations.[9]
- A–10–14: Require all 14 CFR part 121, 135, and 91K operators to provide a specific course on leadership training to their upgrading captains that is consistent with the advisory circular requested in Safety Recommendation A–10–13.
- A–10–15: Develop and distribute to all pilots, multimedia guidance materials on professionalism in aircraft operations that contain standards of performance for professionalism; best practices for sterile cockpit adherence; techniques for assessing and correcting pilot deviations; examples and scenarios; and a detailed review of accidents involving breakdowns in sterile cockpit and other procedures, including the Colgan Air, Inc. flight 3407 accident. Obtain the input of operators and air carrier and general aviation pilot groups in the development and distribution of these guidance materials.[10]

C. Airline Safety and Federal Aviation Administration Extension Act of 2010 (Public Law 111–216)

Paragraph (a)(1) of section 206 of Public Law 111–216 directed the FAA to convene an ARC to develop procedures for each part 121 air carrier to take the following actions:

(A) Establish flight crewmember mentoring programs under which the air carrier will pair highly experienced flight crewmembers who will serve as mentor pilots and be paired with newly employed flight crewmembers. Mentor pilots should be provided, at a minimum, specific instruction on techniques for instilling and reinforcing the highest standards of technical performance, airmanship, and professionalism in newly employed flight crewmembers.

(B) Establish flight crewmember professional development committees made up of air carrier management and labor union or professional association representatives to develop, administer, and oversee formal mentoring programs of the carrier to assist flight crewmembers to reach their maximum potential as safe, seasoned, and proficient flight crewmembers.

(C) Establish or modify training programs to accommodate substantially different levels and types of flight experience by newly employed flight crewmembers.

(D) Establish or modify training programs for second-in-command flight crewmembers attempting to qualify as pilot-in-command flight crewmembers for the first time in a specific aircraft type and ensure that such programs include leadership and command training.

(E) Ensure that recurrent training for pilots in command includes leadership and command training.

(F) Such other actions as the aviation rulemaking committee determines appropriate to enhance flight crewmember professional development.

Accordingly, as directed by section 206, the FAA convened the MLP ARC to address procedures in these areas.

Section 206 of Public Law 111–216 also requires the FAA to issue an NPRM and final rule based on the ARC recommendations. It further specifies that leadership and command training must include instruction on compliance with flightcrew member duties under § 121.542, the sterile flight deck rule.

Finally, section 206 of Public Law 111–216 requires the FAA to establish a streamlined review process for part 121 air carriers that had, in effect on August 1, 2010, the programs described above. Under the streamlined review process, the FAA must expedite approval of programs that it determines meet the requirements in the final rule.[11]

In addition to the requirements in section 206, Public Law 111–216 also contains a number of related requirements for rulemaking, which have resulted in the following rulemaking initiatives: Pilot Certification and Qualification Requirements for Air Carrier Operations (secs. 216 and 217); Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers (secs. 208 and 209); Safety Management Systems for Domestic, Flag, and Supplemental Operations Certificate Holders (sec. 215); and Pilot Records Database (sec. 203). The FAA also determined that amendments to FSTD qualification and evaluation standards in part 60 were necessary to support the provisions in the Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers final rule and initiated a rulemaking to address this issue.

In 2013, the FAA issued the Pilot Certification and Qualification Requirements for Air Carrier Operations final rule and the Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers final rule. In 2015, the FAA issued the Safety Management Systems for Domestic, Flag, and Supplemental Operations Certificate Holders final rule (80 FR 1308, January 8, 2015).[12] In 2016, the FAA issued the Flight Simulation Training Device Qualification Standards for Extended Envelope and Adverse Weather Event Training Tasks final rule (81 FR 18178, March 30, 2016).[13] The Pilot Records Database rulemaking initiative is in development.

The Pilot Certification rule includes a number of changes that increase the knowledge, qualification, and experience of pilots serving in part 121 operations. Notably, the Pilot Certification rule requires all pilots serving in part 121 operations to hold an airline transport pilot (ATP) certificate with a type rating and requires pilots to complete a minimum of 1,000 hours of relevant operational experience prior to serving as a PIC in part 121 operations. Additionally, the Pilot Certification rule requires pilots, who will serve in part 121 operations, to complete the ATP–CTP prior to ATP certification.[14]

during flight time.'' However, because section 206 uses the terms ''flight crewmember'' and ''pilot'' interchangeably, the FAA assumes that Congress intended the rulemaking requirements of this section to apply to pilots only. Further, because no accidents have been attributed to flight engineer performance and the FAA has not identified any issues related to flight engineer training or professionalism, this NPRM applies to pilots only.

[9] ''Captain'' is an industry term that refers to the PIC.

[10] This recommendation supersedes NTSB Safety Recommendation A–07–8: Work with pilot associations to develop a specific program of education for air carrier pilots that addresses professional standards and their role in ensuring safety of flight. The program should include associated guidance information and references to recent accidents involving pilots acting unprofessionally or not following standard operating procedures.

[11] Existing § 121.405 provides the process by which a certificate holder must seek approval of its training program. Therefore, the streamlining of the review process would take place under the framework of this provision and be managed by the principal operations inspector (POI) responsible for approval of an air carrier's training program. The FAA will provide guidance to POIs on this process upon publication of the final rule.

[12] RIN 2120–AJ86.

[13] RIN 2120–AK08.

[14] The ATP–CTP provides foundational knowledge and competencies to prepare a pilot to enter an air carrier training program. It is designed to bridge the gap between a pilot who holds a commercial pilot certificate and a pilot eligible to operate in an air carrier environment. The ATP–CTP provides academic and simulator training in essential subject areas, such as aerodynamics,

Public Law 111–216 also required the FAA to establish a task force and multidisciplinary expert panels, in addition to the MLP ARC, to further examine existing training program requirements and develop recommendations for improvements. Therefore, the FAA established the following ARCs:

- Stick Pusher and Adverse Weather Event Training ARC (sec. 208 of Pub. L. 111–216) to study and submit to the Administrator a report on methods to increase the familiarity and improve the response of flightcrew members on stick pusher systems, icing conditions, and microburst and windshear weather events.
- Flightcrew Member Training Hours Requirement Review ARC (THRR ARC) (sec. 209 of Pub. L. 111–216) to assess and make recommendations to the Administrator on the best methods and optimal time needed for flightcrew member training in part 121 and 135 air carrier operations; the best methods for flightcrew member evaluation; best methods to allow specific academic training courses to be credited toward the total flight hours required to receive an Airline Transport Pilot certificate; and crew leadership training.
- Air Carrier Safety and Pilot Training ARC (ACSPT ARC) (sec. 204 of Pub. L. 111–216) to evaluate best practices in the air carrier industry and provide recommendations on air carrier management responsibilities for flightcrew member education and support, flightcrew member professional standards, flightcrew member training standards and performance, and mentoring and information sharing between air carriers.

D. Related FAA Actions

To promote pilot professionalism and standardization, the FAA has taken a number of actions through rulemakings and guidance. The FAA first issued the sterile flight deck rule (§ 121.542) to prohibit the performance of nonessential duties by flightcrew members during critical phases of flight, including all ground operations involving taxi, take-off and landing and other flight operations conducted below 10,000 feet, except cruise flight (46 FR 5500, January 19, 1981). The FAA recently amended the sterile flight deck rule to prohibit flightcrew members from using a personal wireless communications device or laptop computer for personal use while at their duty station while the aircraft is being operated. This rule is intended to ensure that certain non-essential activities do not contribute to the challenge of task management on the flight deck or a loss of situational awareness due to attention to non-essential tasks. (Prohibition on Personal Use of Electronic Devices on the Flight Deck final rule, 79 FR 8257, February 12, 2014) [15] (The FAA monitors compliance with this rule during the conduct of enroute inspections.) Training on § 121.542 is currently required during initial and recurrent ground training for all flightcrew members.[16]

On February 27, 2003, the FAA issued Advisory Circular (AC) 120–71A, Standard Operating Procedures for Flight Deck Crewmembers. This AC stressed that safety in commercial operations depends on good crew performance founded on clear, comprehensive, and readily available standard operating procedures.

In response to NTSB Safety Recommendation A–06–7, the FAA issued Safety Alert for Operators (SAFO) 06004 on April 28, 2006, to emphasize the importance of sterile flight deck discipline and fatigue countermeasures, especially during approach and landing.[17]

On July 3, 2007, the FAA issued Safety Alert for Operators (SAFO) 07006, to address procedural intentional non-compliance (PINC) because multiple accidents revealed pilots not adhering to established procedures and airplane limitations when conducting positioning flights.[18] Accordingly, the FAA recommended that certificate holders consider training for management personnel and crewmembers on the hazards associated with positioning flights and PINC principals.

On April 26, 2010, the FAA issued Information for Operators (InFO) 10003, to address flight deck distractions because recent incidents and accidents revealed pilots using laptop computers and mobile telephones for personal activities unrelated to the duties and responsibilities required for conduct of a safe flight. Accordingly, the FAA recommended to Directors of Safety and Directors of Operations that specific policies and training be provided to ensure that distractions in the flight deck are minimized.

To address the significance of human performance factors such as communication, decision-making, and leadership, the FAA issued the Air Carrier and Commercial Operator Training Programs final rule requiring crew resource management (CRM) training for flightcrew members and flight attendants and dispatcher resource management (DRM) training for aircraft dispatchers. (60 FR 65940 December 20, 1995) [19] In this final rule, the FAA stated that the objective of CRM and DRM training was to teach flightcrew members, flight attendants, and aircraft dispatchers to effectively use all available resources (*e.g.* hardware, software, and human resources) to achieve safe and efficient flight operations. Coincident to the final rule, the FAA published AC 120–51B Crew Resource Management Training and AC 121–32 Dispatch Resource Management Training to provide guidance on establishing CRM and DRM training under the broad requirement established by the final rule. The current version, AC 120–51E, stresses that CRM training should focus on the functioning of crewmembers as teams and should include all operational personnel. During the time since publication of the CRM final rule, the agency has revised AC 120–51 three times to address evolving research and concepts of CRM.

The FAA recognizes the need to continue to review air carrier training and qualification regulations, policies, and guidance to ensure they are current and relevant and addresses new technology and research. Therefore, in January 2014, the FAA chartered the Air Carrier Training ARC to provide a forum for the U.S. aviation community to continue to discuss, prioritize, and provide recommendations to the FAA concerning air carrier training.

automation, adverse weather conditions, air carrier operations, transport airplane performance, professionalism, and leadership and development.

[15] RIN 2120–AJ17.

[16] *See* §§ 121.415(a), 121.419(c) and (d), and 121.427(b).

[17] NTSB Safety Recommendation A–06–7: Direct the principal operations inspectors of all 14 CFR part 121 and 135 operators to reemphasize the importance of strict compliance with the sterile flight deck rule. This recommendation was issued after Corporate Air flight 5966 struck trees on final approach and crashed short of the runway at the Kirksville Regional Airport, Kirksville, Missouri, fatally injuring the PIC, SIC, and 11 of the 13 passengers on October 19, 2004. The airplane was destroyed by impact and a post-impact fire. The NTSB determined that the pilots' failure to make standard callouts contributed to the accident, and the pilots' unprofessional behavior during the flight and their fatigue likely contributed to the pilots' downgraded performance. The NTSB issued several safety recommendations in response to this accident, including A–06–7.

[18] Positioning flights include nonrevenue flights, flights to pick up passengers, and ferry flights for maintenance.

[19] RIN 2120–AC79.

E. Flight Crewmember Mentoring, Leadership, and Professional Development Aviation Rulemaking Committee (MLP ARC)

1. Background

On September 15, 2010, the FAA established the MLP ARC as required by Public Law 111–216. The MLP ARC membership consisted of representatives from the Air Line Pilots Association (ALPA), Air Transport Association (ATA) (now known as Airlines for America), Coalition of Airline Pilots Associations (CAPA), National Air Carrier Association (NACA), National Association of Flight Instructors (NAFI), Regional Airline Association (RAA), and the University Aviation Association (UAA).

The Administrator tasked the MLP ARC with developing recommendations to submit to the FAA for rulemaking consideration. Specifically the MLP ARC considered and addressed the topics as required by section 206(a)(1) of Public Law 111–216 and as specified in the ARC charter. The MLP ARC presented its report and recommendations to the FAA on November 2, 2010 (''Report from the MLP ARC'').

NACA filed a dissenting report to the MLP ARC recommendations, asserting that the recommendations were too prescriptive and did not provide sufficient scalability for smaller airlines. A copy of the Report from the MLP ARC, including NACA's dissenting report, has been placed in the docket for this rulemaking.

2. Summary of Recommendations and Dissenting Views

a. Mentoring Programs

Based on section 206(a)(1)(A) of Public Law 111–216, the FAA asked the MLP ARC to consider and address flightcrew member mentoring programs. In response to this tasking, the MLP ARC recommended the creation of two mentoring programs: Long-term career mentoring and flightcrew mentoring. The long-term career mentoring would be accomplished by a relationship between a protégé pilot and a highly experienced senior pilot. Flightcrew mentoring would be facilitated by the short-term relationship between every PIC and SIC protégé that occurs naturally with each crew pairing. The MLP ARC also recommended that career mentors be paired with protégé pilots at the following career milestones: (1) New-hire pilots during their first year following initial hire, (2) operational transitions, and (3) PICs during their first year following upgrade to PIC. Additionally, the MLP ARC recommended that flightcrew mentors submit a protégé report to the career mentor for every crew pairing with a new-hire pilot during the new-hire pilot's first year.

To support FAA analysis of the MLP ARC recommendations related to mentoring, the FAA Civil Aerospace Medical Institute (CAMI), Human Factors Research Laboratory, reviewed mentoring research literature to (1) assess the benefits of mentoring as it was related to improving pilot airmanship, aeronautical decision-making, and professionalism, (2) assess effectiveness of mentoring programs across a range of occupations, and (3) make recommendations regarding the development of mentoring programs, the selection and training of mentors, and the expected benefits to mentors and protégés. CAMI developed a report of the research review and recommendations in a document titled ''Determining the Feasibility and Effectiveness of Aircraft Pilot Mentoring Programs May 2015'' (Report from CAMI). The FAA notes that although the report identifies some limitations in the mentoring research, the report does provide several mentoring program recommendations based on the available literature. The FAA has provided a copy of this report in the docket for this rulemaking.

The FAA agrees with certain elements of the MLP ARC recommendations pertaining to flightcrew member mentoring programs and is proposing PIC mentoring training. However, the FAA does not agree with the MLP ARC recommendation for career mentors and the associated recommendation for PICs to submit a report to the career mentor after every crew pairing with a new-hire pilot. These recommendations do not allow for the many air carrier-specific factors that must be considered in the development, administration, and oversight of a formal pilot mentoring program. Further, the Report from CAMI identified factors such as air carrier culture, goals and objectives as important to the development of a mentoring program. *See* Report from CAMI at p. 20, 21, 30 and 46. The FAA agrees with NACA's recommendation that flexibility must be allowed in the development of a formal pilot mentoring program. The FAA's proposals regarding PIC mentoring training and a formal pilot mentoring program are addressed in further detail in the portion of the document titled ''III. Discussion of the Proposal, D. PIC Mentoring Training'' and ''III. Discussion of the Proposal, I. Pilot Professional Development Committee (§ 121.17).''

b. Professional Development

Based on section 206(a)(1)(B) of Public Law 111–216, the FAA tasked the MLP ARC to consider and address procedures to ''Establish flight crewmember professional development committees made up of air carrier management and labor union or professional association representatives to develop, administer, and oversee formal mentoring programs of the carrier to assist flight crewmembers to reach their maximum potential as safe, seasoned, and proficient flight crewmembers.'' In response to this tasking, the MLP ARC recommended the creation of a Professional Development Steering Committee (PDSC) at each air carrier to meet at least quarterly. The MLP ARC stated that ''[h]aving in place positive programs that continually develop and cultivate professionalism will, in the ARC's view, have a profound impact on safety, standardization, professional ethics, and integrity.'' To this end, the MLP ARC further stated that ''the 14 CFR should provide specific guidance on the responsibility of each air carrier's professional development programs'' and outlined objectives for all stakeholders (*i.e.,* the air carrier, the pilots and the industry). *See* Report from the MLP ARC at p. 7.

The MLP ARC recommended that the PDSC's responsibilities include areas such as professional development, pilot mentoring, and certain pilot training subjects. A number of additional areas of PDSC responsibility contemplated by the MLP ARC fall within the purview of air carrier management (*e.g.,* the hiring process and development of the training program) or are outside of the scope of the tasking (*e.g.,* share de-identified data with industry and academia).

In connection with the tasking to consider flightcrew member professional development committees, the MLP ARC also recommended the creation of a full-time part 119 professional development position dedicated solely to the professional development program at the air carrier. Further the MLP ARC recommended that the individual who holds this position meet the following qualifications: (1) Hold an ATP certificate; (2) have at least 3 years of experience as a part 121 pilot; (3) hold a bachelor's degree; and, (4) be qualified through training, experience and expertise. The MLP ARC also recommended that the PDSC consist of leaders of flight operations management and pilot representatives, such as from the pilots' union, and focus on career

professional development programs specific to the air carrier.

NACA dissented from the recommendation to require a part 119 management official to head the PDSC although it concurred that a professional development position is important. NACA explained that new and smaller airlines commonly employ personnel who fulfill multiple management responsibilities (*e.g.* a small airline's director of safety may also serve as director of security). Further, NACA noted that the qualifications for the part 119 management official recommended by the MLP ARC do not relate to professional development, mentoring, or leadership qualifications.

The FAA agrees with certain elements of the MLP ARC recommendations pertaining to the creation of a professional development steering committee to develop, administer and oversee a formal pilot mentoring program. Consistent with the MLP ARC recommendations, the FAA recognizes the importance of both management and pilot participation in a committee focused on pilot professional development. However, regarding management qualifications, the FAA's proposal balances the MLP ARC recommendations with NACA's dissent. The FAA proposes to require the management representative who serves on such a committee to have certain qualifications to capture relevant operational experience, but is not required to be a part 119 management official. This component of the FAA's proposal is addressed in further detail in the portion of the document titled ''III. Discussion of the Proposal, I. Pilot Professional Development Committee (§ 121.17).''

c. Establish or Modify Training Programs To Accommodate Substantially Different Levels and Types of Experience

Based on section 206(a)(1)(C) of Public Law 111–216, the FAA asked the MLP ARC to consider and address ''Methods to establish or modify training programs to accommodate substantially different levels and types of experience.'' The MLP ARC recommended amendments to the part 121 training content requirements for indoctrination training as the most appropriate means by which to address this tasking.

The MLP ARC recommended that indoctrination training address three broad subject areas: (1) An overview of air carrier management and the pilot union (as applicable); (2) flight operations; and, (3) professional development. The MLP ARC provided a summary of content for each of the three subject areas, noting some degree of overlap with current training content requirements in part 121. The MLP ARC further recommended that part 121 indoctrination training should allow the training to be tailored to each air carrier's equipment and operational environment.

NACA provided a dissenting view with respect to the MLP ARC's indoctrination training recommendations. NACA does not believe the MLP ARC recommendations fulfill the intent of the tasking because the MLP ARC recommended increasing indoctrination training to cover a wider range of topics but did not allow for training to be adjusted for specific pilot groups and assumed all pilot indoctrination training classes are conducted in a similar fashion.

The FAA agrees with the intent of the recommendations to strengthen pilot indoctrination training but has not included amendments to basic indoctrination training in this proposal. The FAA does not believe that the recommended approach to accommodate different levels and types of experience is necessary because of the recent changes to part 121 air carrier pilot certification requirements and the redundancy with other existing training requirements.

The Pilot Certification final rule, issued after the MLP ARC developed its recommendations, requires all pilots in part 121 operations to hold an ATP certificate and a type rating. Further, recognizing pilots come from various backgrounds, the rule requires ATP applicants to complete an ATP–CTP that addresses the potential knowledge gap between a commercial pilot certificate and an ATP certificate. This prerequisite eligibility requirement for an ATP certificate (the ATP–CTP) provides foundational knowledge in many subject areas, including air carrier operations, leadership and command, professional development and crew resource management (CRM). Thus, the Pilot Certification rule requirements raise the baseline knowledge and experience level for pilots prior to serving at an air carrier.

Additionally, as acknowledged by the MLP ARC, much of the content suggested for indoctrination training is currently required by part 121 (*e.g.,* hazardous materials training (subpart Z), icing subjects (§ 121.629), weight and balance (§ 121.419)). In addition, some of the recommended content, such as security training, is required by other federal agency regulations (*e.g.,* aircraft operator's security program training required by the Transportation Security Administration (49 CFR 1544.233)).

The FAA also agrees with the MLP ARC recommendation that indoctrination training should be tailored to the air carrier's unique operational environment. Currently, § 121.415(a)(1)(iii)–(iv) requires indoctrination training to include contents of the air carrier's certificate and operations specifications, and appropriate portions of the air carrier's operating manual. Therefore, the FAA expects that individual air carrier's indoctrination training curriculum is already tailored to its environment in accordance with the existing regulatory requirement in § 121.415(a)(1).

Further, the MLP ARC recommended the inclusion of industry best practices in an Advisory Circular (AC) or a standard training template pertaining to indoctrination training. Since this proposal does not include amendments to basic indoctrination, the FAA has not developed an AC specific to basic indoctrination. However, on March 16, 2010, the FAA published InFO 10002 Industry Best Practices Reference List which provides a comprehensive list of resources available for use in the development of training curriculums.

The MLP ARC also recommended that the PDSC should develop special indoctrination training for all pilots when special events occur in the life of the air carrier, such as mergers or acquisitions, to ensure that all pilots operate from a standard operating procedure. The FAA does not agree with the recommendation to require the PDSC to develop special indoctrination training for special events because current regulations already require air carriers to provide training for special events. Section 121.415(g) requires air carrier training programs to include ground and flight training, instruction, and practice, as necessary to ensure pilots qualify in new equipment, facilities, procedures, and techniques. Thus, an air carrier involved in a merger or acquisition is already required to provide training, as necessary, to ensure all pilots are operating from a standard operating procedure.[20]

Although the FAA has not included the MLP ARC recommendations for amendments to indoctrination training in this proposal, the FAA has proposed a requirement for operations familiarization. This component of the FAA's proposal is addressed in the portion of the document titled, ''III. Discussion of the Proposal, B.

[20] *See* FAA Order 8900.1 Volume 3, Chapter 34, Section 1 for guidance to inspectors regarding mergers and acquisitions.

Operations Familiarization (§ 121.432(d)).''

d. Enhancements To Upgrade Training To Include Leadership and Command Training

Based on section 206(a)(1)(D) of Public Law 111–216, the FAA asked the MLP ARC to consider and address enhancements to upgrade training to include leadership and command. In response to this tasking, the MLP ARC discovered there is wide variation among part 121 air carriers regarding leadership and command training for new PICs. The MLP ARC stated that current part 121 training requirements are ''not written in such a manner to ensure that new captains will receive a comprehensive education on subjects which are foundational to command, leadership, and professionalism.'' *See* Report from the MLP ARC at p. 22. The MLP ARC recommended that part 121 air carriers should develop and implement a leadership and command course for all SICs attempting to qualify as PIC for the first time in a specific aircraft type.

The MLP ARC recommended that this leadership and command course be developed as a training event separate from the normal upgrade syllabus. Additionally, the MLP ARC recommended that the course consist of a minimum of 32 hours of in-person facilitated class discussion separated into two segments; the first segment to be completed prior to upgrade training and the second segment to be completed between 6 and 18 months after the completion of PIC operating experience.

NACA opposed the prescribed 32 hours of in-person, facilitated training. NACA did not oppose leadership and command training, but stated 32 hours of training for one topic was extreme and costly. NACA also stated that each air carrier should be allowed to develop a leadership and command course that best suits that air carrier's needs.

In addition to the MLP ARC, two other ARCs subsequently considered leadership and command training. The ACSPTARC determined that leadership and command courses varied among air carriers and recommended rulemaking and associated guidance to implement leadership and command training for new PICs. The THRR ARC also considered leadership training for all PICs, including the MLP ARC recommendations in this area. The THRR ARC stated that current upgrade training ''does not necessarily provide education to the new PIC on his or her leadership role.'' The THRR ARC also stated that ''Crew Resource Management training, required for all air carriers, contains some elements of the desired leadership training, but is not designed to aid the PIC in assuming a leadership role in the aircraft and the air carrier as the training envisioned by this ARC would.'' *See* Report from the THRR ARC at p. 17. The THRR ARC agreed with the MLP ARC to require leadership and command training for SICs attempting to qualify as PIC for the first time in a specific aircraft type. The THRR ARC also agreed with the MLP ARC that this course should be separate from current upgrade training requirements and consist of two segments. However, the THRR ARC disagreed with the MLP ARC recommendation for a minimum of 32 hours of training. The THRR ARC recommended using an instructional system design (ISD) process which would allow each air carrier to determine the training time. The THRR ARC was also concerned that a prescribed minimum training time would not address scalability concerns of small air carriers.

Additionally, the THRR ARC concurred with the MLP ARC that a facilitated discussion was a key component of a leadership and command course. However, the THRR ARC stated that additional items in a leadership and command course may be suitable for distance learning.

The FAA agrees with the MLP ARC and THRR ARC recommendations to require leadership and command training for all SICs attempting to qualify as PIC for the first time in a specific aircraft type but does not agree with the recommendation that leadership and command training should be separate from the upgrade syllabus. Further, the FAA believes that the MLP ARC recommendations for a specific minimum number of training hours and in-person training are unnecessarily prescriptive. The FAA agrees with the THRR ARC and NACA positions pertaining to the necessity of flexibility in the development of leadership and command training. Accordingly, the FAA is proposing a comprehensive revision to the SIC to PIC upgrade training requirements to include leadership and command training in a performance based curriculum. The FAA's proposals regarding PIC leadership and command training and upgrade training are addressed in further detail in the portion of the document titled ''III. Discussion of the Proposal, C. PIC Leadership and Command Training'' and ''III. Discussion of the Proposal, E. SIC to PIC Upgrade (§§ 121.420 and 121.426).''

e. Enhancements to Recurrent Training To Include Leadership and Command Training

Based on section 206(a)(1)(E) of Public Law 111–216, the FAA asked the MLP ARC to consider and address enhancements to recurrent training to include leadership and command. In response to this tasking, the MLP ARC determined that there is no current regulatory requirement for leadership and command training in recurrent training. The MLP ARC recommended that part 121 air carriers enhance recurrent training by integrating leadership and command components into the various forms of recurrent training (*e.g.* distance instruction, classroom, FSTD briefing, and FSTD training). The MLP ARC recommended that the leadership and command components that an air carrier incorporates into annual recurrent training as emphasis items be determined by the PDSC, with all components being included in recurrent training at least once during a 4-year cycle. Further, the MLP ARC recommended that special emphasis be given to sterile flight deck procedures.

The FAA agrees with the MLP ARC recommendation to include leadership and command in recurrent training and also agrees that the delivery of recurrent leadership and command training may be accomplished through a range of methods. However, the FAA does not agree with the MLP ARC recommendation regarding the frequency for recurrent leadership and command training. Since leadership and command skills are used regularly, during every flight, and therefore are less susceptible to degradation, the FAA does not believe it is necessary to require leadership and command training annually. Further, the FAA does not agree with the MLP ARC recommendation that the PDSC should determine the content of the training. Development of training curriculums is the responsibility of air carrier management. This component of the FAA's proposal is addressed in further detail in the portion of the document titled ''III. Discussion of the Proposal, G. Recurrent Leadership and Command Training and Mentoring Training (§§ 121.409(b) and 121.427).''

f. Other Actions That May Enhance Professional Development

Based on section 206(a)(1)(F) of Public Law 111–216, the FAA asked the MLP ARC to consider and address ''Other actions that may enhance crewmember professional development.'' The MLP ARC made

three recommendations in this area: (1) Enhancements to knowledge tests and practical test standards (PTS); (2) bachelor's degree for pilots in part 121 operations; and (3) leadership and command training for pilots currently employed.

Enhancements to Knowledge Tests and PTS

The MLP ARC stated ''that in order to ensure that an ATP pilot applicant at any part 121 air carrier has a foundational knowledge of the concepts of professional development, leadership, and command; the PTS requirements for the Commercial, Flight Instructor, and ATP certificates should incorporate these elements into the written, practical, and/or oral portions of pilot certification.'' *See* Report from the MLP ARC at p. 29.

The FAA agrees with the intent of the recommendation to ensure ATP applicants at a part 121 air carrier have the foundational knowledge of professional development, leadership and command. However, the FAA does not agree with the recommended approach of amending the PTS because the FAA believes the Pilot Certification rule addressed this recommendation.

As previously discussed, the Pilot Certification rule, issued after the MLP ARC developed its recommendations, requires all pilots in part 121 operations to hold an ATP certificate and a type rating. Further, the Pilot Certification rule requires ATP applicants to complete an ATP–CTP that provides foundational knowledge in leadership and command, professional development, and CRM. Additionally, as stated in the Pilot Certification rule, the ATP–CTP course topics will be incorporated into the ATP knowledge test. *See* 78 FR at 42368.

Bachelor's Degree for Pilots in Part 121 Operations

The MLP ARC recommended that pilots hired by part 121 air carriers be required to have a minimum of a bachelor's degree or equivalent military flight training. NACA provided a dissenting view that many highly qualified and experienced applicants may be eliminated due to this requirement. NACA believes each carrier should be able to set its own hiring qualifications.

As indicated in the 2012 Pilot Source Study, there was no difference in the completion rate of a part 121 air carrier's training program between pilots with a bachelor's degree and pilots without a bachelor's degree.[21] Although the Pilot Source Study did indicate pilots with at least an associate degree in aviation had a higher completion rate of part 121 air carrier training programs, the FAA believes each air carrier should have the flexibility to set its own hiring requirements for higher education. Therefore, this proposal does not include a requirement for part 121 pilots to have a bachelor's degree.

Leadership and Command Training for Pilots Currently Employed

The MLP ARC recommended that each air carrier's PDSC develop a process or training program to ensure that all PICs are qualified in the principles of the entire leadership and command program. In addition, the MLP ARC recommended that each air carrier's PDSC develop a process or training program that ensures all pilots at an air carrier understand the entire professional development and mentoring programs.

The FAA agrees with the intent of the recommendation to ensure all PICs have completed the air carrier's training in leadership and command and is proposing a requirement for all current PICs to complete leadership and command training equivalent to the leadership and command training in the air carrier's upgrade ground training. However, the regulatory framework for part 121 training program designates the development of an approved pilot training curriculum as the exclusive responsibility of air carrier management, not a committee such as the PDSC. This component of the FAA's proposal is addressed in the portion of the document titled, ''III. Discussion of the Proposal, F. Training for Pilots Currently Serving as PIC (§ 121.429).''

Finally, the FAA agrees with the intent of the recommendation to ensure all pilots at an air carrier understand the professional development and mentoring programs. However, the FAA believes this recommendation is the responsibility of each air carrier's Pilot Professional Development Committee (PPDC) in developing, administering, and overseeing a formal pilot mentoring program. Therefore, this proposal does not include a separate requirement to address this recommendation.

III. Discussion of the Proposal

A. Applicability, Effective Date, and Compliance Date

This proposal affects operators that train and qualify pilots in accordance with part 121 and therefore primarily affects certificate holders conducting part 121 operations. Certificate holders that conduct operations under part 121 may train and qualify pilots in accordance with the provisions of current subparts N and O or under an Advanced Qualification Program (AQP) in accordance with subpart Y of part 121. AQP allows for an alternative method for training and evaluating pilots based on instructional systems design, advanced simulation equipment, and comprehensive data analysis to continuously validate curriculums. Requirements of subparts N and O that are not specifically addressed in the certificate holder's AQP continue to apply to the certificate holder and to the individuals being trained and qualified by the certificate holder. *See* § 121.903(b). Although the proposed rule does not make any changes to subpart Y, after the new subparts N and O training requirements become effective (60 days after publication of a final rule in the **Federal Register**), certificate holders that use AQP would have to review their training curriculums to make sure they address the new subparts N and O requirements before the proposed compliance date (24 months after the effective date).

Additionally, the proposal affects some certificate holders conducting part 135 commuter operations.[22] Further, operators conducting operations under 91K or under part 135 authorized to voluntarily comply with subparts N and O of part 121 may also be affected.

For all of the proposals in this NPRM, the FAA is proposing an effective date of 60 days after publication of a final rule in the **Federal Register**. However, the FAA is proposing a delayed compliance date of 24 months after the effective date for the proposals pertaining to operations familiarization, leadership and command training, mentoring training, the revised upgrade curriculum, and the Pilot Professional Development Committee, as indicated in the regulatory text. Under this proposal, all PICs would have to complete leadership and command and mentoring training no later than the compliance date. The FAA expects that the delayed compliance date would allow sufficient time for air carriers to revise training curriculums, receive FAA approval of those curriculums, train the instructors who would conduct

[21] The 2012 Pilot Source Study is available in the docket for this rulemaking.

[22] In accordance with 14 CFR 135.3, a certificate holder that conducts commuter operations under part 135 with airplanes in which two pilots are required by the type certification rules must comply with subparts N and O of part 121 instead of the requirements of subparts E, G, and H of part 135.

the training, and provide this training to all PICs.

In addition, although compliance with the revised upgrade curriculum requirements would not be required until 24 months after the effective date, the FAA proposes to provide flexibility by allowing those air carriers that choose to comply earlier to do so. The proposed revisions to §§ 121.419 and 121.424 would allow an air carrier to include in its approved training program either the existing upgrade curriculum or the revised upgrade curriculum until the compliance date.

B. Operations Familiarization (§ 121.432)

Currently, a pilot newly employed by an air carrier may serve as a pilot in part 121 operations without first observing actual operations conducted by the air carrier. The MLP ARC, however, recommended that all pilots complete one or more observation flights before beginning service with a part 121 operator as one of a number of revisions to air carrier indoctrination training. The MLP ARC identified observation flights as providing a valuable introduction for new-hire pilots to an air carrier's operations and company procedures. The MLP ARC explained that, ''[t]hese flights should be used as an integral part of the indoctrination training process helping to reinforce information learned during training and ease the transition to line operations.'' *See* Report from the MLP ARC at p. 17.

The FAA is aware that some air carriers already recognize the benefit of these flights and currently require operations familiarization flights for newly employed pilots. Additionally, the ACSPT ARC also identified observations flights as a best practice in use at several air carriers. The ACSPT ARC indicated that observation flights allow a new-hire pilot to be better prepared to serve in line operations because the pilot would have gained familiarity with typical line operations ''without becoming task saturated in the control seat of a new, unfamiliar environment.'' *See* Report from the ACSPT ARC at p. 37.

The FAA agrees with the MLP ARC recommendation for observation flights and proposes to add a requirement for newly employed pilots to complete operations familiarization before beginning operating experience and serving as a pilot in part 121 operations for the air carrier.[23] *See* § 121.434. The operations familiarization must include at least two operating cycles [24] during part 121 operations conducted by the air carrier. During the operating cycles, the newly employed pilot must occupy the flight deck observer seat and use a headset that allows the newly employed pilot to listen to the communications between the required flightcrew members and air traffic control. The proposed operations familiarization may occur in any airplane type operated by the air carrier in part 121 operations because the FAA believes that each air carrier's processes are similar among airplane types. Operations familiarization during or soon after the completion of basic indoctrination training would provide newly employed pilots with an opportunity to observe from the flight deck in a real world environment, the unique characteristics of the air carrier's operations and the specialized processes learned during basic indoctrination training.

In order to achieve the operations familiarization goals, the FAA believes that a minimum of two operating cycles are necessary to provide the newly employed pilot with sufficient exposure to an air carrier's operations and processes. During each flight, the newly employed pilot may observe different operational events, processes and briefings (*e.g.,* types of departures and arrivals, airports, ramp operations, checklist sequences, varying weather, and navigation methods). In addition, two operating cycles may allow the newly employed pilot to observe two different flight crews, as well as a complete round trip.

The FAA expects each pilot completing operations familiarization to remain on the flight deck and in the observer seat for takeoff and landing as well as during the en route portion of the flight. These pilots may, however, leave the flight deck to attend to physiological needs, and during long haul operations, for reasonable rest breaks.

Finally, the FAA recognizes that certain airplanes used in part 121 operations do not have an observer seat in the flight deck. Therefore, the proposed rule provides a process for an air carrier to request a deviation from the operations familiarization requirements to meet the learning objectives through another means.

C. PIC Leadership and Command Training

1. General Description and Objectives

Although the MLP ARC and the ACSPT ARC reported that some air carriers provided leadership and command training, the current part 121 training requirements do not specifically require air carrier training programs to include leadership and command instruction. The purpose of leadership and command training is to provide PICs with the leadership and command skills necessary to manage the crew (including flight attendants, if applicable), communications, workload, and decision-making in a manner that promotes professionalism and adherence to standard operating procedures. Accordingly, an air carrier's leadership and command training should include subjects such as leadership characteristics, types of leaders, leadership strategies, roles of a leader, leadership styles, command responsibility and authority, sound decisions and awareness.

Consistent with the MLP ARC recommendation to ensure all PICs are qualified in the principles of leadership and command, the FAA is proposing to require all PICs serving in part 121 operations to complete leadership and command training. Specifically, the FAA is proposing that this training be included during ground and flight training in the PIC upgrade curriculum (or the initial curriculum for the limited circumstance of a new-hire PIC), as well as the PIC recurrent curriculum. The FAA is also proposing that all pilots qualified to serve as PIC prior to the compliance date must complete the PIC upgrade ground training on leadership and command.

The FAA has drafted an AC containing guidelines for the development of leadership and command training and provided a copy of this document in the docket for this rulemaking. The FAA seeks comment on this draft AC.

2. Distance Instruction

Although the MLP ARC recommended facilitated in-person training for leadership and command, this proposal does not place restrictions on distance instruction as long as the leadership and command training objectives can be satisfied. The FAA believes that the MLP ARC and THRR ARC recommendations for a facilitated discussion during leadership and command training can be accomplished either in-person or with existing technology. Moreover, the proposal for leadership and command training is not

[23] The FAA clarifies that a person completing conversion training after serving as a flight engineer for the air carrier is not a ''newly employed pilot.'' This person is completing training to serve in a new flightcrew member duty position but is not ''newly employed'' by the air carrier.

[24] Section 121.431(b) defines operating cycle as ''a complete flight segment consisting of a takeoff, climb, enroute portion, descent, and a landing.''

limited to ground training. The FAA has proposed that leadership and command must be demonstrated during the flight training portion of the upgrade curriculum and during recurrent LOFT. The FAA seeks comment, however, on whether restrictions on distance instruction are necessary to ensure the effectiveness of the leadership and command components of PIC training. The FAA asks commenters to specify whether the curriculum in which leadership and command training is required (*e.g.,* PIC initial, upgrade, recurrent) constitutes a basis for differentiating any restrictions on distance instruction.

D. PIC Mentoring Training

The FAA proposes to require training on mentoring skills for all PICs serving in part 121 operations to establish the mentoring environment recommended by the MLP ARC. The mentoring research literature indicates that mentor training is one of the most important and agreed upon elements for effective mentoring. *See* Report from CAMI p. 22 and 23. The proposed mentoring training would include techniques for instilling and reinforcing the highest standards of technical performance, airmanship, and professionalism in newly employed pilots. By providing mentoring training to all PICs serving in part 121 operations, the opportunity exists for a PIC to mentor an SIC during each duty day. Accordingly, the benefits of SIC mentoring would be maximized by requiring all PICs to complete mentoring training.

This training would be included in the PIC upgrade curriculum (or the initial curriculum for the limited circumstance of a new-hire PIC) and PIC recurrent ground training. The FAA has included mentoring skills in upgrade ground training because it complements the other related PIC ''soft skills'' (*i.e.,* leadership and command and CRM). The FAA believes that collectively these ''soft skills'' would enhance pilot professionalism. Further, all current PICs would also be required to complete the PIC upgrade ground training on mentoring skills to create a comprehensive and consistent mentoring environment.

The FAA has developed a draft AC that provides guidelines for developing and implementing mentoring training for PICs and provided a copy of this document in the docket for this rulemaking. The FAA seeks comment on this draft AC.

In addition, this proposal leverages the experience requirements required by the Pilot Certification rule for all PICs serving in part 121 operations. The Pilot Certification rule raised the experience requirements for all PICs serving in part 121 operations by requiring at least 1,000 hours of air carrier experience.[25] Therefore, the FAA believes the increased experience requirements of the Pilot Certification rule together with this proposal would ensure every newly employed pilot is paired, on every flight, with an experienced pilot who can serve as a mentor.

E. SIC to PIC Upgrade (§§ 121.420 and 121.426)

Currently, subpart N and appendix E of part 121 allow pilots who have previously qualified as SIC on an airplane type to complete upgrade training to qualify as PIC on that same airplane type. *See* §§ 121.400(c)(3), 121.415, and 121.433(a)(2). The upgrade training requirements in subpart N and appendix E of part 121 presuppose that upon entering the upgrade curriculum, the pilot holds only a commercial pilot certificate with a multi-engine land class rating and no type rating on that airplane. As a result of this presupposition, the upgrade training requirements are focused on developing the technical knowledge and skills necessary to hold an ATP certificate and type rating for that airplane. However, the current role served by an SIC in part 121 operations as well as the current SIC qualification requirements no longer support this foundation for upgrade training requirements.

The historic division of responsibilities between the PIC and SIC has advanced over time from a flight deck environment where the PIC typically served as the pilot flying and the SIC typically served exclusively as the pilot monitoring. As this progression occurred, throughout various rulemakings, the FAA has amended the training, qualification, and experience requirements of SICs to recognize this advancement in SIC responsibilities. In the current air carrier environment, both the PIC and SIC share pilot flying and pilot monitoring responsibilities. Thus, in the Pilot Certification rule the FAA determined that it was appropriate to require an SIC to train to the same level of airplane handling and proficiency as the PIC by obtaining an airplane type rating. *See* 78 FR at 42354. As a result, with the Pilot Certification rule, the FAA elevated the qualifications of all SICs.

With the changes put in place by the Pilot Certification rule, all SICs serving in part 121 operations must now hold an ATP certificate and type rating for the airplane in which they serve. Additionally, a pilot must have a minimum of 1,000 hours of air carrier experience to serve as a PIC. This means that SICs will have already demonstrated technical mastery of the airplane at the ATP certificate level when they begin upgrade training. Therefore, the FAA is proposing revised upgrade training requirements to account for this evolution in SIC qualification and experience requirements. The following proposed upgrade training would ensure technical knowledge and skills while focusing on the decision-making and leadership skills required of a PIC serving in part 121 operations.

1. Performance-Based Curriculum

The FAA is proposing a performance-based upgrade curriculum. The proposal removes the requirement to include all existing upgrade ground training subjects required by § 121.419(a) and the § 121.424 requirement to include all appendix E maneuvers and procedures during upgrade flight training. Instead, the proposal refocuses upgrade ground and flight training to include subjects, maneuvers, and procedures specific to the duties and responsibilities the pilot will have as PIC at that air carrier. However, consistent with existing upgrade curriculum requirements, the proposed upgrade flight training continues to include rare, but high-risk scenarios. The FAA believes this approach would continue to allow air carriers to develop a robust upgrade curriculum specific to their operations and airplane types, and provides the opportunity for air carriers to more effectively target PIC-specific responsibilities and duties.

Consistent with existing upgrade curriculum requirements, the proposal does not specify a minimum number of training hours. However, because the FAA has removed the requirement to train the entire range of § 121.419 subjects and appendix E tasks in upgrade training, the FAA believes that the revised upgrade ground training can be completed in less time than the programmed hours currently identified in each air carrier's approved training program and the upgrade flight training can be completed within the same or less time than currently identified in each air carrier's approved training program.

[25] Section 121.436(a)(3) requires a pilot in command serving in part 121 operations to have 1,000 hours as second in command in part 121 operations, pilot in command in operations under § 91.1053(a)(2)(i), pilot in command in operations under § 135.243(a)(1), or any combination thereof.

2. Revised Upgrade Curriculum Requirements

a. Seat Dependent and Duty Position Maneuvers and Procedures

The proposed upgrade ground and flight training must include seat dependent maneuvers and procedures as well as duty position maneuvers and procedures. Seat dependent maneuvers and procedures include the use of systems with controls that are not centrally located, or are accessible or operable from only the left or from only the right pilot seat as identified by the airplane manufacturer, air carrier, or the Administrator as seat dependent tasks. For example, in some airplane types, the tiller used to steer the airplane while taxiing on the ground is only accessible from the left seat. In these airplane types, upgrade training must include the maneuvers and procedures for taxiing from the seat in which the operator expects the PIC to serve.[26] The number of seat dependent maneuvers and procedures would vary among air carriers due to variations in the design of airplane types; some airplane types may not have any seat dependent maneuvers and procedures while other airplane types may have several.

Duty position maneuvers and procedures include tasks specified by the airplane manufacturer, air carrier, or the Administrator, as PIC or SIC only tasks. For example, some air carrier procedures specify that only the PIC may perform a circling approach. In this instance, upgrade training must include the maneuvers and procedures for circling approaches. Additionally, certain maneuvers and procedures require coordinated action between the PIC and SIC to accomplish the maneuver or procedure. For these maneuvers and procedures, the air carrier's standard operating procedures will specify who (SIC or PIC) performs each step of the maneuver or procedure. For example, during engine start, the PIC may perform the communication and coordination with the ramp personnel while the SIC physically turns the switch to engage the engine starter. In this instance, upgrade training must include engine start to train the pilot on the PIC required actions. The duty position procedures and maneuvers would vary by airplane type and air carrier. However, it is expected that all air carriers would have some duty position procedures, such as completion of weight and balance or variations of pre-flight, engine start, taxi and post-flight duties.

b. Leadership and Command and CRM

Under this proposal, upgrade ground training must include leadership and command, as well as CRM. CRM training includes decision making, authority and responsibility, and conflict resolution. The proposed upgrade flight training must include scenario-based training structured to incorporate CRM and leadership and command. The purpose of this scenario-based training is to provide the pilot with an opportunity to use these ''soft skills'' learned in ground training in a realistic flight environment.

Scenario-based training should address specific training objectives based on technical and soft skills. As such, the scenario-based training may consist of full or partial flight segments and would necessarily vary, depending on the training objectives. Examples of scenarios include, but are not limited to, mechanical malfunctions, passenger medical events, changing weather, or security concerns. An effective scenario would provide an opportunity for the PIC to identify available resources, obtain information from those resources, analyze that information, apply decision-making techniques, and communicate and coordinate with ATC, the aircraft dispatcher, and other crewmembers, as appropriate. The FAA believes this scenario-based training would ensure the effective integration of these ''soft skills'' with technical skills.

c. Mentoring

The proposed upgrade ground training must include mentoring, to include techniques for instilling and reinforcing the highest standards of technical performance, airmanship, and professionalism in newly employed pilots.

d. Low-Altitude Windshear and Extended Envelope Flight Training

The proposed upgrade flight training must continue to include training in the rare, but high risk scenarios specified in § 121.423 as well as the carrier's approved low-altitude windshear flight training program.

e. Additional Flight Training

The proposed upgrade curriculum also must include sufficient flight training to ensure the pilot has attained the knowledge and skills to proficiently operate the airplane as a PIC. Under the proposed upgrade curriculum, the air carrier must determine the specific maneuvers and procedures for each airplane type considering its operational factors and authorizations, risks identified through its safety management system (SMS), and other risks identified through programs such as an Aviation Safety Action Program (ASAP), Flight Operational Quality Assurance (FOQA), and Line Operations Safety Audit (LOSA).[27] For example, an air carrier may be authorized by FAA to conduct operations using lower than standard takeoff minima. As a condition of this authorization, each PIC must have completed training in the duty position for the applicable takeoff minima authorized for the air carrier.[28] Therefore, in this instance, upgrade training must include takeoff maneuvers using the lower standard minima authorized for the air carrier.

Additionally, the training must ensure the pilot has developed the visual and psychomotor acuity necessary to operate the airplane from the seat position to be occupied while serving as PIC, typically the left pilot seat. For example, a carrier authorized to conduct circling approaches may determine that the circling approach maneuver is required during upgrade flight training due to the altered visual references available to the pilot from the left pilot seat.

3. Upgrade Proficiency Check Requirements

To ensure a proficient PIC, the FAA proposes to revise the waiver provisions for a § 121.441 proficiency check completed after upgrade ground and flight training. Section 121.441 allows a person conducting a proficiency check to waive certain maneuvers if, among other requirements, the pilot has ''within the preceding six calendar months, satisfactorily completed an approved training program for the particular type airplane.'' This waiver authority is premised on the requirement for the pilot to demonstrate proficiency in all maneuvers and procedures specified in appendix E during flight training. Since the proposed upgrade training requirements do not require pilots to complete all maneuvers and procedures in appendix E during training, proficiency must still be demonstrated for all maneuvers and procedures in appendix F during the proficiency check completed after upgrade training. Accordingly, the waiver provisions in § 121.441 and

[26] Typically, the PIC is assigned to and operates the airplane from the left seat and the SIC is assigned to and operates the airplane from the right seat.

[27] ASAP, FOQA, and LOSA are voluntary programs implemented by many air carriers. Analysis of the data provided by these voluntary programs has contributed to increased safety including improvements to training and operational procedures.

[28] Operations specification C078, IFR Lower Than Standard Takeoff Minim, 14 CFR part 121 Airplane Operations—All Airports

appendix F would no longer be appropriate for the proficiency check completed after upgrade training. The waiver provisions for recurrent proficiency checks and proficiency checks after completion of initial, conversion, or transition training are unchanged.

4. Effect of Revised Upgrade Curriculum on Recurrent Training

To serve as a pilot in part 121 operations, a pilot must satisfactorily complete recurrent ground and flight training within 12 calendar months preceding service as a pilot. *See* §§ 121.427 and 121.433(c). In order to track when this training is due, industry practice is to assign the pilot a ''base'' month; the month when recurrent training is due. A pilot may have a different base month for ground training and flight training. An air carrier may change a pilot's base month (*i.e.,* reset it to an earlier month in the 12-month recurrent interval) if the air carrier ensures that the pilot has met all requirements of recurrent training. Satisfactory completion of a qualification curriculum may provide an air carrier with an opportunity to reset a pilot's base month if the qualification curriculum includes the recurrent training requirements.

Under this proposal, an air carrier may continue to reset a pilot's base month for recurrent flight training if the pilot satisfactorily completes the proposed upgrade flight training and proficiency check. The proposed upgrade requirements continue to meet the recurrent flight training requirements of § 121.427. However, under this proposal, an air carrier may not reset a pilot's base month for recurrent ground training based upon a pilot's satisfactory completion of the proposed upgrade ground training because the proposed upgrade curriculum requirements do not include all the subjects required by § 121.427 for recurrent ground training.

As is the case today, a pilot's base month for recurrent ground training may only be changed upon completion of upgrade ground training if the air carrier's upgrade curriculum includes all recurrent ground training requirements of § 121.427.[29] The FAA is aware that some carriers designed their upgrade curriculums to include all recurrent ground training requirements to change the pilot's base month while other carriers designed their upgrade curriculums to only include the upgrade ground training requirements without a change to the pilot's base month. Therefore, the FAA expects the change to upgrade ground training to have a minimal impact on recurrent training because air carriers may continue to design their upgrade curriculums in the same manner.

F. Training for Pilots Currently Serving as PIC (§ 121.429)

As discussed previously, the MLP ARC recommended that air carriers qualify all PICs in the principles of leadership and command. The MLP ARC also recommended the creation of a mentoring environment by training all PICs on mentoring skills. Consistent with these MLP ARC recommendations, the FAA is proposing that all pilots qualified to serve as PIC prior to the compliance date must complete the PIC upgrade ground training on leadership and command and mentoring.

However, the FAA believes that it is unnecessarily burdensome for PICs to complete the one-time training on leadership and command and mentoring if the PIC has previously completed training that is duplicative of the proposed requirements in § 121.429. The MLP ARC and the ACSPT ARC reported that some air carriers have voluntarily provided leadership and command training to PICs. *See* Report from the MLP ARC at p. 22 and Report from ACSPT ARC at p. 10.

Therefore, the FAA proposes to allow credit toward all or part of the requirements for leadership and command and mentoring training for current PICs based on leadership and command and mentoring training previously completed by these PICs at that air carrier. The FAA seeks comment on the proposal to allow credit for previously completed training at that air carrier, specifically:

(1) Whether and to what extent air carriers are already providing leadership and command training and/or mentoring training for current PICs as described in the draft ACs included in the docket for this rulemaking;

(2) Whether the previous training must have been provided as part of a training program approved by the FAA for that air carrier;

(3) Whether the previous training must have been completed within a certain period of time prior to the effective date of the final rule;

(4) What criteria and documentation should the FAA consider in determining whether all or part of the requirements have been met with previous training; and

(5) What criteria and documentation should the FAA consider in determining whether a PIC completed all or part of the previous training at that air carrier.

G. Recurrent PIC Leadership and Command and Mentoring Training (§§ 121.409(b) and 121.427)

Consistent with the MLP ARC recommendation for enhancing recurrent training, the FAA proposes to require recurrent training on leadership and command for all PICs serving in part 121 operations. The FAA also proposes to require recurrent training on mentoring skills for all PICs serving in part 121 operations.

The purpose of recurrent training is to ensure that flightcrew members remain competent in the performance of their assigned duties. The FAA has previously recognized that the necessary frequency for recurrent training is not the same for all subject areas and tasks. For example, most flight training tasks are required at least every 12 months, however, extended envelope flight training tasks are only required every 24 or 36 months.[30]

The MLP ARC recommended that recurrent training include selected items from leadership and command training every year with all components being included at least once during a 4-year cycle. However, the FAA does not believe that it is necessary to require leadership and command training to be completed on an annual basis. Rather, the FAA believes the appropriate frequency for recurrent leadership and command and mentoring training is at least once every 36 months because these skills are used regularly, during every flight, and therefore are less susceptible to degradation. Therefore, the FAA proposes to require recurrent ground training on leadership and command and mentoring for PICs every 36 calendar months.

Currently, air carriers may substitute LOFT that meets the requirements of § 121.409, for the recurrent proficiency check requirement specified in § 121.441. LOFT is flight training conducted in an FFS using real-time scenarios of complete flight segments that address normal, non-normal, or emergency procedures and provides training in CRM. The FAA proposes to modify the existing recurrent LOFT scenario requirements in § 121.409. Specifically, the FAA proposes that the LOFT scenario must provide each PIC an opportunity to demonstrate leadership and command. This proposed amendment to recurrent LOFT is consistent with the proposal for upgrade flight training to include scenario-based training that

[29] *See* FAA Order 8900.1, Volume 3, Chapter 19, Section 10.

[30] *See* §§ 121.423 and 121.427.

incorporates leadership and command skills. Additionally, it would provide an opportunity for the PIC to practice the integration of leadership and command skills with technical skills. The proposed requirement to include leadership and command skills during recurrent LOFT does not place any additional FFS time burden on air carriers who substitute LOFT for recurrent proficiency check requirements because the requirement can be met during the ordinary course of any LOFT that is currently part of an air carrier's training program. However there may be some burden due to the need to amend an air carrier's training program. This burden has been reflected in the information collection requirements that are discussed in Section IV Regulatory Notices and Analyses, E. Paperwork Reduction Act.

H. Leadership and Command Training and Mentoring Training for SICs Serving in Operations That Require Three or More Pilots

The FAA's proposal to provide leadership and command training and mentoring training to PICs is consistent with the rulemaking requirements in Public Law 111–216. However, the FAA has long recognized that a pilot who serves as SIC in an operation that requires three or more pilots must be fully qualified to act as PIC of that operation (except for operating experience).[31]

Based on the current requirement for the SIC serving in an augmented flightcrew to be fully qualified to act as PIC, the FAA is considering including the requirements for leadership and command training and mentoring training in the requirements for these SICs.[32] Accordingly, the FAA seeks comment on the following:

(1) Whether the PIC leadership and command training should be included in the qualification requirements for pilots serving as the SIC in an augmented flightcrew;

(2) Whether mentoring training should be included in the qualification requirements for pilots serving as the SIC in an augmented flightcrew;

(3) Whether providing training in only one of the new subject areas (*i.e.,* only leadership and command training or only mentoring training) would reduce the effectiveness of the training for these SICs; and

(4) Whether providing training in only one of the new subject areas (*i.e.,* only leadership and command training or only mentoring training) would reduce the effectiveness of the requirement for the SIC in an augmented flightcrew to be fully qualified to act as PIC.

I. Pilot Professional Development Committee (§ 121.17)

Public Law 111–216 and the MLP ARC report suggest that air carriers can maximize the benefits of the existing pilot operating rules and pilot training and evaluation through formal pilot mentoring programs. Accordingly, the FAA proposes to add a requirement for certificate holders conducting operations under part 121 to establish and maintain a pilot professional development committee (PPDC) to develop, administer, and oversee a formal pilot mentoring program.

The FAA's proposal to require each certificate holder conducting part 121 operations to establish a PPDC is based on the premise that the PPDC must consider the attributes of the carrier itself in order to design a mentoring program. The mentoring research literature indicates one mentoring program approach will not necessarily fit all air carriers and it is important that the goals and objectives of the mentoring program are firmly tied to the air carrier's culture. *See* Report from CAMI pp. 20, 21, 30 and 46. Therefore, to develop, administer, and oversee a formal pilot mentoring program, the FAA believes the PPDC would need to consider many factors, including the air carrier's size and scope of operation (*e.g.,* number of pilots, number of aircraft, number of operations, types of operations, and locations of operations), unique organizational culture, and unique hiring and advancement practices. For example, the pilots at a smaller air carrier with few bases of operation may have more frequent opportunities for ''in person'' mentoring during the course of a duty day than pilots at a larger air carrier with numerous bases and pilots. Alternatively, pilots at larger air carriers may utilize technology (*e.g.* video conferencing) to create mentoring opportunities. These are just two examples of why the FAA believes the parameters for a formal pilot mentoring program must be designed by the PPDC for each air carrier.

The FAA proposes to require the PPDC to meet frequently enough to accomplish the objectives of the committee. Although the MLP ARC recommended quarterly meetings, the FAA believes that the same factors would affect the frequency of meetings. For example, the PPDC at a small carrier with limited hiring and advancement may not need to meet as frequently as at a larger carrier in order to accomplish and sustain the same mentoring program objectives. However, the FAA expects that in order for the PPDC to be effective, the committee must meet at least once a year. The FAA further notes that an air carrier may take advantage of existing labor-management collaborative initiatives and incorporate the PPDC into an existing committee structure.

The proposal includes minimum staffing requirements for the PPDC. Specifically, the FAA proposes that the PPDC must consist of at least one management representative and at least one representative of the air carrier's pilots. The FAA believes that mentoring programs at each air carrier would realize the most benefit by including the perspective and participation of both the air carrier's management and its pilots.

The FAA used the term management representative to mean any person who has been designated to represent management's perspective on pilot mentoring. The FAA does not believe that it is necessary to require a part 119 management official to oversee the committee. Therefore, to account for the varying sizes and organizational structures of part 121 air carriers, the FAA proposal specifies qualification requirements for the management representative who serves on the committee instead of adding a requirement for a new part 119 management official to serve this purpose.

The proposal requires at least one management representative who serves on the carrier's PPDC to (1) have at least 1 year experience serving as a PIC in part 121 operations, and (2) be qualified through training, experience, and expertise relevant to the PPDC's responsibilities. The specific qualifications for the management representative are intended to capture relevant operational experience and do not include the MLP ARC recommendation for a bachelor's degree because a highly qualified and experienced person could be eliminated with this requirement.

The FAA has developed draft guidance pertaining to a PPDC and the development, administration, and oversight of a formal pilot mentoring program. The FAA seeks comment on this draft guidance which can be found in the docket for this rulemaking.

The FAA also seeks comments on whether a PPDC and a formal pilot mentoring program is necessary in light of the FAA's proposal to require all PICs

[31] *See* § 121.432(a).

[32] An augmented flightcrew is a flightcrew that consists of more than the minimum number of flightcrew members required by the airplane type certificate to operate the airplane to allow a flightcrew member to be replaced by another qualified flightcrew member for in-flight rest.

to complete mentoring training, including recurrent mentoring training. Although addressed in full in the ''PIC Mentoring Training'' discussion in this preamble, by providing training on mentoring to all PICs, all newly employed SICs would be paired with a pilot who is prepared and has been trained to instill and reinforce the professionalism, skill, and knowledge expected of all pilots serving in part 121 operations.

J. Pilot Recurrent Ground Training Content and Programmed Hours (§ 121.427)

Currently, § 121.427 specifies the minimum content and training hours for pilot recurrent ground training. The minimum content requirements include instruction in the subjects required for initial ground training.

Prior to the Pilot Certification rule, § 121.419 contained pilot initial ground training requirements applicable to all pilots in part 121 operations. However, the Pilot Certification rule resulted in different initial ground training requirements for pilots who have completed the ATP–CTP.

The Pilot Certification rule created new prerequisite certification training (*i.e.*, the ATP–CTP) and experience requirements that pilots must now achieve before starting initial training at an air carrier. The ATP–CTP requirements include ground training in general knowledge areas for airplanes and environments relevant to air carrier operations. As a result, the ATP–CTP establishes a foundational knowledge base that additional airplane type-specific and air carrier-specific qualification training is built upon when a pilot completes training at an air carrier.

In the Pilot Certification rule, the FAA recognized that a number of the general knowledge elements that are included in pilot initial ground training in § 121.419(a)(1) are now addressed by the ATP–CTP academic requirements. Therefore, in § 121.419(b), the Pilot Certification rule revised the part 121 initial ground training requirements by removing the generic elements for pilots who have completed the ATP–CTP.[33] As a result of the revisions to the required initial ground training subjects for pilots who have completed the ATP–CTP, the Pilot Certification rule also reduced the minimum programmed hours for this revised initial ground training by 10 hours. *See* § 121.419(d).

When the FAA revised the initial ground training subjects, the FAA did not address the effects of this change on recurrent ground training. Since the required content of recurrent ground training is based, in part, on the content of initial ground training, the content of recurrent ground training may also be reduced for pilots who have completed the revised initial ground training requirements. For these pilots, the recurrent ground training requirement to include initial ground training is satisfied by including only those initial ground training subjects in § 121.419(b). Currently, recurrent training for pilots who have not completed the ATP–CTP must continue to include those initial ground training subjects in § 121.419(a). However, there is no basis for differentiating recurrent ground training requirements based on different initial ground training requirements.

In the time since the part 121 recurrent training requirements were established, the qualification, experience, and training requirements for all pilots in part 121 operations have significantly increased; the latest changes resulting from both the certification standards from the Pilot Certification rule and the additional knowledge and skill requirements required from the Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers final rule. Further, air carrier training programs have also evolved in their maturity such that the general knowledge elements are no longer necessary to support the objectives of recurrent training.

Accordingly, the FAA proposes to remove from the recurrent ground training requirements, certain foundational knowledge elements that are no longer necessary in light of the maturity of air carrier training programs and the increase in pilot experience and qualification. This creates a single standard for recurrent ground training requirements.[34]

Given the proposed reduction in recurrent ground training content, the FAA further proposes a reduction in required minimum programmed hours for pilot recurrent ground training. Although the FAA does not require a specific amount of minimum time for each particular subject, after comparing the subjects required during recurrent ground training prior to and after the Pilot Certification rule, the FAA believes that a one hour reduction in required minimum programmed hours for pilot recurrent ground training is appropriate. Accordingly, the FAA proposes to further amend § 121.427 by reducing by one hour the minimum programmed hours required annually for pilot recurrent ground training.

Notwithstanding this proposal, pilots must still complete recurrent extended envelope ground training and the associated programmed hours. Also, in addition to the annual minimum programmed hours, the FAA proposes that PICs must complete leadership and command and mentoring training every 36 months.

K. Part 135 Operators and Part 91 Subpart K Program Managers Complying With Part 121, Subparts N and O

In addition to air carriers conducting part 121 operations, some additional operators use pilot training and qualification programs that comply with subparts N and O of part 121. Those operators include the following:

- Operators conducting commuter operations with airplanes in which the airplanes' type certificate requires two pilots are required by § 135.3(b) to comply with the training and qualification requirements in subparts N and O of part 121 instead of the requirements in subparts E, G, and H of part 135.[35]
- Operators conducting part 135 operations authorized to voluntarily comply with the training and qualification requirements in subparts N and O of part 121 instead of the requirements in subparts E, G, and H of part 135.[36]
- Fractional ownership program managers conducting operations under subpart K of part 91, authorized to

[33] For example, the ATP–CTP must include instruction on transport category aircraft performance. As indicated in AC 61–138 Airline Transport Pilot Certification Training Program, instruction on transport category aircraft performance should include an introduction to air carrier weight and balance systems. Therefore, for pilots who have completed the ATP–CTP, the Pilot Certification rule revised the initial ground training requirements to remove ''principles of weight and balance'' and focus the training on the air carrier's specific method for determining weight and balance.

[34] To implement the proposed amendments to recurrent ground training content for pilots, the FAA proposes revisions to § 121.427(b), that separate the recurrent ground training requirements by training population. Additionally, the FAA proposes to remove from § 121.427(b), the reference to § 121.805 because of the requirement in § 121.415(a)(3) to complete § 121.805 training.

[35] 14 CFR 110.2 definition of commuter operation.

Commuter operation means any scheduled operation conducted by any person operating one of the following types of aircraft with a frequency of operations of at least five round trips per week on at least one route between two or more points according to the published flight schedules:

(1) Airplanes, other than turbojet-powered airplanes, having a maximum passenger-seat configuration of 9 seats or less, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less; or

(2) Rotorcraft.

[36] *See* § 135.3(c).

voluntarily comply with the training and qualification requirements in subparts N and O of part 121 instead of the requirements in 14 CFR 91.1065 through 91.1107.[37]

Sections 135.3 and 91.1063, which allow, and in some cases require, operators to train and qualify pilots under part 121, raise the training requirements for these other operators and permits them to benefit from the more balanced mix of training and checking in part 121 (versus the testing and checking emphasis in part 135 and 91K). *See* 60 FR 65940, December 20, 1995 (Air Carrier and Commercial Operator Training Programs final rule (RIN 2120–AC79)), 66 FR 37520, July 18, 2001 (Regulation of Fractional Aircraft Ownership Programs and On-Demand Operations NPRM (RIN 2120–AH06)). However, some of the proposed revisions to part 121 in this NPRM are not compatible with all part 135 and 91K operations because of differences between the requirements for minimum flight crew and pilot certification.

First, for these other operators who either choose or are required to train and qualify pilots in accordance with part 121 requirements, the part 121 SIC certification requirements do not apply. SIC pilots serving in these operations are not required to hold an ATP certificate or type rating in the airplane in which they serve. However, this NPRM includes proposed revisions to the upgrade curriculum requirements in subpart N of part 121 based on the presupposition that the pilot entering the upgrade curriculum already holds an ATP certificate and type rating for the airplane. Since this presupposition is not applicable to pilots serving in part 135 and 91K operations, the FAA proposes to retain the existing upgrade curriculum requirements for part 135 operators and fractional ownership program managers who use a part 121 subparts N and O training and qualification program.

Second, unlike part 121 operating rules which require at least two pilots for all operations (§ 121.385(c)), certain operations under parts 135 and 91K may be conducted with only one pilot. The proposed leadership and command and mentoring enhancements to part 121 training programs were developed based on the assumption by the MLP ARC and the FAA that at least two pilots are serving on the flight deck during operations. Since this assumption is not applicable to all part 135 and 91K operations, for these other operators who choose to train and qualify pilots in accordance with part 121 requirements, the FAA proposes to limit the applicability of the leadership and command and mentoring training to pilots in command serving in operations that require two or more pilots.

The remaining proposed amendments to subparts N and O of part 121 would apply to these other operators. The FAA notes that the proposal for a PPDC would not apply to these other operators because this provision is proposed in subpart A of part 121.

The FAA also proposes to revise § 121.431(a)(1) to remove language that is redundant to § 135.3(b) and (c). The FAA believes § 135.3(b) and (c) adequately address the requirements for part 135 operators who choose, or are required, to train and qualify pilots under part 121.

L. Flight Simulation Training Device (FSTD) Conforming Changes

In a 1996 final rule, Advanced Simulation Plan Revisions, the FAA replaced the terminology used in appendix H to part 121 to identify the varying capabilities of the different simulators at that time (61 FR 30726, June 17, 1996).[38] Then, in a 2006 final rule, Flight Simulation Training Device Initial and Continuing Qualification and Use, the FAA added part 60 to title 14, providing requirements for the evaluation, qualification, and maintenance of FSTDs (71 FR 63392, October 30, 2006).[39] Based on the changes made by these two final rules, the Pilot Certification rule as well as the substantive proposals found elsewhere in this NPRM, the FAA proposes a number of conforming changes throughout subparts N and O, and appendices E, F and H as described in more detail in the following discussion.

References to FSTDs in subparts N and O and appendices E and F have been updated to reflect current terminology. Specifically, references to visual simulators (Level A FFS) and advanced simulators (Level B, C and D FFS) have been updated to reflect current terminology and all references to simulation technology that no longer exists have been removed.

As a result of the terminology updates and the commonality in training maneuvers and procedures across qualification curriculum categories, the FAA is proposing revisions to appendices E and F to consolidate the columns identifying the FSTD or airplane required for the completion of each maneuver or procedure. There is only one substantive change to a required maneuver or procedure in appendices E and F. This change is described later in the preamble discussion pertaining to preflight visual inspection using pictorial means.

In § 121.439, the FAA proposes to update the references to visual simulators (Level A FFS) and advanced simulators (Level B, C and D FFS) to reflect current terminology. In addition, the FAA clarifies that a Level A FFS may not be used to satisfy the requirements of this section because a Level A FFS cannot be qualified under part 60 for takeoff and landing tasks. Accordingly, all requirements associated with completing takeoffs and landings in a Level A FFS have been removed from this section.

The FAA proposes to remove the experience requirements for use of a Level C FFS and to conform appendix H terminology with subparts N and O.

The current distinction in capabilities between a Level C and Level D FFS is negligible. The primary difference that exists today between a Level C and a Level D FFS is the evaluation of vibration and sound. Level D evaluation involves objective criteria while Level C evaluation of vibration and sound is subjective. Additionally, the FAA considered the increase in the baseline qualification and experience requirements for all pilots engaged in part 121 operations put into place by the Pilot Certification rule. Based on the current simulation technology and current part 121 pilot qualification and experience, the FAA has determined that the appendix H experience requirements for use of a Level C FFS are unnecessary.

The FAA further notes that removing the experience requirements for use of a Level C FFS is consistent with Exemption No. 5400 as amended over the last 22 years. In 1992, the FAA first issued Exemption No. 5400 to the member airlines of the Air Transport Association of America (now Airlines for America), and ''other similarly situated Part 121 air carriers.'' This exemption allows air carriers to conduct pilot training in a Level C FFS while providing an exemption from the pilot experience requirements in appendix H. At the time of this first exemption, the FAA recognized that more than a decade of experience with training and checking under appendix H had proven these experience requirements to be excessively conservative. This exemption has been extended multiple times without any adverse impact on safety and is still in place today. *See* FAA Exemption No. 5400L, Regulatory Docket No. FAA–2001–10676.

However, the FAA notes that the experience requirements in § 61.64 for

[37] *See* § 91.1063(b).

[38] RIN 2120–AF29

[39] RIN 2120–AH07

use of a Level C or D FFS still apply to practical tests for type ratings conducted in a part 121 training and qualification program. The experience requirements in § 61.64 ensure that a pilot has minimum level of inflight experience in a turbojet airplane or turbo-propeller airplane, as applicable, prior to serving as PIC in operations under any part of title 14 in a turbojet or turbo-propeller airplane that requires a type rating.

The floating paragraph below § 121.409(b)(3) requires the Administrator or a check airman to ''certify'' satisfactory completion of a course of training conducted in a simulator. This provision was implemented at a time when simulator technology was new and unproven. As technology advanced, the FAA incrementally raised the standards for performance of simulators, while simultaneously increasing the allowance for training and checking in a simulator. As a result, the FAA believes that training conducted in FFS is effective and believes that the certification required by an instructor in accordance with existing § 121.401(c) is sufficient.[40] Therefore, the FAA proposes to remove the floating paragraph below § 121.409(b)(3) because the FAA is confident in the effectiveness of today's simulation technology and the instruction that occurs.

M. SIC Training and Checking Conforming Changes

1. Amendments to Training Requirements in Appendix E to Part 121

Certain maneuvers and procedures in appendix E to part 121 are limited to PIC training. Those maneuvers and procedures are as follows: Steep turns, zero-flap approaches and landings, landing and go around with the horizontal stabilizer out of trim, and maneuvering to a landing with a simulated powerplant failure. Additionally, depending on the air carrier's policies, circling approaches may also be limited to PIC training. However, in this NPRM, the FAA proposes to require that SIC training include these maneuvers in order to align appendix E with the training requirements in § 61.71(b). The Pilot Certification rule requires all SICs serving in part 121 operations to hold a type rating. To obtain a type rating within a part 121 training program, § 61.71(b)(1) requires the pilot to satisfactorily accomplish an approved training program and proficiency check for that airplane type that includes all the tasks and maneuvers required to serve as PIC in accordance with subparts N and O of part 121. Therefore, § 61.71(b)(1) already requires an SIC obtaining a type rating in a part 121 training program (*i.e.*, during initial, transition, or conversion) to complete training on those maneuvers and procedures in appendix E that are currently limited to PIC training.

The FAA recognizes that there are limited instances in which a part 121 SIC obtains a type rating prior to employment at a part 121 air carrier.[41] However, to ensure all SICs at the air carrier have been trained to the same standards at that specific air carrier, the FAA is proposing that all SICs be trained by that air carrier on the maneuvers and procedures in appendix E that are currently limited to PIC training, regardless of whether the SIC already holds a type rating. The FAA believes that the effect of this proposed change is minimal because in the limited instances that an SIC holds a type rating, it is expected that the SIC should be able to complete the flight training in less time than an SIC who does not hold a type rating. In accordance with § 121.401(e), a pilot who progresses successfully through flight training, is recommended by an instructor or check airman, and successfully completes the appropriate proficiency check, is not required to complete the programmed hours of flight training for the particular airplane type. Additionally, an air carrier may develop and submit for approval a reduced training hour curriculum based on specific prerequisites.[42] For example, a carrier could have an initial Boeing 737 SIC curriculum for pilots who do not hold a Boeing 737 type rating and a second initial Boeing 737 SIC curriculum that requires less flight training hours for pilots that already hold a Boeing 737 type rating.

2. Amendments to Proficiency Check Requirements in Appendix F to Part 121

Two maneuvers and procedures in appendix F to part 121 are limited to PIC proficiency checks: steep turns and a second missed approach. Additionally, depending on the air carrier's policies and airplane types, some maneuvers and procedures may be limited to PIC proficiency checks: taxiing, circling approaches, maneuvering to a landing with simulated powerplant failure, and two actual landings. However, as previously discussed, § 61.71(b)(1) requires an SIC obtaining a type rating within a part 121 training program to complete a proficiency check which includes all tasks and maneuvers required to serve as PIC. Therefore, the FAA has amended appendix F to indicate that these maneuvers and procedures are required for SICs completing a proficiency check to obtain a type rating.

3. Amendment to § 61.71

As previously discussed, current § 61.71(b)(1) requires a pilot obtaining a type rating within a part 121 training program to satisfactorily accomplish an approved training program and proficiency check for that airplane type that includes all the tasks and maneuvers required to serve as PIC in accordance with the requirements of subparts N and O of part 121.

Currently, as required by § 121.424, PIC initial, transition and upgrade flight training includes the same tasks and maneuvers. However, this NPRM includes proposed revisions to the tasks and maneuvers required for upgrade flight training. Accordingly, without a clarification to § 61.71(b)(1), the proposed changes to the upgrade curriculum could result in confusion as to which tasks and maneuvers are required under § 61.71(b)(1) since the tasks and maneuvers required to serve as PIC would vary for initial, transition, and upgrade training. Therefore, the FAA is proposing a change to § 61.71(b)(1) to clarify that a pilot obtaining a type rating within a part 121 training program must satisfactorily accomplish the same tasks and maneuvers required by § 121.424 to serve as PIC.

[40] Section 121.401(c) states, Each instructor, supervisor, or check airman who is responsible for a particular ground training subject, segment of flight training, course of training, flight check, or competence check under this part shall certify as to the proficiency and knowledge of the crewmember, aircraft dispatcher, flight instructor, or check airman concerned upon completion of that training or check. That certification shall be made a part of the crewmember's or dispatcher's record. When the certification required by this paragraph is made by an entry in a computerized recordkeeping system, the certifying instructor, supervisor, or check airman must be identified with that entry. However, the signature of the certifying instructor, supervisor, or check airman is not required for computerized entries.

[41] For example, a pilot may seek type rating training from a part 142 training center. Part 142 airplane type rating training courses are based on the Airline Transport Pilot and Aircraft Type Rating Practical Test Standards for Airplane (FAA–S–8081–5, current edition) (ATP PTS) which includes the PIC-only tasks and maneuvers in appendix E. Although not specifically required by part 142 regulations, all part 142 airplane type rating courses include these tasks and maneuvers since their training courses are based on the ATP PTS.

[42] *See* FAA Order 8900.1, Volume 3, Chapter 19, Section 1.

N. Other Conforming and Miscellaneous Changes

1. Pilot Transition Ground Training Content (§ 121.419)

The FAA proposes to align the subject area requirements for pilot transition ground training with the subject area requirements for initial ground training for pilots who have completed the ATP–CTP.[43] Prior to the Pilot Certification rule, the subject areas for pilot initial ground training and pilot transition ground training were the same. However, the Pilot Certification rule revised the initial ground training subject areas for pilots who have completed the ATP–CTP because the FAA recognized that a number of the general knowledge elements that are included in pilot initial ground training in § 121.419(a)(1) are now addressed by the ATP–CTP. Therefore, the Pilot Certification rule revised the subjects in part 121 pilot initial ground training to remove the generic elements for pilots who have completed the ATP–CTP. The initial ground training subjects specific to each airplane type remain unchanged.

In order for a pilot to complete the transition curriculum requirements to qualify to serve on an airplane of a different type, a pilot must have previously qualified and served in the same duty position (*i.e.*, PIC or SIC) on another airplane of the same group.[44] Therefore, prior to commencing transition training, a pilot would have already satisfactorily completed training in the foundational knowledge elements either during initial ground training with the air carrier or during the ATP–CTP. Additionally, the pilot would have previously demonstrated proficiency in these foundational knowledge elements during at least one proficiency check conducted by a check pilot.

In recognition of the transitioning pilot's previous training in foundational knowledge elements combined with the recent increase in qualification and experience required to serve as a pilot in part 121 operations, and the evolution of air carrier training programs discussed earlier in this preamble, the FAA proposes to align the required transition ground training subjects with the required initial ground training subjects as revised by the Pilot Certification rule. As a result, the foundational knowledge elements removed from the initial ground training curriculum in the Pilot Certification rule would no longer be required for transition ground training.[45] The airplane type specific training requirements remain unchanged.

2. Conversion Training (§§ 121.400, 121.415, 121.419, 121.424)

Currently, the term ''upgrade'' applies to part 121 training to allow SICs who previously served on an airplane type to serve as PICs on the airplane type. Upgrade also applies to training to allow flight engineers who previously served on an airplane type to serve as SICs on the airplane type. The FAA has proposed to rename the training provided to flight engineers qualifying as SICs to distinguish this training from the SIC to PIC upgrade training. The proposed new term for flight engineer to SIC training is ''conversion.''

Additionally, for flight engineers who have completed the ATP–CTP, the FAA proposes to align the subject areas for conversion ground training with the subject areas for initial ground training for those pilots who have completed the ATP–CTP. Prior to the Pilot Certification rule, the subject areas for pilot initial ground training and flight engineer upgrade ground training (now identified as conversion training) were the same. The Pilot Certification rule revised the subject areas for initial ground training for pilots who have completed the ATP–CTP. However, the Pilot Certification rule did not address the effect of the ATP–CTP on flight engineer upgrade ground training (now identified as conversion training). With the changes put in place by the Pilot Certification rule, flight engineers who complete conversion training must also hold an ATP certificate prior to serving as an SIC in part 121 operations. Therefore, for flight engineers who have completed the ATP–CTP, the FAA proposes that conversion ground training consist of the same subject areas as initial ground training for those pilots who have completed the ATP–CTP.

3. Preflight Visual Inspection Using Pictorial Means

Part 121 appendix E requires initial, transition, and upgrade training to include the preflight visual inspection of the exterior and interior of the airplane, the location of each item to be inspected, and the purpose for inspecting it. Additionally, the proficiency check requirements in appendix F require the pilot to conduct an actual visual inspection of the exterior and interior of the airplane, locating each item and explaining briefly the purpose for inspecting it.

In 1985, the FAA first issued Exemption No. 4416 to the member airlines of the Air Transport Association of America (now Airlines for America), and any other qualifying part 121 certificate holder, to allow the preflight visual inspection to be trained and checked using pictorial means as long as certain conditions and limitations were met. There has been no adverse impact on safety as a result of this exemption. Accordingly, the FAA has extended Exemption No. 4416 multiple times and it is still in use today. *See* Exemption No. 4416P, Regulatory Docket No. FAA–2002–12831.

Instead of continuing to extend Exemption No. 4416, the FAA proposes to amend appendices E and F to allow pictorial means for the conduct of the preflight visual inspection. Consistent with the exemption, the pictorial means must be approved by the Administrator and must provide for the portrayal of normal and abnormal conditions of preflight inspection items. Additionally, if the pictorial means was used during the proficiency check, the pilot must demonstrate proficiency on at least one complete visual inspection of a static airplane before the completion of operating experience required by § 121.434. This means that the demonstration of proficiency may occur at any time between the satisfactory completion of the proficiency check and the completion of all required hours of operating experience. A check pilot must certify the pilot's proficiency on visual inspection before the pilot completes the operating experience required by § 121.434.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

1. Introduction

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39), as amended, prohibits agencies from setting standards that create unnecessary

[43] Transition training applies to a pilot who has previously qualified and served in the same duty position on another airplane of the same group. *See* §§ 121.400(c)(2) and 121.433(a)(1).

[44] For the purpose of subpart N, airplanes are divided into two groups. Group I includes propeller driven airplanes and group II includes turbojet powered airplanes. *See* § 121.400.

[45] The FAA notes that unlike initial and recurrent ground training, part 121 does not provide a minimum number of programmed hours for the transition ground training requirements.

obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, the FAA has determined that this proposed rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

2. Total Benefits and Costs of This Rule

The October 14, 2004 crash of Pinnacle Airlines flight 3701 in Jefferson City, Missouri and the February 12, 2009 crash of Colgan Air flight 3407 near Buffalo, New York are examples of past accidents where unprofessional pilot behavior contributed to the accident. These accidents provide a qualitative analysis of the expected benefits of the proposed rule because quantified benefits related to the accidents are attributed to earlier rules. However, these accidents exemplify the types of accidents that the proposed rule intends to prevent as issues addressed by this rule were present in these accidents; therefore the FAA believes further rulemaking is appropriate. The benefits of the training in the proposed rule include an increased level of safety from mitigation of unprofessional pilot behavior which would reduce pilot errors that can lead to a catastrophic event.

Moreover the proposed rule responds to the statutory requirement for a rulemaking in Public Law 111–216 and to unresolved NTSB recommendations.

Additionally, by reducing subjects in pilot recurrent ground training and upgrade training, the proposed rule would generate savings to operators of $72 million over a 10-year period. When discounted using a 7 percent discount rate, the proposed rule would result in savings of $46 million over the same period.

The estimated cost of the proposed rule to air carriers is $68 million over a 10-year period. When discounted using a 7 percent discount rate, the proposed rule is estimated to result in costs of $47 million over the same period. Detailed benefit and cost information follows below.

3. Who is potentially affected by this rule?

The proposed rule would apply to all part 121 air carriers (78) and, for some provisions, to part 135 operators conducting commuter operations in airplanes type certificated for two pilots (3).[46]

4. Assumptions

The key elements used in framing the regulatory evaluation are as follows:

- Discount Rates:[47] 7% and 3%
- Period of Analysis: 2015–2024
- Monetary values expressed in 2013 dollars
- Discounting calculations use 2013 as the base year

Other key assumptions used to complete the regulatory evaluation are as follows:

- Pilot Retirement Rate: 2.2%
- Pilot Attrition Rate Due To Medical Reasons: 0.5%
- Pilot Growth Rate: 0.4%
- Ground Instructors Needed: 1 instructor for every 200 pilots
- Class Size: 20 pilots per class

5. Benefits of This Rule

The benefits of the training in the proposed rule include an increased level of safety from mitigation of unprofessional pilot behavior which would reduce pilot errors that can lead to a catastrophic event. The October 14, 2004 crash of Pinnacle Airlines flight 3701 in Jefferson City, Missouri and the February 12, 2009 crash of Colgan Air flight 3407 near Buffalo, New York are examples of past accidents where unprofessional pilot behavior contributed to the accident. In addition the proposed rule responds to NTSB recommendations and satisfies the statutory requirement for a rulemaking in Public Law 111–216.

The FAA proposed rule also includes savings from reducing certain subjects in pilot recurrent ground training and upgrade training. Reducing these subjects would not impact safety because the recent Pilot Certification rule ensured technical proficiency in those subjects via other means. The savings from recurrent training apply to all part 121 air carriers and to carriers who operate within part 135 and are required to use pilot training and qualification programs that comply with part 121 subparts N and O. The savings from upgrade training applies only to part 121 air carriers. SICs within part 135 are not required to hold an ATP certificate or type rating and therefore must continue to meet current upgrade requirements. The estimated savings from the proposed rule are shown in Table 3 below.

TABLE 3—SAVINGS OF THE PROPOSED RULE BY PROVISION (2015–2024) *

Cost saving benefits	Total cost savings (millions of 2013 dollars)		
		Present value	
	Total	7 Percent	3 Percent
Recurrent Ground Training (§ 121.427)	$52.559	$34.424	$43.486

[46] If authorized by the Administrator, part 91K operators and part 135 operators may voluntarily comply with the training program requirements in subparts N and O of part 121 instead of the training program requirements of part 91K or part 135. Given that part 121 compliance is voluntary for part 91K and part 135 operators (other than those 3 commuter operators) and the number of pilots who voluntarily train under part 121 subparts N and O is not known, this pilot segment is not included in this analysis.

[47] Office of Management and Budget, OMB Circular No. A–4, *New Guidelines for the Conduct of Regulatory Analysis*, Mar. 2, 2004.

TABLE 3—SAVINGS OF THE PROPOSED RULE BY PROVISION (2015–2024) *—Continued

Cost saving benefits	Total cost savings (millions of 2013 dollars)		
		Present value	
	Total	7 Percent	3 Percent
Upgrade Ground Training (§ 121.420)	19.458	11.839	15.615
Total	72.017	46.263	59.101

* Table values have been rounded. Totals may not add due to rounding.

6. Costs of This Rule

This proposed rule would impose two types of compliance costs: (1) Start-up costs to develop training curriculums and train the current pilot work force prior to the compliance date and (2) recurring costs to conduct the training each year as the pilot work force evolves over time and to operate the PPDC.

The costs of the proposed rule are associated with the following proposed requirements of the rule:

- Operations familiarization for new-hire pilots;
- Revised ground and flight training for upgrading pilots which includes leadership and command and mentoring training;
- Leadership and command and mentoring ground training for current PICs;
- Leadership and command and mentoring recurrent training for PICs; and
- Pilot Professional Development Committees (PPDC).

These cost provisions apply to all part 121 air carriers and, with the exception of the PPDC, to carriers who operate under part 135 and are required to use pilot training and qualification programs that comply with part 121 subparts N and O.

The estimated compliance costs of the proposed rule, by provision, are shown in Table 4 below.

TABLE 4—COMPLIANCE COSTS FOR THE PROPOSED RULE BY PROVISION (2015–2024) *

Cost	Total compliance costs (millions of 2013 dollars)		
		Present Value	
	Total	7 Percent	3 Percent
New-Hire Pilot Operations Familiarization (§ 121.432(d))	$4.693	$2.855	$3.766
Upgrade Training (§§ 121.420 and 121.426)	10.178	6.304	8.227
One-Time and Recurrent PIC Training (§§ 121.409(b), 121.427, and 121.429)	51.815	37.037	44.568
PPDC Meeting (§ 121.17)	0.938	0.572	0.754
Recordkeeping	0.007	0.006	0.006
Total	67.632	46.774	57.321

* Table values have been rounded. Totals may not add due to rounding.

7. Alternatives Considered

The FAA considered an alternative to the proposed rulemaking: a proposal representing the MLP ARC recommendations as presented to the FAA.

These recommendations, and their corresponding costs, are presented in Table 5 below and discussed in further detail in the Pilot Professional Development Regulatory Evaluation.

TABLE 5—ESTIMATED COSTS OF MLP ARC RECOMMENDATIONS (2015–2024) *

Proposed provision	Total costs (millions of 2013 dollars)		
		Present Value	
	Total	7 Percent	3 Percent
Create a Professional Development Position	$166.140	$109.056	$137.593
Create a PDSC Program	0.704	0.615	0.663
Mentor Training for All PICs	37.084	27.899	32.651
Hold Quarterly PDSC Meetings	12.670	8.011	10.332
Additional Indoctrination Training for New-Hire Pilots	0.656	0.399	0.526
1 or More Familiarization Flights for New-Hire Pilots **	4.693	2.855	3.766
32 Hours of Training for SICs Upgrading to PIC	39.026	23.745	31.318
Recurrent PIC Training	238.295	144.987	191.233
Total	499.267	317.567	408.083

* Table values have been rounded. Totals may not add due to rounding.
** FAA estimate is for 2 operating cycles.

The cost of the MLP ARC recommendations is substantially greater than the cost of the proposed rule. The main drivers of the cost differences between the MLP ARC recommendations and the proposed rule are the full-time professional development position and the longer amount of time required for leadership and command training during upgrade training and during PIC recurrent training.

The FAA carefully considered the MLP ARC recommendations when developing the proposed rule and many of the recommendations are incorporated into the proposed rule albeit with less prescriptive requirements. Specifically, the MLP ARC recommended that the committee to oversee pilot professional development meet quarterly while the proposed rule does not specify how frequently the committee overseeing the formal pilot mentoring program should meet. Further the MLP ARC recommended a 32-hour program in leadership and command for upgrading pilots. The proposed rule requires leadership and command training for upgrading pilots but does not specify a minimum number of hours for that training. Relatedly the MLP ARC recommended that the leadership and command topics be included in recurrent training over a four-year cycle suggesting that the recurrent training would then need to be eight hours per year to cover the same material that is included in the upgrade training. The proposed rule also includes a requirement to include leadership and command training in recurrent training but does not specify a minimum number of hours for that training. The FAA does not have enough information to quantify the benefits related to incremental hours spent in leadership and command training or additional committee meetings and therefore leaves the requirements flexible so that each air carrier can make a determination based on its own circumstances.

Additional requirements recommended by the MLP ARC are not included in the proposed rule for a number of reasons. These reasons include redundancy with existing requirements, redundancy in light of regulatory changes put in place after the MLP ARC issued its recommendations, and identification of alternate (less costly) means to achieve desired benefit. A full discussion of the MLP ARC recommendations and dissenting views, and the FAA response can be found in the portion of this preamble titled ''Background''.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The Small Business Administration (SBA) categorizes airlines with 1,500 or fewer employees as small businesses. Of the 78 carriers that operate under part 121, 52 had fewer than 1,500 total employees based on National Vital Information Subsystem (NVIS) data from August 2014. Of the three part 135 operators required to use pilot training and qualification programs that comply with part 121 subparts N and O, all three have fewer than 1,500 total employees based on NVIS data. The count of pilots for the 52 small part 121 air carriers and the three small part 135 operators is shown in Table 6 below.[48]

TABLE 6—TOTAL NUMBER OF IMPACTED PILOTS, PICS, AND SICS FROM SMALL CARRIERS IN 2014 AND 2024

Pilot category	Year		Annual growth (%)
	2014	2024	
PIC	3,176	3,306	0.4
SIC	2,643	2,753	0.4
Total pilots	5,819	6,059	0.4

Based on these pilot counts, the analysis used to conduct the Pilot Professional Development Regulatory Evaluation was recalculated to analyze the cost to small carriers only. Total cost of the proposed rule on small carriers is shown in Table 7 below.

[48] Of these carriers, six use an Advanced Qualification Program (AQP) and therefore incur additional costs associated with a one-time revision to their Qualification Standards Document. For further details see the Paperwork Reduction Act section of this document.

TABLE 7—TOTAL COST OF THE PROPOSED RULE FOR SMALL CARRIERS (2015–2024) *

	Total costs (millions of 2013 dollars)		
		Present value	
	Total	7 Percent	3 Percent
Total Compliance Costs	$6.455	$4.475	$5.476

* Table values have been rounded. Totals may not add due to rounding.

The total cost of the proposed rule on small carriers, and the corresponding per small carrier cost, by provision, is shown in Table 8 below.

TABLE 8—TOTAL AND PER CARRIER COST OF THE PROPOSED RULE FOR SMALL CARRIERS BY PROVISION (2015–2024) *

Cost	Total compliance costs (millions of 2013 dollars)		
	Total	Carriers impacted	Per carrier total cost
New-Hire Pilot Operations Familiarization	$0.354	55	$0.006
Upgrade Training	0.956	55	0.017
One-Time and Recurrent PIC Training	4.518	55	0.082
PPDC Meeting	0.626	52	0.012
Recordkeeping	0.001	55	0.000
Total	6.455	.....	0.118

* Table values have been rounded. Totals may not add due to rounding.

The total cost per carrier of $118,000 for the proposed rule shown in Table 8 above, over the 10-year analysis period, implies an annual average per carrier cost of approximately $11,800. However, the highest cost to a small carrier occurs in 2016 (see Table 9) when the cost per carrier is approximately $41,000 because of the one-time cost to train all current PICs in leadership and command and mentoring.

TABLE 9—TOTAL AND ANNUAL COMPLIANCE COST FOR SMALL CARRIERS BY PROVISION (2015–2024)

[Millions of 2013 dollars] *

Year	Operations familiarization	Revised upgrade training	PIC leadership and command and mentoring	PPDC annual meeting	Record-keeping	Annual total
2015	$0.000	$0.004	$0.002	$0.000	$0.000	$0.005
2016	0.000	0.000	0.041	0.000	0.000	0.041
2017	0.0008	0.002	0.005	0.002	0.000	0.009
2018	0.0008	0.002	0.005	0.002	0.000	0.009
2019	0.0008	0.002	0.005	0.002	0.000	0.009
2020	0.0008	0.002	0.005	0.002	0.000	0.009
2021	0.0008	0.002	0.005	0.002	0.000	0.009
2022	0.0008	0.002	0.005	0.002	0.000	0.009
2023	0.0008	0.002	0.005	0.002	0.000	0.009
2024	0.0008	0.002	0.005	0.002	0.000	0.009
Total	0.006	0.017	0.082	0.012	0.000	0.118

* Table values have been rounded. Totals may not add due to rounding.

The FAA believes that such an economic cost is not economically significant. BTS Form 41 Financial data is available for 31 small air carriers.[49] Operating revenues in 2013 for these 31 operators ranged from $2.4 million to $1 billion. Based on these figures, the estimated annual per carrier cost of the proposed rule does not exceed 2% of the operating revenue for any carrier where data is available. The annual cost per small carrier is above 1% of the lowest operating revenue ($24,000) but below 2% ($48,000). Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking would not result in a significant economic impact on a substantial number of small entities.

The FAA solicits comments regarding this determination.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub.

[49] Bureau of Transportation Statistics Air Carrier Financial Reports (Form 41 Financial Data) Database. Schedules P–1.1 and P–1.2. *http://www.transtats.bts.gov/Tables.asp?DB_ID=135&DB_Name=Air%20Carrier%20Financial%20Reports%20%28Form%2041%20Financial%20Data%29&DB_Short_Name=Air%20Carrier%20Financial.*

L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would respond to a statutorily mandated safety objective and is not considered an unnecessary obstacle to the foreign commerce of the United States.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $151.0 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This action contains the following proposed new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these proposed information collection amendments to OMB for its review.

Summary: The proposed rule requires the development and approval of new and revised training curriculums for the following:

- Leadership and command and mentoring ground training for pilots currently serving as PIC (§ 121.429) and recurrent PIC leadership and command and mentoring training (§§ 121.409(b) and 121.427);
- Upgrade training curriculum requirements (§§ 121.420 and 121.426);
- Part 121 appendix H requirements; and
- Approval of Qualification Standards Document for certificate holders using an Advanced Qualification Program (AQP) (§ 121.909).

The proposed rule also requires some additional recordkeeping related to maintaining records of pilots completing the following:

- Leadership and command and mentoring ground training for pilots currently serving as PIC (§ 121.429);
- Recurrent PIC leadership and command and mentoring ground training (§ 121.427); and
- Operations familiarization for new-hire pilots (§ 121.432(d)).

Use: This information would be used to ensure safety-of-flight by making certain that adequate training is obtained and maintained by those who operate under this part of the regulation. The FAA would review the respondents' training programs and training courseware through routine certification, inspection and surveillance of certificate holders using part 121 pilot training and qualification programs to ensure compliance and adherence to regulations and, where necessary, to take enforcement action.

Respondents (including number of): The relevant provisions of the proposed rule apply to certificate holders using part 121 pilot training and qualification programs. Currently there are 81 such certificate holders who collectively employ 37,228 PICs and 39,956 SICs.

Frequency: The development and approval of new and revised curriculums would be a one-time occurrence for each certificate holder. Similarly the documentation regarding training in leadership and command and mentoring for current PICs would be a one-time occurrence. The documentation of operations familiarization for new-hire pilots would occur once for each new-hire pilot. The documentation of recurrent PIC leadership and command and mentoring training would occur every three years for each PIC.

Annual Burden Estimate: These proposed amendments to part 121 set out prerequisites and levy requirements that must be met by certificate holders using part 121 pilot training and qualification programs and by those individuals who serve in given capacities for those certificate holders. The estimates for hours and costs are broken down by development and approval of new and revised training curriculums followed by pilot training recordkeeping.

The FAA anticipates that certificate holders would incur costs for the following groups of provisions:

- Operations familiarization for new-hire pilots (§ 121.432(d));
- Leadership and command and mentoring ground training for pilots currently serving as PIC (§ 121.429);
- Upgrade training curriculum requirements (§§ 121.420 and 121.426);
- Recurrent PIC leadership and command and mentoring ground training (§§ 121.409(b) and 121.427);
- Part 121, appendix H requirements; and
- Approval of Qualification Standards Document for certificate holders using an AQP (§ 121.909).

1. Development and Approval of New and Revised Training Curriculums

For the development and approval of new and revised training curriculums, the FAA estimated the paperwork costs for these provisions by multiplying the hourly rate of the person responsible by the number of estimated hours to develop and submit the new or revised training curriculum. (In all cases we assume that a ground instructor would develop and submit the new or revised training curriculum and that the ground instructor fully burdened wage is $44 per hour.[50]) We then multiplied these costs by the number of certificate holders affected by the provision.

a. Leadership and Command and Mentoring Ground Training for Pilots Currently Serving as PIC (§ 121.429) and Recurrent PIC Leadership and Command and Mentoring Training (§§ 121.409(b) and 121.427)

Proposed § 121.429 would require one-time development of a training course for leadership and command and mentoring for current PICs. This course must be submitted to the FAA for approval.

Proposed revisions to §§ 121.409(b) and 121.427 would require one-time

[50] Training instructor hourly wage rate of $31 multiplied by 1.42 to account for costs of employer provided benefits. Wage based on 2013 Bureau of Labor Statistics (BLS) Occupational Employment Statistics for Air Transportation Industry. (*http://www.bls.gov/oes/current/naics4_481100.htm*): Training and Development Specialists (13–1151). Wage multiplier from BLS, Employer costs for Employee compensation—June 2013, Table 5, Private Industry. (*http://www.bls.gov/news.release/pdf/ecec.pdf*)

revision to the certificate holder's approved recurrent PIC training curriculum. This revised curriculum must be submitted to the FAA for approval.

The FAA estimates a total of 40 hours of ground instructor time for development and submission of both the curriculum for current PICs and the revision to the recurrent PIC training curriculum.

Assuming 81 affected certificate holders, the FAA estimates that these proposed provisions would result in a one-time total cost of $142,560 for all affected certificate holders.

b. Upgrade Training Curriculum Requirements (§§ 121.420 and 121.426)

Proposed §§ 121.420 and 121.426 would require one time revision to the certificate holder's approved SIC to PIC upgrade training curriculum. This revised curriculum must be submitted to the FAA for approval.

The FAA estimates a total of 80 hours of ground instructor time for development and submission of the revised SIC to PIC upgrade training curriculum.

Assuming 81 affected certificate holders, the FAA estimates that these proposed provisions would result in a one-time cost of $285,120 for all affected certificate holders.

c. Part 121 Appendix H Requirements

The proposed revision to part 121 appendix H would require one time revision to the certificate holder's approved training program to remove the pilot experience prerequisites for using a Level C FFS during training and checking. This revised training program must be submitted to the FAA for approval. The FAA expects that the program updates to reflect this change are minimal and are subsumed in the paperwork costs for the collective amendments made to the training provisions in this proposed rule.

The FAA estimates there are no costs for this proposed provision.

d. Approval of Qualification Standards Document for Certificate Holders Using an AQP (§ 121.909)

Although the proposed rule does not make any changes to § 121.909, when the new subparts N and O training requirements become effective, certificate holders that use AQP would have to review their training programs to make sure they address the new subparts N and O requirements. It is possible that certificate holders may make a one-time revision to their Qualifications Standards Document required by § 121.909 during this process to address the revised subparts N and O requirements.

This is a cost that only applies to certificate holders that use AQP for pilot training because they are the only ones who must meet the § 121.909 requirements. Therefore, this provision does not apply to certificate holders who only train their pilots under a training program in accordance with subparts N and O of part 121.

For each of the 25 certificate holders with an approved AQP, the FAA estimates 3 hours of ground instructor time for development and submission of the revised Qualification Standards Document.

The FAA estimates that this proposed provision would result in one-time costs of $3,300 across all certificate holders who train their pilots under AQP.

2. Recordkeeping

For the pilot training recordkeeping, the FAA estimated the paperwork costs for these provisions by first multiplying the number of required entries by the estimated number of pilots affected. Second, we multiplied the total number of entries by .001 hours (the time required to make each entry). Lastly, we multiplied the total time to make all entries by the hourly rate of the person responsible for making the entries. In all cases, the FAA assumes that the person making the entries is a clerical employee with an estimated fully-burdened wage of $26 per hour.[51]

a. Leadership and Command and Mentoring Ground Training for Pilots Currently Serving as PIC (§ 121.429)

A record showing compliance with this requirement for current PICs would need to be retained in accordance with § 121.683(a)(1). This would be a one-time burden.

The FAA assumes that this cost would be incurred in the year prior to the compliance date of the rule and estimates that during that year 37,527 pilots would be affected and would require one record. The FAA estimates 38 hours of clerical time for entry of these records.

The FAA estimates that this proposed provision would add a one-time cost of $988 for all affected certificate holders.

b. Recurrent PIC Leadership and Command and Mentoring Ground Training (§ 121.427)

A record showing compliance with this requirement for current PICs would need to be retained in accordance with § 121.683(a)(1). This would be an addition to the current recordkeeping burden approved under OMB Control Number 2120–0008.

PICs are required to complete the recurrent training every 3 years. Over the 10 year analysis period, the FAA estimates that there would be 96,328 instances of PICs undergoing recurrent training involving leadership and command and mentoring. Each instance would require one record. The FAA estimates 97 hours of clerical time for entry of these records.

The FAA estimates that this proposed provision would result in costs of $2,522 over the analysis period for all affected certificate holders.

c. Operations Familiarization for New-Hire Pilots (§ 121.432(d))

Section 121.432(d) proposes a new qualification requirement for new-hire pilots to complete operations familiarization consisting of 2 operating cycles. A record showing compliance with this requirement for each new-hire pilot would need to be retained in accordance with § 121.683(a)(1). This would be an addition to the current recordkeeping burden approved under OMB Control Number 2120–0008.

The FAA estimates all affected certificate holders would have a total of 19,636 new-hire pilots over the analysis period. Each of the estimated 19,636 pilots affected would require one record. The FAA estimates 20 hours of clerical time for entry of these records. The FAA estimates that this proposed provision would result in costs of $520 across the analysis period for all affected certificate holders.

3. Summary of Estimated Paperwork Costs

The total cost burden would be $435,010 ($379,076 discounted at 7 percent) over the 10-year analysis period.

[51] The clerk hourly wage rate of $18 multiplied by 1.42 to account for costs of employer provided benefits. Wage based on 2013 BLS Occupational Employment Statistics for Air Transportation Industry. (*http://www.bls.gov/oes/current/naics4_481100.htm*): Information and Record Clerks (43–4000). Wage multiplier from BLS, Employer costs for Employee compensation—June 2013, Table 5, Private Industry. (*http://www.bls.gov/news.release/pdf/ecec.pdf*)

SUMMARY OF ESTIMATED PAPERWORK COSTS

Proposed rule requirement	Number of records	Number of hours	Wage	Number of certificate holders	Total cost
Development and Approval of New and Revised Training Curriculums					
Leadership and command and mentoring ground training for pilots currently serving as PIC (§ 121.429) and recurrent PIC leadership and command and mentoring training (§§ 121.409(b) and 121.427)	N/A	40	*$44	81	$142,560
Upgrade training curriculum (§§ 121.420 and 121.426)	N/A	80	*44	81	285,120
Approval of Qualification Standards Document (§ 121.909)	N/A	3	*44	25	3,300
Recordkeeping					
Leadership and command and mentoring ground training for pilots currently serving as PIC (§ 121.429)	37,527	38	**26	N/A	988
Recurrent PIC leadership and command and mentoring ground training (§ 121.427)	96,328	97	**26	N/A	2,522
Operations familiarization for new-hire pilots (§ 121.432(d))	19,636	20	**26	N/A	520
Total		278			435,010

* Fully burdened hourly wage for ground instructor.
** Fully burdened hourly wage for clerical employee.

The FAA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the FAA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FAA's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement to the address listed in the **ADDRESSES** section at the beginning of this preamble by January 5, 2017. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Building, Room 10202, 725 17th Street NW., Washington, DC 20053.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6 and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The FAA has determined that it would not be a ''significant energy action'' under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

VI. Additional Information

A. Comments Invited

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

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public

contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Proprietary or Confidential Business Information: Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the FAA does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or

3. Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects

14 CFR Part 61

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 91

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 135

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709–44711, 44729, 44903, 45102–45103, 45301–45302.

■ 2. Amend § 61.71 by revising paragraph (b)(1) to read as follows:

§ 61.71 Graduates of an approved training program other than under this part: Special rules.

* * * * *

(b) * * *

(1) Satisfactorily accomplished an approved training curriculum and a proficiency check for that airplane type that includes all the tasks and maneuvers required by §§ 121.424 and 121.441 of this chapter to serve as pilot in command in operations conducted under part 121 of this chapter; and

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 3. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 4. Amend § 91.1063 as follows:

■ a. Redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively; and

■ b. Add new paragraph (c).

The addition reads as follows:

§ 91.1063 Testing and training: Applicability and terms used.

* * * * *

(c) Additional limitations applicable to program managers authorized in accordance with paragraph (b) of this section, to comply with subparts N and O of part 121 of this chapter instead of §§ 91.1065 through 91.1107 of this part.

(1) *Upgrade training.* (i) Each program manager must include in upgrade ground training for pilots, instruction in at least the subjects identified in § 121.419(a) of this chapter, as applicable to their assigned duties; and, for pilots serving in crews of two or more pilots, beginning on [24 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE], instruction in the subjects identified in § 121.419(c) of this chapter.

(ii) Each program manager must include in upgrade flight training for pilots, flight training for the maneuvers and procedures required in § 121.424(a), (c), (e) and (f) of this chapter; and, for pilots serving in crews of two or more pilots, beginning on [24 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE], the flight training required in § 121.424(b) of this chapter.

(2) *Initial and recurrent leadership and command and mentoring training.* Program managers are not required to include leadership and command training in §§ 121.409(b)(2)(ii)(B)(*6*), 121.419(c)(1), 121.424(b) and 121.427(d)(1) of this chapter, and mentoring training in §§ 121.419(c)(2) and 121.427(d)(1) of this chapter in initial and recurrent training for pilots in command who serve in operations that use only one pilot.

(3) *One-time leadership and command and mentoring training.* Section 121.429 of this chapter does not apply to program managers conducting operations under this subpart when those operations use only one pilot.

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 5. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40119, 41706, 42301 preceding note added by Pub. L. 112–95, sec. 412, 126 Stat. 89, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44729, 44732; 46105; Pub. L. 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112–95, 126 Stat. 62 (49 U.S.C. 44732 note).

■ 6. Add § 121.17 to subpart A to read as follows:

§ 121.17 Pilot Professional Development Committee.

(a) Each certificate holder conducting operations under this part must establish and maintain a pilot professional development committee to develop, administer, and oversee a formal pilot mentoring program.

(b) The pilot professional development committee must consist of at least the following individuals:

(1) One certificate holder management representative who has completed at least one year of service as a pilot in command in part 121 operations and is qualified through training, experience, and expertise.

(2) One representative of the pilots employed by the certificate holder.

(c) The pilot professional development committee must hold its first meeting no later than [24 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE]. Thereafter, the pilot professional development committee must meet on a regular basis. The committee must meet with sufficient frequency to accomplish its objectives but not less than once every 12 calendar months.

■ 7. Amend § 121.400 as follows:

■ a. Revise paragraph (a);

■ b. Revise paragraph (c)(3);

■ c. Redesignate paragraphs (c)(4) through (c)(11) as paragraphs (c)(5) through (c)(12), respectively; and

■ d. Add new paragraph (c)(4).

The revisions and addition read as follows:

§ 121.400 Applicability and terms used.

(a) This subpart prescribes the requirements applicable to each certificate holder for establishing and maintaining a training program for crewmembers, aircraft dispatchers, and other operations personnel, and for the approval and use of flight simulation training devices and training equipment in the conduct of the program.

* * * * *

(c) * * *

(3) Upgrade training. The training required for flightcrew members who have qualified and served as second in command on a particular airplane type, before they serve as pilot in command on that airplane.

(4) Conversion training. The training required for flightcrew members who have qualified and served as flight engineer on a particular airplane type, before they serve as second in command on that airplane.

* * * * *

■ 8. Amend § 121.401 by revising paragraph (a)(4) to read as follows:

§ 121.401 Training program: General

(a) * * *

(4) Provide enough flight instructors and approved check airmen to conduct required flight training and checks required under this part.

* * * * *

§ 121.403 [Amended]

■ 9. In § 121.403 in paragraph (b)(4), remove the words ''airplane simulators or other'' and add, in their place, the words ''flight simulation.''

§ 121.407 [Amended]

■ 10. Amend § 121.407 as follows:

■ a. In the section heading, remove the words ''airplane simulators and other'' and add, in their place, the words ''flight simulation'';

■ b. In paragraph (a) introductory text, remove the words ''airplane simulator and other training device'' and add, in their place, the word ''FSTD'';

■ c. In paragraph (b), remove the words ''airplane simulator or other training device'' and add, in their place, the word ''FSTD'';

■ d. In paragraph (c) introductory text, remove the words ''An airplane simulator'' and add, in their place, the words ''A Level B or higher FFS'', remove the word ''in-flight'' and add, in its place, the word ''inflight'', and remove the word ''simulator'' and add, in its place, the word ''FFS'';

■ f. In paragraph (c)(2), add a comma after ''§ 121.424(a) and (c)'' and add ''§ 121.426,'' after the comma; and

■ g. In paragraphs (d) and (e), remove the words ''airplane simulator'' and add, in their place, the word ''FFS''.

■ 11. Amend § 121.409 as follows:

■ a. In the section heading, remove the words ''airplane simulators and other'' and add, in their place, the words ''flight simulation'';

■ b. In paragraph (a), remove the words ''airplane simulators and other training devices'' and add, in their place, the word ''FSTDs'';

■ c. In paragraphs (b) introductory text, (b)(1) and (c)(1), remove the words ''airplane simulator'' and add, in their place, the word ''FFS'';

■ d. In paragraph (b)(2)(ii)(B)(*4*), remove the word ''and'' at the end of the paragraph;

■ e. In paragraph (b)(2)(ii)(B)(*5*), remove the period at the end of the paragraph and add, in its place, ''; and'';

■ f. Add paragraph (b)(2)(ii)(B)(*6*);

■ g. Remove the floating paragraph that follows paragraph (b)(3);

■ h. In paragraph (c)(2), remove the words ''airplane simulator or other training device'' and add, in their place, the word ''FSTD''; and

■ i. In paragraph (d), in the first sentence, remove the word ''simulator'' and add, in its place, the word ''FFS'', and in the second sentence, add ''121.426,'' after ''121.424'' and before ''and 121.427''.

The addition reads as follows:

§ 121.409 Training courses using flight simulation training devices.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) * * *

(*6)* Provides an opportunity for each pilot in command to demonstrate leadership and command skills.

* * * * *

§ 121.411 [Amended]

■ 12. Amend § 121.411 as follows:

■ a. In paragraphs (a)(1), (a)(2), (f)(1), and (f)(2), remove the words ''flight simulator'' and add, in their place, the words ''full flight simulator''; and

■ b. In paragraph (b)(4), remove the word ''in-flight'' and add, in its place, the word ''inflight''.

§ 121.412 [Amended]

■ 13. Amend § 121.412 as follows:

■ a. In paragraphs (a)(1), (a)(2), (f)(1), and (f)(2), remove the words ''flight simulator'' and add, in their place, the words ''full flight simulator''; and

■ b. In paragraph (b)(4), remove the word ''in-flight'' and add, in its place, the word ''inflight''.

§ 121.413 [Amended]

■ 14. Amend § 121.413 as follows:

■ a. In paragraphs (a)(2), (c)(7) introductory text, (c)(7)(iv), (d)(2) introductory text, (d)(2)(iv), (f), (g) introductory text, (g)(1), (g)(2) and (h), remove the words ''flight simulator'' and add, in their place, the words ''full flight simulator''; and

■ b. In paragraph (f), remove the words ''in flight'' and add, in their place, the word ''inflight''.

§ 121.414 [Amended]

■ 15. Amend § 121.414 as follows:

■ a. In paragraphs (a)(2), (c)(8) introductory text, (c)(8)(iv), (d)(2) introductory text, (d)(2)(iv), (f), (g) introductory text, (g)(1), (g)(2), and (h), remove the words ''flight simulator'' and add, in their place, the words ''full flight simulator'';

■ b. In paragraph (e)(3)(i), remove the word ''In-flight'' and add, in its place, the word ''Inflight''; and

■ c. In paragraph (f), remove the words ''in flight'' and add, in their place, the word ''inflight''.

■ 16. Amend § 121.415 as follows:

■ a. In paragraph (b), remove the reference to ''121.425'' and add, in its place, ''121.426'';

■ b. Revise paragraph (e);
■ c. Redesignate paragraphs (f) through (j) as paragraphs (g) through (k), respectively;
■ d. Add new paragraph (f);
■ e. Revise newly redesignated paragraph (g);
■ f. Revise newly redesignated paragraph (h) introductory text;
■ g. In newly redesignated paragraph (j) remove the reference to ''paragraph (h)'' and add in its place ''paragraph (i)''; and
■ h. In newly redesignated paragraph (k) remove the references to ''paragraphs (h) and (i)'' and add in their place, ''paragraphs (i) and (j)''.

The revisions and addition read as follows:

§ 121.415 Crewmember and dispatcher training program requirements.

* * * * *

(e) *Upgrade training.* (1) Upgrade training as specified in §§ 121.420 and 121.426 of this part for a particular type airplane may be included in the training program for flightcrew members who have qualified and served as second in command pilot on that airplane; or

(2) Before [24 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE], upgrade training as specified in §§ 121.419 and 121.424 of this part for a particular type airplane may be included in the training program for flightcrew members who have qualified and served as second in command pilot on that airplane.

(f) Conversion training as specified in §§ 121.419 and 121.424 of this part for a particular type airplane may be included in the training program for flightcrew members who have qualified and served as flight engineer on that airplane.

(g) Particular subjects, maneuvers, procedures, or parts thereof specified in §§ 121.419, 121.420, 121.421, 121.422, 121.424, 121.425 and 121.426 of this part for transition, conversion or upgrade training, as applicable, may be omitted, or the programmed hours of ground instruction or inflight training may be reduced, as provided in § 121.405 of this part.

(h) In addition to initial, transition, conversion, upgrade, recurrent and differences training, each training program must also provide ground and flight training, instruction, and practice as necessary to insure that each crewmember and dispatcher—

* * * * *

§ 121.417 [Amended]

■ 17. In 14 CFR 121.417(b)(3)(ii), remove the words ''in flight'' and add in their place, the word ''inflight''.

■ 18. Amend § 121.418 by revising paragraphs (a)(2) and (c) to read as follows:

§ 121.418 Differences training and related aircraft differences training.

(a) * * *

(2) Differences training for all variations of a particular type airplane may be included in initial, transition, conversion, upgrade, and recurrent training for the airplane.

* * * * *

(c) Approved related aircraft differences training. Approved related aircraft differences training for flightcrew members may be included in initial, transition, conversion, upgrade and recurrent training for the base aircraft. If the certificate holder's approved training program includes related aircraft differences training in accordance with paragraph (b) of this section, the training required by §§ 121.419, 121.420, 121.424, 121.425, 121.426 and 121.427 of this part, as applicable to flightcrew members, may be modified for the related aircraft.

■ 19. Amend § 121.419 as follows:
■ a. Revise the section heading;
■ b. Revise paragraph (a) introductory text;
■ c. Revise paragraph (b) introductory text;
■ d. Redesignate paragraphs (c) through (e) as paragraphs (d) through (f), respectively;
■ e. Add new paragraph (c);
■ f. In newly redesignated paragraph (f)(2) remove the reference, ''paragraphs (c) and (d)'' and add in its place, ''paragraphs (d) and (e)''; and
■ g. Add paragraph (g).

The revisions and additions read as follows:

§ 121.419 Pilots and flight engineers: Initial, transition, and conversion ground training and before [24 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE], upgrade ground training.

(a) Except as provided in paragraph (b) of this section, initial, conversion, and upgrade ground training for pilots and initial and transition ground training for flight engineers, must include instruction in at least the following as applicable to their assigned duties:

* * * * *

(b) Initial and conversion ground training for pilots who have completed the airline transport pilot certification training program in § 61.156 of this chapter, and transition ground training for pilots, must include instruction in at least the following as applicable to their assigned duties:

* * * * *

(c) Beginning on [24 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE], and in addition to the requirements in paragraphs (a) or (b) of this section, as applicable, initial ground training for pilots in command must include instruction on the following:

(1) Leadership and command, including flightcrew member duties under § 121.542 of this part; and

(2) Mentoring, including techniques for instilling and reinforcing the highest standards of technical performance, airmanship, and professionalism in newly employed pilots.

* * * * *

(f) * * *

(1) * * *

(2) Beginning March 12, 2019, initial programmed hours applicable to pilots as specified in paragraphs (d) and (e) of this section must include 2 additional hours.

(g) Before [24 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE] upgrade ground training must include either the instruction specified in paragraph (a) of this section or the instruction specified in § 121.420 of this part. Beginning on [24 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE], upgrade ground training must include the instruction specified in § 121.420 of this part.

■ 20. Add § 121.420 to read as follows:

§ 121.420 Pilots: Upgrade ground training.

(a) Upgrade ground training must include instruction in at least the following subjects as applicable to the duties assigned to the pilot in command:

(1) Seat dependent procedures, as applicable;

(2) Duty position procedures, as applicable;

(3) Leadership and command, including flightcrew member duties under § 121.542 of this part;

(4) Crew resource management, including decision making, authority and responsibility and conflict resolution; and

(5) Mentoring, including techniques for reinforcing the highest standards of technical performance, airmanship and professional development in newly employed pilots.

(b) Compliance date. Beginning on [24 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE], upgrade ground training must satisfy the requirements of this section.

§ 121.423 [Amended]

■ 21. In the § 121.423 section heading, remove the word ''Pilot'' and add, in its place, the word ''Pilots''.

■ 22. Amend § 121.424 as follows:
■ a. Revise section heading;
■ b. Revise paragraph (a) introductory text;
■ c. Redesignate paragraphs (b) through (e) as paragraphs (c) through (f), respectively;
■ d. Add new paragraph (b);
■ e. In newly redesignated paragraph (c)(1), remove the words ''a simulator'' and add, in their place, the words ''an FFS'';
■ f. In newly redesignated paragraph (c)(3), remove the words ''an airplane simulator, an appropriate training device,'' and add in their place, the words ''an FFS, an FTD,'';
■ g. In newly redesignated paragraph (d) introductory text remove the reference ''paragraph (d)'' and add in its place the reference, ''paragraph (e)'';
■ h. In newly redesignated paragraph (e) introductory text remove the words ''airplane simulator'' and add in their place the word, ''FFS'';
■ i. Revise newly redesignated paragraphs (e)(1)(i) and (ii);
■ j. In paragraph (e)(2), remove the words ''airplane simulator'' and add in their place the word ''FFS''; and
■ k. Add paragraph (g).

The revisions and additions read as follows:

§ 121.424 Pilots: Initial, transition, and conversion flight training and before [24 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE], upgrade flight training.

(a) Initial, transition, conversion, and upgrade flight training for pilots must include the following:

* * * * *

(b) Beginning on [24 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE], in addition to the requirements in paragraph (a) of this section, initial flight training for pilots in command must include sufficient scenario based training incorporating CRM and leadership and command skills, to ensure the pilot's proficiency as pilot in command. The training required by this paragraph may be completed inflight or in an FSTD.

* * * * *

(e) * * *

(1) * * *

(i) Training and practice in the FFS in at least all of the maneuvers and procedures set forth in appendix E to this part for initial flight training that are capable of being performed in an FFS; and

(ii) A proficiency check in the FFS or the airplane to the level of proficiency of a pilot in command or second in command, as applicable, in at least the maneuvers and procedures set forth in appendix F to this part that are capable of being performed in an FFS.

* * * * *

(g) Before [24 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE] upgrade flight training must be provided in accordance with either this section or § 121.426 of this part. Beginning on [24 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE], upgrade flight training must be provided as specified in § 121.426 of this part.

§ 121.425 [Amended]

■ 23. Amend § 121.425 as follows:
■ a. In paragraphs (a)(1) and (a)(2)(iii), remove the comma after the word, ''inflight'' and remove the words ''in an airplane simulator, or in a training device'' and add, in their place, the words ''or in an FSTD'';
■ b. Designate the paragraph that follows paragraph (a)(2)(iii) as (a)(3) and remove the words ''airplane simulator'' and add, in their place, the word ''FFS''; and
■ c. In paragraph (c), remove the words ''airplane simulator or other training device'' and add, in their place, the word ''FSTD'' and remove the words ''simulator or other training device'' and add, in their place, ''FSTD''.
■ 24. Add § 121.426 to read as follows:

§ 121.426 Pilots: Upgrade flight training.

(a) Upgrade flight training for pilots must include the following:

(1) Seat dependent maneuvers and procedures, as applicable;

(2) Duty position maneuvers and procedures, as applicable;

(3) Extended envelope training set forth in § 121.423 of this part;

(4) Maneuvers and procedures set forth in the certificate holder's low altitude windshear flight training program;

(5) Sufficient scenario based training incorporating CRM and leadership and command skills, to ensure the pilot's proficiency as pilot in command; and

(6) Sufficient training to ensure the pilot's knowledge and skill with respect to the following:

(i) The airplane, its systems and components;

(ii) Proper control of airspeed, configuration, direction, altitude and attitude in accordance with the Airplane Flight Manual, the certificate holder's operations manual, checklists or other approved material appropriate to the airplane type; and

(iii) Compliance with ATC, instrument procedures, or other applicable procedures.

(b) The training required by paragraph (a) of this section must be performed inflight except—

(1) That windshear maneuvers and procedures must be performed in an FFS in which the maneuvers and procedures are specifically authorized to be accomplished;

(2) That the extended envelope training required by § 121.423 must be performed in a Level C or higher FFS unless the Administrator has issued to the certificate holder a deviation in accordance with § 121.423(e); and

(3) To the extent that certain other maneuvers and procedures may be performed in an FFS, an FTD, or a static airplane as permitted in appendix E to this part.

(c) If the certificate holder's approved training program includes a course of training utilizing an FFS under § 121.409(c) and (d) of this part, each pilot must successfully complete—

(1) With respect to § 121.409(c) of this part—A proficiency check in the FFS or the airplane to the level of proficiency of a pilot in command in at least the maneuvers and procedures set forth in appendix F to this part that are capable of being performed in an FFS.

(2) With respect to § 121.409(d) of this part, training and practice in at least the maneuvers and procedures set forth in the certificate holder's approved low-altitude windshear flight training program that are capable of being performed in an FFS in which the maneuvers and procedures are specifically authorized.

(d) Compliance dates. Beginning on [24 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE], upgrade flight training must satisfy the requirements of this section, except for the extended envelope training in paragraph (a)(3) and (b)(2) of this section. Upgrade flight training must include the requirements of paragraph (a)(3) and (b)(2) beginning on March 12, 2019.
■ 25. Amend § 121.427 as follows:
■ a. In paragraph (a), remove the words ''crew member'' and add, in their place, the word ''crewmember'';
■ b. Revise paragraph (b)(2);
■ c. Revise paragraph (b)(4);
■ d. Revise paragraph (c) introductory text;
■ e. Redesignate paragraphs (c)(1), (c)(2), and (c)(3) as paragraphs (c)(2), (c)(3), and (c)(4), respectively;
■ f. Add new paragraph (c)(1);
■ g. In newly redesignated paragraph (c)(2), remove the words ''pilots and'';
■ h. Redesignate paragraphs (d) and (e) as paragraphs (e) and (f), respectively;
■ i. Add new paragraph (d);
■ j. Revise newly redesignated paragraph (e)(1)(ii);
■ k. Revise newly redesignated paragraph (e)(2)(ii); and
■ l. Revise newly redesignated paragraph (f)(1).

The revisions and additions read as follows:

§ 121.427 Recurrent training.

* * * * *

(b) * * *

(2) Instruction as necessary in the following:

(i) For pilots, the subjects required for ground training by §§ 121.415(a)(1), (a)(3), and (a)(4) and 121.419(b);

(ii) For flight engineers, the subjects required for ground training by §§ 121.415(a)(1), (a)(3), and (a)(4) and 121.419(a);

(iii) For flight attendants, the subjects required for ground training by §§ 121.415(a)(1), (a)(3), and (a)(4) and 121.421(a); and

(iv) For aircraft dispatchers, the subjects required for ground training by §§ 121.415(a)(1) and (a)(4) and 121.422(a).

* * * * *

(4) For crewmembers, CRM training and for aircraft dispatchers, DRM training. For flightcrew members, CRM training or portions thereof may be accomplished during an approved FFS line-oriented flight training (LOFT) session.

(c) Recurrent ground training for crewmembers and dispatchers must consist of at least the following programmed hours of instruction in the required subjects specified in paragraph (b) unless reduced under § 121.405:

(1) For pilots—

(i) Group I reciprocating powered airplanes, 15 hours;

(ii) Group I turbopropeller powered airplanes, 19 hours; and

(iii) Group II airplanes, 24 hours.

* * * * *

(d) Recurrent ground training for pilots serving as pilot in command.

(1) Within 36 months preceding service as pilot in command, each person must complete ground training on leadership and command, including instruction on flightcrew member duties under § 121.542 of this part, and mentoring. This training is in addition to the ground training required in paragraph (b) of this section and the programmed hours required in paragraph (c) of this section.

(2) The requirements of paragraph (d)(1) do not apply until after a pilot has completed ground training on leadership and command and mentoring, as required by §§ 121.419, 121.420 and 121.429 of this part, as applicable.

(e) * * *

(1) * * *

(ii) Flight training in an approved FFS in maneuvers and procedures set forth in the certificate holder's approved low-altitude windshear flight training program and flight training in maneuvers and procedures set forth in appendix F to this part, or in a flight training program approved by the Administrator, except as follows—

* * * * *

(2) * * *

(ii) The flight check, other than the preflight inspection, may be conducted in an FSTD. The preflight inspection may be conducted in an airplane, or by using an approved pictorial means that realistically portrays the location and detail of preflight inspection items and provides for the portrayal of abnormal conditions. Satisfactory completion of an approved line-oriented flight training may be substituted for the flight check.

(f) * * *

(1) Compliance with the requirements identified in paragraph (e)(1)(i) of this section is required no later than March 12, 2019.

* * * * *

■ 26. Add § 121.429 to subpart N to read as follows:

§ 121.429 Pilots in command: Leadership and command and mentoring training.

(a) Beginning on [24 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE], no certificate holder may use a pilot as pilot in command in an operation under this part unless the pilot has completed the following ground training in accordance with the certificate holder's approved training program:

(1) Leadership and command training in § 121.419(c)(1) of this part and mentoring training in § 121.419(c)(2) of this part; or

(2) Leadership and command training in § 121.420(a)(3) of this part and mentoring training in § 121.420(a)(5) of this part.

(b) Credit for training provided by the certificate holder.

(1) The Administrator may credit leadership and command training and mentoring training completed by the pilot, with that certificate holder, prior to [60 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], toward all or part of the training required by paragraph (a) of this section.

(2) In granting credit for the training required by paragraph (a) of this section, the Administrator may consider training aids, devices, methods and procedures used by the certificate holder in voluntary leadership and command and mentoring instruction.

■ 27. Amend § 121.431 by revising paragraph (a)(1) to read as follows:

§ 121.431 Applicability.

(a) * * *

(1) Prescribes crewmember qualifications for all certificate holders except where otherwise specified; and

* * * * *

■ 28. Amend § 121.432 by revising paragraph (a) and adding new paragraph (d) to read as follows:

§ 121.432 General.

(a) Except in the case of operating experience under § 121.434 of this part and ground training for leadership and command and mentoring required by §§ 121.419, 121.420, 121.427 and 121.429 of this part, as applicable, a pilot who serves as second in command of an operation that requires three or more pilots must be fully qualified to act as pilot in command of that operation.

* * * * *

(d) *Operations familiarization.* (1) *Applicability.* The operations familiarization requirements in paragraph (d)(2) of this section apply to all persons newly employed by the certificate holder to serve as a pilot in part 121 operations and who began the certificate holder's basic indoctrination ground training on or after [24 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE].

(2) *Operations familiarization requirements.* (i) No certificate holder may use, and no person may serve as, a pilot in operations under this part unless that person has completed the operations familiarization required by paragraph (d)(2) of this section.

(ii) Operations familiarization must include at least two operating cycles conducted by the certificate holder in accordance with the operating rules of this part.

(iii) All pilots completing operations familiarization must occupy the observer seat on the flight deck and have access to and use an operational headset.

(3) *Deviation.* (i) A certificate holder who operates an aircraft that does not have an observer seat on the flight deck may submit a request to the Administrator for approval of a deviation from the requirements of paragraphs (d)(1) and (d)(2) of this section.

(ii) A request for deviation from any of the requirements in paragraphs (d)(1) and (d)(2) of this section must include the following information:

(A) The total number and types of aircraft operated by the certificate holder in operations under this part that do not have an observer seat on the flight deck;

(B) The total number and types of aircraft operated by the certificate holder in operations under this part that do have an observer seat on the flight deck; and

(C) Alternative methods for achieving the objectives of this section.

(iii) A certificate holder may request an extension of a deviation issued under this section.

(iv) Deviations or extensions to deviations will be issued for a period not to exceed 12 months.

■ 29. Amend § 121.433 as follows:

■ a. Revise paragraph (a)(2); and

■ b. In paragraph (c)(2), remove the word ''simulator'' and add, in its place, the word ''FFS''.

The revision reads as follows:

§ 121.433 Training required.

(a) * * *

(2) Crewmembers who have qualified and served as second in command or flight engineer on a particular type airplane may serve as pilot in command or second in command, respectively, upon completion of upgrade or conversion training, as applicable, for that airplane as provided in § 121.415.

* * * * *

■ 30. Amend § 121.434 as follows:

■ a. Redesignate paragraph (b)(3) as paragraph (b)(4);

■ b. Add new paragraph (b)(3);

■ c. In newly redesignated paragraph (b)(4), remove the words ''in flight'' and add, in their place, the word ''inflight'';

■ d. In paragraph (c)(1)(ii), revise the first sentence; and

■ e. In paragraph (c)(3)(iii), remove the words ''airplane simulator'' and add, in their place, the words ''FFS''.

The addition and revision read as follows:

§ 121.434 Operating experience, operating cycles, and consolidation of knowledge and skills.

* * * * *

(b) * * *

(3) In the case of a pilot who satisfactorily completed the preflight visual inspection of an aircraft by pictorial means during a proficiency check, the pilot must also demonstrate proficiency to a check pilot on at least one complete preflight visual inspection of the interior and exterior of a static airplane. This demonstration of proficiency must be completed by the pilot and certified by the check pilot before the completion of operating experience.

* * * * *

(c) * * *

(1) * * *

(ii) For a qualifying pilot in command completing initial or upgrade training specified in §§ 121.424 or 121.426 of this part, be observed in the performance of prescribed duties by an FAA inspector during at least one flight leg which includes a takeoff and landing.

* * * * *

■ 31. Amend § 121.439 as follows:

■ a. Revise paragraphs (a), (b) introductory text and (b)(1);

■ b. Remove and reserve paragraph (c);

■ c. Revise paragraphs (d) and (e); and

■ d. In paragraph (f)(2)(ii) remove the word ''reestablish'' and add, in its place, the word ''re-establish''.

The revisions read as follows:

§ 121.439 Pilot qualification: Recent experience.

(a) No certificate holder may use any person nor may any person serve as a required pilot flightcrew member, unless within the preceding 90 days, that person has made at least three takeoffs and landings in the type airplane in which that person is to serve. The takeoffs and landings required by this paragraph may be performed in a Level B or higher FFS approved under § 121.407 to include takeoff and landing maneuvers. In addition, any person who fails to make the three required takeoffs and landings within any consecutive 90-day period must re-establish recency of experience as provided in paragraph (b) of this section.

(b) In addition to meeting all applicable training and checking requirements of this part, a required pilot flightcrew member who has not met the requirements of paragraph (a) of this section must re-establish recency of experience as follows:

(1) Under the supervision of a check airman, make at least three takeoffs and landings in the type airplane in which that person is to serve or in a Level B or higher FFS.

* * * * *

(c) [Reserved]

(d) When using an FFS to accomplish any of the requirements of paragraphs (a) or (b) of this section, each required flightcrew member position must be occupied by an appropriately qualified person and the FFS must be operated as if in a normal inflight environment without use of the repositioning features of the FFS.

(e) A check airman who observes the takeoffs and landings prescribed in paragraph (b)(1) of this section shall certify that the person being observed is proficient and qualified to perform flight duty in operations under this part and may require any additional maneuvers that are determined necessary to make this certifying statement.

■ 32. Amend § 121.441 as follows:

■ a. In paragraphs (a) introductory text, (a)(1)(i)(B), (a)(1)(ii)(B), and (a)(2)(ii), remove the word ''simulator'' and add, in its place, the word ''FFS'';

■ b. In paragraph (a)(2)(i), remove the word ''simulator'' and add, in its place, the word ''flight'';

■ c. In paragraph (c) remove the words, ''airplane simulator or other appropriate training device'' and add, in their place, the words ''FFS or FTD'';

■ d. Revise paragraph (d); and

■ e. Remove the floating paragraph that follows paragraph (e).

The revision reads as follows:

§ 121.441 Proficiency checks.

* * * * *

(d) A person giving a proficiency check may, in his discretion, waive any of the maneuvers or procedures for which a specific waiver authority is set forth in appendix F to this part if the conditions in paragraphs (d)(1) through (3) of this section are satisfied:

(1) The Administrator has not specifically required the particular maneuver or procedure to be performed.

(2) The pilot being checked is, at the time of the check, employed by a certificate holder as a pilot.

(3) The pilot being checked meets one of the following conditions:

(i) The pilot is currently qualified for operations under this part in the particular type airplane and flightcrew member position.

(ii) The pilot has, within the preceding six calendar months, satisfactorily completed an approved training curriculum, except for an upgrade training curriculum in accordance with §§ 121.420 and 121.426 of this part, for the particular type airplane.

* * * * *

■ 33. Revise appendix E to read as follows:

Appendix E to Part 121—Flight Training Requirements

The maneuvers and procedures required by § 121.424 of this part for pilot initial, transition, and conversion flight training are set forth in the certificate holder's approved low-altitude windshear flight training program, § 121.423 extended envelope training, and in this appendix. The maneuvers and procedures required for upgrade training in accordance with § 121.424 of this part are set forth in this appendix and in the certificate holder's approved low-altitude windshear flight training program and § 121.423 extended envelope training. For the maneuvers and procedures required for upgrade training in accordance with § 121.426, this appendix

designates the airplane or FSTD, as appropriate, that may be used.

All required maneuvers and procedures must be performed inflight except that windshear and extended envelope training maneuvers and procedures must be performed in a full flight simulator (FFS) in which the maneuvers and procedures are specifically authorized to be accomplished. Certain other maneuvers and procedures may be performed in an FFS, a flight training device (FTD), or a static airplane as indicated by the appropriate symbol in the respective column opposite the maneuver or procedure.

Whenever a maneuver or procedure is authorized to be performed in an FTD, it may be performed in an FFS, and in some cases, a static airplane. Whenever the requirement may be performed in either an FTD or a static airplane, the appropriate symbols are entered in the respective columns.

A Level B or higher FFS may be used instead of the airplane to satisfy the inflight requirements if the FFS is approved under § 121.407 of this part and is used as part of an approved program that meets the requirements for an Advanced Simulation Training Program in appendix H of this part.

For the purpose of this appendix, the following symbols mean—

I = Pilot in Command (PIC) and Second in Command (SIC) initial training
T = PIC and SIC transition training
U = SIC to PIC upgrade training
C = Flight engineer (FE) to SIC conversion training

	Inflight	Static airplane	FFS	FTD
As appropriate to the airplane and the operation involved, flight training for pilots must include the following maneuvers and procedures.				
I. Preflight:				
(a) Visual inspection of the exterior and interior of the airplane, the location of each item to be inspected, and the purpose for inspecting it. The visual inspection may be conducted using an approved pictorial means that realistically portrays the location and detail of visual inspection items and provides for the portrayal of normal and abnormal conditions.	.....	I, T, U, C.		
(b) Use of the prestart checklist, appropriate control system checks, starting procedures, radio and electronic equipment checks, and the selection of proper navigation and communications radio facilities and frequencies prior to flight.	.....	.....	I, T, U, C.	
(c)(1) Before March 12, 2019, taxiing, sailing, and docking procedures in compliance with instructions issued by ATC or by the person conducting the training.	I, T, U, C.			
(2) Taxiing. Beginning March 12, 2019, this maneuver includes the following:.				
(i) Taxiing, sailing, and docking procedures in compliance with instructions issued by ATC or by the person conducting the training.	I, T, U, C.			
(ii) Use of airport diagram (surface movement chart)	I, T, U, C.			
(iii) Obtaining appropriate clearance before crossing or entering active runways.	I, T, U, C.			
(iv) Observation of all surface movement guidance control markings and lighting.	I, T, U, C.			
(d)(1) Before March 12, 2019, pre-takeoff checks that include powerplant checks.	.....	.....	I, T, U, C.	
(2) Beginning March 12, 2019, pre-takeoff procedures that include powerplant checks, receipt of takeoff clearance and confirmation of aircraft location, and FMS entry (if appropriate) for departure runway prior to crossing hold short line for takeoff.	.....	.....	I, T, U, C.	
II. Takeoffs:				
Training in takeoffs must include the types and conditions listed below but more than one type may be combined where appropriate:				
(a) Normal takeoffs which, for the purpose of this maneuver, begin when the airplane is taxied into position on the runway to be used.	I, T, U, C.			
(b) Takeoffs with instrument conditions simulated at or before reaching an altitude of 100′ above the airport elevation.	.....	.....	I, T, U, C.	
(c)(1) Crosswind takeoffs	I, T, U, C.			
(2) Beginning March 12, 2019, crosswind takeoffs including crosswind takeoffs with gusts if practicable under the existing meteorological, airport, and traffic conditions.	I, T, U, C.			
(d) Takeoffs with a simulated failure of the most critical powerplant—	.....	.....	I, T, U, C.	
(1) At a point after V_1 and before V_2 that in the judgment of the person conducting the training is appropriate to the airplane type under the prevailing conditions; or.	.....	.....	I, T, U, C.	
(2) At a point as close as possible after V_1 when V_1 and V_2 or V_1 and V_R are identical; or.	.....	.....	I, T, U, C.	
(3) At the appropriate speed for nontransport category airplanes	.....	.....	I, T, U, C.	
(e) Rejected takeoffs accomplished during a normal takeoff run after reaching a reasonable speed determined by giving due consideration to aircraft characteristics, runway length, surface conditions, wind direction and velocity, brake heat energy, and any other pertinent factors that may adversely affect safety or the airplane.	.....	.....	I, T, U, C.	
(f) Night takeoffs. For pilots in transition training, this requirement may be met during the operating experience required under.	I, T, U, C.			
§ 121.434 of this part by performing a normal takeoff at night when a check airman serving as PIC is occupying a pilot station.				
III. Flight Maneuvers and Procedures:				
(a) Turns with and without spoilers	.....	.....	I, T, U, C.	
(b) Tuck and Mach buffet	.....	.....	I, T, U, C.	

	Inflight	Static airplane	FFS	FTD
(c) Maximum endurance and maximum range procedures	.....	.....	I, T, U, C.	
(d) Operation of systems and controls at the flight engineer station	.....	.....	I, T, U.	
(e) Runaway and jammed stabilizer	.....	.....	I, T, U, C.	
(f) Normal and abnormal or alternate operation of the following systems and procedures:				
(1) Pressurization	.....	.....	.....	I, T, U, C.
(2) Pneumatic	.....	.....	.....	I, T, U, C.
(3) Air conditioning	.....	.....	.....	I, T, U, C.
(4) Fuel and oil	.....	I, T, U, C	.....	I, T, U, C.
(5) Electrical	.....	I, T, U, C	.....	I, T, U, C.
(6) Hydraulic	.....	I, T, U, C	.....	I, T, U, C.
(7) Flight control	.....	I, T, U, C	.....	I, T, U, C.
(8) Anti-icing and deicing	.....	.....	I, T, U, C.	
(9) Autopilot	.....	.....	I, T, U, C.	
(10) Automatic or other approach aids	.....	.....	I, T, U, C.	
(11) Stall warning devices, stall avoidance devices, and stability augmentation devices.	.....	.....	I, T, U, C.	
(12) Airborne radar devices	.....	.....	I, T, U, C.	
(13) Any other systems, devices, or aids available	.....	.....	I, T, U, C.	
(14) Electrical, hydraulic, flight control, and flight instrument system malfunctioning or failure.	.....	I, T, U, C	.....	I, T, U, C.
(15) Landing gear and flap systems failure or malfunction	.....	I, T, U, C	.....	I, T, U, C.
(16) Failure of navigation or communications equipment	.....	.....	I, T, U, C.	
(g) Flight emergency procedures that include at least the following:				
(1) Powerplant, heater, cargo compartment, cabin, flight deck, wing, and electrical fires.	.....	I, T, U, C	.....	I, T, U, C.
(2) Smoke control	.....	I, T, U, C	.....	I, T, U, C.
(3) Powerplant failures	.....	.....	I, T	U, C.
(4) Fuel jettisoning	.....	I, T, U, C	.....	I, T, U, C.
(5) Any other emergency procedures outlined in the appropriate flight manual.	.....	.....	I, T, U, C.	
(h) Steep turns in each direction. Each steep turn must involve a bank angle of 45° with a heading change of at least 180° but not more than 360°. This maneuver is not required for Group I transition training..	.....	.....	I, T, U, C.	
(i) Stall Prevention. For the purpose of this training the approved recovery procedure must be initiated at the first indication of an impending stall (buffet, stick shaker, aural warning). Stall prevention training must be conducted in at least the following configurations:.	.....	.....	I, T, U, C.	
(1) Takeoff configuration (except where the airplane uses only a zero-flap takeoff configuration).	.....	.....	I, T, U, C.	
(2) Clean configuration	.....	.....	I, T, U, C.	
(3) Landing configuration	.....	.....	I, T, U, C.	
(j) Recovery from specific flight characteristics that are peculiar to the airplane type.	.....	.....	I, T, U, C.	
(k) Instrument procedures that include the following:.				
(1) Area departure and arrival	.....	.....	I, T, U, C.	
(2) Use of navigation systems including adherence to assigned radials	.....	.....	I, T, U, C.	
(3) Holding	.....	.....	I, T, U, C.	
(l) ILS instrument approaches that include the following:.				
(1) Normal ILS approaches	I, T, U, C.			
(2) Manually controlled ILS approaches with a simulated failure of one powerplant which occurs before initiating the final approach course and continues to touchdown or through the missed approach procedure.	I	.....	T, U, C.	
(m) Instrument approaches and missed approaches other than ILS which include the following:.				
(1) Nonprecision approaches that the pilot is likely to use	.....	.....	U, C	I, T.
(2) In addition to subparagraph (1) of this paragraph, at least one other nonprecision approach and missed approach procedure that the pilot is likely to use.	.....	.....	I, T, U, C.	
In connection with paragraphs III(l) and III(m), each instrument approach must be performed according to any procedures and limitations approved for the approach facility used. The instrument approach begins when the airplane is over the initial approach fix for the approach procedure being used (or turned over to the final approach controller in the case of GCA approach) and ends when the airplane touches down on the runway or when transition to a missed approach configuration is completed.				
(n) Circling approaches which include the following:	I, T, U, C.			
(1) That portion of the circling approach to the authorized minimum altitude for the procedure being used must be made under simulated instrument conditions.	I, T, U, C.			

	Inflight	Static airplane	FFS	FTD
(2) The circling approach must be made to the authorized minimum circling approach altitude followed by a change in heading and the necessary maneuvering (by visual reference) to maintain a flight path that permits a normal landing on a runway at least 90° from the final approach course of the simulated instrument portion of the approach.	I, T, U, C.			
(3) The circling approach must be performed without excessive maneuvering, and without exceeding the normal operating limits of the airplane. The angle of bank should not exceed 30°.	I, T, U, C.			
Training in the circling approach maneuver is not required if the certificate holder's manual prohibits a circling approach in weather conditions below 1000–3 (ceiling and visibility).				
(o) Zero-flap approaches. Training in this maneuver is not required for a particular airplane type if the Administrator has determined that the probability of flap extension failure on that type airplane is extremely remote due to system design. In making this determination, the Administrator determines whether training on slats only and partial flap approaches is necessary.	I, C	.....	T, U.	
(p) Missed approaches which include the following:				
(1) Missed approaches from ILS approaches	.....	.....	I, T, U, C.	
(2) Other missed approaches	.....	.....	.....	I, T, U, C.
(3) Missed approaches that include a complete approved missed approach procedure.	.....	.....	.....	I, T, U, C.
(4) Missed approaches that include a powerplant failure	.....	.....	I, T, U, C.	
IV. Landings and Approaches to Landings:				
Training in landings and approaches to landings must include the types and conditions listed below but more than one type may be combined where appropriate:				
(a) Normal landings	I, T, U, C.			
(b) Landing and go around with the horizontal stabilizer out of trim	I, C	.....	T	U.
(c) Landing in sequence from an ILS instrument approach	I	.....	T, U, C.	
(d)(1) Crosswind landing	I, T, U, C.			
(2) Beginning March 12, 2019, crosswind landing, including crosswind landings with gusts if practicable under the existing meteorological, airport, and traffic conditions.	I, T, U, C.			
(e) Maneuvering to a landing with simulated powerplant failure, as follows:				
(1) For 3-engine airplanes, maneuvering to a landing with an approved procedure that approximates the loss of two powerplants (center and one outboard engine).	I, C	.....	T, U.	
(2) For other multiengine airplanes, maneuvering to a landing with a simulated failure of 50 percent of available powerplants with the simulated loss of power on one side of the airplane.	I, C	.....	T, U.	
(f) Landing under simulated circling approach conditions (exceptions under III(n) applicable to this requirement).	I	.....	T, U, C.	
(g) Rejected landings that include a normal missed approach procedure after the landing is rejected. For the purpose of this maneuver the landing should be rejected at approximately 50 feet and approximately over the runway threshold.	I	.....	T, U, C.	
(h) Zero-flap landings if the Administrator finds that maneuver appropriate for training in the airplane.	I, C	.....	T, U.	
(i) Manual reversion	.....	.....	I, T, U, C.	
(j) Night landings. For pilots in transition training, this requirement may be met during the operating experience required under § 121.434 of this part by performing a normal landing at night when a check airman serving as PIC is occupying a pilot station.	I, T, U, C.			

34. Revise appendix F to read as follows:

Appendix F to Part 121—Proficiency Check Requirements

The maneuvers and procedures required by § 121.441 for pilot proficiency checks are set forth in this appendix. Except for the equipment examination, these maneuvers and procedures must be performed inflight. Certain maneuvers and procedures may be performed in a full flight simulator (FFS), or a flight training device (FTD) as indicated by the appropriate symbol in the respective column opposite the maneuver or procedure.

Whenever a maneuver or procedure is authorized to be performed in an FTD, it may be performed in an FFS.

A Level B or higher FFS may be used instead of the airplane to satisfy the inflight requirements if the FFS is approved under § 121.407 and is used as part of an approved program that meets the requirements for an Advanced Simulation Training Program in appendix H of this part.

For the purpose of this appendix, the following symbols mean—

B = Both Pilot in Command (PIC) and Second in Command (SIC).

W = May be waived for both PIC and SIC, except during a proficiency check conducted to qualify a PIC after completing an upgrade training curriculum in accordance with §§ 121.420 and 121.426 of this part.

* = A symbol and asterisk (B*) indicates that a particular condition is specified in the maneuvers and procedures column.

= When a maneuver is preceded by this symbol it indicates the maneuver may be required in the airplane at the discretion of the person conducting the check.

Throughout the maneuvers and procedures prescribed in this appendix, good judgment commensurate with a high level of safety must be demonstrated. In determining whether such judgment has been shown, the person conducting the check considers adherence to approved procedures, actions based on analysis of situations for which there is no prescribed procedure or recommended practice, and qualities of

prudence and care in selecting a course of action.

Maneuvers/procedures	Required		Permitted		
	Simulated instrument conditions	Inflight	FFS	FTD	Waiver provisions of § 121.441(d)
The procedures and maneuvers set forth in this appendix must be performed in a manner that satisfactorily demonstrates knowledge and skill with respect to—					
(1) The airplane, its systems and components;					
(2) Proper control of airspeed, configuration, direction, altitude, and attitude in accordance with procedures and limitations contained in the approved Airplane Flight Manual, the certificate holder's operations manual, checklists, or other approved material appropriate to the airplane type; and					
(3) Compliance with approach, ATC, or other applicable procedures.					
I. Preflight:					
(a) Equipment examination (oral or written). As part of the proficiency check the equipment examination must be closely coordinated with, and related to, the flight maneuvers portion but may not be given during the flight maneuvers portion. The equipment examination must cover—					
(1) Subjects requiring a practical knowledge of the airplane, its powerplants, systems, components, operational and performance factors;					
(2) Normal, abnormal, and emergency procedures, and the operations and limitations relating thereto; and					
(3) The appropriate provisions of the approved Airplane Flight Manual.					
The person conducting the check may accept, as equal to this equipment examination, an equipment examination given to the pilot in the certificate holder's ground training within the preceding 6 calendar months.					
(b) Preflight inspection. The pilot must—					
(1) Conduct an actual visual inspection of the exterior and interior of the airplane, locating each item and explaining briefly the purpose for inspecting it. The visual inspection may be conducted using an approved pictorial means that realistically portrays the location and detail of visual inspection items and provides for the portrayal of normal and abnormal conditions. If a flight engineer is a required flightcrew member for the particular type airplane, the visual inspection may be waived under § 121.441(d).	.....	.....	.....	B	W.*
(2) Demonstrate the use of the prestart checklist, appropriate control system checks, starting procedures, radio and electronic equipment checks, and the selection of proper navigation and communications radio facilities and frequencies prior to flight.	.....	.....	.....	B.	
(c)(1) Taxiing. Before March 12, 2019, this maneuver includes taxiing, sailing, or docking procedures in compliance with instructions issued by ATC or by the person conducting the check. SIC proficiency checks for a type rating must include taxiing. However, other SIC proficiency checks need only include taxiing to the extent practical from the seat position assigned to the SIC.	.....	B.			

Maneuvers/procedures	Required		Permitted		
	Simulated instrument conditions	Inflight	FFS	FTD	Waiver provisions of § 121.441(d)
(c)(2) Taxiing. Beginning March 12, 2019, this maneuver includes the following: (i) Taxiing, sailing, or docking procedures in compliance with instructions issued by ATC or by the person conducting the check. (ii) Use of airport diagram (surface movement chart). (iii) Obtaining appropriate clearance before crossing or entering active runways. (iv) Observation of all surface movement guidance control markings and lighting. SIC proficiency checks for a type rating must include taxiing. However, other SIC proficiency checks need only include taxiing to the extent practical from the seat position assigned to the SIC.	.....	B.			
(d)(1) Powerplant checks. As appropriate to the airplane type.	.....	.....	B.		
(d)(2) Beginning March 12, 2019, pre-takeoff procedures that include powerplant checks, receipt of takeoff clearance and confirmation of aircraft location, and FMS entry (if appropriate), for departure runway prior to crossing hold short line for takeoff.	.....	.....	B.		
II. Takeoff:					
Takeoffs must include the types listed below, but more than one type may be combined where appropriate:					
(a) Normal. One normal takeoff which, for the purpose of this maneuver, begins when the airplane is taxied into position on the runway to be used.	.....	B.*			
(b) Instrument. One takeoff with instrument conditions simulated at or before reaching an altitude of 100′ above the airport elevation.	B	.....	B.*		
(c)(1) Crosswind. Before March 12, 2019, one crosswind takeoff, if practicable, under the existing meteorological, airport, and traffic conditions.	.....	B.*			
(c)(2) Beginning March 12, 2019, one crosswind takeoff with gusts, if practicable, under the existing meteorological, airport, and traffic conditions.	.....	B.*			
#(d) Powerplant failure. One takeoff with a simulated failure of the most critical powerplant—	.....	.....	B.		
(1) At a point after V_1 and before V_2 that in the judgment of the person conducting the check is appropriate to the airplane type under the prevailing conditions;	.....	.....	B.		
(2) At a point as close as possible after V_1 when V_1 and V_2 or V_1 and V_r are identical; or.	.....	.....	B.		
(3) At the appropriate speed for nontransport category airplanes.	.....	.....	B.		
(e) Rejected. A rejected takeoff may be performed in an airplane during a normal takeoff run after reaching a reasonable speed determined by giving due consideration to aircraft characteristics, runway length, surface conditions, wind direction and velocity, brake heat energy, and any other pertinent factors that may adversely affect safety or the airplane.	.....	.....	B*	.....	W.
III. Instrument procedures:					
(a) Area departure and area arrival. During each of these maneuvers the pilot must—	B	.....	B	.....	W.*
(1) Adhere to actual or simulated ATC clearances (including assigned radials); and.	B	.....	B.		
(2) Properly use available navigation facilities	B	.....	B.		
Either area arrival or area departure, but not both, may be waived under § 121.441(d).					
(b) Holding. This maneuver includes entering, maintaining, and leaving holding patterns. It may be performed in connection with either area departure or area arrival.	B	.....	B	.....	W.
(c) ILS and other instrument approaches. There must be the following:					
(1) At least one normal ILS approach	B	.....	B.		
(2) At least one manually controlled ILS approach with a simulated failure of one powerplant. The simulated failure should occur before initiating the final approach course and must continue to touchdown or through the missed approach procedure.	B	B.			

Maneuvers/procedures	Required		Permitted		
	Simulated instrument conditions	Inflight	FFS	FTD	Waiver provisions of § 121.441(d)
(3) At least one nonprecision approach procedure using a type of nonprecision approach procedure that the certificate holder is approved to use.	B		B.		
(4) At least one nonprecision approach procedure using a different type of nonprecision approach procedure than performed under subparagraph (3) of this paragraph that the certificate holder is approved to use.	B			B.	
Each instrument approach must be performed according to any procedures and limitations approved for the approach procedure used. The instrument approach begins when the airplane is over the initial approach fix for the approach procedure being used (or turned over to the final approach controller in the case of GCA approach) and ends when the airplane touches down on the runway or when transition to a missed approach configuration is completed. Instrument conditions need not be simulated below 100′ above touchdown zone elevation.					
(d) Circling approaches. If the certificate holder is approved for circling minimums below 1000–3 (ceiling and visibility), at least one circling approach must be made under the following conditions—			B*		W.*
(1) The portion of the approach to the authorized minimum circling approach altitude must be made under simulated instrument conditions.	B		B.*		
(2) The approach must be made to the authorized minimum circling approach altitude followed by a change in heading and the necessary maneuvering (by visual reference) to maintain a flight path that permits a normal landing on a runway at least 90° from the final approach course of the simulated instrument portion of the approach.			B.*		
(3) The circling approach must be performed without excessive maneuvering, and without exceeding the normal operating limits of the airplane. The angle of bank should not exceed 30°.			B.*		
If local conditions beyond the control of the pilot prohibit the maneuver or prevent it from being performed as required, it may be waived as provided in § 121.441(d). However, the maneuver may not be waived under this provision for two successive proficiency checks. Except for a SIC proficiency check for a type rating, the circling approach maneuver is not required for a SIC if the certificate holder's manual prohibits a SIC from performing a circling approach in operations under this part.					
(e) Missed approach.					
(1) At least one missed approach from an ILS approach.			B.*		
(2) At least one additional missed approach for SIC proficiency checks for a type rating and for all PIC proficiency checks.			B.*		
A complete approved missed approach procedure must be accomplished at least once. At the discretion of the person conducting the check a simulated powerplant failure may be required during any of the missed approaches. These maneuvers may be performed either independently or in conjunction with maneuvers required under Sections III or V of this appendix. At least one missed approach must be performed inflight.					
IV. Inflight Maneuvers:					
(a) Steep turns. For SIC proficiency checks for a type rating and for all PIC proficiency checks, at least one steep turn in each direction must be performed. Each steep turn must involve a bank angle of 45° with a heading change of at least 180° but not more than 360°.	B		B		W.
(b) Stall Prevention. For the purpose of this maneuver the approved recovery procedure must be initiated at the first indication of an impending stall (buffet, stick shaker, aural warning). Except as provided below there must be at least three stall prevention recoveries as follows:	B		B		W.*

Maneuvers/procedures	Required		Permitted		
	Simulated instrument conditions	Inflight	FFS	FTD	Waiver provisions of § 121.441(d)
(1) Takeoff configuration (except where the airplane uses only a zero-flap takeoff configuration).	B		B.		
(2) Clean configuration.	B		B.		
(3) Landing configuration.	B		B.		
At the discretion of the person conducting the check, one stall prevention recovery must be performed in one of the above configurations while in a turn with the bank angle between 15° and 30°. Two out of the three stall prevention recoveries required by this paragraph may be waived.					
If the certificate holder is authorized to dispatch or flight release the airplane with a stall warning device inoperative the device may not be used during this maneuver.					
(c) Specific flight characteristics. Recovery from specific flight characteristics that are peculiar to the airplane type.			B		W.
(d) Powerplant failures. In addition to specific requirements for maneuvers with simulated powerplant failures, the person conducting the check may require a simulated powerplant failure at any time during the check.			B.		
V. Landings and Approaches to Landings:					
Notwithstanding the authorizations for combining and waiving maneuvers and for the use of an FFS, at least two actual landings (one to a full stop) must be made for all PIC proficiency checks, all initial SIC proficiency checks, and all SIC proficiency checks for a type rating.					
Landings and approaches to landings must include the types listed below, but more than one type may be combined where appropriate:					
(a) Normal landing		B.			
(b) Landing in sequence from an ILS instrument approach except that if circumstances beyond the control of the pilot prevent an actual landing, the person conducting the check may accept an approach to a point where in his judgment a landing to a full stop could have been made.		B.*			
(c)(1) Crosswind landing, if practical under existing meteorological, airport, and traffic conditions.		B.*			
(c)(2) Beginning March 12, 2019, crosswind landing with gusts, if practical under existing meteorological, airport, and traffic conditions.		B.*			
(d) Maneuvering to a landing with simulated powerplant failure as follows:					
(1) In the case of 3-engine airplanes, maneuvering to a landing with an approved procedure that approximates the loss of two powerplants (center and one outboard engine); or			B.*		
(2) In the case of other multiengine airplanes, maneuvering to a landing with a simulated failure of 50 percent of available powerplants, with the simulated loss of power on one side of the airplane.			B.*		
Notwithstanding the requirements of subparagraphs (d)(1) and (2) of this paragraph, for an SIC proficiency check, except for an SIC proficiency check for a type rating, the simulated loss of power may be only the most critical powerplant.					
In addition, a PIC may omit the maneuver required by subparagraph (d)(1) or (d)(2) of this paragraph during a required proficiency check or FFS course of training if he satisfactorily performed that maneuver during the preceding proficiency check, or during the preceding approved FFS course of training under the observation of a check airman, whichever was completed later.					

Maneuvers/procedures	Required		Permitted		
	Simulated instrument conditions	Inflight	FFS	FTD	Waiver provisions of § 121.441(d)
(e) Except as provided in paragraph (f) of this section, if the certificate holder is approved for circling minimums below 1000–3 (ceiling and visibility), a landing under simulated circling approach conditions. However, when performed in an airplane, if circumstances beyond the control of the pilot prevent a landing, the person conducting the check may accept an approach to a point where, in his judgment, a landing to a full stop could have been made.	.....	.....	B.*		
#(f) A rejected landing, including a normal missed approach procedure, that is rejected approximately 50′ over the runway and approximately over the runway threshold. This maneuver may be combined with instrument, circling, or missed approach procedures, but instrument conditions need not be simulated below 100 feet above the runway.	.....	.....	B.		
VI. Normal and Abnormal Procedures:					
Each pilot must demonstrate the proper use of as many of the systems and devices listed below as the person conducting the check finds are necessary to determine that the person being checked has a practical knowledge of the use of the systems and devices appropriate to the airplane type:					
(a) Anti-icing and deicing systems	.....	.....	B.		
(b) Autopilot systems	.....	.....	B.		
(c) Automatic or other approach aid systems	.....	.....	B.		
(d) Stall warning devices, stall avoidance devices, and stability augmentation devices.	.....	.....	B.		
(e) Airborne radar devices	.....	.....	B.		
(f) Any other systems, devices, or aids available	.....	.....	B.		
(g) Hydraulic and electrical system failures and malfunctions.	.....	.....	.....	B.	
(h) Landing gear and flap systems failure or malfunction	.....	.....	.....	B.	
(i) Failure of navigation or communications equipment	.....	.....	B.		
VII. Emergency Procedures:					
Each pilot must demonstrate the proper emergency procedures for as many of the emergency situations listed below as the person conducting the check finds are necessary to determine that the person being checked has an adequate knowledge of, and ability to perform, such procedure:					
(a) Fire in flight	.....	.....	B.		
(b) Smoke control	.....	.....	B.		
(c) Rapid decompression	.....	.....	B.		
(d) Emergency descent	.....	.....	B.		
(e) Any other emergency procedures outlined in the approved Airplane Flight Manual.	.....	.....	B.		

■ 35. Revise appendix H to read as follows:

Appendix H to Part 121—Advanced Simulation

This appendix prescribes the requirements for use of Level B or higher FFSs to satisfy the inflight requirements of appendices E and F of this part and the requirements of § 121.439. The requirements in this appendix are in addition to the FFS approval requirements in § 121.407. Each FFS used under this appendix must be approved as a Level B, C, or D FFS, as appropriate.

Advanced Simulation Training Program

For a certificate holder to conduct Level C or D training under this appendix all required FFS instruction and checks must be conducted under an advanced simulation training program approved by the Administrator for the certificate holder. This program must also ensure that all instructors and check airmen used in appendix H training and checking are highly qualified to provide the training required in the training program. The advanced simulation training program must include the following:

1. The certificate holder's initial, transition, conversion, upgrade and recurrent FFS training programs and its procedures for re-establishing recency of experience in the FFS.

2. How the training program will integrate Level B, C, and D FFSs with other FSTDs to maximize the total training, checking, and certification functions.

3. Documentation that each instructor and check airman has served for at least 1 year in that capacity in a certificate holder's approved program or has served for at least 1 year as a pilot in command or second in command in an airplane of the group in which that pilot is instructing or checking.

4. A procedure to ensure that each instructor and check airman actively participates in either an approved regularly scheduled line flying program as a flightcrew member or an approved line observation program in the same airplane type for which that person is instructing or checking.

5. A procedure to ensure that each instructor and check airman is given a minimum of 4 hours of training each year to become familiar with the certificate holder's advanced simulation training program, or changes to it, and to emphasize their respective roles in the program. Training for instructors and check airmen must include training policies and procedures, instruction methods and techniques, operation of FFS controls (including environmental and trouble panels), limitations of the FFS, and minimum equipment required for each course of training.

6. A special Line-Oriented Flight Training (LOFT) program to facilitate the transition from the FFS to line flying. This LOFT program must consist of at least a 4-hour course of training for each flightcrew. It also must contain at least two representative flight segments of the certificate holder's operations. One of the flight segments must contain strictly normal operating procedures from push back at one airport to arrival at another. Another flight segment must contain training in appropriate abnormal and emergency flight operations. After March 12, 2019, the LOFT must provide an opportunity for the pilot to demonstrate workload management and pilot monitoring skills.

FFS Training, Checking and Qualification Permitted

1. Level B FFS

a. Recent experience (§ 121.439).

b. Training in night takeoffs and landings (part 121, appendix E).

c. Landings in a proficiency check (part 121, appendix F).

2. Level C and D FFS

a. Recent experience (§ 121.439).

b. All pilot flight training and checking required by this part except the following:

i. The operating experience, operating cycles, and consolidation of knowledge and skills requirements of § 121.434;

ii. The line check required by § 121.440; and

iii. The visual inspection of the exterior and interior of the airplane required by appendices E and F.

c. The practical test requirements of § 61.153(h) of this chapter, except the visual inspection of the exterior and interior of the airplane.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 36. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 41706, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105.

■ 37. Amend § 135.3 by adding paragraph (d) to read as follows:

§ 135.3 Rules applicable to operations subject to this part.

* * * * *

(d) Additional limitations applicable to certificate holders that are required by paragraph (b) of this section or authorized in accordance with paragraph (c) of this section, to comply with subparts N and O of part 121 of this chapter instead of subparts E, G, and H of this part.

(1) *Upgrade training.* (i) Each certificate holder must include in upgrade ground training for pilots, instruction in at least the subjects identified in § 121.419(a) of this chapter, as applicable to their assigned duties; and, for pilots serving in crews of two or more pilots, beginning on [24 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE], instruction in the subjects identified in § 121.419(c) of this chapter.

(ii) Each certificate holder must include in upgrade flight training for pilots, flight training for the maneuvers and procedures required in § 121.424(a), (c), (e) and (f) of this chapter; and, for pilots serving in crews of two or more pilots, beginning on [24 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE], the flight training required in § 121.424(b) of this chapter.

(2) *Initial and recurrent leadership and command and mentoring training.* Certificate holders are not required to include leadership and command training in §§ 121.409(b)(2)(ii)(B)(*6*), 121.419(c)(1), 121.424(b) and 121.427(d)(1) of this chapter and mentoring training in §§ 121.419(c)(2) and 121.427(d)(1) of this chapter in initial and recurrent training for pilots in command who serve in operations that use only one pilot.

(3) *One-time leadership and command and mentoring training.* Section 121.429 of this chapter does not apply to certificate holders conducting operations under this part when those operations use only one pilot.

* * * * *

Issued in Washington, DC, under the authority provided by 49 U.S.C. 106(f), 44701(a) and Sec. 206 of Public Law 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note).

Dated: September 21, 2016.

John Barbagallo,

Deputy Director, Flight Standards Service.

[FR Doc. 2016–23961 Filed 10–6–16; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL REGISTER

Vol. 81 Friday,
No. 195 October 7, 2016

Part III

Department of Commerce

Patent and Trademark Office

37 CFR Part 2

Miscellaneous Changes to Trademark Trial and Appeal Board Rules of Practice; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. PTO–T–2009–0030]

RIN 0651–AC35

Miscellaneous Changes to Trademark Trial and Appeal Board Rules of Practice

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (''USPTO'' or ''Office'') is amending the Trademark Rules of Practice (''Trademark Rules'' or ''Rules''), in particular the rules pertinent to practice before the Trademark Trial and Appeal Board (''Board''), to benefit the public by providing for more efficiency and clarity in inter partes and ex parte proceedings. Certain amendments are directed to reducing the burden on the parties, to conforming the rules to current practice, to updating references that have changed, to reflecting technologic changes, and to ensuring the usage of standard, current terminology. This final rule also furthers strategic objectives of the Office to increase end-to-end electronic processing.

DATES: This rule is effective January 14, 2017.

FOR FURTHER INFORMATION CONTACT: Cheryl Butler, Trademark Trial and Appeal Board, by email at *TTABFRNotices@uspto.gov,* or by telephone at (571) 272–4259.

SUPPLEMENTARY INFORMATION:

Executive Summary: Purpose: The amendments to the rules emphasize the efficiency of electronic filing, which is already utilized by most parties in Board proceedings. In particular, all submissions will be filed through the Board's online filing system, the Electronic System for Trademark Trials and Appeals (''ESTTA'') (available at *http://www.uspto.gov*), except in certain limited circumstances. To simplify proceedings, the Office is resuming service requirements for notices of opposition, petitions for cancellation, and concurrent use proceedings, and is requiring parties to serve all other submissions and papers by email. The amended rules promote other efficiencies in proceedings, such as imposing discovery limitations, and allowing parties to take testimony by affidavit or declaration, with the option for oral cross-examination. The proportionality requirement implemented in the 2015 amendments to the Federal Rules of Civil Procedure is expressly reflected in the Board's amended rules, which in part adapt to recent changes to the Federal Rules of Civil Procedure while taking into account the administrative nature of Board proceedings.

Other amendments address the Board's standard protective order and codify recent case law, including the submission of internet materials. Recognition of remote attendance at oral hearings is codified, and new requirements for notification to the Office and the Board when review by way of civil action is taken are added in order to avoid premature termination of a Board proceeding. The amendments also make minor changes to correct or update certain rules so that they clearly reflect current Board practice and terminology.

Costs and Benefits: This rulemaking is not economically significant under Executive Order 12866 (Sept. 30, 1993).

References below to ''the Act,'' ''the Trademark Act,'' or ''the statute'' refer to the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.,* as amended. References to ''TBMP'' refer to the June 2016 edition of the Trademark Trial and Appeal Board Manual of Procedure.

Background

Reasons for Proposed Rule Changes

The last major set of rule changes at the Board took effect in 2007; the time is ripe for changes that will assist stakeholders in achieving more efficient practice before the Board. In the years since 2007, technology changes have allowed Board operations to move much closer toward the goal of realizing a fully integrated paperless filing and docketing system. In addition, many stakeholders have embraced use of the Board's Accelerated Case Resolution (''ACR'') procedures, which have provided the Board with insight as to the effectiveness of the various procedures to which users of ACR have agreed, and which can be leveraged to benefit all parties involved in Board proceedings. The Federal Rules of Civil Procedure have changed in ways that are appropriate to recognize in Board rules at this time, and the Board rules must be updated to reflect precedential decisions of the Board and the courts.

Electronic Environment

Filing

The amended rules require all filings be made through ESTTA, except examining attorney filings in ex parte appeals which are filed through the Office's internal electronic system.

Service and Electronic Communication

In 2007, the USPTO amended the rules to require each plaintiff to serve the complaint on the defendant. This was a change from long-standing practice where the Board served the complaint on the defendant with the notice of institution. The rules now shift the responsibility for serving the complaint back to the Board. However, in keeping with the progress toward complete electronic communication, the Board will not forward a paper copy of the complaint, but rather will serve the complaint in the form of a link to, or web address for the Board's electronic case file system (''TTABVUE'') in the notice of institution.

Under the 2007 rules, parties were allowed (and encouraged) to stipulate to electronic service between the parties for all filings with the Board. Over the last few years, this has become the common practice, and the USPTO is codifying that practice in this final rule by requiring service between parties by email for all filings with the Board and any other papers served on a party not required to be filed with the Board (*e.g.,* disclosures, discovery, etc.). The rules nonetheless allow for parties to stipulate otherwise, to accommodate other methods of communication that may promote convenience and expediency (*e.g.,* a file hosting service that provides cloud storage, delivery of a USB drive, etc.). In addition, in the event service by email is not possible due to technical problems or extraordinary circumstances, and there is no stipulation to other methods, the party must include a statement with its submission or paper explaining why service by email was not possible, and the certificate of service must reflect the manner in which service was made. The statement is meant to assist the Board in ascertaining whether a repeating problem exists that may be alleviated with Board guidance. The statement is not intended to provide fertile ground for motion practice. In any event, methods of service of discovery requests and responses and document production remain subject to the parties' duty to cooperate under the Federal Rules of Civil Procedure and the Trademark Rules and are to be discussed during the settlement and discovery planning conference. Parties may avail themselves of Board participation in these conferences to ensure the most expeditious manner of service is achieved.

In view of service by email, the additional five days previously added to a prescribed period for response, to account for mail delays, is removed by

this final rule. The response period for a motion is initiated by its service date and runs for 20 days, except that the response period for summary judgment motions remains 30 days. Similarly, no additional time is available for the service of discovery responses.

Streamlining Discovery and Pretrial Procedure

The rules reflect amendments to the Federal Rules of Civil Procedure by addressing the concept of ''proportionality'' in process and procedure in discovery. In addition, this final rule codifies the ability of parties to stipulate to limit discovery by shortening the period, limiting requests, using reciprocal disclosures in lieu of discovery, or eliminating discovery altogether. To further reflect the Federal Rules of Civil Procedure, the rules explicitly include reference to electronically stored information (''ESI'') and tangible things as subject matter for discovery. The Board continues to view the universe of ESI within the context of its narrower scope of jurisdiction, as compared to that of the federal district courts. The burden and expense of e-discovery will weigh heavily in any consideration. *See Frito-Lay North America Inc.* v. *Princeton Vanguard LLC,* 100 USPQ2d 1904, 1909 (TTAB 2011). The inclusion of ESI in the rule simply recognizes that many relevant documents are now kept in electronic form.

Under the amendments, motions to compel initial disclosures must be filed within 30 days after the deadline for initial disclosures.

The amended rules limit the number of requests for production of documents and requests for admissions to 75, the same as the current limitation on interrogatories, with the option to move for additional requests for good cause. In addition, the rules allow for each party that has received produced documents to serve one comprehensive request for admission on the producing party, whereby the producing party would authenticate specific produced documents or specify which of those documents cannot be authenticated. These limitations on discovery simply recognize general practice and are meant to curtail abuse and restrain litigation expense for stakeholders.

Many trial cases are quickly settled, withdrawn, or decided by default, and many others involve cooperative parties who engage in useful settlement and discovery planning conferences. For more contentious cases, parties may request involvement of a Board Interlocutory Attorney in the conference, and this final rule codifies the ability of the Interlocutory Attorneys to sua sponte participate in a discovery conference when they consider it useful. In addition, the circumstances under which telephone conferences with Interlocutory Attorneys can be sought by a party or initiated by the Interlocutory Attorney are broadened to encompass any circumstance in which they ''would be beneficial.''

Under the amended rules, discovery must be served early enough in the discovery period that responses will be provided and all discovery will be complete by the close of discovery. This includes production of documents, which have to be produced or inspected by the close of discovery.

Under the amended rules, discovery disputes have to be resolved promptly following the close of discovery. The deadline for filing motions to compel discovery or to determine the sufficiency of responses to requests for admissions is now prior to the deadline for the plaintiff's pretrial disclosures for the first testimony period. These revisions are intended to avoid the expense and uncertainty that arise when discovery disputes erupt on the eve of trial. These changes also ensure that pretrial disclosures are made and trial preparation is engaged in only after all discovery issues have been resolved. In addition, the Board will be able to reset the pretrial disclosure deadline and testimony periods after resolving any motions relating to discovery and allowing time for compliance with any orders requiring additional responses or production.

In 2007, the rules were amended to make the Board's standard protective order applicable in all proceedings, during disclosure, discovery, and trial, though parties have been able to agree to alternative orders, subject to Board approval. This has worked well, and this final rule clarifies that the protective order is automatically applicable in all inter partes proceedings, subject to specified exceptions. Parties continue to have the flexibility to move forward under an alternative order by stipulation or motion approved by the Board. This final rule also codifies practice and precedent that the Board may treat as not confidential material that cannot reasonably be considered confidential, notwithstanding party designations. *See Edwards Lifesciences Corp.* v. *VigiLanz Corp.,* 94 USPQ2d 1399, 1402–03 (TTAB 2010).

Since 2007, several types of consented motions for extensions and suspensions have been granted automatically by the Board's electronic filing system and this final rule codifies this practice, while retaining the ability of Board personnel to require that certain conditions be met prior to approval. Thus, the practice by which some consented motions to extend or suspend are not automatically approved and are reviewed and processed by a Board paralegal or attorney continues. In addition, non-dispositive matters can be acted on by paralegals, and the rules clarify that orders on motions under the designation, ''By the Trademark Trial and Appeal Board,'' have the same legal effect as orders by a panel of three judges.

To clarify the obligations of the parties and render the status and timeline for a case more predictable, this final rule provides that a trial proceeding is suspended upon filing of a timely, potentially dispositive motion.

As with the timing of motions relating to discovery disputes that remain unresolved by the parties at the close of discovery, referenced above, under the amended rules motions for summary judgment also have to be filed prior to the deadline for plaintiff's pretrial disclosures for the first testimony period. This avoids disruption of trial planning and preparation through the filing, as late as on the eve of trial, of motions for summary judgment.

The existing rule for convening a pretrial conference because of the complexity of issues is amended so that it is limited to exercise only by the Board, upon the Board's initiative.

Efficient Trial Procedures

For some time now, parties have had the option to stipulate to ACR, which can be adopted in various forms. A common approach is for parties to stipulate that summary judgment cross motions will substitute for a trial record and traditional briefs at final hearing and the Board may resolve any issues of fact that otherwise might be considered subject to dispute. Other approaches adopted by parties utilizing the efficiencies of the ACR process have included agreements to limit discovery, agreements to shorten trial periods or the time between trial periods, stipulations to facts or to the admissibility of documents or other evidence, and stipulations to proffers of testimony by declaration or affidavit. These types of efficiencies are codified through this final rule by specifically providing for such stipulations and, most significantly, by allowing a unilateral option for trial testimony by affidavit or declaration subject to the right of oral cross-examination by the adverse party or parties. Parties also continue to be able to stipulate to rely

on summary judgment materials as trial evidence.

This final rule codifies two changes in recent years, effected by case law and practice, expanding the option to submit certain documents by notice of reliance. First, this final rule codifies existing law that pleaded registrations and registrations owned by any party may be made of record via notice of reliance by submitting therewith a current copy of information from the USPTO electronic database records showing current status and title. The rules currently allow for such copies to be attached to the notice of opposition or petition for cancellation; the change specifically also allows for such copies to be submitted under notice of reliance. Second, this final rule codifies that internet materials also may be submitted under a notice of reliance, as provided by *Safer, Inc.* v. *OMS Investments, Inc.,* 94 USPQ2d 1031 (TTAB 2010).

To alleviate any uncertainty, this final rule adds a paragraph to the requirements for a notice of reliance, specifically, to require that the notice indicate generally the relevance of the evidence and associate it with one or more issues in the proceeding. In an effort to curtail motion practice on this point, the rule explicitly states any failure of a notice of reliance to meet this requirement will be considered a curable procedural defect. This codifies the holding of *FUJIFILM SonoSite, Inc.* v. *Sonoscape Co.,* 111 USPQ2d 1234, 1237 (TTAB 2014).

Under the rule changes, a party must file any motion to use a discovery deposition at trial along with its pretrial disclosures. Also, an adverse party is able to move to quash a notice of testimony deposition if the witness was not included in the pretrial disclosures, and an adverse party is able to move to strike testimony presented by affidavit or declaration if the witness was not included in the pretrial disclosure.

In response to *Cold War Museum Inc.* v. *Cold War Air Museum Inc.,* 586 F.3d 1352, 92 USPQ2d 1626, 1629 (Fed. Cir. 2009), this final rule makes clear that while the file history of the subject application or registration is of record, statements in affidavits or declarations in the file are not testimony.

The Board has seen an increase in testimony deposition transcripts that do not include a word index, and the final rule requires a word index for all testimony transcripts. For ease of review, deposition transcripts also have to be submitted in full-sized format, not condensed with multiple pages per sheet. More broadly, the rules make clear that it is the parties' responsibility to ensure that all exhibits pertaining to an electronic submission must be clear and legible.

This final rule codifies case law and Board practice under which the Board may sua sponte grant judgment for the defendant when the plaintiff has not submitted evidence, even where the plaintiff has responded to the Board's show cause order for failure to file a brief but has either not moved to reopen its trial period or not been successful in any such motion. *Gaylord Entertainment Co.* v. *Calvin Gilmore Productions. Inc.,* 59 USPQ2d 1369, 1372 (TTAB 2000).

To alleviate confusion and codify case law, the amended rules clarify that evidentiary objections may be set out in a separate appendix that does not count against the page limit for a brief and that briefs exceeding the page limit may not be considered by the Board. *Alcatraz Media Inc.* v. *Chesapeake Marine Tours Inc.,* 107 USPQ2d 1750, 1753–54 (TTAB 2013) (Appropriate evidentiary objections may be raised in appendix or separate paper rather than in text of brief.), *aff'd,* 565 F. App'x 900 (Fed. Cir. 2013) (mem.).

Remand Procedures/Appeal Procedures

Certain aspects of ex parte appeals procedure are clarified in the amendments. Under this final rule, evidence should not be filed with the Board after the filing of the notice of appeal to the Board and should be added to the record when attached to a timely request for reconsideration or via a request for remand. This is not a change to the substance of the existing rule, but is designed to address a recurring error by applicants during ex parte appeal to the Board.

Under the final rule, reply briefs in ex parte appeals are limited to 10 pages. To facilitate consideration and discussion of record evidence, citation to evidence in all the briefs for the appeal, by the applicant and examining attorney, are to the documents in the electronic application record by docket entry date and page number.

The amended rules align more closely the terminology of § 2.130 pertaining to the Board referring applications involved in inter partes proceedings back to the Trademark Examining Operation upon request with that of § 2.142(d) and (f)(6) remanding applications involved in ex parte appeals back to the Trademark Examining Operation. This is not a change to the substance of the existing rule.

Other Clarification of Board Practice and Codification of Case Law

Correlative to electronic filing and communication, the Board also has made it possible for parties, examining attorneys, and members of the Board to attend hearings remotely through video conference. This final rule codifies that option.

In §§ 2.106(a) and 2.114(a), this final rule codifies case law and practice to make it clear that when no answer has been filed, all other deadlines are tolled. If the parties have continued to litigate after an answer is late-filed, it will generally be viewed as a waiver of the technical default.

The amended rules provide that the grounds, goods, and services in a Notice of Opposition to an application under Trademark Act section 66(a) are limited to those identified on the ESTTA cover sheet. These amendments codify the holding of *Hunt Control Systems Inc.* v. *Koninklijke Philips Electronics N.V.,* 98 USPQ2d 1558, 1561–62 (TTAB 2011). In addition, the rules clarify that after the close of the time period for filing a Notice of Opposition, the notice may not be amended to add a joint opposer.

Requirements for filing appeals of Board decisions are restructured to align with the rules governing review of Patent Trial and Appeal Board decisions. Further, all notices of appeal to the United States Court of Appeals for the Federal Circuit must be filed with the USPTO's Office of General Counsel and a copy filed with the Board via ESTTA. When a party seeks review of a Board inter partes decision by commencing a civil action, the amendments clarify that a notice of such commencement must be filed with the Board via ESTTA to avoid premature termination of the Board proceeding during pendency of the civil action. The amendments further require that both a notice and a copy of the complaint for review of an ex parte decision by way of civil action are to be filed with the USPTO's Office of General Counsel with a copy to be filed with the Board via ESTTA. In addition, requests to extend the time for filing an appeal, or commencing a civil action, are to be filed as provided in 37 CFR 104.2 and addressed to the attention of the Office of the Solicitor, and a copy should be filed with the Board via ESTTA.

Public Participation

The Board began in 2015 looking ahead to the implementation of changes in the Federal Rules of Civil Procedure then scheduled to take effect in December 2015. The Board also looked back on its multi-year campaign to

promote the use of ACR, to determine lessons learned, and to identify ways to leverage the benefits of ACR into all Board trial cases. For these and other reasons, it became clear that the timing was right to consider updating the Board's rules. On January 29, 2015, the Board held an ESTTA Users Forum, directed to issues and matters involving electronic filing. On February 19, 2015, the Board held a Stakeholder Roundtable concerning matters of practice and received comments and suggestions from various organizations representing intellectual property user groups, including in house counsel, outside counsel, and mark owners and applicants. That February roundtable involved discussion of many of the provisions that are now included in the rule package. The Board also engaged in significant stakeholder outreach throughout 2015, alerting users in locations across the country about the issues that they could expect to be addressed in prospective rulemaking. Finally, the Board engaged the Trademark Public Advisory Committee on process and procedure changes under consideration, on multiple occasions during the year. All of these events enriched the process through which the Board developed the rule changes and served as a precursor to the continuing discussion with stakeholders that the Office sought through the Notice of Proposed Rulemaking.

Proposed Rule and Request for Comments

A proposed rule was published in the **Federal Register** on April 4, 2016, at 81 FR 19295–19324. The Office received comments from five intellectual property organizations, two law firms, and 10 attorneys. These comments are posted on the Office's Web site at *http://www.uspto.gov/trademark/trademark-updates-and-announcements/comments-miscellaneous-changes-ttab-rules-practice,* and are addressed below.

The Office received many positive comments in favor of several rule changes and appreciates the public support. To streamline this final rule, such comments expressing support are not individually set forth and no specific responses to such comments are provided. In addition, comments and responses that apply more generally to issues and multiple rules are presented under the heading General Comments and Responses, while other comments and responses are interwoven into the Discussion of Rule Changes to provide context for those comments. Comments outside the scope of this rulemaking have been considered even if not specifically addressed herein.

General Comments and Responses

Electronic Filing

Comment: One commenter noted that no ESTTA form exists for a combined notice of opposition and petition for cancellation, and suggested that either ESTTA should be enhanced to accommodate this filing, or an exception for paper filing with no fee should be permitted.

Response: In view of the extremely small number of combined complaints, no ESTTA enhancement will be undertaken in the near future to accommodate this type of filing. Rather, a comparable outcome can be achieved by electronically filing separately a notice of opposition and a petition for cancellation and simultaneously requesting consolidation. The fee amount remains unchanged, as the combined filing did not provide any avoidance or reduction of fees per party or class sought to be opposed or cancelled. *See* TBMP section 305.02. Although the commenter noted the additional expense of requesting consolidation, the expense should be relatively minimal. Therefore, no exception to the requirement to file by ESTTA will be made for a combined filing, and prior case law allowing for this type of combined notice of opposition and petition for cancellation is superseded by the mandatory online filing requirement.

To facilitate proper handling, the motion for consolidation in this situation should be included in the same filing with the petition for cancellation, the institution of which will be processed by Board personnel rather than automatically instituted, as with most oppositions. The attached pleading should include a prominent reference to the motion to consolidate. This procedure will help bring the requested consolidation to the Board's attention more promptly.

Service by the Board

Comment: Although all commenters who addressed the proposal supported the Board's resumption of its pre-2007 practice of serving the complaint, some commenters shared concerns about the manner of service. The proposed rules provided that, in all cases except those challenging a registered extension of protection under the Madrid Protocol, if the parties had provided email addresses to the Office, the Board would serve the complaint in the form of an email notice with a link to the appropriate entry in TTABVUE. Commenters articulated worry that the proposed method of serving the complaint may not sufficiently convey to pro se parties the seriousness of the proceeding or the importance of timely responding to the complaint. Some commenters expressed apprehensions that parties might mistake the email notice for a trademark-related solicitation, and therefore disregard it. Also regarding Board service of complaints by email, several commenters conveyed apprehensions that service emails may not reach the intended recipient either because of spam filtering or outdated email contact information. One commenter suggested informing applicants and registrants of the possibility of this type of email notification.

Response: With regard to cancellations, at this juncture, the Board intends to serve by U.S. mail, pending system enhancements to facilitate email service. In anticipation of a future move toward email service of complaints in cancellation proceedings, the Office will supplement its existing efforts to emphasize to registrants the importance of maintaining correct and current email address information with the Office and taking steps to ensure that Office emails are not blocked by servers or spam filters, or diverted to junk mail folders. *See, e.g.,* the USPTO Web page entitled ''Don't Miss Important E-Mails from the USPTO: Add the USPTO to your 'Safe Senders' list,'' which includes instructions to ensure that USPTO emails reach the recipient. In addition, the Office plans to implement the suggestion made by one commenter that the Office specifically notify registration owners when they receive their registration certificates that the Current Owner Address information in the USPTO's Trademark Status and Document Retrieval (''TSDR'') database, including the email address, may be used for service.

Turning to oppositions, the rules provide that notice of the opposition will be sent to the ''email or correspondence address'' of the appropriate recipient, as specified in the rules. Applicants would receive notices by email only if email communication has been authorized. Having authorized email communication, the recipient should be aware that this may include official USPTO correspondence requiring a timely response. Moreover, applicants who have authorized email during the examination of their applications likely will be accustomed to receiving important email notices from the Office, including Office Actions that required a timely response to avoid abandonment of the application. Thus, notice of an opposition to which they must respond will be similar. As all of the USPTO

electronic systems are enhanced and email communication is more widely authorized, the rule allows the Board the flexibility to increase the proportion of notices sent only by email. As a reminder, § 2.18(b)(1) requires applicants, registrants, and parties to proceedings to promptly notify the Office of any change in physical address or email address.

The Office also plans to continue its efforts to educate the public about trademark solicitations and how to distinguish them from USPTO communications. *See, e.g.,* the USPTO Web page entitled ''WARNING: Non-USPTO Solicitations That May Resemble Official USPTO Communications'' and the educational video on the USPTO Web site entitled ''TM Newsflash 16: Solicitation Alert.'' Also, the Office continues to work with enforcement agencies on fraudulent solicitations, including those that recipients are misled into believing come from the USPTO. The Office has been successfully using email communication in many aspects of Board proceedings and for other trademark-related communications, and will use this experience to make its email service of the notice of opposition as effective as possible.

Comment: Some commenters noted that the USPTO's databases contain multiple fields for address and email address information, and sought clarification as to what address and email information would be used for service by the Board.

Response: As noted above, at this juncture, in cancellation proceedings, the Board intends to serve by U.S. mail, pending system enhancements to facilitate email service at a later date. The Office plans to effect service using the ''Current Owner Information'' field or, if one has been appointed, the ''Domestic Representative Information'' field in the USPTO's TSDR database. For opposition proceedings, the terminology ''email or correspondence address of record'' in the rule refers to ''correspondence address'' as it is used throughout the Rules of Practice in Trademark Cases (*e.g.,* §§ 2.18, 2.21, 2.22, 2.23) and the addition of ''email'' merely highlights that an email correspondence address may be used when authorized.

Comment: Other commenters inquired about any procedures the Board might follow prior to entry of default judgment when the Board served the complaint by email.

Response: Where there is no authorized email address, the Board continues to mail both the institution notice and the notice of default to the appropriate physical address. Where there is an authorized email address, the notice of default will go to that same email address. When the Board serves the institution notice in an opposition proceeding using an authorized email address but receives a notification that the email was undeliverable, Board staff investigate other possible addresses for forwarding the institution notice; if no other address is found, the Board effects service by publication in the Official Gazette. In addition, the Office encourages trademark owners to exercise due diligence in monitoring the status of their registrations online through the USPTO database.

Comment: One commenter proposed clarifying language in §§ 2.105(b)(2) and 2.113(b)(2) to provide that a plaintiff's domestic representative will be served with a copy of the notice of the opposition or the cancellation proceeding only if appointed as the domestic representative in the Board proceeding.

Response: The proposed amendment of these rules only pertained to adding email as a possible correspondence address. The rule language for which clarification is sought by the commenter is longstanding, and there has been no confusion as a result of the wording. The current terminology ''opposer has appointed'' and ''petitioner has appointed'' refers to the parties' roles in the Board proceeding, and therefore contemplates an appointment in the proceeding. Therefore, no changes are made in response to the comment.

Effective Date Applicable for Pending Cases

Comment: Some commenters expressed concern with the application of the new rules to all pending cases and requested assurance that the Board will remain flexible in granting extension of the discovery and trial periods to accommodate issues that may arise; for example, docketing issues regarding discovery, email service, and timing. The rules call for electronic service of documents between parties and remove the additional five days added to deadlines when parties choose to serve by mail.

Response: The Board has accommodated these concerns by publishing this final rule well in advance of the effective date. This allows time for the parties to take appropriate actions in cases pending on the publication date and prepare their docketing for the new rules. In view of the delayed effective date, the Board does not anticipate many scheduling or other difficulties as a result of the new rules; however, the Board may entertain scheduling issues that still arise in cases pending prior to the publication date as a result of the final rules where appropriate. To the extent issues arise despite the delayed effective date, parties are encouraged to resolve issues by stipulation. With regard to service, under the new rules parties may stipulate to any type of service, including by mail, and the extra five days previously provided by § 2.119(c) are already built into the response time period.

Evidentiary Rulings

Comment: One commenter suggested that one judge should rule on evidentiary issues and decide whether the panel of judges should see the evidence, so that judges ruling on the final decision have not seen evidence that has been stricken.

Response: The Board has not observed any detrimental effect of having the same panel rule on the evidentiary objections and the final decision. The panel assigned at final decision reviews the complete record, which would include any determinations made on evidentiary objections. As the Board has noted, Rule 403 of the Federal Rules of Evidence ''assumes a trial judge is able to discern and weigh the improper inferences that a jury might draw from certain evidence, and then balance those improprieties against probative value and necessity . . . . [as well as] exclude those improper inferences from his mind in reaching a decision.'' *Ava Ruha Corp.* v. *Mother's Nutritional Ctr., Inc.,* 113 USPQ2d 1575, 1579 (TTAB 2015) (quoting *Gulf States Utils. Co.* v. *Ecodyne Corp.,* 735 F.2d 517, 510 (5th Cir. 1981)). To the extent that the comment is directed to procedural concerns, those are already handled by interlocutory decisions. Parties should make sure that curable defects are brought up early so that the objections may be considered. Those objections that are substantive in nature go to the weight of the evidence, which is routinely handled by judges. *See Kohler Co.* v. *Baldwin Hardware Corp.,* 82 USPQ2d 1100, 1104 (TTAB 2007). This would also not be an efficient way of handling objections that are raised during testimony depositions in particular and in responses to affidavits, as many of these objections are not maintained in the briefs. Thus, such rulings would be premature.

Grammar/Nomenclature

Comment: One commenter provided various comments to add commas, and change ''may not'' to ''will not'' or ''shall not'' etc., and to continue to use

the term Examiner as it is used in various other Trademark Rules.

Response: The comma placement and use of ''may'' versus ''will'' or ''shall'' are purposeful and remain. With regard to retention of the term ''Examiner,'' the phraseology of choice for the Board in the amendments is ''trademark examining attorney'' or ''examining attorney,'' consistent with terminology in Board procedure.

Counting Dates

Comment: One commenter expressed concern that the Rules and the TBMP do not explain whether in inter partes proceedings the initial day triggering the time period is to be counted, and whether the action is due on the final day or on the day after the final day of the specified period. The commenter indicated that it would be helpful if either the rules or the manual explained the inclusion/exclusion of the first and last days of the period, similar to Rule 6(a)(1) of the Federal Rules of Civil Procedure.

Response: The Board has a longstanding practice that follows Rule 6(a)(1) of the Federal Rules of Civil Procedure pursuant to § 2.116 that has not presented problems. There is no foreseeable need to specify in the rules how to count days. To do so could require changing other rules beyond those proposed for amendment by the NPRM.

Creating Efficiencies

Comment: One commenter questioned whether speeding up proceedings is an advantage. As previous statistics show, well over 90% of TTAB cases are withdrawn, settled, or defaulted and do not require a final decision. A major advantage of the slower paced proceedings is the time provided to permit resolution of the dispute without significant financial investment. With this in mind, the proposed rules designed to speed up the process are of questionable value.

Response: Parties may continue to stipulate or request extensions or suspensions. The Board will continue its practice of being flexible to facilitate concurrent settlement of the Board case and other issues, which may involve use matters and other jurisdictions. However, the Board also recognizes, as do many parties, that deadlines facilitate settlement discussions. Where the parties seek speedier and more cost effective resolution, the new rules provide tools to support that goal.

Discovery Sanctions

Comment: One commenter expressed concern that the Board's proposed rules provide no additional sanctions, and thus will not prevent parties from abusing discovery.

Response: Although it is not the Board's practice to award monetary sanctions, the Board has available a full range of other sanctions, including judgment. *See Baron Philippe de Rothschild S.A.* v. *Styl-Rite Optical Mfg. Co.,* 55 USPQ2d 1848 (TTAB 2000). The Board will continue its practice of active case management and the imposition of appropriate sanctions.

Withdrawal of Application Without Prejudice

Comment: Two commenters suggested that applicants be able to withdraw an application without consent and without prejudice prior to the filing of an answer in oppositions before the Board. According to the comments, there are many reasons why a party may prefer not to litigate unrelated to the substantive merits of the case. Because of the claim-preclusive effect (in subsequent Board cases) of such a judgment, well positioned opposers are enabled to take advantage of applicants with limited financial resources to force them to surrender their rights with no chance to obtain trademark registration if circumstances change.

Response: This subject is outside the scope of the current rulemaking. The Office notes this is a longstanding practice, but the Office may consider it in a future rulemaking. Currently, applicants may abandon an application without prejudice during the publication and extension of time periods prior to the filing of a notice of opposition. *See* TBMP section 218.

Judicial Notice of USPTO Records

Comment: One commenter suggested that the Board take judicial notice of USPTO records, and, in particular, allow parties to introduce registrations into the record by only the registration number, rather than by the inclusion of the full content of the registration in document form.

Response: The Board considered this option but decided not to adopt it at this time. The USPTO has an obligation to preserve a complete written record of Board proceedings that contains all of the evidence presented by the parties in documentary form for a variety of purposes, including possible judicial review. *See* 15 U.S.C. 1071(a)(3) (the United States Court of Appeals for the Federal Circuit may request that the USPTO forward to the court the original or certified copies of the documents in the record). The official record of a Board proceeding must be complete, accurate, and reliable, especially because in direct appeals to the Federal Circuit the court's review of the Board's decision is confined to the four corners of the administrative record. Although parties can enter pleaded registration and application numbers into ESTTA when they submit a pleading, which automatically populates the party caption field in TTABVUE with links to the USPTO's trademark file for the specified registration or application number, unlike subject applications and registrations which are by rule automatically part of the record, the provision of the link to the trademark file does not make it of record in the Board proceeding. Moreover, the registration and application numbers in the party caption field may or may not be comprehensive because some pleaded registration and application numbers are only referenced in the attached pleading, which does not prepopulate the party caption field in TTABVUE. The burden of creating a complete evidentiary record by introducing in documentary form information contained in the USPTO's trademark file records is most appropriately borne by the party wishing to introduce such evidence rather than by the Board. Finally, parties are reminded that it is important for them to review their pleaded registrations to make sure the owner name and any assignments are up to date. As the USPTO plans for enhancements to its electronic systems and databases, user requests for a more streamlined approach for introducing USPTO records into evidence in a Board proceeding will be considered.

Create Central Online Docket for Dates and Deadlines

Comment: One commenter requested that the Board, through either ESTTA or TTABVUE, provide a central online docket where the parties and the Board can access a definitive list of dates and deadlines in inter partes matters, which would be updated automatically to reflect the current status of the proceeding.

Response: The suggestion falls outside the scope of the current rulemaking. However, this suggestion, which previously has been made in other venues for public comment on Board electronic systems, will be considered as the USPTO plans for enhancements to its electronic systems and databases.

Discussion of Rule Changes

Interferences and Concurrent Use Proceedings

Preliminary to Interference

The Office is amending § 2.92 to incorporate a nomenclature change from ''Examiner of Trademarks'' to ''examining attorney.''

Comment: Some commenters do not want this change because ''examiner'' is used in other parts of the Trademark Rules and ''examining attorney'' increases the length of briefs.

Response: While the Trademark Rules continue to use the term ''examiner'' in some locations, the Board desires consistency within its rules of procedure and has retained these amendments.

Adding Party to Interference

The Office is amending § 2.98 to incorporate a nomenclature change from ''examiner'' to ''examining attorney.''

Application To Register as a Concurrent User

The Office is amending § 2.99(c) and (d) to change ''notification'' to ''notice of institution'' or ''notice,'' and to specify that the notice may be transmitted via email.

The Office is revising § 2.99(d)(1) to remove the service requirement for applicants for concurrent use registration and to specify that the notice of institution will include a web link or web address to access the concurrent use proceeding.

The Office is amending § 2.99(d)(2) to clarify that an answer to the notice of institution is not required by an applicant or registrant whose application or registration is acknowledged in the concurrent use application.

The Office is amending § 2.99(d)(3) to clarify that a user who does not file an answer when required is in default, but the burden of providing entitlement to registration(s) remains with the concurrent use applicant(s).

The Office is amending § 2.99(f)(3) to incorporate a nomenclature change from ''examiner'' to ''examining attorney.''

Opposition

Filing an Opposition

The Office is amending § 2.101(a) and (b) to remove the opposer's requirement to serve a copy of the notice of opposition on applicant.

The Office is amending § 2.101(b)(1) to require that oppositions be filed by the due date in paragraph (c) through ESTTA. The amendment codifies the use of electronic filing.

The Office is amending § 2.101(b)(2) to provide that an opposition against an application based on Sections 1 or 44 of the Trademark Act may be filed in paper form in the event that ESTTA is unavailable due to technical problems or when extraordinary circumstances are present. The amendment also requires that a paper opposition to an application must be accompanied by a Petition to the Director under § 2.146 with the required fees and showing, and to add that timeliness of the submission will be determined in accordance with §§ 2.195 through 2.198.

The Office is amending § 2.101(b) by adding a new paragraph (b)(3) that continues the existing unconditional requirement that an opposition to an application based on Section 66(a) of the Trademark Act must be filed through ESTTA.

The Office is amending § 2.101(c) by moving the content of paragraph (d)(1) to the end of paragraph (c).

The Office is amending § 2.101(d) by removing paragraphs (d)(1), (3), and (4), but retaining the content in paragraph (d)(2) as paragraph (d), and providing that an ESTTA opposition cannot be filed absent sufficient fees and a paper opposition accompanied by insufficient fees may not be instituted, but a potential opposer may resubmit the opposition with the required fee if time remains. The revisions are intended to simplify the rules pertaining to insufficient fees.

The Office is amending § 2.101(d)(4) to redesignate it as § 2.101(e) and clarify that the filing date of an opposition is the date of electronic receipt in the Office of the notice of opposition and required fee and to add that the filing date for a paper filing, where permitted, will be determined in accordance with §§ 2.195 through 2.198.

Comment: One commenter expressed concerns about attorney docketing systems in light of the proposed amendments to § 2.101(d) and (e) regarding the filing date of an opposition filed electronically versus one filed on paper.

Response: While the filing date of an opposition may depend on the method of filing, the filing date never complicates attorney docketing systems because the due date for an answer and subsequent proceeding deadlines are set by the Board's institution order and are not a function of the filing date.

Extension of Time for Filing an Opposition

The Office is amending § 2.102 to omit references to ''written'' requests for extensions of time, as it is unnecessary in view of the requirement in § 2.191 that all business be conducted in writing.

The Office is amending § 2.102(a)(1) to require that requests to extend the time for filing an opposition be filed through ESTTA by the opposition due date in paragraph 2.101(c). The amendment continues the existing requirement that an opposition to an application based on Section 66(a) of the Act must be filed through ESTTA, but provides that an opposition against an application based on Sections 1 or 44 of the Act may be filed in paper form in the event that ESTTA is unavailable due to technical problems or when extraordinary circumstances are present. The Office is amending § 2.102(a)(2) to require that a paper request to extend the opposition period must be accompanied by a Petition to the Director under § 2.146, with the required fees and showing, and to add that timeliness of the paper submission will be determined in accordance with §§ 2.195 through 2.198.

The Office is amending § 2.102(b) to clarify that an opposition filed during an extension of time must be in the name of the person to whom the extension was granted except in cases of misidentification through mistake or where there is privity.

The Office is amending § 2.102(c)(1) to clarify that a sixty-day extension is not available as a first extension of time to oppose. The Office is amending § 2.102(c)(3) to clarify that only a sixty-day time period is allowed for a final extension of the opposition period.

The Office is adding new § 2.102(d), which clarifies that the filing date of a request to extend the time for filing an opposition is the date of electronic receipt in the Office of the notice of opposition and that the filing date for a paper filing, where permitted, will be determined in accordance with §§ 2.195 through 2.198.

Comment: One commenter sought clarification regarding the Office's method of notifying an applicant of an extension of time to oppose, suggesting email notification in cases where the applicant has authorized email communication.

Response: Currently, the notices to applicants of extensions of time to oppose are delivered by postcards that are automatically generated. The Office intends to implement email notification of applicants who have authorized email communication in the future, but the transition requires system enhancements that cannot be made in the very near future.

Contents of Opposition

The Office is amending § 2.104(a) to specify that ESTTA requires the opposer to select relevant grounds for opposition, and the accompanying required statement supports and explains the grounds. The amendment codifies current Office practice.

The Office is adding new § 2.104(c) to clarify that with respect to an opposition to an application filed under Section 66(a) of the Trademark Act, the goods and/or services opposed and the grounds for opposition are limited to those set forth in the ESTTA cover sheet. The amendment conforms with Section 68(c)(3) of the Act, is consistent with the amendment to § 2.107(b), and codifies current case law and practice.

Comment: One commenter suggested that the rules state that in situations where a party's ESTTA cover sheet is inconsistent with the accompanying pleading, the ESTTA cover sheet would be considered controlling. Another commenter suggested the opposite proposing that the rules specify that in such situations, the pleading would be considered controlling.

Response: The ESTTA cover sheet is considered part of the complete opposition pleading. *See PPG Industries Inc.* v. *Guardian Industries Corp.,* 73 USPQ2d 1926, 1928 (TTAB 2005) (''Since ESTTA's inception, the Board has viewed the ESTTA filing form and any attachments thereto as comprising a single document or paper being filed with the Board''). Proposed § 2.104(c) regarding the inability to add goods, services, or grounds beyond those set forth in the ESTTA cover sheet pertained only to oppositions to applications under Trademark Act section 66(a), 15 U.S.C. 1141f(a) (Madrid Protocol applications), and the final rule clarifies that for such oppositions only, the ESTTA cover sheet controls the scope of the opposition. Use of ESTTA has been and continues to be mandatory for the filing of either extensions of time to oppose or notices of opposition against Madrid Protocol applications. The requirement to use ESTTA for such filings enables the Office to fulfill its obligation to timely notify the International Bureau of the World Intellectual Property Organization (IB) of oppositions and the grounds therefor against Madrid Protocol applications. So, because the grounds for opposition indicated on the ESTTA cover sheet are used for the automatic electronic transmission of the requisite notice to the IB, they cannot be changed, even in circumstances where the attached complaint differs from the cover sheet.

However, with respect to oppositions against applications under Trademark Act sections 1 and 44, 15 U.S.C. 1051 and 1126, the concerns with Madrid Protocol applications and notification to the IB do not apply. Therefore, the scope of an opposition need not necessarily be limited to what is set forth in the ESTTA cover sheet, and the complete opposition pleading may inform the scope. Because the primary purpose of the pleadings is to give fair notice of the claims asserted, a complaint may be amended in accordance with Rule 15 of the Federal Rules of Civil Procedure.

Comment: One commenter suggested clarifications in § 2.104(c) to add the prohibition against amending to add joint opposers, found in § 2.107(b), to the statement regarding the prohibition against adding opposed goods, services, and grounds not in the ESTTA cover sheet.

Response: This suggested addition is not included in the final rule, but § 2.104(c) has been revised in light of the comment by removing references to amendments for pleadings, which are addressed in § 2.107(b). Section 2.104 concerns the contents of the incoming notice of opposition and the ESTTA cover sheet, and § 2.104(c) codifies the distinction that oppositions to Madrid Protocol applications are limited to the goods, services, or grounds set forth in the ESTTA cover sheet. By contrast, in oppositions to applications under Sections 1 or 44(e) of the Act, the ESTTA cover sheet does not control, and the goods, services, or grounds in the accompanying statement may be considered. With opposers, regardless of the basis of the opposition application, the opposers identified in the ESTTA cover sheet determine the fees paid through ESTTA. Any additional opposers named only in the accompanying statement, for whom no fees have been paid, will not be part of the proceeding, regardless of the filing basis of the opposed application. *See Syngenta Crop Protection Inc.* v. *Bio-Check LLC,* 90 USPQ2d 1112, 1115 n.2 (TTAB 2009) (second opposer named in the notice of opposition but not on the ESTTA cover sheet, for whom no fee was paid, not party to the proceeding). Therefore, because no distinction exists in the treatment of joint opposers omitted from the ESTTA cover sheet but included in the accompanying statement, it was deemed inappropriate to include a reference to joint opposers in § 2.104(c), which is otherwise directed to a distinction for oppositions to Madrid Protocol applications.

Notification to Parties of Opposition Proceeding(s)

The Office is amending § 2.105(a) to remove the service requirement for opposers and to specify that the notice of institution constitutes service and will include a web link or web address to access the electronic proceeding record.

Comment: One commenter suggested changing ''mailing date of the notice'' to ''date the Board sends the notice'' in § 2.105(a) and the corresponding rule in § 2.113(a) because the proposed rules provide that the Board may serve the notice by email.

Response: The phrase ''mailing date'' in these rules refers to the date that appears on the order, whether generated by ESTTA or manually by Board staff, and therefore the Office has retained that phrasing.

The Office is amending § 2.105(b) and (c) to provide that it will effect service of the notice of opposition at the email or correspondence address of record for the parties, their attorneys, or their domestic representatives.

Answer

The Office is amending § 2.106(a) to add that default may occur after the time to answer is reset and that failure to file a timely answer tolls all deadlines until the issue of default is resolved. The amendment codifies current Office practice and is consistent with the Office's amendment to § 2.114(a).

The Office is amending § 2.106(b)(1) to require that answers be filed through ESTTA, but provides that they may be filed in paper form in the event that ESTTA is unavailable due to technical problems or when extraordinary circumstances are present. An answer filed on paper must be accompanied by a Petition to the Director under § 2.146, with the required fees and showing. The amendment codifies the use of electronic filing.

The Office is amending renumbered § 2.106(b)(2) to specify that a reply to an affirmative defense shall not be filed.

The Office is amending renumbered § 2.106(b)(3)(i) to add a requirement that an applicant subject to an opposition proceeding must promptly inform the Board of the filing of another proceeding between the same parties or anyone in privity therewith.

The Office is amending renumbered § 2.106(b)(3)(iv) to clarify that the Board may sua sponte reset the times for pleading, discovery, testimony, briefs, or oral argument.

Amendment of Pleadings in an Opposition Proceeding

The Office is amending § 2.107(a) to add that an opposition proceeding may not be amended to add a joint opposer.

The Office is amending § 2.107(b) to clarify that, with respect to an opposition to an application filed under Section 66(a) of the Trademark Act, pleadings may not be amended to add grounds for opposition or goods or services beyond those set forth in the cover sheet, or to add a joint opposer. The amendment conforms with Section 68(c)(3) of the Act, is consistent with the amendment to § 2.104(c), and codifies current case law and practice.

Comment: A few commenters suggested clarifications or exceptions to the proposed prohibition in § 2.107 against the addition of joint opposers to an opposition proceeding after the close of the time period for filing an opposition. For example, commenters proposed that adding a joint opposer be permitted for assignees and successors in interest to the opposer in appropriate circumstances.

Response: Although assignees or successors may be joined or substituted as party plaintiffs during a proceeding, even when they are ''joined,'' they are not considered joint opposers. *See* TBMP section 512. Rather, they stand in the shoes of the assignor or predecessor. The assignor or predecessor may be retained as a party for the limited purpose of facilitating discovery, but the assignee is the party in interest at that point, and no additional fees are charged to add a party, as would be required with a true joint opposer. In view thereof, adding the term ''joint opposer'' in the rule does not prohibit the joining or substituting of assignees or successors, and therefore the commenter's suggestion is not adopted.

Cancellation

Filing a Petition for Cancellation

The Office is amending § 2.111(a) and (b) to remove the petitioner's requirement to serve a copy of the petition to cancel on registrant.

The Office is amending § 2.111(c)(1) to require that a petition to cancel a registration be filed through ESTTA. The Office is amending § 2.111(c)(2) to provide that a petition to cancel may be filed in paper form in the event that ESTTA is unavailable due to technical problems or when extraordinary circumstances are present. The amendment also requires that a paper petition to cancel a registration must be accompanied by a Petition to the Director under § 2.146, with the required fees and showing, and to add that timeliness of the submission, if relevant to a ground asserted in the petition to cancel, will be determined in accordance with §§ 2.195 through 2.198. The amendments codify the use of electronic filing.

The Office is deleting § 2.111(c)(3) and adding a new § 2.111(d), which provides that a petition for cancellation cannot be filed via ESTTA absent sufficient fees and a paper petition accompanied by insufficient fees may not be instituted. The revisions are intended to simplify the rules pertaining to insufficient fees.

The Office is redesignating § 2.111(c)(4) as § 2.111(e), which clarifies that the filing date of a petition for cancellation is the date of electronic receipt in the Office of the petition and required fee and adds that the filing date for a paper petition for cancellation, where permitted, will be determined in accordance with §§ 2.195 through 2.198.

Contents of Petition for Cancellation

The Office is amending § 2.112(a) to add that the petition for cancellation must indicate, to the best of petitioner's knowledge, a current email address(es) of the current owner of the registration.

Comment: Commenters noted concerns with the proposed rule requiring that the petition for cancellation include ''to the best of petitioner's knowledge,'' contact information for the current owner as well as ''any attorney reasonably believed by the petitioner to be a possible representative of the owner in matters relating to the registration.'' While no commenters objected to providing known contact information, many sought clarification or revised rule language to make clear that no obligation exists for the petitioner to conduct due diligence or any research. Several other commenters objected to this requirement when the necessary contact information for service already appears in the USPTO database and one commenter objected to providing information about possible owners where there is a domestic representative in the record.

Response: The final rule language retains the current requirement that the name and address of the current owner must be included, ''to the best of petitioner's knowledge.'' This standard has been in the rule for some time, and has not created problems for petitioners. Based on the objections and concerns expressed by commenters, the proposed addition regarding information about possible attorneys is not included in the final rule. Plaintiffs are still encouraged to provide information about a new owner even if there is a listed domestic representative, as the domestic representative of the prior owner may not be aware of the change. Also, plaintiffs are encouraged to provide current contact information for attorneys or, in the case of registrations under Section 66(a) of the Act, current contact information for the designated representative for the international registration, which may not be in the USPTO database. Providing such information facilitates the Board's location and service of the proper parties in order to avoid defaults that may subsequently be set aside and thus prolong the process.

The Office is further amending § 2.112(a) to specify that ESTTA requires the petitioner to select relevant grounds for cancellation, and that the required accompanying statement supports and explains the grounds. The amendment codifies current Office practice.

Notification of Cancellation Proceeding

The Office is amending § 2.113(a) to remove the service requirement for petitioners and to specify that the notice of institution constitutes service and will include a web link or web address to access the electronic proceeding record.

The Office is amending § 2.113(b) and (c) to provide that it will effect service of the petition for cancellation at the email or correspondence address of record for the parties, their attorneys, or their domestic representatives. The Office is further amending § 2.113(c) to create new paragraphs (c)(1) and (2) for clarity.

Comment: One commenter inquired why the Office proposed that for cancellations filed against registered extensions of protection under the Madrid Protocol (Madrid registrations), service would be effected on the international registration holder's designated representative rather than on the owner, as with other registrations. One commenter suggested eliminating the word ''only'' before ''to the domestic representative'' in proposed § 2.113(c)(2).

Response: Upon further review, the Office has withdrawn the proposal to serve cancellations filed against Madrid registrations differently, and the final rule sets forth consistent procedures for the service of cancellations, regardless of the basis of the registration. However, for Madrid registrations, the Board will endeavor to forward a courtesy copy of the notice to the international registration holder's designated representative. Regarding the suggested deletion of ''only'' from § 2.113(c)(2), the word has been retained to reflect

that service will be through the domestic representative's address rather than the current owner's address. However, the Office retains the discretion to send courtesy copies to whomever the Office deems appropriate.

Comment: One commenter inquired about the inconsistency among § 2.113(c)(1), (2), and (3) where not every section included an explicit statement that service of the institution order constitutes service.

Response: The inconsistency has been eliminated by the deletion of § 2.113(c)(3). The Office is amending § 2.113(d) to remove ''petition for cancellation'' and to provide that the courtesy copy of the notice of institution that shall be forwarded to the alleged current owner of the registration will include a web link or web address to access the electronic proceeding record.

Answer

The Office is amending § 2.114(a) to add that default may occur after the time to answer is reset and that failure to file a timely answer tolls all deadlines until the issue of default is resolved. The revision codifies current Office practice and is consistent with the Office's amendment to § 2.106(a).

The Office is amending § 2.114(b)(1) to require that answers be filed through ESTTA, but provides that they may be filed in paper form in the event that ESTTA is unavailable due to technical problems or when extraordinary circumstances are present. An answer filed on paper must be accompanied by a Petition to the Director under § 2.146, with the required fees and showing. The amendment codifies the use of electronic filing.

The Office is amending renumbered § 2.114(b)(2) to clarify that a reply to an affirmative defense shall not be filed. The Office is further amending § 2.114(b)(1) to add that a pleaded registration is a registration identified by number by the party in the position of plaintiff in an original or counterclaim petition for cancellation.

Comment: One commenter questioned why there is a difference between the wording in proposed § 2.106(b)(1), now in renumbered § 2.106(b)(2), which uses ''shall not'' and the wording in § 2.114(b)(2), which uses ''need not.'' The commenter suggested § 2.114(b)(2) be amended to ''shall not.''

Response: The Office has adopted the suggested change.

The Office is amending renumbered § 2.114(b)(3)(i) to add a requirement that a party in the position of respondent and counterclaim plaintiff must promptly inform the Board of the filing of another proceeding between the same parties or anyone in privity therewith.

The Office is amending renumbered § 2.114(b)(3)(iii) to clarify that the Board may sua sponte reset the period for filing an answer to a counterclaim. The Office is amending renumbered § 2.114(b)(3)(iv) to clarify that the Board may sua sponte reset the times for pleading, discovery, testimony, briefs, or oral argument.

The Office is amending § 2.114(c) to add that counterclaim petitions for cancellation may be withdrawn without prejudice before an answer is filed.

Procedure in Inter Partes Proceedings

Federal Rules of Civil Procedure

The Office is amending § 2.116(e) to add that the submission of notices of reliance, declarations, and affidavits, as well as the taking of depositions, during the testimony period corresponds to the trial in court proceedings. The revision codifies current Office practice and is consistent with amendments relating to declarations and affidavits.

The Office is amending § 2.116(g) to clarify that the Board's standard protective order, which is available on the Office's Web site, is automatically applicable throughout all inter partes proceedings, subject to specified exceptions. The Office is further amending § 2.116(g) to add that the Board may treat as not confidential material which cannot reasonably be considered confidential, notwithstanding a party's designation. The revisions codify current case law and Office practice.

Comment: One commenter expressed concern with the proposed amendment to § 2.116(g) providing that the Board may treat information and documents which it determines cannot reasonably be considered confidential as not confidential, notwithstanding a party's designation. It was suggested that the Board provide prior notice, and an opportunity to respond, before reclassifying confidential (and highly confidential or trade secret/commercially sensitive) information or documents. Further, the commenter requested confirmation that the applicable Standard Protective Order is the one currently provided on the USPTO Web site.

Response: The purpose of the rule is to codify existing practice to treat improperly designated material that is public information as public. This is narrowly applied and only done when necessary to articulate the Board decision. *See, e.g., Couch/Braunsdorf Affinity, Inc.* v. *12 Interactive, LLC,* 110 USPQ2d 1458, 1461 (TTAB 2014). The applicable Standard Protective Order is available on the USPTO Web site, TTAB home page, and is clearly labeled with its effective date. The prior Standard Protective Order is also available, labeled as ''retired,'' with a retirement date.

Suspension of Proceedings

The Office is amending § 2.117(c) to clarify that the Board may suspend proceedings sua sponte and retains discretion to condition approval of consented or stipulated motions to suspend on the provision by parties of necessary information about the status of settlement talks or discovery or trial activities.

Undelivered Office Notices

The Office is amending § 2.118 to add notification of non-delivery in paper or electronic form of Board notices and to delete the time period prescribed by the Director.

Service and Signing

The Office is incorporating the word ''submissions'' throughout § 2.119 to codify the use of electronic filing.

The Office is amending § 2.119(a) to remove the service requirements for notices of opposition and petitions to cancel, consistent with amendments to §§ 2.101(a) and (b) and 2.111(a) and (b).

The Office is amending § 2.119(b) to require that all submissions filed with the Board and any other papers served on a party be served by email, unless otherwise stipulated or service by email cannot be made due to technical problems or extraordinary circumstances.

Comment: Commenters generally approved of the proposed requirement in § 2.119 that parties in Board proceedings serve each other by email unless they agree to an alternative service method, or unless technical problems or extraordinary circumstances prevent email service. However, some requested clarification about how to address service of voluminous documents for which email might be impractical. Others sought further guidance as to what types of situations might qualify for the exception to email service, even in the absence of agreement between the parties on an alternative method.

Response: The Board encourages parties to agree on an effective alternative method of service, such as file hosting services, if email is not practical. In cases where the parties anticipate voluminous productions, for example, this would be a worthwhile issue to discuss at the discovery conference, with Board participation if

the parties deem it necessary. The parties are reminded that under the 2015 amendments to the Federal Rules of Civil Procedure there is a focus on party cooperation in the discovery process which includes service of discovery responses.

The Office is amending § 2.119(b)(3) to revise the manner of service on a person's residence by stating that a copy of a submission may be left with some person of suitable age and discretion who resides there. The amendment is consistent with both the Patent Rules of Practice and the Federal Rules of Civil Procedure.

The Office is amending § 2.119(b)(6) to remove the requirement for mutual agreement by the parties for service by other forms of electronic transmission and to remove service by notice published in the *Official Gazette.*

The Office is amending § 2.119(c) to remove the provision adding five days to the prescribed period for action after service by the postal service or overnight courier. All fifteen-day response dates initiated by a service date are amended to twenty days.

Comment: Some commenters expressed various concerns that the proposed rules call for electronic service of documents between parties and remove the additional five days, provided by the previously existing § 2.119(c), which were added to deadlines when parties choose to serve by first class mail, Priority Mail Express® and overnight courier.

Response: Under the amended rules, parties may stipulate to any type of service, including by mail. The extra five days provided for in former § 2.119(c) are already built into the response time period.

The Office is amending § 2.119(d) to add that no party may serve submissions by means of the postal service if a party to an inter partes proceeding is not domiciled in the United States and is not represented by an attorney or other authorized representative located in the United States.

Discovery

The Office is amending § 2.120(a)(1) to add the use of proportionality in process and procedure in discovery, in conformance with the 2015 amendments to the Federal Rules of Civil Procedure, and to reorganize portions of the text for clarity.

The Office is amending § 2.120(a)(2) to add headings for paragraphs (a)(2)(i) through (v) and to reorganize portions of the text for clarity.

The Office is amending renumbered § 2.120(a)(2)(i) to specify that a Board Interlocutory Attorney or Administrative Trademark Judge will participate in a discovery conference when the Board deems it useful. The revision codifies current Office practice.

Comment: One commenter stated with regard to the proposed revisions to § 2.120(a)(2)(i) that it would be useful to have an Interlocutory Attorney or Administrative Trademark Judge consistently available by phone to actively intervene and manage discovery disputes, motion practice, and overly contentious proceedings. The commenter also stated that it would be useful for the Board to issue short minute orders memorializing phone conferences, and to issue orders precluding parties from filing papers without prior leave in overly contentious cases.

Response: The Board notes that each of these comments may be satisfied under the existing rules.

The Office is amending renumbered § 2.120(a)(2)(iii) to add that the Board may issue an order regarding expert discovery either on its own initiative or on notice from a party of the disclosure of expert testimony.

The Office is amending renumbered § 2.120(a)(2)(iv) to add that parties may stipulate that there will be no discovery, that the number of discovery requests or depositions be limited, or that reciprocal disclosures be used in place of discovery. The amendment codifies some of the stipulations successfully used by parties in ACR procedures and other proceedings incorporating ACR-type efficiencies. The Office is further amending § 2.120(a)(2)(iv) to require that an expert disclosure deadline must always be scheduled prior to the close of discovery. The Office is further amending § 2.120(a)(2)(iv) to clarify that extensions of the discovery period granted by the Board will be limited.

Comment: Several commenters expressed concern over the amendment to § 2.120(a)(2)(iv) expressly providing that ''limited extensions of the discovery period may be granted upon stipulation or the parties approved by the Board, upon motion granted by the Board. . . .'' Commenters commended the Board's flexibility in its proceedings and urged continued flexibility, noting that trademark constituents chose to litigate before the Board over district court because of the Board's flexibility and that the majority of the Board's cases settle because of the Board's flexible schedule and forum, which encourages settlement. Among the recommendations made by commenters were: That the language be removed; that the Board remain liberal in granting requests to extend the discovery period; that, in view of the amendment to § 2.120(a)(2)(v) requiring all discovery to be served and completed during the discovery period, the Board remain flexible in granting extensions of the discovery period to allow the parties to be able to complete discovery during the discovery period and supplement discovery as required by Rule 26(e) of the Federal Rules of Civil Procedure, as well as to accommodate settlement, especially in view of the acknowledgement that the majority of Board cases settle; and that the Board take a more active role in case management and in exercising its authority to control the disposition of cases.

Response: The Board appreciates the commenters' recognition of the flexibility provided by its proceedings. The amendment to § 2.120(a)(2)(iv) reflects existing Board practice, allowing for active case management while meeting the needs of the parties. It imposes neither a numerical limit on extensions of the discovery period nor a stricter standard for granting an extension.

The Office is amending § 2.120(a)(3) to require that discovery requests be served early enough in the discovery period that responses will be due no later than the close of discovery, and when the time to respond is extended, discovery responses may not be due later than the close of discovery. The amendment is intended to alleviate motion practice prompted by responses to discovery requests served after discovery has closed.

Comment: Many commenters expressed general support for the amendment requiring that all discovery requests must be served early enough in the discovery period so that all responses will be due no later than the close of the discovery period. One commenter expressed its view that the amendment will facilitate the orderly conclusion of fact discovery and should reduce the frequency of motions to re-open discovery following a party's receipt of a deficient discovery response after the close of discovery. Some commenters, reciting that the stated intent of the amendment is to alleviate motion practice prompted by responses to discovery requests served after discovery has closed, sought clarification of how the proposed rule will alleviate motions practice, noting that the objective may not be accomplished where a party refuses to provide responses and the adversary must bring a motion to compel. One commenter inquired how the amended rule will impact the parties' ongoing obligation to supplement discovery as

required under Rule 26(e) of the Federal Rules of Civil Procedure.

Response: The amendment has no impact on current Board practice concerning the ability of parties to seek extensions of the discovery period. The Board anticipates that the amendment will alleviate motion practice by avoiding the uncertainty created by discovery disputes arising after the discovery period has closed where responses have not been served. As observed by one commenter, there will be fewer motions to reopen discovery based on responses received after discovery closed. Similarly, there will be fewer motions to extend the trial schedule because a party is awaiting responses to discovery requests after the close of the discovery period, or has received allegedly insufficient responses after the close of the discovery period. Instead the focus of any dispute will be on the sufficiency of the responses at issue. The amendment also has no effect on a party's duty to supplement discovery as required under Rule 26(e) of the Federal Rules of Civil Procedure.

Comment: Two comments were submitted concerning the effect of the proposed amendment to § 2.120(a)(3).

Response: The amendment has no impact on current Board practice concerning the ability of parties to seek extensions of the discovery period. The Board anticipates that the amendment will alleviate motion practice by avoiding the uncertainty created by discovery disputes arising after the discovery period has closed where responses have not been served. Instead, the focus of any dispute will be on the sufficiency of the responses at issue.

The Office is amending § 2.120(b) to require that any agreement by the parties as to the location of a discovery deposition shall be made in writing.

The Office is amending the title of § 2.120(c) to clarify that it applies to foreign parties within the jurisdiction of the United States.

Comment: Several comments addressed a proposed amendment to § 2.120(c)(2) requiring that a party must inform every adverse party when a foreign party has or will have, during a time set for discovery, an officer, director, managing agent, or other person who consents to testify on its behalf present within the United States. One commenter stated that some of its members believed the change would be positive and eliminate the need to seek this information by interrogatory. The remaining commenters, however, expressed concerns about the proposed amendment. The concerns generally related to practicality, particularly for large foreign parties; scope, because the proposed amendment was not limited to individuals with knowledge relevant to the Board proceeding; and privacy, both for parties collecting travel information and counsel conveying it to adverse parties.

Response: In response to the commenters' concerns, the proposed addition to § 2.120(c)(2) of the clause ''the party must inform every adverse party of such presence'' has been eliminated. The Board notes, however, that parties retain the ability to request such information through interrogatories.

The Office is revising § 2.120(d) such that it addresses only interrogatories, deleting paragraphs (d)(1) and (2). Provisions relating to requests for production are moved to revised § 2.120(e), and § 2.120(f) through (k) are renumbered in conformance.

The Office is amending § 2.120(e) to limit the total number of requests for production to seventy-five and to provide a mechanism for objecting to requests exceeding the limitation parallel to § 2.120(d).

The Office is further amending § 2.120(e) to clarify that the rule applies to electronically stored information as well as documents and tangible things; to provide that the time, place, and manner for production shall comport with the provisions of Rule 34 of the Federal Rules of Civil Procedure, or be made pursuant to agreement of the parties; and to remove the provision that production will be made at the place where the documents and things are usually kept.

Comment: One commenter asked that the rules reflect the prominence of electronic production by requiring production of responsive documents, rather than retaining the option to make documents available for inspection, and requiring parties to produce documents electronically when possible.

Response: The rule incorporates by reference, and is consistent with, Rule 34 of the Federal Rules of Civil Procedure. Parties may agree to other manners of production of documents, ESI, and tangible things. The Board encourages electronic production whenever possible and reminds the parties that production of ESI, which is generally limited in Board proceedings, is a subject for discussion at the discovery conference. *See Frito-Lay North America Inc.* v. *Princeton Vanguard LLC,* 100 USPQ2d 1904, 1909 (TTAB 2011).

The Office is amending renumbered § 2.120(f)(1) to clarify that the rule applies to ESI as well as documents and tangible things. The Office is further amending § 2.120(f)(1) to require that a motion to compel initial disclosures must be filed within thirty days after the deadline therefor and include a copy of the disclosures. The Office is further amending § 2.120(f)(1) to require that a motion to compel discovery must be filed prior to the deadline for pretrial disclosures for the first testimony period, rather than the commencement of that period. The Office is further amending § 2.120(f)(1) to clarify that the request for designation pertains to a witness. The Office is further amending § 2.120(f)(1) to require a showing from the moving party that the party has made a good faith effort to resolve the issues presented in the motion.

Comment: In the proposed amendment to § 2.120(f)(1), one commenter requested an enlargement of the time for filing motions to compel initial disclosures from 30 to 60 days.

Response: Parties have many options for changing the timing of initial disclosures and any resulting motions to compel, including stipulated extensions, waiver, or suspension for settlement discussions. The Board does not discern a benefit to parties by extending this deadline further into the 180-day discovery period. The amendment to § 2.120(f) facilitates preserving essentially three months of the six-month discovery period for service of written discovery, in order that responses can be served before the close of discovery. Extending the deadline for a motion to compel initial disclosures to 60 days from the due date of the disclosure will further erode the remaining discovery period.

Comment: Commenters who addressed the amendments to § 2.120(f) and (i) requiring that motions to compel expert testimony disclosures be filed prior to the close of discovery and that motions to compel discovery and to test the sufficiency of any objection be filed prior to the deadline for pre-trial disclosures for the first testimony period approved of the changes.

Response: The changes encourage efficiency in the schedule. The parties will focus on discovery during the assigned period and be able to resolve any disputes or outstanding discovery matters before trial. Once pretrial disclosures are served, the parties will focus on trial matters, or settlement, if appropriate.

The Office is amending renumbered § 2.120(f)(2) to clarify that when a motion to compel is filed after the close of discovery, the parties need not make pretrial disclosures until directed to do so by the Board.

Comment: One commenter asked that § 2.120(f)(2) be amended to clarify whether a case is automatically deemed

suspended on the filing of a motion for an order to compel initial disclosures, expert testimony disclosure, or discovery.

Response: By comparison, an amendment to § 2.127(d) specifies that a case ''is suspended'' when a party timely files a potentially dispositive motion. Motions to compel under § 2.120(f)(2), however, present different considerations, including the requirement of a showing of good-faith effort to resolve the issues presented in the motion. In order to retain its discretion in managing discovery, the Board does not amend § 2.120(f)(2) commensurately with § 2.127(d). While suspension in this situation occurs only upon issuance of a suspension order, ordinarily such suspension is effective as of the date of the filing of the motion to compel.

Comment: One commenter suggested that the USPTO amend § 2.120(f) (motion for an order to compel discovery) to include a mirror provision (analogous to Rule 37(a)(5)(B) of the Federal Rules of Civil Procedure)—*i.e.,* if the motion to compel is denied, the Board may issue a protective order. This would make the provisions for motions to compel and motions for protective order symmetrical.

Response: There is no need to issue a protective order as the purpose is already served by the order denying the motion to compel.

The Office is amending renumbered § 2.120(g) to conform to Federal Rule of Civil Procedure 26(c).

The Office is amending renumbered § 2.120(i) to limit the total number of requests for admission to 75 and to provide a mechanism for objecting to requests exceeding the limitation parallel to § 2.120(d) and (e).

Comment: Several commenters addressed the proposed amendments to § 2.120(e) and (i) limiting requests for production and admission to 75, and the proposed amendment to § 2.120(d) to delete motions for leave to serve additional interrogatories beyond the existing limit of 75. Some commenters expressed support for the proposed limits, stating that they would be sufficient and beneficial in most cases, with some requesting that motions for leave to propound more than 75 requests in unusual cases be permitted. However, several commenters objected to the proposed limit on requests for admission. Some commenters also asked for clarification regarding how the requests for production and admission will be counted under the proposed amendments.

Response: Requests for admission will be counted reflecting the form articulated in Rule 36(a)(2) of the Federal Rules of Civil Procedure: ''Each matter must be separately stated.'' Requests for production will be counted in the same manner as interrogatories, that is, each subpart will count as a separate request. The Board has revised the proposed amendments to § 2.120(d), (e), and (i) to permit motions to serve more than 75 interrogatories, requests for production, and requests for admission on a showing of good cause. With respect to the latter, examples that may support a showing of good cause include cases involving foreign parties from whom oral discovery may be unavailable, or requests intended to narrow the issues in dispute in proceedings involving multiple marks and applications or registrations with lengthy identifications of goods and services.

The Office is further amending renumbered § 2.120(i) to permit a party to make one comprehensive request for an admission authenticating specific documents produced by an adverse party, or specifying which of those documents cannot be authenticated.

Comment: Two comments addressed a proposed amendment to § 2.120(i) permitting a party to make one comprehensive request for an admission authenticating documents produced by an adverse party. One commenter favored the proposed amendment, while the other expressed concern that it would shift the burden of proof for the right to use the document from the recipient to the producing party.

Response: The proposed amendment has been revised in the final rule to clarify that the party propounding a comprehensive request for admission must identify each document for which it seeks authentication. Specifically, the first sentence of Rule 36(a)(2) of the Federal Rules of Civil Procedure, requiring that ''[e]ach matter must be separately stated,'' will not apply to this single comprehensive request for an admission authenticating documents produced by an adverse party.

The Office is amending renumbered § 2.120(i)(1) to require that any motion to test the sufficiency of any objection, including a general objection on the ground of excessive number, must be filed prior to the deadline for pretrial disclosures for the first testimony period, rather than the commencement of that period. The Office is further amending § 2.120(i)(1) to require a showing from the moving party that the party has made a good faith effort to resolve the issues presented in the motion.

The Office is amending renumbered § 2.120(i)(2) to clarify that when a motion to determine the sufficiency of an answer or objection to a request for admission is filed after the close of discovery, the parties need not make pretrial disclosures until directed to do so by the Board.

The Office is amending renumbered § 2.120(j)(1) to state more generally that the Board may schedule a telephone conference whenever it appears that a stipulation or motion is of such nature that a telephone conference would be beneficial. The Office is amending § 2.120(j)(2) to remove provisions allowing parties to move for an in-person meeting with the Board during the interlocutory phase of an inter partes proceeding and the requirement that any such meeting directed by the Board be at its offices. The Board is adding new § 2.120(j)(3) to codify existing practice that parties may not make a recording of the conferences referenced in § 2.120(j)(1) and (2).

Comment: One commenter asked for the reason supporting the proposed amendment to § 2.120(j)(3), which states that parties may not make a recording of the conferences referenced in § 2.120(j)(1) and (2).

Response: The amendment codifies existing Board practice, promotes candid discussion during conferences, and protects the privacy of the parties.

The Office is amending renumbered § 2.120(k)(2) to change the time for a motion to use a discovery deposition to when the offering party makes its pretrial disclosures and to clarify that the exceptional circumstances standard applies when this deadline has passed.

The Office is amending renumbered § 2.120(k)(3)(i) to clarify that the disclosures referenced are initial disclosures, to remove the exclusion of disclosed documents, and to incorporate a reference to new § 2.122(g).

The Office is amending renumbered § 2.120(k)(3)(ii) to add that a party may make documents produced by another party of record by notice of reliance alone if the party has obtained an admission or stipulation from the producing party that authenticates the documents. This amendment is consistent with the amendment in renumbered § 2.120(i) permitting a party to make one comprehensive request for an admission authenticating specific documents produced by an adverse party.

The Office is amending renumbered § 2.120(k)(7) to add an authenticated produced document to the list of evidence that may be referred to by any party when it has been made of record.

Assignment of Times for Taking Testimony and Presenting Evidence

The Office is amending § 2.121(a) to clarify that evidence must be presented during a party's testimony period. The Office is further amending § 2.121(a) to add that the resetting of a party's testimony period will result in the rescheduling of the remaining pretrial disclosure deadlines without action by any party. These amendments codify current Office practice.

The Office is amending § 2.121(c) to add that testimony periods may be shortened by stipulation of the parties approved by the Board or may be extended on motion granted by the Board or order of the Board. The Office is further amending § 2.121(c) to add that the pretrial disclosure deadlines associated with testimony periods may remain as set if a motion for an extension is denied. These amendments codify current Office practice.

The Office is amending § 2.121(d) to add that stipulations to reschedule the deadlines for the closing date of discovery, pretrial disclosures, and testimony periods must be submitted through ESTTA with the relevant dates set forth and an express statement that all parties agree to the new dates. The amendment codifies the use of electronic filing.

The Office is amending § 2.121(e) to add that the testimony of a witness may be either taken on oral examination and transcribed or presented in the form of an affidavit or declaration, as provided in amendments to § 2.123.

The Office is further amending § 2.121(e) to add that a party may move to quash a noticed testimony deposition of a witness not identified or improperly identified in pretrial disclosures before the deposition. The amendment codifies current Office practice.

The Office is further amending § 2.121(e) to add that when testimony has been presented by affidavit or declaration, but was not covered by an earlier pretrial disclosure, the remedy for any adverse party is the prompt filing of a motion to strike, as provided in §§ 2.123 and 2.124. The amendment aligns the remedy for undisclosed testimony by affidavit or declaration with the remedy for undisclosed deposition testimony.

Matters in Evidence

The Office is amending § 2.122(a) to clarify the heading of the paragraph and to specify that parties may stipulate to rules of evidence for proceedings before the Board. The Office is further amending § 2.122(a), consistent with § 2.120(k)(7), to add that when evidence has been made of record by one party in accordance with these rules, it may be referred to by any party for any purpose permitted by the Federal Rules of Evidence. The amendments codify current Office practice.

Comment: On commenter viewed the last sentence of § 2.122(a) as redundant with § 2.120(k)(7) and suggested retaining the sentence in § 2.122(a) and deleting it from § 2.120(k)(7) as unnecessary.

Response: The language in § 2.120(k)(7) is longstanding and the Office is retaining it for consistency and to avoid any confusion as to the implications of a potential deletion of that language from that section.

The Office is amending § 2.122(b) to clarify the heading of the paragraph and to clarify that statements made in an affidavit or declaration in the file of an application for registration or in the file of a registration are not testimony on behalf of the applicant or registrant and that matters asserted in the files of applications and registrations are governed by the Federal Rules of Evidence, the relevant provisions of the Federal Rules of Civil Procedure, the relevant provisions of Title 28 of the United States Code, and the provisions of this part of title 37 of the Code of Federal Regulations.

Comment: One commenter supported the specification that statements in affidavits or declarations submitted in connection with an application during ex parte examination are not considered evidence. However, one commenter requested clarification as to why § 2.122(b)(2) excludes statements made in an affidavit or declaration in the file of an application or registration from evidence, and requested that the rule about specimens not being in evidence unless reintroduced be deleted.

Response: Section 2.122(b) provides that the subject application or registration file is automatically of record; however, the existing rule also provides that the dates of first use and specimens are not evidence. The final rule has been amended to provide that statements made in affidavits and declarations in a subject application or registration file are not testimony. Matter residing in an application or registration file reflects an applicant or registrant having met certain requirements or having overcome certain refusals during the ex parte prosecution of an application or maintenance of a registration. Although part of the record of the proceeding, such material constitutes hearsay (except for statements falling under Fed. R. Evid. 801(d)), further compounded by the fact that the affidavits or declarations were not subject to contemporaneous cross-examination. Now that testimony by affidavit or declaration is unilaterally available, it is necessary to clearly distinguish material residing in an application or registration from testimony introduced in the proceeding. Self-authenticating exhibits (*e.g.,* printed publications, internet printouts with the URL and date) attached to affidavits or declarations in applications or registrations may have evidentiary value for what they show on their face. The final rule has been further amended to clarify that while application and registration materials are ''of record,'' they are subject to the Federal Rules of Evidence, Federal Rules of Civil Procedure, Title 28 of the United States Code, and the provisions of this part of title 37 of the Code of Federal Regulations.

The Office is amending § 2.122(d)(1) to replace ''printout'' with ''copy.'' The Office is amending § 2.122(d)(2) to add a cross-reference to new § 2.122(g) and to specify that a registration owned by a party may be made of record via notice of reliance accompanied by a current copy of information from the electronic database records of the Office showing the current status and title of the registration. These amendments codify current case law and Office practice.

Comment: One commenter suggested replacing the word ''printout'' with ''download'' for making registrations of record under § 2.122(d). In addition, the commenter questioned whether the wording ''current status of and current title to'' in § 2.122(d)(1) and (2) has a different meaning from the wording ''current status and title of'' in § 2.122(d)(1) and (2).

Response: Currently, a registration is not considered of record when the number is input into the ESTTA form. To make a registration of record, a copy of the electronic database records of the Office must be attached to the pleading. The word ''download'' does not encompass all possible manners in which a copy may be attached. The Board amended § 2.122(d) by replacing the word ''printout'' with the word ''copy'' to broaden the manner in which a registration may be attached to include, for example, printouts or downloads. The Office has retained the slightly different wording in § 2.122(d)(1) and (2) but the wording does not have different meanings.

The Office is amending § 2.122(e) to designate a new paragraph (e)(1), clarify that printed publications must be relevant to a particular proceeding, and add a cross-reference to new § 2.122(g).

The Office is adding new § 2.122(e)(2) permitting admission of internet

materials into evidence by notice of reliance and providing requirements for their identification. The amendment codifies current case law and Office practice.

The Office is adding new § 2.122(g) detailing the requirements for admission of evidence by notice of reliance. Section 2.122(g) provides that a notice must indicate generally the relevance of the evidence offered and associate it with one or more issues in the proceeding, but failure to do so with sufficient specificity is a procedural defect that can be cured by the offering party within the time set by Board order. The amendment codifies current case law and Office practice.

Comment: One commenter suggested that the requirement in § 2.122(g) to indicate generally the relevance of proffered evidence and associate it with one or more issues, specify that the offering party should indicate the relevance of each document or group of documents within each exhibit, and that the omissions may be cured without reopening the testimony period.

Response: While this suggestion reflects language from Board cases, the final rule provides sufficient guidance and accommodates broader potential circumstances, to allow for flexibility and not encourage motion practice.

Trial Testimony in Inter Partes Cases

The Office is amending § 2.123(a)(1) to permit submission of witness testimony by affidavit or declaration and in conformance with the Federal Rules of Evidence, subject to the right of any adverse party to take and bear the expense of oral cross-examination of that witness, as provided in amendments to § 2.121(e), and to add that the offering party must make that witness available. The amendment is intended to promote efficient trial procedure.

Comment: Several commenters approved of the unilateral option, some noting that many already submit testimony by affidavit as a form of ACR which reduces costs; however, some commenters expressed a desire to be able to submit video depositions as testimony.

Response: The Board has never accepted video testimony and has not experienced any detrimental effect. The current online filing system is not able to accept video testimony; however, this possibility may be considered in subsequent rulemakings as TTAB's online systems are enhanced.

Comment: One commenter expressed concern in light of the preclusive effect of Board decisions that affidavit/declaration testimony is less like a district court proceeding.

Response: The general concept of issue preclusion already applies to summary judgment decisions in district courts, which are often presented on testimony by affidavit or declaration. *See* 18 Charles Alan Wright et al., Fed. Prac. & Proc. Juris. section 4419 (2d ed. 2016). The same is true of Board decisions granting summary judgment. In addition, the option for stipulated ACR has been available for several years and also results in final decisions made on a record based on affidavit or declaration testimony. The new procedure retains what the Supreme Court focused on in *B&B Hardware, Inc.* v. *Hargis Industries, Inc.,* 135 S. Ct. 1293, 113 USPQ2d 2045 (2015): That testimony be under oath and subject to cross-examination. The ability to elect cross-examination of the witness in the new unilateral procedure maintains the fairness and weightiness of Board proceedings.

Comment: Several commenters expressed concern with the cost-shifting of cross-examination because it puts the burden on the party seeking cross-examination to pay the costs for traveling to the adversary's place of business, and that it is generally unfair and detrimental.

Response: Even with oral testimony depositions, the party cross-examining the witness must pay its own travel expense and its own attorney expenses. The proffering party has had and will retain the expense of producing its witness. The final rule adds no burden on these points. The provision that the party seeking oral cross-examination must bear the expense of oral cross-examination is intended to cover the expense of the court reporter. Any redirect and recross is to be taken at the same time, with the party that originally sought cross-examination bearing the cost of the court reporter. The goal of the final rule is to minimize the ability of a party seeking cross-examination to thwart the other party's efforts to rein in the cost of litigation by opting for testimony by affidavit or declaration.

Comment: Some commenters requested that the final rule clearly provide that affidavit/declaration testimony be duly sworn under penalty of perjury and that the testimony and introduction of evidence in a testimony affidavit or declaration are subject to the Federal Rules of Evidence, *i.e.,* only contain facts admissible in evidence. It was noted in particular that § 2.20 allows for statements on information and belief. Finally, one commenter queried whether the unilateral option for testimony by affidavit or declaration might increase the number of cases proceeding through trial and thereby impact Board pendency.

Response: The Office has adopted language in the final rule directed to the concerns expressed regarding affidavit testimony by explicitly requiring that the affidavit or declaration pursuant to § 2.20 be made in conformance with the Federal Rules of Evidence. Regarding the concern raised about affidavit or declaration testimony being ''duly sworn'' and under penalty of perjury, the testimony affidavit is a sworn statement, while the declaration permits a comparable alternative unsworn statement. *See* 28 U.S.C. 1746. Either option is under penalty of perjury, and statements in Board proceedings are subject to 18 U.S.C. 1001. With regard to concern over the pendency of Board proceedings, the experience with ACR proceedings provides some insight. Recently, ACR cases, where affidavit or declaration testimony is commonly used, accounted for one in six final decisions in fiscal year 2014. During this same time period, the Board did not see an increase in pendency for final decisions. Even in cases that were not counted as ACR cases, the parties frequently agreed to use testimony by affidavit or declaration. Despite the increasing use of affidavit or declaration testimony, overall pendency has decreased the last four fiscal years in a row.

The Office is further amending § 2.123(a)(1) to move to § 2.123(a)(2) a provision permitting a motion for deposition on oral examination of a witness in the United States whose testimonial deposition on written questions has been noticed.

Comment: Related to the similar issue in § 2.120(c), some concern has been expressed that the requirement in § 2.123(a)(2) that the proffering party must inform every adverse party when it knows its foreign witness will be within the jurisdiction of the United States during such party's testimony period, improperly places counsel in the position of informing on their clients and incentivizes counsel to advise foreign parties not to meet in the United States or not to travel to the United States for conferences and other business, and that existing procedures for seeking discovery and testimony of foreign parties are sufficient.

Response: In response to the expressed concerns, this requirement has been deleted. It is noted that parties may continue to request such information during discovery in the form of an interrogatory that is subject to the duty to supplement.

The Office is amending § 2.123(b) to remove the requirement for written agreement of the parties to submit testimony in the form of an affidavit, as provided in amendments to § 2.123(a)(1), and to clarify that parties may stipulate to any relevant facts.

The Office is amending § 2.123(c) to remove the option of identifying a witness by description in a notice of examination and to clarify that such notice shall be given to adverse parties before oral depositions.

The Office is further amending § 2.123(c) to add that, when a party elects to take oral cross-examination of an affiant or declarant, the notice of such election must be served on the adverse party and a copy filed with the Board within 20 days from the date of service of the affidavit or declaration and completed within 30 days from the date of service of the notice of election.

The Office is further amending § 2.123(c) to add that the Board may extend the periods for electing and taking oral cross-examination and, when necessary, shall suspend or reschedule proceedings in the matter to allow for the orderly completion of oral cross-examination(s) that cannot be completed within a testimony period.

Comment: Proposed § 2.123(c) provided that the notice to take a cross-examination deposition must be served on the adverse party and filed with the Board ''within 10 days from the date of service of the affidavit or declaration and completed 20 days from the date of service of the notice of election.'' One commenter expressed concern that the time periods are too short to permit sufficient time to review declaration and affidavit testimony and accompanying exhibits, confer with clients and witnesses, determine whether a cross-examination deposition is necessary, and notice such cross-examination deposition, especially where numerous testimony declarations with voluminous exhibits are served on the same date and/or at the end of the assigned testimony period. The commenter recommended allowing at least 20 days from the date of service of the affidavit or declaration testimony to serve a notice of a cross-examination testimony deposition, and at least 30 days from the date of service of the notice to complete such depositions.

Response: The Office has adopted the suggestion to increase the time frames to accommodate scheduling considerations raised by the commenter. The notice to take a cross-examination deposition must be served on the adverse party and filed with the Board ''within 20 days from the date of service of the affidavit or declaration and completed 30 days from the date of service of the notice of election.''

The Office is amending § 2.123(e)(1) to specify that a witness must be sworn before providing oral testimony. The Office is further amending § 2.123(e)(1) to move from § 2.123(e)(3) the provision that cross-examination is available on oral depositions. The Office is further amending § 2.123(e)(1) to add that, where testimony is proffered by affidavit or declaration, cross-examination is available for any witness within the jurisdiction of the United States, as provided in amendments to § 2.123(a)(1).

The Office is amending § 2.123(e)(2) to remove provisions permitting depositions to be taken in longhand, by typewriting, or stenographically and to specify that testimony depositions shall be recorded.

The Office is amending § 2.123(e)(3) to delete the provision that cross-examination is available on oral depositions, which the Office is moving to § 2.123(e)(1), and to insert paragraphs (e)(1)(i) and (ii) for clarity.

The Office is amending § 2.123(e)(4) to specify that the rule regarding objections pertains to oral examination.

The Office is amending § 2.123(e)(5) to clarify that the rule regarding witness signature relates to the transcript of an oral deposition.

The Office is amending § 2.123(f)(2) to require that deposition transcripts and exhibits shall be filed in electronic form using ESTTA. If the nature of an exhibit, such as CDs or DVDs, precludes electronic transmission via ESTTA, it shall be submitted by mail. The amendment codifies the use of electronic filing.

The Office is amending § 2.123(g)(1) to add that deposition transcripts must be submitted in full-sized format (one page per sheet), not condensed (multiple pages per sheet). The Office is amending § 2.123(g)(3) to add that deposition transcripts must contain a word index, listing the pages where the words appear in the deposition.

Comment: One commenter requested clarification to the form for exhibits attached to affidavit or declaration testimony.

Response: The Office has not set out in the final rule any specific requirements regarding the form of exhibits. The Board and the parties have experience with such submissions in connection with summary judgment motions and ACR procedures as described in the TBMP at sections 528.05(b) and 702.04, which do not specify requirements for the form of exhibits, and this has not created problems. Notably, documents submitted under an affidavit or declaration but not identified therein cannot be considered as exhibits. The parties are encouraged to be guided by the form requirements set out for exhibits to depositions in § 2.123(g)(2) and the mailing requirements for certain exhibits set out in § 2.123(f)(2).

The Office is removing § 2.123(i), which permits inspection by parties and printing by the Office of depositions after they are filed in the Office. Section 2.123(j) through (l) is renumbered § 2.123(i) through (k) in conformance.

The Office is amending renumbered § 2.123(j) to add that objection may be made to receiving in evidence any declaration or affidavit. The Office is further amending renumbered § 2.123(j) to provide that objections may not be considered until final hearing.

Depositions Upon Written Questions

The Office is adding new § 2.124(b)(3) to provide that a party desiring to take cross-examination by written questions of a witness who has provided testimony by affidavit or declaration shall serve notice on each adverse party and file a copy of the notice with the Board.

The Office is amending § 2.124(d)(1) to clarify that the procedures for examination on written questions apply to both direct testimony and cross-examination. The Office is further amending § 2.124(d)(1) to specify the procedure for cross-examination by written questions of a witness who has provided testimony by affidavit or declaration.

The Office is adding new § 2.124(d)(3) to provide that service of written questions, responses, and cross-examination questions shall be in accordance with § 2.119(b).

Filing and Service of Testimony

The Office is amending § 2.125 to renumber paragraphs (a) through (e) as (b) through (f) and to add new § 2.125(a) to require that one copy of a declaration or affidavit prepared in accordance with § 2.123, with exhibits, shall be served on each adverse party at the time the declaration or affidavit is submitted to the Board during the assigned testimony period.

The Office is amending renumbered § 2.125(b) to add a cross-reference to § 2.124 and to clarify that the paragraph applies to testimony depositions, including depositions on written questions.

The Office is amending renumbered § 2.125(f) to permit sealing of a part of an affidavit or declaration.

Form of Submissions to the Trademark Trial and Appeal Board

The Office is amending § 2.126 to renumber paragraph (a) as (b) and to add new paragraph (a) to require that submissions to the Board must be made via ESTTA. The amendment codifies the use of electronic filing.

Comment: Commenters who addressed the proposal to mandate the electronic filing of all submissions to the Board via ESTTA generally expressed approval, although a few commenters requested ESTTA enhancements to increase the permissible file size limits for attachments and to allow multimedia submissions. Several commenters asked that an exception to the ESTTA filing requirement be made for voluminous and multimedia submissions.

Response: While the Office continually strives to improve its electronic systems, the requested ESTTA enhancements cannot be made in the near future. The lack of these features, however, need not prevent effective electronic filing. ESTTA currently permits a filing to include multiple PDF attachments totaling less than 53 MB, which more than suffices for the vast majority of filings. ESTTA's ''Tips for Attaching Large PDF Files,'' available from a help link within ESTTA, provide useful recommendations to minimize attachment file size. If, despite following best practices, file size remains a concern, an ESTTA submission may be divided into separate filings. While some commenters noted that such a procedure is more burdensome for a filer than simply submitting via paper, a paper filing would impose a similar or greater burden on the Office to receive and route the papers, to scan and upload them into the electronic official record, and to store and later destroy the papers in accordance with the Office's document retention policy. The Office deems it most appropriate that on the rare occasion when a single ESTTA filing cannot accommodate all the attachments, the effort of separating the attachments into multiple filings should rest with the filer. This is because the filer has the greatest opportunity to minimize the need for attachments, as well as to ensure that its expectations for image quality and color of the submissions are met.

Turning to multimedia, ESTTA currently is not configured to accept such submissions, and the Office does not anticipate an ESTTA enhancement to accept multimedia in the near future. Board proceedings are conducted exclusively on the written record. While the Office acknowledges that some commenters have suggested the Board consider accepting video depositions, under the current requirements and practice, such submissions are not permitted, thus rendering it unnecessary to make an electronic filing exception for that purpose. Multimedia files such as specimens for sound or motion marks, having been submitted through the Trademark Electronic Application System (TEAS), may be included in the electronic official record in ex parte appeals. The need to submit multimedia evidence in Board inter partes proceedings infrequently arises when a party submits video or audio evidence, such as commercials. The Board will continue its current practice of accepting DVDs or CDs for this limited purpose, and the submission of such exhibits will be exempt from the requirement to file using ESTTA. When making such a submission of exhibits, parties are advised to include in the accompanying ESTTA filing a ''placeholder'' exhibit page to indicate the CD or DVD exhibit, and to mail the CD or DVD to the Board. If in the future the Board's electronic filing system can be enhanced to allow the submission of multimedia material, similar to TEAS, the Board will revisit its acceptance of CDs or DVDs.

Comment: Numerous commenters expressed concerns about the interpretation and implementation of the proposed exception to allow paper filings ''when ESTTA is unavailable due to technical problems, or when extraordinary circumstances are present.'' Some commenters expressed only their desire that such petitions be liberally granted and that the Office provide guidance as to the types of circumstances that would qualify as extraordinary. Other commenters sought a waiver of the usual petition fee for this type of petition. Still others objected to the requirement for a petition at all, which they claimed creates unwelcome uncertainty as to whether the paper filing would be accepted. They contended that the Office should guarantee acceptance of a paper filing accompanied merely by a statement of the reason for the paper filing.

Response: To balance the interest in promoting electronic filing with the concerns expressed by commenters, the final rule maintains the proposed petition requirement for notices of opposition, extensions of time to oppose, petitions to cancel, and answers thereto not filed through ESTTA, but no longer includes the petition requirement for other types of filings not made through ESTTA. Paper pleadings increase the burden on the Board because they require more manual processing than most other types of paper filings. Therefore, the Board has maintained the petition requirement for pleadings and extensions of time to oppose to encourage electronic filing from the outset, with the expectation that parties who initially file electronically will continue to do so throughout the proceeding. For notices of opposition and petitions to cancel, if the petition to file on paper is granted, the Board's institution orders will address the schedule and deadlines. For answers filed on paper, the pendency of the petition to file on paper will not act as a stay of proceedings, *see* § 2.146(g), and parties should adhere to the trial schedule. Petitions to file on paper are subject to § 2.146, including the requirement for verified facts under § 2.146(g). Paper filings not accompanied by the requisite petition will not be considered.

For other paper filings, the final rule requires a showing by written explanation accompanying the filing that ESTTA was unavailable due to technical problems, or that extraordinary circumstances justify the paper filing. Such explanations must include the specific facts underlying the inability to file by ESTTA, rather than a mere conclusory statement that technical problems or extraordinary circumstances prevented the use of ESTTA. No fee is required. In these situations, parties should consider any such paper filing accepted unless the Board indicates otherwise. Thus, for any filing to which the opposing party would respond, for purposes of the response deadline, the opposing party should proceed as if the paper submission were accepted at the time of its filing and respond accordingly. The Board will review the explanation accompanying the paper filing in its consideration of the filing, and submissions that do not meet the technical problems or extraordinary circumstances showing will not be considered.

The Office intends to continue its flexible, reasonable approach in handling the unusual occasions when USPTO technical problems render ESTTA unavailable. For example, in situations where verifiable issues with USPTO systems prevented electronic filing in the past, the Office's practices have included waiving non-statutory deadlines and waiving petition fees associated with matters concerning the USPTO's technical problems. These and other measures may be taken by the Office as appropriate in the future to avoid negatively impacting prospective

filers in the event of USPTO technical problems. However, the precise impact of technical problems varies depending on the specific facts, and the Office cannot reasonably provide advance guidance about all possibilities.

The same holds true regarding the types of situations that would qualify as extraordinary circumstances. Because the assessment would depend on the specific facts, the Office deems it appropriate to address particular situations on a case-by-case basis as they arise.

Comment: Some commenters requested assurances that the paper filing exception could apply in the event of technical difficulties on the filer's end.

Response: The exception for extraordinary circumstances may apply to situations where no USPTO technical problems exist, but the filer experiences an extraordinary situation making ESTTA unavailable to the filer. Such extraordinary circumstances might, in appropriate situations, include certain types of technical problems at the filer's location or with the filer's systems.

The Office is adding new § 2.126(a)(1) providing that text in an electronic submission must be filed in at least 11-point type and double-spaced. The amendment is consistent with the amendment to § 2.126(b)(1). The final rule retains the 11-point type size from the existing rule.

The Office is adding new § 2.126(a)(2) to require that exhibits pertaining to an electronic submission must be made electronically as an attachment to the submission and must be clear and legible. The amendment codifies the use of electronic filing.

The Office is amending renumbered § 2.126(b) to permit submissions in paper form in the event that ESTTA is unavailable due to technical problems or when extraordinary circumstances are present. The Office is further amending renumbered § 2.126(b) to require that all submissions in paper form except extensions of time to file a notice of opposition, notices of opposition, petitions to cancel, or answers thereto, must include a written explanation of such technical problems or extraordinary circumstances.

The Office proposed to amend renumbered § 2.126(b)(1) to require that text in a paper submission must be filed in at least 12-point type. Consistent with § 2.126(a)(1), however, the final rule retains the 11-point type size from the existing rule.

The Office is removing the paragraph previously designated § 2.126(b).

The Office is amending § 2.126(c) to provide that submissions to the Board that are confidential in whole or part must be submitted using the ''Confidential'' selection available in ESTTA or, where appropriate, under a separate paper cover. The Office is further amending § 2.126(c) to clarify that a redacted copy must be submitted concurrently for public viewing.

Motions

The Office is amending § 2.127(a) to reflect that all response dates initiated by a service date are twenty days. The Office is further amending § 2.127(a) to add that the time for filing a reply brief will not be reopened.

The Office is amending § 2.127(b) to reflect that all response dates initiated by a service date are twenty days.

The Office is amending § 2.127(c) to add that conceded matters and other matters not dispositive of a proceeding may be acted on by a Paralegal of the Board or by ESTTA and that motions disposed of by orders entitled ''By the Trademark Trial and Appeal Board'' have the same legal effect as orders by a panel of three Administrative Trademark Judges of the Board. The amendments codify current Office practice.

The Office is amending § 2.127(d) to clarify that a case is suspended when a party timely files any potentially dispositive motion.

The Office is amending § 2.127(e)(1) to require that a motion for summary judgment must be filed prior to the deadline for pretrial disclosures for the first testimony period, rather than the commencement of that period. The Office is further amending § 2.127(e)(1) to change references to Rule 56(f) to 56(d) in conformance with amendments to the Federal Rules of Civil Procedure. The Office is further amending § 2.127(e)(1) to reflect that the reply in support of a motion for summary judgment is due twenty days after service of the response. The Office is further amending § 2.127(e)(1) to add that the time for filing a motion under Rule 56(d) and a reply brief will not be reopened.

Comment: Commenters who addressed the proposed amendment to § 2.127(e), requiring that any motion for summary judgment be filed before the deadline for pretrial disclosures, approved of the change.

Response: The change encourages efficiency in the schedule by providing that, once the due date for the first pretrial disclosure has arrived, the parties are focused on trial, or settlement, and neither party will be surprised, while preparing for trial after the due date for the first pretrial disclosures, by the filing of a summary judgment motion by its adversary.

The Office is amending § 2.127(e)(2) to add that if a motion for summary judgment is denied, the parties may stipulate that the materials submitted with briefs on the motion be considered at trial as trial evidence, which may be supplemented by additional evidence during trial. The revision codifies an approach used by parties in proceedings incorporating ACR-type efficiencies at trial.

Comment: One commenter requested clarification that § 2.127(e)(2) does not require stipulations that summary judgment evidence be relied on at trial.

Response: The final rule states parties may stipulate to reliance on summary judgment evidence and does not contemplate requiring such stipulations; it only codifies an existing practice. To remove any ambiguity on this point, the Board has omitted from the final rule the word ''shall,'' which was intended to be directed to the Board.

Briefs at Final Hearing

The Office is amending § 2.128(a)(3) to add that, when the Board issues a show cause order for failure to file a brief and there is no evidence of record, if the party responds to the order showing good cause why judgment should not be entered based on loss of interest but does not move to reopen its testimony period based on demonstrable excusable neglect, judgment may be entered against the plaintiff for failure to take testimony or submit evidence. The amendment codifies current case law and practice and is consistent with TBMP section 536.

The Office is amending § 2.128(b) to add that evidentiary objections may be set out in a separate appendix that does not count against the briefing page limit. The amendment codifies current case law and practice and is consistent with TBMP section 801.03. The Office is further amending § 2.128(b) to add that briefs exceeding the page limits may not be considered by the Board, and this also codifies existing practice.

Oral Argument; Reconsideration

The Office is amending § 2.129(a) to clarify that all statutory members of the Board may hear oral argument. The Office is further amending § 2.129(a) to add that parties and members of the Board may attend oral argument in person or, at the discretion of the Board, remotely. The amendment codifies current Office practices and is consistent with the Office's amendments to § 2.142(e)(1).

Comment: One commenter expressed support for the amendment to § 2.129(a),

and recommends that remote participation be granted where counsel, an examining attorney, or participating member of the Board is located 100 miles or more from the oral hearing location.

Response: The Office will liberally grant remote attendance, but retains discretion to account for any technological limitations.

The Office is amending § 2.129(b) to add that the Board may deny a request to reset a hearing date for lack of good cause or if multiple requests for rescheduling have been filed.

The Office is amending § 2.129(c) to reflect that all response dates initiated by a service date are twenty days.

New Matter Suggested by the Trademark Examining Attorney

The Office is amending § 2.130 to add that, if during an inter partes proceeding involving an application the examining attorney believes certain facts render the mark unregistrable, the examining attorney should request remand of the application rather than simply notify the Board.

Involuntary Dismissal for Failure To Take Testimony

The Office is amending § 2.132(a) to clarify that, if a plaintiff has not submitted evidence and its time for taking testimony has expired, the Board may grant judgment for the defendant sua sponte. The Office is further amending § 2.132(a) to reflect that all response dates initiated by a service date are twenty days. The Office is further amending § 2.132(a) to clarify that the standard for the showing required not to render judgment dismissing the case is excusable neglect.

The Office is amending § 2.132(b) to limit evidence to Office records showing the current status and title of a plaintiff's pleaded registrations. The Office is further amending § 2.132(b) to reflect that all response dates initiated by a service date are twenty days. The Office is further amending § 2.132(b) to clarify that the Board may decline to render judgment on a motion to dismiss until all testimony periods have passed.

Surrender or Voluntary Cancellation of Registration

The Office is amending § 2.134(b) to clarify that the paragraph is applicable to extensions of protection in accordance with the Madrid Protocol.

Status of Application or Registration on Termination of Proceeding

The Office is amending § 2.136 to specify when a proceeding will be terminated by the Board and the status of an application or registration on termination of an opposition, cancellation, or concurrent use proceeding.

Comment: One commenter expressed concern that the rule change to § 2.136 fails to address the problem where a registration issues following receipt of a notice of termination of a Board proceeding even when the proceeding has been decided adversely to the applicant. It is suggested that the proposed rule address this problem by requiring all termination orders to specify whether registration is refused.

Response: While the status entry ''terminated'' is recorded in the prosecution history of a proceeding file, the Office does not issue a ''termination order,'' and final decisions already state if registration is refused. The commenter's scenario involves an internal processing issue, which the Office is addressing. While this occurs on occasion, the Office has a process to cancel an inadvertently issued registration. As a logical extension of the amendments clarifying the termination process for oppositions and concurrent use proceedings, the final rule has been further amended to include clarification of the process for cancellation proceedings and the status of registrations on termination of the proceedings.

Appeals

Time and Manner of Ex Parte Appeals

The Office is amending § 2.142 to incorporate a nomenclature change from ''examiner'' to ''examining attorney'' and to incorporate email as a possible manner of transmission from the examining attorney.

Comment: The directive in proposed § 2.142(b)(1) and (f)(4) that the examining attorney ''shall mail a copy of the brief'' seems inconsistent with the Board's move to electronic communications.

Response: The Trademark Examining Operation currently does not require electronic communication; however, examining attorneys mail briefs via email when authorized by the applicant. The Office has adopted changes to accommodate when examining attorneys communicate through email.

The Office is amending § 2.142(b)(2) to exempt examining attorney submissions from the ESTTA requirement because they are filed through the Office's internal electronic systems. In view of the shorter page limit for ex parte appeal briefs, the Office is also deleting the requirement that ex parte briefs contain an alphabetical index of cited cases. Finally, the Office is adding that a reply brief from an appellant shall not exceed ten pages in length and that no further briefs are permitted unless authorized by the Board.

The Office is adding new § 2.142(b)(3) to specify that citation to evidence in briefs should be to the documents in the electronic application record by date, the name of the paper under which the evidence was submitted, and the page number in the electronic record. The amendment is intended to facilitate review of record evidence by the applicant, the examining attorney, the Board, and the public.

Comment: One commenter recommends that the final rule be amended to include an example of a preferred citation format.

Response: To remain flexible to accommodate technological change which could prompt different citation forms, the Office has not put examples in the final rule. The key is to provide a citation that allows the reader to easily find the referenced document. Citation format may be by date, description of filing, and page number (*e.g.,* October 10, 2010 Office Action p. 2, or 10/10/10 Office Action at 2, or 10/10/10 Office Action, TSDR 2). Where appropriate, reference to the TTABVUE entry and page number, *e.g.,* 1 TTABVUE 2, is also suggested. *See* TBMP sections 801.01 and 1203.01.

The Office is amending § 2.142(c) to add that the statement of issues in a brief should note that the applicant has complied with all requirements made by the examining attorney and not the subject of appeal.

The Office is amending § 2.142(d) to clarify that evidence should not be filed with the Board after a notice of appeal is filed. The amendment more directly states the prohibition. The Office is further amending § 2.142(d) for clarity, including by specifying that an appellant or examining attorney who desires to introduce additional evidence after an appeal is filed should submit a request to the Board to suspend the appeal and remand the application for further examination.

The Office is amending § 2.142(e)(1) to clarify that all statutory members of the Board may hear oral argument. The Office is further amending § 2.142(e)(1) to add that appellants, examining attorneys, and members of the Board may attend oral argument in person or, at the discretion of the Board, remotely. The amendment codifies current Office practice and is consistent with the Office's amendments to § 2.129(a).

The Office is amending § 2.142(e)(2) to add that a supervisory or managing attorney may designate an examining

attorney to present oral argument and to delete the provision that the examining attorney designated must be from the same examining division.

Comment: One commenter expressed concern that the proposed amendment to § 2.142(e)(2), allowing for inter-law office file swapping before oral argument, might be potentially prejudicial to applicants. The commenter's concern is that decision-making may be more circumspect if supervisory or managing attorneys were required to field the appeals generated within their own law offices, rather than be allowed to forward appeals to other law offices.

Response: The final rule recognizes the Office's discretion regarding staffing of cases, and is necessary to accommodate workflow and maintain pendency goals. The Office needs procedures that allow for the most efficient use of resources. The Office is amending § 2.142(f)(1) to change the time for further examination of an application on remand from thirty days to the time set by the Board.

Appeal to Court and Civil Action

The Office is amending § 2.145 by reorganizing the subjects covered and rewording some provisions to improve the clarity and structure of the rule and to align the provisions with the analogous rules governing judicial review of Patent Trial and Appeal Board decisions in 37 CFR part 90.

From a restructuring standpoint, certain amendments result in existing provisions being moved to a different paragraph of the rule. Specifically, provisions regarding appeals to the U.S. Court of Appeals for the Federal Circuit, which currently appear in paragraphs (a) and (b), are grouped together under paragraph (a). Provisions regarding the process provided for in Section 21(a)(1) of the Act, whereby an adverse party to a Federal Circuit appeal of an inter partes Board decision may file notice of its election to have proceedings conducted by way of a civil action, are moved from paragraph (c), which concerns civil actions, to revised paragraph (b), with the paragraph heading ''For a notice of election under section 21(a)(1) to proceed under section 21(b) of the Act.''

Substantively, throughout § 2.145, the Office is removing specific references to times for taking action or other requirements that are specified in the Act or another set of rules (*e.g.,* Federal Rules of Appellate Procedure) and replacing them with references to the applicable section of the Act or rules that set the time or requirements for the specified action. These changes will help ensure that parties consult the applicable statute or rule itself and avoid the need for the USPTO to amend its regulations if the applicable provision of the statute or rule changes.

The Office also is amending the provisions in § 2.145 that require copies of notices of appeal, notices of election, and notices of civil action to be filed with the Trademark Trial and Appeal Board to specify that such notices must be filed with the Board via ESTTA. These amendments codify the use of electronic filing and enhance the Office's ability to properly handle applications, registrations, and proceedings while on review in federal court.

Regarding amendments to the requirements for appeals to the Federal Circuit, the Office is amending § 2.145(a) to add paragraphs (a)(1)–(3). The Office is moving the language currently in § 2.145(a) to new (a)(1) and amending it, in accordance with Section 21(a) of the Act, to include that a registrant who has filed an affidavit or declaration under Section 71 of the Trademark Act and is dissatisfied with the decision of the Director may appeal. The Office is further amending § 2.145(a)(1) to add that it is unnecessary to request reconsideration before filing an appeal of a Board decision, but a party requesting reconsideration must do so before filing a notice of appeal. Section 2.145(a)(2) and (3) specifies the requirements contained in current § 2.145(a) and (b) for filing an appeal to the Federal Circuit.

Regarding amendments to the requirements for filing a civil action in district court in § 2.145(c), the Office is adding in § 2.145(c)(1) an amendment corresponding to the amendment to § 2.145(a)(1) that it is unnecessary for a party to request reconsideration before filing a civil action seeking judicial review of a Board decision, but a party requesting reconsideration must do so before filing the civil action. The Office is replacing current § 2.145(c)(2) with a provision that specifies the requirements for serving the Director with a complaint by an applicant or registrant in an ex parte case who seeks remedy by civil action under section 21(b) of the Act. The amendment, which references Federal Rule of Civil Procedure 4(i) and § 104.2, is intended to facilitate proper service of complaints in such actions on the Director. The Office is replacing current § 2.145(c)(3) with a modified version of the provision currently in § 2.145(c)(4), to specify that the party who commences a civil action for review of a Board decision in an inter partes case must file notice thereof with the Trademark Trial and Appeal Board via ESTTA no later than five business days after filing the complaint in district court. The addition of a time frame for filing the notice of the civil action with the Board, and explicitly stating that the notice must identify the civil action with particularity, is necessary to ensure that the Board is timely notified when parties seek judicial review of its decisions and to avoid premature termination of a proceeding.

The Office is amending § 2.145(d) regarding time for appeal or civil action by restructuring the paragraphs by the type of action (*i.e.,* (1) for an appeal to the Federal Circuit, (2) for a notice of election, or (3) for a civil action) and to add a new paragraph (d)(4)(i) regarding time computation if a request for reconsideration is filed. The Office is moving the time computation provision currently in (d)(2) regarding when the last day of time falls on a holiday to new paragraph (d)(4)(ii) and omitting the addition of one day to any two-month time that includes February 28. The Office also is changing the times for filing a notice of appeal or commencing a civil action from two months to sixty-three days (*i.e.,* nine weeks) from the date of the final decision of the Board. The amendment aligns the times for appeal from Board action with those for the Patent Trial and Appeal Board in part 90 of title 37 of the Code of Federal Regulations and is intended to simplify calculation of the deadlines for taking action.

The Office is amending § 2.145(e) to specify that a request for extension of time to seek judicial review must be filed as provided in § 104.2 and addressed to the attention of the Office of the Solicitor, to which the Director has delegated his or her authority to decide such requests, with a copy filed with the Board via ESTTA. The amendment is intended to facilitate proper filing of and timely action upon extension requests and to avoid premature termination of a Board proceeding.

Comment: One commenter expressed concern with the proposed amendment to § 2.145(e)(2) that an appellant from a Board decision file requests for an extension of time to seek judicial review both with the Office of the General Counsel and through ESTTA with the Board. The commenter recommended that the Office allow for service on the Board and the Solicitor's Office using the same ESTTA form.

Response: The need for an appellant to file with the Office of the General Counsel and with the Board through ESTTA also pertains to notices of appeal

and civil actions, in addition to extension requests. The concurrent filing is intended to facilitate prompt notice of appeals not only to the Office's General Counsel, but also on the Board to avoid premature termination of proceedings and inadvertent action on subject applications or registrations, which is in the best interest of the parties. As the Office plans to enhance its electronic systems, it will work toward a more streamlined process where a single submission will facilitate the necessary prompt notification to all interested areas of the office. In the meantime, the relatively minimal additional burden of dual notification is justified by its benefits.

General Information and Correspondence in Trademark Cases

Addresses for Trademark Correspondence With the United States Patent and Trademark Office

The Office is amending § 2.190(a) and (c) to reflect a nomenclature change from the Assignment Services Division to the Assignment Recordation Branch. The Office is amending § 2.190(b) to direct that documents in proceedings before the Board be filed through ESTTA. The amendment codifies the use of electronic filing.

Business To Be Transacted in Writing

The Office is amending § 2.191 to direct that documents in proceedings before the Board be filed through ESTTA. The amendment codifies the use of electronic filing.

Comment: One commenter suggested that § 2.191 be revised to indicate that ESTTA filing is mandatory.

Response: The Office has adopted the suggestion.

Receipt of Trademark Correspondence

The Office is amending § 2.195(d)(3) by deleting the option of filing notices of ex parte appeal by facsimile. This is a conforming amendment to align § 2.195(d)(3) with the final rules requiring that all filings with the Board be through ESTTA.

Rulemaking Considerations

Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure and/or interpretive rules. *See Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Rule that clarifies interpretation of a statute is interpretive.); *Bachow Communications Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims.).

Accordingly, prior notice and opportunity for public comment for the rule changes are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'' (quoting 5 U.S.C. 553(b)(A))). However, the Office chose to seek public comment before implementing the rule to benefit from the public's input.

Regulatory Flexibility Act: The Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. *See* Regulatory Flexibility Act, 5 U.S.C. 605(b).

The rules involve changes to rules of agency practice and procedure in matters before the Trademark Trial and Appeal Board. The primary changes are to codify certain existing practices, increase efficiency and streamline proceedings, and provide greater clarity as to certain requirements in Board proceedings. The rules do not alter any substantive criteria used to decide cases.

The rules will apply to all persons appearing before the Board. Applicants for a trademark and other parties to Board proceedings are not industry-specific and may consist of individuals, small businesses, non-profit organizations, and large corporations. The Office does not collect or maintain statistics in Board cases on small- versus large-entity parties, and this information would be required in order to determine the number of small entities that would be affected by the rules.

The burdens, if any, to all entities, including small entities, imposed by these rule changes will be minor and consist of relatively minor additional responsibilities and procedural requirements on parties appearing before the Board. Two possible sources of burden may come from the requirement that all submissions be filed through the Board's online filing system, the Electronic System for Trademark Trials and Appeals (''ESTTA''), except in certain limited circumstances, and the requirement that service between parties be conducted by email. For impacted entities that do not have the necessary equipment and internet service, this may result in additional costs to obtain this ability or for some types of filings, to petition to file on paper. However, the Office does not anticipate this requirement to impact a significant number of entities, as well over 95 percent of filings are already submitted electronically, and it is common practice among parties to use electronic service.

In most instances the rule changes will lessen the burdens on parties, including small entities. For example, the Office is shifting away from the parties to itself the obligation to serve notices of opposition, petitions for cancellation, and concurrent use proceedings. Moreover, the rules provide for email service of other documents among the parties to a proceeding, thereby eliminating the existing need to arrange for the mailing or hand delivery of these documents. Also, the Office is making discovery less onerous for the parties by imposing limitations on the volume of discovery, incorporating a proportionality requirement, and allowing parties to present direct testimony by affidavit or declaration. The rules also keep burdens and costs lower for the parties by permitting remote attendance at oral hearings, thereby eliminating the need for travel to appear in person. Overall, the rules will have a net benefit to the parties to proceedings by increasing convenience, providing efficiency and clarity in the process, and streamlining the procedures. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866: This rule has been determined not to be significant for purposes of Executive Order 12866.

Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule changes; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected prior to issuing a notice of proposed rulemaking, and provided online access to the rulemaking docket; (7) attempted

to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

Executive Order 13132: This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final covered rule, the Office will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rule are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rule change is not covered because it is not expected to result in a major rule as defined in 5 U.S.C. 804(2).

Unfunded Mandate Reform Act of 1995: The Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule will have no such effect on State, local, and tribal governments or the private sector.

Paperwork Reduction Act: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This rule involves information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). The collections of information involved in this rulemaking have been reviewed and previously approved by OMB under control numbers 0651–0040 and 0651–0054. This rule will shift a greater portion of paper filings to electronic filings. However, this rulemaking does not add any additional information requirements or fees for parties before the Board, and therefore, it does not materially change the information collection burdens approved under the OMB control numbers 0651–0040 and 0651–0054.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 2

Administrative practice and procedure, Trademarks.

For the reasons given in the preamble and under the authority contained in 15 U.S.C. 1113, 15 U.S.C. 1123, and 35 U.S.C. 2, as amended, the Office is amending part 2 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 1113, 15 U.S.C. 1123, 35 U.S.C. 2, Section 10(c) of Pub. L. 112–29, unless otherwise noted.

■ 2. Revise § 2.92 to read as follows:

§ 2.92 Preliminary to interference.

An interference which has been declared by the Director will not be instituted by the Trademark Trial and Appeal Board until the examining attorney has determined that the marks which are to form the subject matter of the controversy are registrable, and all of the marks have been published in the Official Gazette for opposition.

■ 3. In § 2.98, revise the second sentence to read as follows:

§ 2.98 Adding party to interference.

* * * If an application which is or might be the subject of a petition for addition to an interference is not added, the examining attorney may suspend action on the application pending termination of the interference proceeding.

■ 4. In § 2.99, revise paragraphs (c), (d), and (f)(3) to read as follows:

§ 2.99 Application to register as concurrent user.

* * * * *

(c) If no opposition is filed, or if all oppositions that are filed are dismissed or withdrawn, the Trademark Trial and Appeal Board will send a notice of institution to the applicant for concurrent use registration (plaintiff) and to each applicant, registrant or user specified as a concurrent user in the application (defendants). The notice for each defendant shall state the name and address of the plaintiff and of the plaintiff's attorney or other authorized representative, if any, together with the serial number and filing date of the application. If a party has provided the Office with an email address, the notice may be transmitted via email.

(d)(1) The Board's notice of institution will include a web link or web address to access the concurrent use application proceeding contained in Office records.

(2) An answer to the notice is not required in the case of an applicant or registrant whose application or registration is acknowledged by the concurrent use applicant in the concurrent use application, but a statement, if desired, may be filed within forty days after the issuance of the notice; in the case of any other party specified as a concurrent user in the application, an answer must be filed within forty days after the issuance of the notice.

(3) If an answer, when required, is not filed, judgment will be entered precluding the defaulting user from claiming any right more extensive than that acknowledged in the application(s) for concurrent use registration, but the burden of proving entitlement to registration(s) will remain with the concurrent use applicant(s).

* * * * *

(f) * * *

(3) A true copy of the court decree is submitted to the examining attorney; and

* * * * *

■ 5. Revise § 2.101 to read as follows:

§ 2.101 Filing an opposition.

(a) An opposition proceeding is commenced by filing in the Office a timely notice of opposition with the required fee.

(b) Any person who believes that he, she or it would be damaged by the registration of a mark on the Principal Register may file an opposition addressed to the Trademark Trial and Appeal Board. The opposition need not be verified, but must be signed by the opposer or the opposer's attorney, as specified in § 11.1 of this chapter, or other authorized representative, as specified in § 11.14(b) of this chapter. Electronic signatures pursuant to § 2.193(c) are required for oppositions filed through ESTTA under paragraph (b)(1) or (2) of this section.

(1) An opposition to an application must be filed by the due date set forth in paragraph (c) of this section through ESTTA.

(2) In the event that ESTTA is unavailable due to technical problems, or when extraordinary circumstances are present, an opposition against an application based on Section 1 or 44 of the Act may be filed in paper form. A paper opposition to an application based on Section 1 or 44 of the Act must be filed by the due date set forth in paragraph (c) of this section and be accompanied by a Petition to the Director under § 2.146, with the fees therefor and the showing required under this paragraph. Timeliness of the paper submission will be determined in accordance with §§ 2.195 through 2.198.

(3) An opposition to an application based on Section 66(a) of the Act must be filed through ESTTA and may not under any circumstances be filed in paper form.

(c) The opposition must be filed within thirty days after publication (§ 2.80) of the application being opposed or within an extension of time (§ 2.102) for filing an opposition. The opposition must be accompanied by the required fee for each party joined as opposer for each class in the application for which registration is opposed (see § 2.6).

(d) An otherwise timely opposition cannot be filed via ESTTA unless the opposition is accompanied by a fee that is sufficient to pay in full for each named party opposer to oppose the registration of a mark in each class specified in the opposition. A paper opposition that is not accompanied by the required fee sufficient to pay in full for each named party opposer for each class in the application for which registration is opposed may not be instituted. If time remains in the opposition period as originally set or as extended by the Board, the potential opposer may resubmit the opposition with the required fee.

(e) The filing date of an opposition is the date of electronic receipt in the Office of the notice of opposition, and required fee. In the rare instances that filing by paper is permitted under these rules, the filing date will be determined in accordance with §§ 2.195 through 2.198.

■ 6. Amend § 2.102 by:

■ a. Revising paragraphs (a), (b), and (c)(1) and (2);

■ b. Adding a sentence after the first sentence in paragraph (c)(3);

■ c. Adding paragraph (d); and

■ d. Adding and reserving paragraph (e).

The revisions and additions read as follows:

§ 2.102 Extension of time for filing an opposition.

(a) Any person who believes that he, she or it would be damaged by the registration of a mark on the Principal Register may file a request with the Trademark Trial and Appeal Board to extend the time for filing an opposition. The request need not be verified, but must be signed by the potential opposer or by the potential opposer's attorney, as specified in § 11.1 of this chapter, or authorized representative, as specified in § 11.14(b) of this chapter. Electronic signatures pursuant to § 2.193(c) are required for electronically filed extension requests.

(1) A request to extend the time for filing an opposition to an application must be filed through ESTTA by the opposition due date set forth in § 2.101(c). In the event that ESTTA is unavailable due to technical problems, or when extraordinary circumstances are present, a request to extend the opposition period for an application based on Section 1 or 44 of the Act may be filed in paper form by the opposition due date set forth in § 2.101(c). A request to extend the opposition period for an application based on Section 66(a) of the Act must be filed through ESTTA and may not under any circumstances be filed in paper form.

(2) A paper request to extend the opposition period for an application based on Section 1 or 44 of the Act must be filed by the due date set forth in § 2.101(c) and be accompanied by a Petition to the Director under § 2.146, with the fees therefor and the showing required under paragraph (a)(1) of this section. Timeliness of the paper submission will be determined in accordance with §§ 2.195 through 2.198.

(b) A request to extend the time for filing an opposition must identify the potential opposer with reasonable certainty. Any opposition filed during an extension of time must be in the name of the person to whom the extension was granted, except that an opposition may be accepted if the person in whose name the extension was requested was misidentified through mistake or if the opposition is filed in the name of a person in privity with the person who requested and was granted the extension of time.

(c) * * *

(1) A person may file a first request for:

(i) Either a thirty-day extension of time, which will be granted upon request; or

(ii) A ninety-day extension of time, which will be granted only for good cause shown. A sixty-day extension is not available as a first extension of time to oppose.

(2) If a person was granted an initial thirty-day extension of time, that person may file a request for an additional sixty-day extension of time, which will be granted only for good cause shown.

(3) * * * No other time period will be allowed for a final extension of the opposition period. * * *

(d) The filing date of a request to extend the time for filing an opposition is the date of electronic receipt in the Office of the request. In the rare instance that filing by paper is permitted under these rules, the filing date will be determined in accordance with §§ 2.195 through 2.198.

(e) [Reserved]

§ 2.103 [Added and Reserved]

■ 7. Add and reserve § 2.103.

■ 8. Amend § 2.104 by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 2.104 Contents of opposition.

(a) The opposition must set forth a short and plain statement showing why the opposer believes he, she or it would be damaged by the registration of the opposed mark and state the grounds for opposition. ESTTA requires the opposer to select relevant grounds for opposition. The required accompanying statement supports and explains the grounds.

* * * * *

(c) Oppositions to applications filed under Section 66(a) of the Act are limited to the goods, services and grounds set forth in the ESTTA cover sheet.

■ 9. Revise § 2.105 to read as follows:

§ 2.105 Notification to parties of opposition proceeding(s).

(a) When an opposition in proper form (see §§ 2.101 and 2.104) has been filed with the correct fee(s), and the opposition has been determined to be timely and complete, the Trademark Trial and Appeal Board shall prepare a notice of institution, which shall identify the proceeding as an opposition, number of the proceeding, and the application(s) involved; and the notice shall designate a time, not less than thirty days from the mailing date of the notice, within which an answer must be filed. The notice, which will include a Web link or Web address to access the electronic proceeding record, constitutes service of the notice of opposition to the applicant.

(b) The Board shall forward a copy of the notice to opposer, as follows:

(1) If the opposition is transmitted by an attorney, or a written power of

attorney is filed, the Board will send the notice to the attorney transmitting the opposition or to the attorney designated in the power of attorney, provided that the person is an ''attorney'' as defined in § 11.1 of this chapter, at the email or correspondence address for the attorney.

(2) If opposer is not represented by an attorney in the opposition, but opposer has appointed a domestic representative, the Board will send the notice to the domestic representative, at the email or correspondence address of record for the domestic representative, unless opposer designates in writing another correspondence address.

(3) If opposer is not represented by an attorney in the opposition, and no domestic representative has been appointed, the Board will send the notice directly to opposer at the email or correspondence address of record for opposer, unless opposer designates in writing another correspondence address.

(c) The Board shall forward a copy of the notice to applicant, as follows:

(1) If the opposed application contains a clear indication that the application is being prosecuted by an attorney, as defined in § 11.1 of this chapter, the Board shall send the notice described in this section to applicant's attorney at the email or correspondence address of record for the attorney.

(2) If the opposed application is not being prosecuted by an attorney but a domestic representative has been appointed, the Board will send the notice described in this section to the domestic representative, at the email or correspondence address of record for the domestic representative, unless applicant designates in writing another correspondence address.

(3) If the opposed application is not being prosecuted by an attorney, and no domestic representative has been appointed, the Board will send the notice described in this section directly to applicant, at the email or correspondence address of record for the applicant, unless applicant designates in writing another correspondence address.

■ 10. Amend § 2.106 by revising paragraphs (a) and (b) to read as follows:

§ 2.106 Answer.

(a) If no answer is filed within the time initially set, or as may later be reset by the Board, the opposition may be decided as in case of default. The failure to file a timely answer tolls all deadlines, including the discovery conference, until the issue of default is resolved.

(b)(1) An answer must be filed through ESTTA. In the event that ESTTA is unavailable due to technical problems, or when extraordinary circumstances are present, an answer may be filed in paper form. An answer filed in paper form must be accompanied by a Petition to the Director under § 2.146, with the fees therefor and the showing required under this paragraph (b).

(2) An answer shall state in short and plain terms the applicant's defenses to each claim asserted and shall admit or deny the averments upon which the opposer relies. If the applicant is without knowledge or information sufficient to form a belief as to the truth of an averment, applicant shall so state and this will have the effect of a denial. Denials may take any of the forms specified in Rule 8(b) of the Federal Rules of Civil Procedure. An answer may contain any defense, including the affirmative defenses of unclean hands, laches, estoppel, acquiescence, fraud, mistake, prior judgment, or any other matter constituting an avoidance or affirmative defense. When pleading special matters, the Federal Rules of Civil Procedure shall be followed. A reply to an affirmative defense shall not be filed. When a defense attacks the validity of a registration pleaded in the opposition, paragraph (b)(3) of this section shall govern. A pleaded registration is a registration identified by number by the party in the position of plaintiff in an original notice of opposition or in any amendment thereto made under Rule 15 of the Federal Rules of Civil Procedure.

(3)(i) A defense attacking the validity of any one or more of the registrations pleaded in the opposition shall be a compulsory counterclaim if grounds for such counterclaim exist at the time when the answer is filed. If grounds for a counterclaim are known to the applicant when the answer to the opposition is filed, the counterclaim shall be pleaded with or as part of the answer. If grounds for a counterclaim are learned during the course of the opposition proceeding, the counterclaim shall be pleaded promptly after the grounds therefor are learned. A counterclaim need not be filed if the claim is the subject of another proceeding between the same parties or anyone in privity therewith; but the applicant must promptly inform the Board, in the context of the opposition proceeding, of the filing of the other proceeding.

(ii) An attack on the validity of a registration pleaded by an opposer will not be heard unless a counterclaim or separate petition is filed to seek the cancellation of such registration.

(iii) The provisions of §§ 2.111 through 2.115, inclusive, shall be applicable to counterclaims. A time, not less than thirty days, will be designated by the Board within which an answer to the counterclaim must be filed.

(iv) The times for pleading, discovery, testimony, briefs or oral argument may be reset or extended when necessary, upon motion by a party, or as the Board may deem necessary, to enable a party fully to present or meet a counterclaim or separate petition for cancellation of a registration.

* * * * *

■ 11. Revise § 2.107 to read as follows:

§ 2.107 Amendment of pleadings in an opposition proceeding.

(a) Pleadings in an opposition proceeding against an application filed under section 1 or 44 of the Act may be amended in the same manner and to the same extent as in a civil action in a United States district court, except that, after the close of the time period for filing an opposition including any extension of time for filing an opposition, an opposition may not be amended to add to the goods or services opposed, or to add a joint opposer.

(b) Pleadings in an opposition proceeding against an application filed under section 66(a) of the Act may be amended in the same manner and to the same extent as in a civil action in a United States district court, except that, once filed, the opposition may not be amended to add grounds for opposition or goods or services beyond those identified in the notice of opposition, or to add a joint opposer. The grounds for opposition, the goods or services opposed, and the named opposers are limited to those identified in the ESTTA cover sheet regardless of what is contained in any attached statement.

■ 12. Revise § 2.111 to read as follows:

§ 2.111 Filing petition for cancellation.

(a) A cancellation proceeding is commenced by filing in the Office a timely petition for cancellation with the required fee.

(b) Any person who believes that he, she or it is or will be damaged by a registration may file a petition, addressed to the Trademark Trial and Appeal Board, for cancellation of the registration in whole or in part. The petition for cancellation need not be verified, but must be signed by the petitioner or the petitioner's attorney, as specified in § 11.1 of this chapter, or other authorized representative, as specified in § 11.14(b) of this chapter. Electronic signatures pursuant to § 2.193(c) are required for petitions submitted electronically via ESTTA.

The petition for cancellation may be filed at any time in the case of registrations on the Supplemental Register or under the Act of 1920, or registrations under the Act of 1881 or the Act of 1905 which have not been published under section 12(c) of the Act, or on any ground specified in section 14(3) or (5) of the Act. In all other cases, the petition for cancellation and the required fee must be filed within five years from the date of registration of the mark under the Act or from the date of publication under section 12(c) of the Act.

(c)(1) A petition to cancel a registration must be filed through ESTTA.

(2) In the event that ESTTA is unavailable due to technical problems, or when extraordinary circumstances are present, a petition to cancel may be filed in paper form. A paper petition to cancel a registration must be accompanied by a Petition to the Director under § 2.146, with the fees therefor and the showing required under this paragraph (c). Timeliness of the paper submission, if relevant to a ground asserted in the petition to cancel, will be determined in accordance with §§ 2.195 through 2.198.

(d) The petition for cancellation must be accompanied by the required fee for each party joined as petitioner for each class in the registration(s) for which cancellation is sought (see § 2.6). A petition cannot be filed via ESTTA unless the petition is accompanied by a fee that is sufficient to pay in full for each named petitioner to seek cancellation of the registration(s) in each class specified in the petition. A petition filed in paper form that is not accompanied by a fee sufficient to pay in full for each named petitioner for each class in the registration(s) for which cancellation is sought may not be instituted.

(e) The filing date of a petition for cancellation is the date of electronic receipt in the Office of the petition and required fee. In the rare instances that filing by paper is permitted under these rules, the filing date of a petition for cancellation will be determined in accordance with §§ 2.195 through 2.198.

■ 13. Revise § 2.112 to read as follows:

§ 2.112 Contents of petition for cancellation.

(a) The petition for cancellation must set forth a short and plain statement showing why the petitioner believes he, she or it is or will be damaged by the registration, state the ground for cancellation, and indicate, to the best of petitioner's knowledge, the name and address, and a current email address(es), of the current owner of the registration. ESTTA requires the petitioner to select relevant grounds for petition to cancel. The required accompanying statement supports and explains the grounds.

(b) When appropriate, petitions for cancellation of different registrations owned by the same party may be joined in a consolidated petition for cancellation. The required fee must be included for each party joined as a petitioner for each class sought to be cancelled in each registration against which the petition for cancellation has been filed.

■ 14. Revise § 2.113 to read as follows:

§ 2.113 Notification of cancellation proceeding.

(a) When a petition for cancellation in proper form (see §§ 2.111 and 2.112) has been filed and the correct fee has been submitted, the Trademark Trial and Appeal Board shall prepare a notice of institution which shall identify the proceeding as a cancellation, number of the proceeding and the registration(s) involved; and shall designate a time, not less than thirty days from the mailing date of the notice, within which an answer must be filed. The notice, which will include a Web link or Web address to access the electronic proceeding record, constitutes service to the registrant of the petition to cancel.

(b) The Board shall forward a copy of the notice to petitioner, as follows:

(1) If the petition for cancellation is transmitted by an attorney, or a written power of attorney is filed, the Board will send the notice to the attorney transmitting the petition for cancellation or to the attorney designated in the power of attorney, provided that person is an ''attorney'' as defined in § 11.1 of this chapter, to the attorney's email or correspondence address of record for the attorney.

(2) If petitioner is not represented by an attorney in the cancellation proceeding, but petitioner has appointed a domestic representative, the Board will send the notice to the domestic representative, at the email or correspondence address of record for the domestic representative, unless petitioner designates in writing another correspondence address.

(3) If petitioner is not represented by an attorney in the cancellation proceeding, and no domestic representative has been appointed, the Board will send the notice directly to petitioner, at the email or correspondence address of record for petitioner, unless petitioner designates in writing another correspondence address.

(c)(1) The Board shall forward a copy of the notice to the party shown by the records of the Office to be the current owner of the registration(s) sought to be cancelled at the email or address of record for the current owner, except that the Board, in its discretion, may join or substitute as respondent a party who makes a showing of a current ownership interest in such registration(s).

(2) If the respondent has appointed a domestic representative, and such appointment is reflected in the Office's records, the Board will send the notice only to the domestic representative at the email or correspondence address of record for the domestic representative.

(d) When the party alleged by the petitioner, pursuant to § 2.112(a), as the current owner of the registration(s) is not the record owner, a courtesy copy of the notice with a Web link or Web address to access the electronic proceeding record shall be forwarded to the alleged current owner. The alleged current owner may file a motion to be joined or substituted as respondent.

■ 15. Revise § 2.114 to read as follows:

§ 2.114 Answer.

(a) If no answer is filed within the time initially set, or as may later be reset by the Board, the petition may be decided as in case of default. The failure to file a timely answer tolls all deadlines, including the discovery conference, until the issue of default is resolved.

(b)(1) An answer must be filed through ESTTA. In the event that ESTTA is unavailable due to technical problems, or when extraordinary circumstances are present, an answer may be filed in paper form. An answer filed in paper form must be accompanied by a Petition to the Director under § 2.146, with the fees therefor and the showing required under this paragraph (b).

(2) An answer shall state in short and plain terms the respondent's defenses to each claim asserted and shall admit or deny the averments upon which the petitioner relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, respondent shall so state and this will have the effect of a denial. Denials may take any of the forms specified in Rule 8(b) of the Federal Rules of Civil Procedure. An answer may contain any defense, including the affirmative defenses of unclean hands, laches, estoppel, acquiescence, fraud, mistake, prior judgment, or any other matter constituting an avoidance or affirmative defense. When pleading special matters, the Federal Rules of Civil Procedure

shall be followed. A reply to an affirmative defense shall not be filed. When a defense attacks the validity of a registration pleaded in the petition, paragraph (b)(3) of this section shall govern. A pleaded registration is a registration identified by number by the party in position of plaintiff in an original petition for cancellation, or a counterclaim petition for cancellation, or in any amendment thereto made under Rule 15 of the Federal Rules of Civil Procedure.

(3)(i) A defense attacking the validity of any one or more of the registrations pleaded in the petition shall be a compulsory counterclaim if grounds for such counterclaim exist at the time when the answer is filed. If grounds for a counterclaim are known to respondent when the answer to the petition is filed, the counterclaim shall be pleaded with or as part of the answer. If grounds for a counterclaim are learned during the course of the cancellation proceeding, the counterclaim shall be pleaded promptly after the grounds therefor are learned. A counterclaim need not be filed if the claim is the subject of another proceeding between the same parties or anyone in privity therewith; but the party in position of respondent and counterclaim plaintiff must promptly inform the Board, in the context of the primary cancellation proceeding, of the filing of the other proceeding.

(ii) An attack on the validity of a registration pleaded by a petitioner for cancellation will not be heard unless a counterclaim or separate petition is filed to seek the cancellation of such registration.

(iii) The provisions of §§ 2.111 through 2.115, inclusive, shall be applicable to counterclaims. A time, not less than thirty days, will be designated by the Board within which an answer to the counterclaim must be filed. Such response period may be reset as necessary by the Board, for a time period to be determined by the Board.

(iv) The times for pleading, discovery, testimony, briefs, or oral argument may be reset or extended when necessary, upon motion by a party, or as the Board may deem necessary, to enable a party fully to present or meet a counterclaim or separate petition for cancellation of a registration.

(c) The petition for cancellation or counterclaim petition for cancellation may be withdrawn without prejudice before the answer is filed. After the answer is filed, such petition or counterclaim petition may not be withdrawn without prejudice except with the written consent of the registrant or the registrant's attorney or other authorized representative.

■ 16. Amend § 2.116 by revising paragraphs (c) and (e) through (g) to read as follows:

§ 2.116 Federal Rules of Civil Procedure.

* * * * *

(c) The notice of opposition or the petition for cancellation and the answer correspond to the complaint and answer in a court proceeding.

* * * * *

(e) The submission of notices of reliance, declarations and affidavits, as well as the taking of depositions, during the assigned testimony periods correspond to the trial in court proceedings.

(f) Oral hearing, if requested, of arguments on the record and merits corresponds to oral summation in court proceedings.

(g) The Trademark Trial and Appeal Board's standard protective order is automatically imposed in all inter partes proceedings unless the parties, by stipulation approved by the Board, agree to an alternative order, or a motion by a party to use an alternative order is granted by the Board. The standard protective order is available at the Office's Web site. No material disclosed or produced by a party, presented at trial, or filed with the Board, including motions or briefs which discuss such material, shall be treated as confidential or shielded from public view unless designated as protected under the Board's standard protective order, or under an alternative order stipulated to by the parties and approved by the Board, or under an order submitted by motion of a party granted by the Board. The Board may treat as not confidential that material which cannot reasonably be considered confidential, notwithstanding a designation as such by a party.

■ 17. Amend § 2.117 by revising paragraph (c) to read as follows:

§ 2.117 Suspension of proceedings.

* * * * *

(c) Proceedings may also be suspended sua sponte by the Board, or, for good cause, upon motion or a stipulation of the parties approved by the Board. Many consented or stipulated motions to suspend are suitable for automatic approval by ESTTA, but the Board retains discretion to condition approval on the party or parties providing necessary information about the status of settlement talks, discovery activities, or trial activities, as may be appropriate.

■ 18. Revise § 2.118 to read as follows:

§ 2.118 Undelivered Office notices.

When a notice sent by the Office to any registrant or applicant is returned to the Office undelivered, including notification to the Office of non-delivery in paper or electronic form, additional notice may be given by publication in the Official Gazette.

■ 19. Revise § 2.119 to read as follows:

§ 2.119 Service and signing.

(a) Except for the notice of opposition or the petition to cancel, every submission filed in the Office in inter partes cases, including notices of appeal to the courts, must be served upon the other party or parties. Proof of such service must be made before the submission will be considered by the Office. A statement signed by the attorney or other authorized representative, attached to or appearing on the original submission when filed, clearly stating the date and manner in which service was made will be accepted as prima facie proof of service.

(b) Service of submissions filed with the Board and any other papers served on a party not required to be filed with the Board, must be on the attorney or other authorized representative of the party if there be such or on the party if there is no attorney or other authorized representative, and must be made by email, unless otherwise stipulated, or if the serving party can show by written explanation accompanying the submission or paper, or in a subsequent amended certificate of service, that service by email was attempted but could not be made due to technical problems or extraordinary circumstances, then service may be made in any of the following ways:

(1) By delivering a copy of the submission or paper to the person served;

(2) By leaving a copy at the usual place of business of the person served, with someone in the person's employment;

(3) When the person served has no usual place of business, by leaving a copy at the person's residence, with some person of suitable age and discretion who resides there;

(4) Transmission by the Priority Mail Express® Post Office to Addressee service of the United States Postal Service or by first-class mail, which may also be certified or registered;

(5) Transmission by overnight courier; or

(6) Other forms of electronic transmission.

(c) When service is made by first-class mail, Priority Mail Express®, or overnight courier, the date of mailing or

of delivery to the overnight courier will be considered the date of service.

(d) If a party to an inter partes proceeding is not domiciled in the United States and is not represented by an attorney or other authorized representative located in the United States, none of the parties to the proceeding is eligible to use the service option under paragraph (b)(4) of this section. The party not domiciled in the United States may designate by submission filed in the Office the name and address of a person residing in the United States on whom may be served notices or process in the proceeding. If the party has appointed a domestic representative, official communications of the Office will be addressed to the domestic representative unless the proceeding is being prosecuted by an attorney at law or other qualified person duly authorized under § 11.14(c) of this chapter. If the party has not appointed a domestic representative and the proceeding is not being prosecuted by an attorney at law or other qualified person, the Office will send correspondence directly to the party, unless the party designates in writing another address to which correspondence is to be sent. The mere designation of a domestic representative does not authorize the person designated to prosecute the proceeding unless qualified under § 11.14(a) of this chapter, or qualified under § 11.14(b) of this chapter and authorized under § 2.17(f).

(e) Every submission filed in an inter partes proceeding, and every request for an extension of time to file an opposition, must be signed by the party filing it, or by the party's attorney or other authorized representative, but an unsigned submission will not be refused consideration if a signed copy is submitted to the Office within the time limit set in the notification of this defect by the Office.

■ 20. Revise § 2.120 to read as follows:

§ 2.120 Discovery.

(a) *In general.* (1) Except as otherwise provided in this section, and wherever appropriate, the provisions of the Federal Rules of Civil Procedure relating to disclosure and discovery shall apply in opposition, cancellation, interference and concurrent use registration proceedings. The provisions of Rule 26 of the Federal Rules of Civil Procedure relating to required disclosures, the conference of the parties to discuss settlement and to develop a disclosure and discovery plan, the scope, proportionality, timing and sequence of discovery, protective orders, signing of disclosures and discovery responses, and supplementation of disclosures and discovery responses, are applicable to Board proceedings in modified form, as noted in these rules and as may be detailed in any order instituting an inter partes proceeding or subsequent scheduling order. The Board will specify the deadline for a discovery conference, the opening and closing dates for the taking of discovery, and the deadlines within the discovery period for making initial disclosures and expert disclosure. The trial order setting these deadlines and dates will be included within the notice of institution of the proceeding.

(2)(i) The discovery conference shall occur no later than the opening of the discovery period, and the parties must discuss the subjects set forth in Rule 26(f) of the Federal Rules of Civil Procedure and any subjects set forth in the Board's institution order. A Board Interlocutory Attorney or Administrative Trademark Judge will participate in the conference upon request of any party made after answer but no later than ten days prior to the deadline for the conference, or when the Board deems it useful for the parties to have Board involvement. The participating attorney or judge may expand or reduce the number or nature of subjects to be discussed in the conference as may be deemed appropriate. The discovery period will be set for a period of 180 days.

(ii) Initial disclosures must be made no later than thirty days after the opening of the discovery period.

(iii) Disclosure of expert testimony must occur in the manner and sequence provided in Rule 26(a)(2) of the Federal Rules of Civil Procedure, unless alternate directions have been provided by the Board in an institution order or any subsequent order resetting disclosure, discovery or trial dates. If the expert is retained after the deadline for disclosure of expert testimony, the party must promptly file a motion for leave to use expert testimony. Upon disclosure by any party of plans to use expert testimony, whether before or after the deadline for disclosing expert testimony, the Board, either on its own initiative or on notice from either party of the disclosure of expert testimony, may issue an order regarding expert discovery and/or set a deadline for any other party to disclose plans to use a rebuttal expert.

(iv) The parties may stipulate to a shortening of the discovery period, that there will be no discovery, that the number of discovery requests or depositions be limited, or that reciprocal disclosures be used in place of discovery. Limited extensions of the discovery period may be granted upon stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board. If a motion for an extension is denied, the discovery period may remain as originally set or as reset. Disclosure deadlines and obligations may be modified upon written stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board, but the expert disclosure deadline must always be scheduled prior to the close of discovery. If a stipulation or motion for modification is denied, discovery disclosure deadlines may remain as originally set or reset and obligations may remain unaltered.

(v) The parties are not required to prepare or transmit to the Board a written report outlining their discovery conference discussions, unless the parties have agreed to alter disclosure or discovery obligations set forth by these rules or applicable Federal Rules of Civil Procedure, or unless directed to file such a report by a participating Board Interlocutory Attorney or Administrative Trademark Judge.

(3) A party must make its initial disclosures prior to seeking discovery, absent modification of this requirement by a stipulation of the parties approved by the Board, or a motion granted by the Board, or by order of the Board. Discovery depositions must be properly noticed and taken during the discovery period. Interrogatories, requests for production of documents and things, and requests for admission must be served early enough in the discovery period, as originally set or as may have been reset by the Board, so that responses will be due no later than the close of discovery. Responses to interrogatories, requests for production of documents and things, and requests for admission must be served within thirty days from the date of service of such discovery requests. The time to respond may be extended upon stipulation of the parties, or upon motion granted by the Board, or by order of the Board, but the response may not be due later than the close of discovery. The resetting of a party's time to respond to an outstanding request for discovery will not result in the automatic rescheduling of the discovery and/or testimony periods; such dates will be rescheduled only upon stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board.

(b) *Discovery deposition within the United States.* The deposition of a natural person shall be taken in the Federal judicial district where the

person resides or is regularly employed or at any place on which the parties agree in writing. The responsibility rests wholly with the party taking discovery to secure the attendance of a proposed deponent other than a party or anyone who, at the time set for the taking of the deposition, is an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or Rule 31(a) of the Federal Rules of Civil Procedure. (See 35 U.S.C. 24.)

(c) *Discovery deposition in foreign countries; or of foreign party within jurisdiction of the United States.* (1) The discovery deposition of a natural person residing in a foreign country who is a party or who, at the time set for the taking of the deposition, is an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or Rule 31(a) of the Federal Rules of Civil Procedure, shall, if taken in a foreign country, be taken in the manner prescribed by § 2.124 unless the Trademark Trial and Appeal Board, upon motion for good cause, orders that the deposition be taken by oral examination, or the parties so stipulate.

(2) Whenever a foreign party is or will be, during a time set for discovery, present within the United States or any territory which is under the control and jurisdiction of the United States, such party may be deposed by oral examination upon notice by the party seeking discovery. Whenever a foreign party has or will have, during a time set for discovery, an officer, director, managing agent, or other person who consents to testify on its behalf, present within the United States or any territory which is under the control and jurisdiction of the United States, such officer, director, managing agent, or other person who consents to testify in its behalf may be deposed by oral examination upon notice by the party seeking discovery. The party seeking discovery may have one or more officers, directors, managing agents, or other persons who consent to testify on behalf of the adverse party, designated under Rule 30(b)(6) of the Federal Rules of Civil Procedure. The deposition of a person under this paragraph shall be taken in the Federal judicial district where the witness resides or is regularly employed, or, if the witness neither resides nor is regularly employed in a Federal judicial district, where the witness is at the time of the deposition. This paragraph (c)(2) does not preclude the taking of a discovery deposition of a foreign party by any other procedure provided by paragraph (c)(1) of this section.

(d) *Interrogatories.* The total number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts, except that the Trademark Trial and Appeal Board, in its discretion, may allow additional interrogatories upon motion therefor showing good cause, or upon stipulation of the parties, approved by the Board. A motion for leave to serve additional interrogatories must be filed and granted prior to the service of the proposed additional interrogatories and must be accompanied by a copy of the interrogatories, if any, which have already been served by the moving party, and by a copy of the interrogatories proposed to be served. If a party upon which interrogatories have been served believes that the number of interrogatories exceeds the limitation specified in this paragraph (d), and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections to the interrogatories, serve a general objection on the ground of their excessive number. If the inquiring party, in turn, files a motion to compel discovery, the motion must be accompanied by a copy of the set(s) of the interrogatories which together are said to exceed the limitation, and must otherwise comply with the requirements of paragraph (f) of this section.

(e) *Requests for production.* The total number of requests for production which a party may serve upon another party pursuant to Rule 34 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts, except that the Trademark Trial and Appeal Board, in its discretion, may allow additional requests upon motion therefor showing good cause, or upon stipulation of the parties, approved by the Board. A motion for leave to serve additional requests must be filed and granted prior to the service of the proposed additional requests and must be accompanied by a copy of the requests, if any, which have already been served by the moving party, and by a copy of the requests proposed to be served. If a party upon which requests have been served believes that the number of requests exceeds the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving responses and specific objections to the requests, serve a general objection on the ground of their excessive number. If the inquiring party, in turn, files a motion to compel discovery, the motion must be accompanied by a copy of the set(s) of the requests which together are said to exceed the limitation, and must otherwise comply with the requirements of paragraph (f) of this section. The time, place, and manner for production of documents, electronically stored information, and tangible things shall comport with the provisions of Rule 34 of the Federal Rules of Civil Procedure, or be made pursuant to agreement of the parties, or where and in the manner which the Trademark Trial and Appeal Board, upon motion, orders.

(f) *Motion for an order to compel disclosure or discovery.* (1) If a party fails to make required initial disclosures or expert testimony disclosure, or fails to designate a person pursuant to Rule 30(b)(6) or Rule 31(a) of the Federal Rules of Civil Procedure, or if a party, or such designated person, or an officer, director or managing agent of a party fails to attend a deposition or fails to answer any question propounded in a discovery deposition, or any interrogatory, or fails to produce and permit the inspection and copying of any document, electronically stored information, or tangible thing, the party entitled to disclosure or seeking discovery may file a motion to compel disclosure, a designation, or attendance at a deposition, or an answer, or production and an opportunity to inspect and copy. A motion to compel initial disclosures must be filed within thirty days after the deadline therefor and include a copy of the disclosure(s), if any, and a motion to compel an expert testimony disclosure must be filed prior to the close of the discovery period. A motion to compel discovery must be filed prior to the deadline for pretrial disclosures for the first testimony period as originally set or as reset. A motion to compel discovery shall include a copy of the request for designation of a witness or of the relevant portion of the discovery deposition; or a copy of the interrogatory with any answer or objection that was made; or a copy of the request for production, any proffer of production or objection to production in response to the request, and a list and brief description of the documents, electronically stored information, or tangible things that were not produced for inspection and copying. A motion to compel initial disclosures, expert testimony disclosure, or discovery must be supported by a showing from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in

the motion but the parties were unable to resolve their differences. If issues raised in the motion are subsequently resolved by agreement of the parties, the moving party should inform the Board in writing of the issues in the motion which no longer require adjudication.

(2) When a party files a motion for an order to compel initial disclosures, expert testimony disclosure, or discovery, the case will be suspended by the Board with respect to all matters not germane to the motion. After the motion to compel is filed and served, no party should file any paper that is not germane to the motion, except as otherwise specified in the Board's suspension order. Nor may any party serve any additional discovery until the period of suspension is lifted or expires by or under order of the Board. The filing of a motion to compel any disclosure or discovery shall not toll the time for a party to comply with any disclosure requirement or to respond to any outstanding discovery requests or to appear for any noticed discovery deposition. If discovery has closed, however, the parties need not make pretrial disclosures until directed to do so by the Board.

(g) *Motion for a protective order.* Upon motion by a party obligated to make initial disclosures or expert testimony disclosure or from whom discovery is sought, and for good cause, the Trademark Trial and Appeal Board may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the types of orders provided by clauses (A) through (H), inclusive, of Rule 26(c)(1) of the Federal Rules of Civil Procedure. If the motion for a protective order is denied in whole or in part, the Board may, on such conditions (other than an award of expenses to the party prevailing on the motion) as are just, order that any party comply with disclosure obligations or provide or permit discovery.

(h) *Sanctions.* (1) If a party fails to participate in the required discovery conference, or if a party fails to comply with an order of the Trademark Trial and Appeal Board relating to disclosure or discovery, including a protective order, the Board may make any appropriate order, including those provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure, except that the Board will not hold any person in contempt or award expenses to any party. The Board may impose against a party any of the sanctions provided in Rule 37(b)(2) in the event that said party or any attorney, agent, or designated witness of that party fails to comply with a protective order made pursuant to Rule 26(c) of the Federal Rules of Civil Procedure. A motion for sanctions against a party for its failure to participate in the required discovery conference must be filed prior to the deadline for any party to make initial disclosures.

(2) If a party fails to make required initial disclosures or expert testimony disclosure, and such party or the party's attorney or other authorized representative informs the party or parties entitled to receive disclosures that required disclosures will not be made, the Board may make any appropriate order, as specified in paragraph (h)(1) of this section. If a party, or an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or 31(a) of the Federal Rules of Civil Procedure to testify on behalf of a party, fails to attend the party's or person's discovery deposition, after being served with proper notice, or fails to provide any response to a set of interrogatories or to a set of requests for production of documents and things, and such party or the party's attorney or other authorized representative informs the party seeking discovery that no response will be made thereto, the Board may make any appropriate order, as specified in paragraph (h)(1) of this section.

(i) *Requests for admission.* The total number of requests for admission which a party may serve upon another party pursuant to Rule 36 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts, except that the Trademark Trial and Appeal Board, in its discretion, may allow additional requests upon motion therefor showing good cause, or upon stipulation of the parties, approved by the Board. A motion for leave to serve additional requests must be filed and granted prior to the service of the proposed additional requests and must be accompanied by a copy of the requests, if any, which have already been served by the moving party, and by a copy of the requests proposed to be served. If a party upon which requests for admission have been served believes that the number of requests for admission exceeds the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections to the requests for admission, serve a general objection on the ground of their excessive number. However, independent of this limit, a party may make one comprehensive request for admission of any adverse party that has produced documents for an admission authenticating specific documents, or specifying which of those documents cannot be authenticated.

(1) Any motion by a party to determine the sufficiency of an answer or objection, including testing the sufficiency of a general objection on the ground of excessive number, to a request made by that party for an admission must be filed prior to the deadline for pretrial disclosures for the first testimony period, as originally set or as reset. The motion shall include a copy of the request for admission and any exhibits thereto and of the answer or objection. The motion must be supported by a written statement from the moving party showing that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion and has been unable to reach agreement. If issues raised in the motion are subsequently resolved by agreement of the parties, the moving party should inform the Board in writing of the issues in the motion which no longer require adjudication.

(2) When a party files a motion to determine the sufficiency of an answer or objection to a request for an admission, the case will be suspended by the Board with respect to all matters not germane to the motion. After the motion is filed and served, no party should file any paper that is not germane to the motion, except as otherwise specified in the Board's suspension order. Nor may any party serve any additional discovery until the period of suspension is lifted or expires by or under order of the Board. The filing of a motion to determine the sufficiency of an answer or objection to a request for admission shall not toll the time for a party to comply with any disclosure requirement or to respond to any outstanding discovery requests or to appear for any noticed discovery deposition. If discovery has closed, however, the parties need not make pretrial disclosures until directed to do so by the Board.

(j) *Telephone and pretrial conferences.* (1) Whenever it appears to the Trademark Trial and Appeal Board that a stipulation or motion filed in an inter partes proceeding is of such nature that a telephone conference would be beneficial, the Board may, upon its own initiative or upon request made by one or both of the parties, schedule a telephone conference.

(2) Whenever it appears to the Trademark Trial and Appeal Board that questions or issues arising during the

interlocutory phase of an inter partes proceeding have become so complex that their resolution by correspondence or telephone conference is not practical and that resolution would likely be facilitated by a conference in person of the parties or their attorneys with an Administrative Trademark Judge or an Interlocutory Attorney of the Board, the Board may, upon its own initiative, direct that the parties and/or their attorneys meet with the Board for a disclosure, discovery or pretrial conference on such terms as the Board may order.

(3) Parties may not make a recording of the conferences referenced in paragraphs (j)(1) and (2) of this section.

(k) *Use of discovery deposition, answer to interrogatory, admission or written disclosure.* (1) The discovery deposition of a party or of anyone who at the time of taking the deposition was an officer, director or managing agent of a party, or a person designated by a party pursuant to Rule 30(b)(6) or Rule 31(a) of the Federal Rules of Civil Procedure, may be offered in evidence by an adverse party.

(2) Except as provided in paragraph (k)(1) of this section, the discovery deposition of a witness, whether or not a party, shall not be offered in evidence unless the person whose deposition was taken is, during the testimony period of the party offering the deposition, dead; or out of the United States (unless it appears that the absence of the witness was procured by the party offering the deposition); or unable to testify because of age, illness, infirmity, or imprisonment; or cannot be served with a subpoena to compel attendance at a testimonial deposition; or there is a stipulation by the parties; or upon a showing that such exceptional circumstances exist as to make it desirable, in the interest of justice, to allow the deposition to be used. The use of a discovery deposition by any party under this paragraph will be allowed only by stipulation of the parties approved by the Trademark Trial and Appeal Board, or by order of the Board on motion, which shall be filed when the party makes its pretrial disclosures, unless the motion is based upon a claim that such exceptional circumstances exist as to make it desirable, in the interest of justice, to allow the deposition to be used, even though such deadline has passed, in which case the motion shall be filed promptly after the circumstances claimed to justify use of the deposition became known.

(3)(i) A discovery deposition, an answer to an interrogatory, an admission to a request for admission, or a written initial disclosure, which may be offered in evidence under the provisions of paragraph (k) of this section, may be made of record in the case by filing the deposition or any part thereof with any exhibit to the part that is filed, or a copy of the interrogatory and answer thereto with any exhibit made part of the answer, or a copy of the request for admission and any exhibit thereto and the admission (or a statement that the party from which an admission was requested failed to respond thereto), or a copy of the written initial disclosure, together with a notice of reliance in accordance with § 2.122(g). The notice of reliance and the material submitted thereunder should be filed during the testimony period of the party that files the notice of reliance. An objection made at a discovery deposition by a party answering a question subject to the objection will be considered at final hearing.

(ii) A party that has obtained documents from another party through disclosure or under Rule 34 of the Federal Rules of Civil Procedure may not make the documents of record by notice of reliance alone, except to the extent that they are admissible by notice of reliance under the provisions of § 2.122(e), or the party has obtained an admission or stipulation from the producing party that authenticates the documents.

(4) If only part of a discovery deposition is submitted and made part of the record by a party, an adverse party may introduce under a notice of reliance any other part of the deposition which should in fairness be considered so as to make not misleading what was offered by the submitting party. A notice of reliance filed by an adverse party must be supported by a written statement explaining why the adverse party needs to rely upon each additional part listed in the adverse party's notice, failing which the Board, in its discretion, may refuse to consider the additional parts.

(5) Written disclosures, an answer to an interrogatory, or an admission to a request for admission, may be submitted and made part of the record only by the receiving or inquiring party except that, if fewer than all of the written disclosures, answers to interrogatories, or fewer than all of the admissions, are offered in evidence by the receiving or inquiring party, the disclosing or responding party may introduce under a notice of reliance any other written disclosures, answers to interrogatories, or any other admissions, which should in fairness be considered so as to make not misleading what was offered by the receiving or inquiring party. The notice of reliance filed by the disclosing or responding party must be supported by a written statement explaining why the disclosing or responding party needs to rely upon each of the additional written disclosures or discovery responses listed in the disclosing or responding party's notice, and absent such statement, the Board, in its discretion, may refuse to consider the additional written disclosures or responses.

(6) Paragraph (k) of this section will not be interpreted to preclude reading or use of written disclosures or documents, a discovery deposition, or answer to an interrogatory, or admission as part of the examination or cross-examination of any witness during the testimony period of any party.

(7) When a written disclosure, a discovery deposition, or a part thereof, or an answer to an interrogatory, or an admission, or an authenticated produced document has been made of record by one party in accordance with the provisions of paragraph (k)(3) of this section, it may be referred to by any party for any purpose permitted by the Federal Rules of Evidence.

(8) Written disclosures or disclosed documents, requests for discovery, responses thereto, and materials or depositions obtained through the disclosure or discovery process should not be filed with the Board, except when submitted with a motion relating to disclosure or discovery, or in support of or in response to a motion for summary judgment, or under a notice of reliance, when permitted, during a party's testimony period.

■ 21. Amend § 2.121 by revising the heading and paragraphs (a) and (c) through (e) to read as follows:

§ 2.121 Assignment of times for taking testimony and presenting evidence.

(a) The Trademark Trial and Appeal Board will issue a trial order setting a deadline for each party's required pretrial disclosures and assigning to each party its time for taking testimony and presenting evidence (''testimony period''). No testimony shall be taken or evidence presented except during the times assigned, unless by stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board. The deadlines for pretrial disclosures and the testimony periods may be rescheduled by stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board. If a motion to reschedule any pretrial disclosure deadline and/or testimony period is denied, the pretrial disclosure deadline or testimony period and any subsequent remaining periods may remain as set. The resetting of the

closing date for discovery will result in the rescheduling of pretrial disclosure deadlines and testimony periods without action by any party. The resetting of a party's testimony period will result in the rescheduling of the remaining pretrial disclosure deadlines without action by any party.

* * * * *

(c) A testimony period which is solely for rebuttal will be set for fifteen days. All other testimony periods will be set for thirty days. The periods may be shortened or extended by stipulation of the parties approved by the Trademark Trial and Appeal Board, or may be extended upon motion granted by the Board, or by order of the Board. If a motion for an extension is denied, the testimony periods and their associated pretrial disclosure deadlines may remain as set.

(d) When parties stipulate to the rescheduling of a deadline for pretrial disclosures and subsequent testimony periods or to the rescheduling of the closing date for discovery and the rescheduling of subsequent deadlines for pretrial disclosures and testimony periods, a stipulation presented in the form used in a trial order, signed by the parties, or a motion in said form signed by one party and including a statement that every other party has agreed thereto, shall be submitted to the Board through ESTTA, with the relevant dates set forth and an express statement that all parties agree to the new dates.

(e) A party need not disclose, prior to its testimony period, any notices of reliance it intends to file during its testimony period. However, no later than fifteen days prior to the opening of each testimony period, or on such alternate schedule as may be provided by order of the Board, the party scheduled to present evidence must disclose the name and, if not previously provided, the telephone number and address of each witness from whom it intends to take testimony, or may take testimony if the need arises, general identifying information about the witness, such as relationship to any party, including job title if employed by a party, or, if neither a party nor related to a party, occupation and job title, a general summary or list of subjects on which the witness is expected to testify, and a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony of the witness. The testimony of a witness may be taken upon oral examination and transcribed, or presented in the form of an affidavit or declaration, as provided in § 2.123. Pretrial disclosure of a witness under this paragraph (e) does not substitute for issuance of a proper notice of examination under § 2.123(c) or § 2.124(b). If a party does not plan to take testimony from any witnesses, it must so state in its pretrial disclosure. When a party fails to make required pretrial disclosures, any adverse party or parties may have remedy by way of a motion to the Board to delay or reset any subsequent pretrial disclosure deadlines and/or testimony periods. A party may move to quash a noticed testimony deposition of a witness not identified or improperly identified in pretrial disclosures before the deposition. When testimony has been presented by affidavit or declaration, but was not covered by an earlier pretrial disclosure, the remedy for any adverse party is the prompt filing of a motion to strike, as provided in §§ 2.123 and 2.124.

■ 22. Amend § 2.122 by revising paragraphs (a) through (e) and adding paragraph (g) to read as follows:

§ 2.122 Matters in evidence.

(a) *Applicable rules.* Unless the parties otherwise stipulate, the rules of evidence for proceedings before the Trademark Trial and Appeal Board are the Federal Rules of Evidence, the relevant provisions of the Federal Rules of Civil Procedure, the relevant provisions of Title 28 of the United States Code, and the provisions of this part. When evidence has been made of record by one party in accordance with these rules, it may be referred to by any party for any purpose permitted by the Federal Rules of Evidence.

(b) *Application and registration files.* (1) The file of each application or registration specified in a notice of interference, of each application or registration specified in the notice of a concurrent use registration proceeding, of the application against which a notice of opposition is filed, or of each registration against which a petition or counterclaim for cancellation is filed forms part of the record of the proceeding without any action by the parties and reference may be made to the file for any relevant and competent purpose in accordance with paragraph (b)(2) of this section.

(2) The allegation in an application for registration, or in a registration, of a date of use is not evidence on behalf of the applicant or registrant; a date of use of a mark must be established by competent evidence. Specimens in the file of an application for registration, or in the file of a registration, are not evidence on behalf of the applicant or registrant unless identified and introduced in evidence as exhibits during the period for the taking of testimony. Statements made in an affidavit or declaration in the file of an application for registration, or in the file of a registration, are not testimony on behalf of the applicant or registrant. Establishing the truth of these or any other matters asserted in the files of these applications and registrations shall be governed by the Federal Rules of Evidence, the relevant provisions of the Federal Rules of Civil Procedure, the relevant provisions of Title 28 of the United States Code, and the provisions of this part.

(c) *Exhibits to pleadings.* Except as provided in paragraph (d)(1) of this section, an exhibit attached to a pleading is not evidence on behalf of the party to whose pleading the exhibit is attached, and must be identified and introduced in evidence as an exhibit during the period for the taking of testimony.

(d) *Registrations.* (1) A registration of the opposer or petitioner pleaded in an opposition or petition to cancel will be received in evidence and made part of the record if the opposition or petition is accompanied by an original or photocopy of the registration prepared and issued by the Office showing both the current status of and current title to the registration, or by a current copy of information from the electronic database records of the Office showing the current status and title of the registration. For the cost of a copy of a registration showing status and title, see § 2.6(b)(4).

(2) A registration owned by any party to a proceeding may be made of record in the proceeding by that party by appropriate identification and introduction during the taking of testimony or by filing a notice of reliance in accordance with paragraph (g) of this section, which shall be accompanied by a copy (original or photocopy) of the registration prepared and issued by the Office showing both the current status of and current title to the registration, or by a current copy of information from the electronic database records of the Office showing the current status and title of the registration. The notice of reliance shall be filed during the testimony period of the party that files the notice.

(e) *Printed publications and official records.* (1) Printed publications, such as books and periodicals, available to the general public in libraries or of general circulation among members of the public or that segment of the public which is relevant in a particular proceeding, and official records, if the publication or official record is competent evidence and relevant to an

issue, may be introduced in evidence by filing a notice of reliance on the material being offered in accordance with paragraph (g) of this section. The notice of reliance shall specify the printed publication (including information sufficient to identify the source and the date of the publication) or the official record and the pages to be read; and be accompanied by the official record or a copy thereof whose authenticity is established under the Federal Rules of Evidence, or by the printed publication or a copy of the relevant portion thereof. A copy of an official record of the Office need not be certified to be offered in evidence.

(2) Internet materials may be admitted into evidence under a notice of reliance in accordance with paragraph (g) of this section, in the same manner as a printed publication in general circulation, so long as the date the internet materials were accessed and their source (*e.g.,* URL) are provided.

* * * * *

(g) *Notices of reliance.* The types of evidence admissible by notice of reliance are identified in paragraphs (d)(2) and (e)(1) and (2) of this section and § 2.120(k). A notice of reliance shall be filed during the testimony period of the party that files the notice. For all evidence offered by notice of reliance, the notice must indicate generally the relevance of the evidence and associate it with one or more issues in the proceeding. Failure to identify the relevance of the evidence, or associate it with issues in the proceeding, with sufficient specificity is a procedural defect that can be cured by the offering party within the time set by Board order.

■ 23. Amend § 2.123 by revising paragraphs (a) through (c) and (e) through (k) and removing paragraph (l) to read as follows:

§ 2.123 Trial testimony in *inter partes* cases.

(a)(1) The testimony of witnesses in inter partes cases may be submitted in the form of an affidavit or a declaration pursuant to § 2.20 and in conformance with the Federal Rules of Evidence, filed during the proffering party's testimony period, subject to the right of any adverse party to elect to take and bear the expense of oral cross-examination of that witness as provided under paragraph (c) of this section if such witness is within the jurisdiction of the United States, or conduct cross-examination by written questions as provided in § 2.124 if such witness is outside the jurisdiction of the United States, and the offering party must make that witness available; or taken by deposition upon oral examination as provided by this section; or by deposition upon written questions as provided by § 2.124.

(2) A testimonial deposition taken in a foreign country shall be taken by deposition upon written questions as provided by § 2.124, unless the Board, upon motion for good cause, orders that the deposition be taken by oral examination or by affidavit or declaration, subject to the right of any adverse party to elect to take and bear the expense of cross-examination by written questions of that witness, or the parties so stipulate. If a party serves notice of the taking of a testimonial deposition upon written questions of a witness who is, or will be at the time of the deposition, present within the United States or any territory which is under the control and jurisdiction of the United States, any adverse party may, within twenty days from the date of service of the notice, file a motion with the Trademark Trial and Appeal Board, for good cause, for an order that the deposition be taken by oral examination.

(b) *Stipulations.* If the parties so stipulate in writing, depositions may be taken before any person authorized to administer oaths, at any place, upon any notice, and in any manner, and when so taken may be used like other depositions. The parties may stipulate in writing what a particular witness would testify to if called; or any relevant facts in the case may be stipulated in writing.

(c) *Notice of examination of witnesses.* Before the oral depositions of witnesses shall be taken by a party, due notice in writing shall be given to the adverse party or parties, as provided in § 2.119(b), of the time when and place where the depositions will be taken, of the cause or matter in which they are to be used, and the name and address of each witness to be examined. Depositions may be noticed for any reasonable time and place in the United States. A deposition may not be noticed for a place in a foreign country except as provided in paragraph (a)(2) of this section. No party shall take depositions in more than one place at the same time, nor so nearly at the same time that reasonable opportunity for travel from one place of examination to the other is not available. When a party elects to take oral cross-examination of an affiant or declarant, the notice of such election must be served on the adverse party and a copy filed with the Board within 20 days from the date of service of the affidavit or declaration and completed within 30 days from the date of service of the notice of election. Upon motion for good cause by any party, or upon its own initiative, the Board may extend the periods for electing and taking oral cross-examination. When such election has been made but cannot be completed within that testimony period, the Board, after the close of that testimony period, shall suspend or reschedule other proceedings in the matter to allow for the orderly completion of the oral cross-examination(s).

* * * * *

(e) *Examination of witnesses.* (1) Each witness before providing oral testimony shall be duly sworn according to law by the officer before whom the deposition is to be taken. Where oral depositions are taken, every adverse party shall have a full opportunity to cross-examine each witness. When testimony is proffered by affidavit or declaration, every adverse party will have the right to elect oral cross-examination of any witness within the jurisdiction of the United States. For examination of witnesses outside the jurisdiction of the United States, see § 2.124.

(2) The deposition shall be taken in answer to questions, with the questions and answers recorded in their regular order by the officer, or by some other person (who shall be subject to the provisions of Rule 28 of the Federal Rules of Civil Procedure) in the presence of the officer except when the officer's presence is waived on the record by agreement of the parties. The testimony shall be recorded and transcribed, unless the parties present agree otherwise. Exhibits which are marked and identified at the deposition will be deemed to have been offered into evidence, without any formal offer thereof, unless the intention of the party marking the exhibits is clearly expressed to the contrary.

(3) If pretrial disclosures or the notice of examination of witnesses served pursuant to paragraph (c) of this section are improper or inadequate with respect to any witness, an adverse party may cross-examine that witness under protest while reserving the right to object to the receipt of the testimony in evidence. Promptly after the testimony is completed, the adverse party, to preserve the objection, shall move to strike the testimony from the record, which motion will be decided on the basis of all the relevant circumstances.

(i) A motion to strike the testimony of a witness for lack of proper or adequate pretrial disclosure may seek exclusion of the entire testimony, when there was no pretrial disclosure, or may seek exclusion of that portion of the testimony that was not adequately disclosed in accordance with § 2.121(e).

(ii) A motion to strike the testimony of a witness for lack of proper or adequate notice of examination must request the exclusion of the entire testimony of that witness and not only a part of that testimony.

(4) All objections made at the time of an oral examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections.

(5) When the oral deposition has been transcribed, the deposition transcript shall be carefully read over by the witness or by the officer to the witness, and shall then be signed by the witness in the presence of any officer authorized to administer oaths unless the reading and the signature be waived on the record by agreement of all parties.

(f) *Certification and filing of deposition.* (1) The officer shall annex to the deposition his or her certificate showing:

(i) Due administration of the oath by the officer to the witness before the commencement of his or her deposition;

(ii) The name of the person by whom the deposition was taken down, and whether, if not taken down by the officer, it was taken down in his or her presence;

(iii) The presence or absence of the adverse party;

(iv) The place, day, and hour of commencing and taking the deposition;

(v) The fact that the officer was not disqualified as specified in Rule 28 of the Federal Rules of Civil Procedure.

(2) If any of the foregoing requirements in paragraph (f)(1) of this section are waived, the certificate shall so state. The officer shall sign the certificate and affix thereto his or her seal of office, if he or she has such a seal. The party taking the deposition, or its attorney or other authorized representative, shall then promptly file the transcript and exhibits in electronic form using ESTTA. If the nature of an exhibit precludes electronic transmission via ESTTA, it shall be submitted by mail by the party taking the deposition, or its attorney or other authorized representative.

(g) *Form of deposition.* (1) The pages of each deposition must be numbered consecutively, and the name of the witness plainly and conspicuously written at the top of each page. A deposition must be in written form. The questions propounded to each witness must be consecutively numbered unless the pages have numbered lines. Each question must be followed by its answer. The deposition transcript must be submitted in full-sized format (one page per sheet), not condensed (multiple pages per sheet).

(2) Exhibits must be numbered or lettered consecutively and each must be marked with the number and title of the case and the name of the party offering the exhibit. Entry and consideration may be refused to improperly marked exhibits.

(3) Each deposition must contain a word index and an index of the names of the witnesses, giving the pages where the words appear in the deposition and where witness examination and cross-examination begin, and an index of the exhibits, briefly describing their nature and giving the pages at which they are introduced and offered in evidence.

(h) *Depositions must be filed.* All depositions which are taken must be duly filed in the Office. On refusal to file, the Office at its discretion will not further hear or consider the contestant with whom the refusal lies; and the Office may, at its discretion, receive and consider a copy of the withheld deposition, attested by such evidence as is procurable.

(i) *Effect of errors and irregularities in depositions.* Rule 32(d)(1), (2), and (3)(A) and (B) of the Federal Rules of Civil Procedure shall apply to errors and irregularities in depositions. Notice will not be taken of merely formal or technical objections which shall not appear to have wrought a substantial injury to the party raising them; and in case of such injury it must be made to appear that the objection was raised at the time specified in said rule.

(j) *Objections to admissibility.* Subject to the provisions of paragraph (i) of this section, objection may be made to receiving in evidence any declaration, affidavit, or deposition, or part thereof, or any other evidence, for any reason which would require the exclusion of the evidence from consideration. Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony must be raised at the time specified in Rule 32(d)(3)(A) of the Federal Rules of Civil Procedure. Such objections may not be considered until final hearing.

(k) *Evidence not considered.* Evidence not obtained and filed in compliance with these sections will not be considered.

■ 24. Amend § 2.124 by revising paragraphs (b)(2), (d)(1), and (f) and adding paragraphs (b)(3) and (d)(3) to read as follows:

§ 2.124 Depositions upon written questions.

* * * * *

(b) * * *

(2) A party desiring to take a discovery deposition upon written questions shall serve notice thereof upon each adverse party and shall file a copy of the notice, but not copies of the questions, with the Board. The notice shall state the name and address, if known, of the person whose deposition is to be taken. If the name of the person is not known, a general description sufficient to identify the witness or the particular class or group to which he or she belongs shall be stated in the notice, and the party from whom the discovery deposition is to be taken shall designate one or more persons to be deposed in the same manner as is provided by Rule 30(b)(6) of the Federal Rules of Civil Procedure.

(3) A party desiring to take cross-examination, by written questions, of a witness who has provided testimony by affidavit or declaration shall serve notice thereof upon each adverse party and shall file a copy of the notice, but not copies of the questions, with the Board.

* * * * *

(d)(1) Every notice served on any adverse party under the provisions of paragraph (b) of this section, for the taking of direct testimony, shall be accompanied by the written questions to be propounded on behalf of the party who proposes to take the deposition. Every notice served on any adverse party under the provisions of paragraph (b)(3) of this section, for the taking of cross-examination, shall be accompanied by the written questions to be propounded on behalf of the party who proposes to take the cross-examination. Within twenty days from the date of service of the notice of taking direct testimony, any adverse party may serve cross questions upon the party who proposes to take the deposition. Any party who serves cross questions, whether in response to direct examination questions or under paragraph (b)(3) of this section, shall also serve every other adverse party. Within ten days from the date of service of the cross questions, the party who proposes to take the deposition, or who earlier offered testimony of the witness by affidavit or declaration, may serve redirect questions on every adverse party. Within ten days from the date of service of the redirect questions, any party who served cross questions may serve recross questions upon the party who proposes to take the deposition; any party who serves recross questions

shall also serve every other adverse party. Written objections to questions may be served on a party propounding questions; any party who objects shall serve a copy of the objections on every other adverse party. In response to objections, substitute questions may be served on the objecting party within ten days of the date of service of the objections; substitute questions shall be served on every other adverse party.

* * * * *

(3) Service of written questions, responses, and cross-examination questions shall be in accordance with § 2.119(b).

* * * * *

(f) The party who took the deposition shall promptly serve a copy of the transcript, copies of documentary exhibits, and duplicates or photographs of physical exhibits on every adverse party. It is the responsibility of the party who takes the deposition to assure that the transcript is correct (see § 2.125(b)). If the deposition is a discovery deposition, it may be made of record as provided by § 2.120(k). If the deposition is a testimonial deposition, the original, together with copies of documentary exhibits and duplicates or photographs of physical exhibits, shall be filed promptly with the Trademark Trial and Appeal Board.

* * * * *

■ 25. Revise § 2.125 to read as follows:

§ 2.125 Filing and service of testimony.

(a) One copy of the declaration or affidavit prepared in accordance with § 2.123, together with copies of documentary exhibits and duplicates or photographs of physical exhibits, shall be served on each adverse party at the time the declaration or affidavit is submitted to the Trademark Trial and Appeal Board during the assigned testimony period.

(b) One copy of the transcript of each testimony deposition taken in accordance with § 2.123 or § 2.124, together with copies of documentary exhibits and duplicates or photographs of physical exhibits, shall be served on each adverse party within thirty days after completion of the taking of that testimony. If the transcript with exhibits is not served on each adverse party within thirty days or within an extension of time for the purpose, any adverse party which was not served may have remedy by way of a motion to the Trademark Trial and Appeal Board to reset such adverse party's testimony and/or briefing periods, as may be appropriate. If the deposing party fails to serve a copy of the transcript with exhibits on an adverse party after having been ordered to do so by the Board, the Board, in its discretion, may strike the deposition, or enter judgment as by default against the deposing party, or take any such other action as may be deemed appropriate.

(c) The party who takes testimony is responsible for having all typographical errors in the transcript and all errors of arrangement, indexing and form of the transcript corrected, on notice to each adverse party, prior to the filing of one certified transcript with the Trademark Trial and Appeal Board. The party who takes testimony is responsible for serving on each adverse party one copy of the corrected transcript or, if reasonably feasible, corrected pages to be inserted into the transcript previously served.

(d) One certified transcript and exhibits shall be filed with the Trademark Trial and Appeal Board. Notice of such filing shall be served on each adverse party and a copy of each notice shall be filed with the Board.

(e) Each transcript shall comply with § 2.123(g) with respect to arrangement, indexing and form.

(f) Upon motion by any party, for good cause, the Trademark Trial and Appeal Board may order that any part of an affidavit or declaration or a deposition transcript or any exhibits that directly disclose any trade secret or other confidential research, development, or commercial information may be filed under seal and kept confidential under the provisions of § 2.27(e). If any party or any attorney or agent of a party fails to comply with an order made under this paragraph, the Board may impose any of the sanctions authorized by § 2.120(h).

■ 26. Revise § 2.126 to read as follows:

§ 2.126 Form of submissions to the Trademark Trial and Appeal Board.

(a) Submissions must be made to the Trademark Trial and Appeal Board via ESTTA.

(1) Text in an electronic submission must be filed in at least 11-point type and double-spaced.

(2) Exhibits pertaining to an electronic submission must be made electronically as an attachment to the submission and must be clear and legible.

(b) In the event that ESTTA is unavailable due to technical problems, or when extraordinary circumstances are present, submissions may be filed in paper form. All submissions in paper form, except the extensions of time to file a notice of opposition, the notice of opposition, the petition to cancel, or answers thereto (*see* §§ 2.101(b)(2), 2.102(a)(2), 2.106(b)(1), 2.111(c)(2), and 2.114(b)(1)), must include a written explanation of such technical problems or extraordinary circumstances. Paper submissions that do not meet the showing required under this paragraph (b) will not be considered. A paper submission, including exhibits and depositions, must meet the following requirements:

(1) A paper submission must be printed in at least 11-point type and double-spaced, with text on one side only of each sheet;

(2) A paper submission must be 8 to 8.5 inches (20.3 to 21.6 cm.) wide and 11 to 11.69 inches (27.9 to 29.7 cm.) long, and contain no tabs or other such devices extending beyond the edges of the paper;

(3) If a paper submission contains dividers, the dividers must not have any extruding tabs or other devices, and must be on the same size and weight paper as the submission;

(4) A paper submission must not be stapled or bound;

(5) All pages of a paper submission must be numbered and exhibits shall be identified in the manner prescribed in § 2.123(g)(2);

(6) Exhibits pertaining to a paper submission must be filed on paper and comply with the requirements for a paper submission.

(c) To be handled as confidential, submissions to the Trademark Trial and Appeal Board that are confidential in whole or part pursuant to § 2.125(e) must be submitted using the ''Confidential'' selection available in ESTTA or, where appropriate, under a separate paper cover. Both the submission and its cover must be marked confidential and must identify the case number and the parties. A copy of the submission for public viewing with the confidential portions redacted must be submitted concurrently.

■ 27. Amend § 2.127 by revising paragraphs (a) through (e) to read as follows:

§ 2.127 Motions.

(a) Every motion must be submitted in written form and must meet the requirements prescribed in § 2.126. It shall contain a full statement of the grounds, and shall embody or be accompanied by a brief. Except as provided in paragraph (e)(1) of this section, a brief in response to a motion shall be filed within twenty days from the date of service of the motion unless another time is specified by the Trademark Trial and Appeal Board, or the time is extended by stipulation of the parties approved by the Board, or upon motion granted by the Board, or upon order of the Board. If a motion for an extension is denied, the time for

responding to the motion remains as specified under this section, unless otherwise ordered. Except as provided in paragraph (e)(1) of this section, a reply brief, if filed, shall be filed within twenty days from the date of service of the brief in response to the motion. The time for filing a reply brief will not be extended or reopened. The Board will consider no further papers in support of or in opposition to a motion. Neither the brief in support of a motion nor the brief in response to a motion shall exceed twenty-five pages in length in its entirety, including table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary. A reply brief shall not exceed ten pages in length in its entirety. Exhibits submitted in support of or in opposition to a motion are not considered part of the brief for purposes of determining the length of the brief. When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded. An oral hearing will not be held on a motion except on order by the Board.

(b) Any request for reconsideration or modification of an order or decision issued on a motion must be filed within one month from the date thereof. A brief in response must be filed within twenty days from the date of service of the request.

(c) Interlocutory motions, requests, conceded matters, and other matters not actually or potentially dispositive of a proceeding may be acted upon by a single Administrative Trademark Judge of the Trademark Trial and Appeal Board, or by an Interlocutory Attorney or Paralegal of the Board to whom authority to act has been delegated, or by ESTTA. Motions disposed of by orders entitled ''By the Trademark Trial and Appeal Board'' have the same legal effect as orders by a panel of three Administrative Trademark Judges of the Board.

(d) When any party timely files a potentially dispositive motion, including, but not limited to, a motion to dismiss, a motion for judgment on the pleadings, or a motion for summary judgment, the case is suspended by the Trademark Trial and Appeal Board with respect to all matters not germane to the motion and no party should file any paper which is not germane to the motion except as otherwise may be specified in a Board order. If the case is not disposed of as a result of the motion, proceedings will be resumed pursuant to an order of the Board when the motion is decided.

(e)(1) A party may not file a motion for summary judgment until the party has made its initial disclosures, except for a motion asserting claim or issue preclusion or lack of jurisdiction by the Trademark Trial and Appeal Board. A motion for summary judgment must be filed prior to the deadline for pretrial disclosures for the first testimony period, as originally set or as reset. A motion under Rule 56(d) of the Federal Rules of Civil Procedure, if filed in response to a motion for summary judgment, shall be filed within thirty days from the date of service of the summary judgment motion. The time for filing a motion under Rule 56(d) will not be extended or reopened. If no motion under Rule 56(d) is filed, a brief in response to the motion for summary judgment shall be filed within thirty days from the date of service of the motion unless the time is extended by stipulation of the parties approved by the Board, or upon motion granted by the Board, or upon order of the Board. If a motion for an extension is denied, the time for responding to the motion for summary judgment may remain as specified under this section. A reply brief, if filed, shall be filed within twenty days from the date of service of the brief in response to the motion. The time for filing a reply brief will not be extended or reopened. The Board will consider no further papers in support of or in opposition to a motion for summary judgment.

(2) For purposes of summary judgment only, the Board will consider any of the following, if a copy is provided with the party's brief on the summary judgment motion: Written disclosures or disclosed documents, a discovery deposition or any part thereof with any exhibit to the part that is filed, an interrogatory and answer thereto with any exhibit made part of the answer, a request for production and the documents or things produced in response thereto, or a request for admission and any exhibit thereto and the admission (or a statement that the party from which an admission was requested failed to respond thereto). If any motion for summary judgment is denied, the parties may stipulate that the materials submitted with briefs on the motion be considered at trial as trial evidence, which may be supplemented by additional evidence during trial.

* * * * *

■ 28. Amend § 2.128 by revising paragraphs (a)(3) and (b) to read as follows:

§ 2.128 Briefs at final hearing.

(a) * * *

(3) When a party in the position of plaintiff fails to file a main brief, an order may be issued allowing plaintiff until a set time, not less than fifteen days, in which to show cause why the Board should not treat such failure as a concession of the case. If plaintiff fails to file a response to the order, or files a response indicating that plaintiff has lost interest in the case, judgment may be entered against plaintiff. If a plaintiff files a response to the order showing good cause, but does not have any evidence of record and does not move to reopen its testimony period and make a showing of excusable neglect sufficient to support such reopening, judgment may be entered against plaintiff for failure to take testimony or submit any other evidence.

(b) Briefs must be submitted in written form and must meet the requirements prescribed in § 2.126. Each brief shall contain an alphabetical index of cited cases. Without prior leave of the Trademark Trial and Appeal Board, a main brief on the case shall not exceed fifty-five pages in length in its entirety, including the table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary; and a reply brief shall not exceed twenty-five pages in its entirety. Evidentiary objections that may properly be raised in a party's brief on the case may instead be raised in an appendix or by way of a separate statement of objections. The appendix or separate statement is not included within the page limit. Any brief beyond the page limits and any brief with attachments outside the stated requirements may not be considered by the Board.

■ 29. Amend § 2.129 by revising paragraphs (a) through (c) to read as follows:

§ 2.129 Oral argument; reconsideration.

(a) If a party desires to have an oral argument at final hearing, the party shall request such argument by a separate notice filed not later than ten days after the due date for the filing of the last reply brief in the proceeding. Oral arguments will be heard by at least three Administrative Trademark Judges or other statutory members of the Trademark Trial and Appeal Board at the time specified in the notice of hearing. If any party appears at the specified time, that party will be heard. Parties and members of the Board may attend in person or, at the discretion of the Board, remotely. If the Board is prevented from hearing the case at the specified time, a new hearing date will be set. Unless otherwise permitted, oral arguments in an inter partes case will be limited to thirty minutes for each party. A party in the position of plaintiff may

reserve part of the time allowed for oral argument to present a rebuttal argument.

(b) The date or time of a hearing may be reset, so far as is convenient and proper, to meet the wishes of the parties and their attorneys or other authorized representatives. The Board may, however, deny a request to reset a hearing date for lack of good cause or if multiple requests for rescheduling have been filed.

(c) Any request for rehearing or reconsideration or modification of a decision issued after final hearing must be filed within one month from the date of the decision. A brief in response must be filed within twenty days from the date of service of the request. The times specified may be extended by order of the Trademark Trial and Appeal Board on motion for good cause.

* * * * *

■ 30. Revise § 2.130 to read as follows:

§ 2.130 New matter suggested by the trademark examining attorney.

If, while an inter partes proceeding involving an application under section 1 or 44 of the Act is pending, facts appear which, in the opinion of the examining attorney, render the mark in the application unregistrable, the examining attorney should request that the Board remand the application. The Board may suspend the proceeding and remand the application to the trademark examining attorney for an ex parte determination of the question of registrability. A copy of the trademark examining attorney's final action will be furnished to the parties to the inter partes proceeding following the final determination of registrability by the trademark examining attorney or the Board on appeal. The Board will consider the application for such further inter partes action as may be appropriate.

■ 31. Revise § 2.131 read as follows:

§ 2.131 Remand after decision in inter partes proceeding.

If, during an inter partes proceeding involving an application under section 1 or 44 of the Act, facts are disclosed which appear to render the mark unregistrable, but such matter has not been tried under the pleadings as filed by the parties or as they might be deemed to be amended under Rule 15(b) of the Federal Rules of Civil Procedure to conform to the evidence, the Trademark Trial and Appeal Board, in lieu of determining the matter in the decision on the proceeding, may remand the application to the trademark examining attorney for reexamination in the event the applicant ultimately prevails in the inter partes proceeding. Upon remand, the trademark examining attorney shall reexamine the application in light of the matter referenced by the Board. If, upon reexamination, the trademark examining attorney finally refuses registration to the applicant, an appeal may be taken as provided by §§ 2.141 and 2.142.

■ 32. Amend § 2.132 by revising paragraphs (a) and (b) to read as follows:

§ 2.132 Involuntary dismissal for failure to take testimony.

(a) If the time for taking testimony by any party in the position of plaintiff has expired and it is clear to the Board from the proceeding record that such party has not taken testimony or offered any other evidence, the Board may grant judgment for the defendant. Also, any party in the position of defendant may, without waiving the right to offer evidence in the event the motion is denied, move for dismissal on the ground of the failure of the plaintiff to prosecute. The party in the position of plaintiff shall have twenty days from the date of service of the motion to show cause why judgment should not be rendered dismissing the case. In the absence of a showing of excusable neglect, judgment may be rendered against the party in the position of plaintiff. If the motion is denied, testimony periods will be reset for the party in the position of defendant and for rebuttal.

(b) If no evidence other than Office records showing the current status and title of plaintiff's pleaded registration(s) is offered by any party in the position of plaintiff, any party in the position of defendant may, without waiving the right to offer evidence in the event the motion is denied, move for dismissal on the ground that upon the law and the facts the party in the position of plaintiff has shown no right to relief. The party in the position of plaintiff shall have twenty days from the date of service of the motion to file a brief in response to the motion. The Trademark Trial and Appeal Board may render judgment against the party in the position of plaintiff, or the Board may decline to render judgment until all testimony periods have passed. If judgment is not rendered on the motion to dismiss, testimony periods will be reset for the party in the position of defendant and for rebuttal.

* * * * *

■ 33. Amend § 2.134 by revising paragraph (b) to read as follows:

§ 2.134 Surrender or voluntary cancellation of registration.

* * * * *

(b) After the commencement of a cancellation proceeding, if it comes to the attention of the Trademark Trial and Appeal Board that the respondent has permitted its involved registration to be cancelled under section 8 or section 71 of the Act of 1946, or has failed to renew its involved registration under section 9 of the Act of 1946, or has allowed its registered extension of protection to expire under section 70(b) of the Act of 1946, an order may be issued allowing respondent until a set time, not less than fifteen days, in which to show cause why such cancellation, failure to renew, or expiration should not be deemed to be the equivalent of a cancellation by request of respondent without the consent of the adverse party and should not result in entry of judgment against respondent as provided by paragraph (a) of this section. In the absence of a showing of good and sufficient cause, judgment may be entered against respondent as provided by paragraph (a) of this section.

■ 34. Revise § 2.136 to read as follows:

§ 2.136 Status of application or registration on termination of proceeding.

After the Board has issued its decision in an opposition, cancellation or concurrent use proceeding, and after the time for filing any appeal of the decision has expired, or any appeal that was filed has been decided and the Board's decision affirmed, the proceeding will be terminated by the Board. On termination of an opposition, cancellation or concurrent use proceeding, if the judgment is not adverse to the applicant or registrant, the subject application returns to the status it had before the institution of the proceeding and the otherwise appropriate status of the subject registration is unaffected by the proceeding. If the judgment is adverse to the applicant or registrant, the application stands refused or the registration will be cancelled in whole or in part without further action and all proceedings thereon are considered terminated.

■ 35. Amend § 2.142 by revising paragraphs (b), (c), (d), (e), and (f)(1) through (4) and (6) to read as follows:

§ 2.142 Time and manner of *ex parte* appeals.

* * * * *

(b)(1) The brief of appellant shall be filed within sixty days from the date of appeal. If the brief is not filed within the time allowed, the appeal may be dismissed. The examining attorney shall, within sixty days after the brief of appellant is sent to the examining

attorney, file with the Trademark Trial and Appeal Board a written brief answering the brief of appellant and shall email or mail a copy of the brief to the appellant. The appellant may file a reply brief within twenty days from the date of mailing of the brief of the examining attorney.

(2) Briefs must meet the requirements prescribed in § 2.126, except examining attorney submissions need not be filed through ESTTA. Without prior leave of the Trademark Trial and Appeal Board, a brief shall not exceed twenty-five pages in length in its entirety, including the table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary. A reply brief from the appellant, if any, shall not exceed ten pages in length in its entirety. Unless authorized by the Board, no further briefs are permitted.

(3) Citation to evidence in briefs should be to the documents in the electronic application record by date, the name of the paper under which the evidence was submitted, and the page number in the electronic record.

(c) All requirements made by the examining attorney and not the subject of appeal shall be complied with prior to the filing of an appeal, and the statement of issues in the brief should note such compliance.

(d) The record in the application should be complete prior to the filing of an appeal. Evidence should not be filed with the Board after the filing of a notice of appeal. If the appellant or the examining attorney desires to introduce additional evidence after an appeal is filed, the appellant or the examining attorney should submit a request to the Board to suspend the appeal and to remand the application for further examination.

(e)(1) If the appellant desires an oral hearing, a request should be made by a separate notice filed not later than ten days after the due date for a reply brief. Oral argument will be heard by at least three Administrative Trademark Judges or other statutory members of the Trademark Trial and Appeal Board at the time specified in the notice of hearing, which may be reset if the Board is prevented from hearing the argument at the specified time or, so far as is convenient and proper, to meet the wish of the appellant or the appellant's attorney or other authorized representative. Appellants, examining attorneys, and members of the Board may attend in person or, at the discretion of the Board, remotely.

(2) If the appellant requests an oral argument, the examining attorney who issued the refusal of registration or the requirement from which the appeal is taken, or in lieu thereof another examining attorney as designated by a supervisory or managing attorney, shall present an oral argument. If no request for an oral hearing is made by the appellant, the appeal will be decided on the record and briefs.

(3) Oral argument will be limited to twenty minutes by the appellant and ten minutes by the examining attorney. The appellant may reserve part of the time allowed for oral argument to present a rebuttal argument.

(f)(1) If, during an appeal from a refusal of registration, it appears to the Trademark Trial and Appeal Board that an issue not previously raised may render the mark of the appellant unregistrable, the Board may suspend the appeal and remand the application to the examining attorney for further examination to be completed within the time set by the Board.

(2) If the further examination does not result in an additional ground for refusal of registration, the examining attorney shall promptly return the application to the Board, for resumption of the appeal, with a written statement that further examination did not result in an additional ground for refusal of registration.

(3) If the further examination does result in an additional ground for refusal of registration, the examining attorney and appellant shall proceed as provided by §§ 2.61, 2.62, and 2.63. If the ground for refusal is made final, the examining attorney shall return the application to the Board, which shall thereupon issue an order allowing the appellant sixty days from the date of the order to file a supplemental brief limited to the additional ground for the refusal of registration. If the supplemental brief is not filed by the appellant within the time allowed, the appeal may be dismissed.

(4) If the supplemental brief of the appellant is filed, the examining attorney shall, within sixty days after the supplemental brief of the appellant is sent to the examining attorney, file with the Board a written brief answering the supplemental brief of appellant and shall email or mail a copy of the brief to the appellant. The appellant may file a reply brief within twenty days from the date of mailing of the brief of the examining attorney.

* * * * *

(6) If, during an appeal from a refusal of registration, it appears to the examining attorney that an issue not involved in the appeal may render the mark of the appellant unregistrable, the examining attorney may, by written request, ask the Board to suspend the appeal and to remand the application to the examining attorney for further examination. If the request is granted, the examining attorney and appellant shall proceed as provided by §§ 2.61, 2.62, and 2.63. After the additional ground for refusal of registration has been withdrawn or made final, the examining attorney shall return the application to the Board, which shall resume proceedings in the appeal and take further appropriate action with respect thereto.

* * * * *

§ 2.143 [Added and Reserved]

■ 36. Add and reserve § 2.143.

■ 37. Revise § 2.145 to read as follows:

§ 2.145 Appeal to court and civil action.

(a) *For an Appeal to the United States Court of Appeals for the Federal Circuit under section 21(a) of the Act.* (1) An applicant for registration, or any party to an interference, opposition, or cancellation proceeding or any party to an application to register as a concurrent user, hereinafter referred to as inter partes proceedings, who is dissatisfied with the decision of the Trademark Trial and Appeal Board, and any registrant who has filed an affidavit or declaration under section 8 or section 71 of the Act or who has filed an application for renewal and is dissatisfied with the decision of the Director (§§ 2.165, 2.184), may appeal to the United States Court of Appeals for the Federal Circuit. It is unnecessary to request reconsideration by the Board before filing any such appeal; however, a party requesting reconsideration must do so before filing a notice of appeal.

(2) In all appeals under section 21(a), the appellant must take the following steps:

(i) File the notice of appeal with the Director, addressed to the Office of the General Counsel, as provided in § 104.2 of this chapter;

(ii) File a copy of the notice of appeal with the Trademark Trial and Appeal Board via ESTTA; and

(iii) Comply with the requirements of the Federal Rules of Appellate Procedure and Rules for the United States Court of Appeals for the Federal Circuit, including serving the requisite number of copies on the Court and paying the requisite fee for the appeal.

(3) *Additional requirements.* (i) The notice of appeal shall specify the party or parties taking the appeal and shall designate the decision or part thereof appealed from.

(ii) In inter partes proceedings, the notice of appeal must be served as provided in § 2.119.

(b) *For a notice of election under section 21(a)(1) to proceed under section 21(b) of the Act.* (1) Any applicant or registrant in an ex parte case who takes an appeal to the United States Court of Appeals for the Federal Circuit waives any right to proceed under section 21(b) of the Act.

(2) If an adverse party to an appeal taken to the United States Court of Appeals for the Federal Circuit by a defeated party in an inter partes proceeding elects to have all further review proceedings conducted under section 21(b) of the Act, that party must take the following steps:

(i) File a notice of election with the Director, addressed to the Office of the General Counsel, as provided in § 104.2 of this chapter;

(ii) File a copy of the notice of election with the Trademark Trial and Appeal Board via ESTTA; and

(iii) Serve the notice of election as provided in § 2.119.

(c) *For a civil action under section 21(b) of the Act.* (1) Any person who may appeal to the United States Court of Appeals for the Federal Circuit (paragraph (a) of this section), may have remedy by civil action under section 21(b) of the Act. It is unnecessary to request reconsideration by the Board before filing any such civil action; however, a party requesting reconsideration must do so before filing a civil action.

(2) Any applicant or registrant in an ex parte case who seeks remedy by civil action under section 21(b) of the Act must serve the summons and complaint pursuant to Rule 4(i) of the Federal Rules of Civil Procedure with the copy to the Director addressed to the Office of the General Counsel as provided in § 104.2 of this chapter. A copy of the complaint must also be filed with the Trademark Trial and Appeal Board via ESTTA.

(3) The party initiating an action for review of a Board decision in an inter partes case under section 21(b) of the Act must file notice thereof with the Trademark Trial and Appeal Board via ESTTA no later than five business days after filing the complaint in the district court. The notice must identify the civil action with particularity by providing the case name, case number, and court in which it was filed. A copy of the complaint may be filed with the notice. Failure to file the required notice can result in termination of the Board proceeding and further action within the United States Patent and Trademark Office consistent with the final Board decision.

(d) *Time for appeal or civil action*—(1) *For an appeal under section 21(a).* The notice of appeal filed pursuant to section 21(a) of the Act must be filed with the Director no later than sixty-three (63) days from the date of the final decision of the Trademark Trial and Appeal Board or the Director. Any notice of cross-appeal is controlled by Rule 4(a)(3) of the Federal Rules of Appellate Procedure, and any other requirement imposed by the Rules of the United States Court of Appeals for the Federal Circuit.

(2) *For a notice of election under 21(a)(1) and a civil action pursuant to such notice of election.* The times for filing a notice of election under section 21(a)(1) and for commencing a civil action pursuant to a notice of election are governed by section 21(a)(1) of the Act.

(3) *For a civil action under section 21(b).* A civil action must be commenced no later than sixty-three (63) days after the date of the final decision of the Trademark Trial and Appeal Board or Director.

(4) *Time computation.* (i) If a request for rehearing or reconsideration or modification of the Board decision is filed within the time specified in § 2.127(b), § 2.129(c), or § 2.144, or within any extension of time granted thereunder, the time for filing an appeal or commencing a civil action shall expire no later than sixty-three (63) days after action on the request.

(ii) *Holidays.* The times specified in this section in days are calendar days. If the last day of time specified for an appeal, notice of election, or commencing a civil action falls on a Saturday, Sunday or Federal holiday in the District of Columbia, the time is extended to the next day which is neither a Saturday, Sunday nor a Federal holiday in the District of Columbia pursuant to § 2.196.

(e) *Extension of time.* (1) The Director, or the Director's designee, may extend the time for filing an appeal, or commencing a civil action, upon written request if:

(i) Requested before the expiration of the period for filing an appeal or commencing a civil action, and upon a showing of good cause; or

(ii) Requested after the expiration of the period for filing an appeal or commencing a civil action, and upon a showing that the failure to act was the result of excusable neglect.

(2) The request must be filed as provided in § 104.2 of this chapter and addressed to the attention of the Office of the Solicitor. A copy of the request should also be filed with the Trademark Trial and Appeal Board via ESTTA.

■ 38. Amend § 2.190 by revising paragraphs (a) through (c) to read as follows:

§ 2.190 Addresses for trademark correspondence with the United States Patent and Trademark Office.

(a) *Trademark correspondence—in general.* All trademark-related documents filed on paper, except documents sent to the Assignment Recordation Branch for recordation; requests for copies of trademark documents; and certain documents filed under the Madrid Protocol as specified in paragraph (e) of this section, should be addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451. All trademark-related documents may be delivered by hand, during the hours the Office is open to receive correspondence, to the Trademark Assistance Center, James Madison Building—East Wing, Concourse Level, 600 Dulany Street, Alexandria, Virginia 22314.

(b) *Electronic trademark documents.* An applicant may transmit a trademark document through TEAS, at *http://www.uspto.gov.* Documents that relate to proceedings before the Trademark Trial and Appeal Board shall be filed directly with the Board electronically through ESTTA, at *http://estta.uspto.gov.*

(c) *Trademark assignments.* Requests to record documents in the Assignment Recordation Branch may be filed through the Office's Web site, at *http://www.uspto.gov.* Paper documents and cover sheets to be recorded in the Assignment Recordation Branch should be addressed to: Mail Stop Assignment Recordation Branch, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450. See § 3.27 of this chapter.

* * * * *

■ 39. Revise § 2.191 to read as follows:

§ 2.191 Business to be transacted in writing.

All business with the Office should be transacted in writing. The personal appearance of applicants or their representatives at the Office is unnecessary. The action of the Office will be based exclusively on the written record. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt. The Office encourages parties to file documents through TEAS wherever possible, and mandates that documents in proceedings before the Trademark Trial and Appeal Board be filed through ESTTA.

■ 40. Revise § 2.195(d)(3) to read as follows:

§ 2.195 Receipt of trademark correspondence.

* * * * *

(d) * * *

(3) Correspondence to be filed with the Trademark Trial and Appeal Board;

* * * * *

Dated: September 19, 2016.

Michelle K. Lee,

Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office.

[FR Doc. 2016–23092 Filed 10–6–16; 8:45 am]

BILLING CODE 3510–16–P

FEDERAL REGISTER

Vol. 81 Friday,
No. 195 October 7, 2016

Part IV

The President

Federal Register
Vol. 81, No. 195
Friday, October 7, 2016

Presidential Documents

Title 3—

The President

Proclamation 9514 of October 3, 2016

National Youth Substance Use and Substance Use Disorder Prevention Month, 2016

By the President of the United States of America

A Proclamation

Far too many young people are unable to grow and thrive because of substance use. And far too many precious lives are being taken from us as a result of drug overdoses, leaving families devastated and heartbroken. Substance use can also lead to lower academic achievement and a variety of physical and emotional consequences, and it is crucial that America's youth learn and understand the risks connected with it. Youth substance use can be prevented—and with dedicated, collective effort across our communities, we can ensure more Americans live long, productive lives. During National Youth Substance Use and Substance Use Disorder Prevention Month, we come together in common purpose to unite behind this important mission.

My Administration's *National Drug Control Strategy* has enabled us to amplify prevention efforts by working with States to implement evidence-based strategies that support communities and strengthen drug-free programs. Every dollar invested in school-based substance use prevention programs can save nearly $18 in costs related to the disease of substance use disorder later on. We must facilitate open discussions with families and children—as well as health care providers—about the dangers posed by the misuse of prescription drugs, because for many individuals, their opioid use disorder starts by misusing prescription medications found in their home medicine cabinet. This is especially important because our Nation is currently facing an opioid epidemic, including a near quadrupling of opioid overdose deaths since 1999. That is why I continue to call on the Congress to provide $1.1 billion to expand access to treatment services for prescription opioid misuse and heroin use.

With evidence-based approaches and community-led prevention activities, we can improve health and safety and give our young people the tools they need to make smart decisions. Parents, guardians, teachers, coaches, community members, and the health care community can all play a part in promoting substance use prevention efforts. This month, let us continue taking every step possible to increase these efforts for our young people—and for all Americans—so that they may pursue a bright future filled with possibility and opportunity.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2016 as National Youth Substance Use and Substance Use Disorder Prevention Month. I call upon all Americans to engage in appropriate programs and activities to promote comprehensive prevention efforts to reduce youth substance use and substance use disorders within their communities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

[FR Doc. 2016–24581
Filed 10–6–16; 11:15 am]
Billing code 3295–F7–P

Presidential Documents

Memorandum of October 5, 2016

Promoting Diversity and Inclusion in the National Security Workforce

Memorandum for the Heads of Executive Departments and Agencies

Our greatest asset in protecting the homeland and advancing our interests abroad is the talent and diversity of our national security workforce. Under my Administration, we have made important progress toward harnessing the extraordinary range of backgrounds, cultures, perspectives, skills, and experiences of the U.S. population toward keeping our country safe and strong. As the United States becomes more diverse and the challenges we face more complex, we must continue to invest in policies to recruit, retain, and develop the best and brightest from all segments of our population. Research has shown that diverse groups are more effective at problem solving than homogeneous groups, and policies that promote diversity and inclusion will enhance our ability to draw from the broadest possible pool of talent, solve our toughest challenges, maximize employee engagement and innovation, and lead by example by setting a high standard for providing access to opportunity to all segments of our society.

The purpose of this memorandum is to provide guidance to the national security workforce in order to strengthen the talent and diversity of their respective organizations. That workforce, which comprises more than 3 million people, includes the following departments, agencies, offices, and other entities (agencies) that are primarily engaged in diplomacy, development, defense, intelligence, law enforcement, and homeland security: 1) Department of State: Civil Service and Foreign Service; 2) United States Agency for International Development (USAID): Civil Service and Foreign Service; 3) Department of Defense (DOD): commissioned officers, enlisted personnel, and civilian personnel; 4) the 17 members of the Intelligence Community; 5) Department of the Treasury: Office of International Affairs and Office of Critical Infrastructure Protection; 6) Department of Justice: National Security Division and Federal Bureau of Investigation; and 7) Department of Homeland Security.

The data collected by these agencies do not capture the full range of diversity in the national security workforce, but where data allow for broad comparison, they indicate that agencies in this workforce are less diverse on average than the rest of the Federal Government. For example, as of 2015, only the Department of State and USAID Civil Services were more diverse in terms of gender, race, and ethnicity than the Federal workforce as a whole. When comparing the agencies' workforces to their leadership personnel (Senior Executive Service (SES) or its equivalent), all agencies' leadership staffs were less diverse than their respective workforces in terms of gender, and all but DOD enlisted personnel and USAID Civil Service had less diverse leadership in terms of race and ethnicity. While these data do not necessarily indicate the existence of barriers to equal employment opportunity, we can do more to promote diversity in the national security workforce, consistent with merit system principles and applicable law.

When I issued Executive Order 13583 of August 18, 2011 (Establishing a Coordinated Government-wide Initiative to Promote Diversity and Inclusion in the Federal Workforce), I directed all departments and agencies to develop and implement a more comprehensive, integrated, and strategic focus on diversity and inclusion. This memorandum supports that effort by providing

guidance that 1) emphasizes a data-driven approach in order to increase transparency and accountability at all levels; 2) takes into account leading practices, research, and experience from the private and public sectors; and 3) complements ongoing actions that agencies are taking pursuant to Executive Order 13583 and under the leadership of the Diversity and Inclusion in Government Council, including but not limited to efforts related to gender, race, ethnicity, disability status, veterans, sexual orientation and gender identity, and other demographic categories. This memorandum also supports Executive Order 13714 of December 15, 2015 (Strengthening the Senior Executive Service), by directing agencies to take additional steps to expand the pipeline of diverse talent into senior positions.

This memorandum also aligns with congressional efforts to promote the diversity of the national security workforce, which have been reflected in legislation such as the:

- **Foreign Service Act of 1980**, which urged the Department of State to develop policies to encourage the ''entry into and advancement in the Foreign Service by persons from all segments of American society'';

- **Intelligence Reform and Terrorism Prevention Act of 2004**, which called on the Intelligence Community to prescribe personnel policies and programs that ensure its personnel ''are sufficiently diverse for purposes of the collection and analysis of intelligence through the recruitment and training of women, minorities, and individuals with diverse ethnic, cultural, and linguistic backgrounds''; and

- **National Defense Authorization Act for Fiscal Year 2013**, which mandated that the U.S. military develop and implement a plan to accurately measure the efforts of the military to ''achieve a dynamic, sustainable level of members of the armed forces (including reserve components) that, among both commissioned officers and senior enlisted personnel of each armed force, will reflect the diverse population of the United States eligible to serve in the armed forces, including gender specific, racial, and ethnic populations.''

Promoting diversity and inclusion within the national security workforce must be a joint effort and requires engagement by senior leadership, managers, and the entire workforce, as well as effective collaboration among those responsible for human resources, equal employment opportunity, and diversity and inclusion issues. In implementing the guidance in this memorandum, agencies shall ensure their diversity and inclusion practices are fully integrated into broader succession planning efforts and supported by sufficient resource allocations and effective programs that invest in personnel development and engagement. Where appropriate, they shall also support, coordinate, and encourage research and other efforts by the Federal Government to expand the knowledge base of best practices for broadening participation and understanding the impact of diversity and inclusion on national security, including in the fields of science and technology.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

Section 1. *Collection, Analysis, and Dissemination of Workforce Data.* Although collected data do not necessarily indicate the existence of barriers to equal employment opportunity, the collection and analysis of metrics allows agencies to assess their workforce talent gaps, as well as the effectiveness of their diversity and inclusion efforts and the adequacy of their resources to address these gaps. The dissemination of data to the public and to agency personnel may increase the transparency and accountability of their efforts. Accordingly, agencies in the national security workforce shall:

(a) *Make aggregate demographic data and other information available to the public and broader workforce.* Agencies shall make available to the general public information on the state of diversity and inclusion in their workforces. That information, which shall be updated at least once a year, shall include aggregate demographic data by workforce or service and grade

or rank; attrition and promotion demographic data; validated inclusion metrics such as the New Inclusion Quotient (New IQ) index score; demographic comparisons to the relevant civilian labor force; and unclassified reports and barrier analyses related to diversity and inclusion. Agencies may publish data in proportions or percentages to account for classification concerns, and the Intelligence Community may publish a community-wide report with the data outlined in this section. In addition, agencies shall provide to their workforces, including senior leadership at the Secretary or Director level, a report that includes demographic data and information on the status of diversity and inclusion efforts no later than 90 days after the date of this memorandum and on an annual basis thereafter (or in line with existing annual reporting requirements related to these issues, if any).

(b) *Expand the collection and analysis of voluntary applicant flow data.* Applicant flow data tracks the selection rate variances for job positions among different demographic categories and can assist agencies in examining the fairness and inclusiveness of their recruitment efforts. Agencies shall develop a system to collect and analyze applicant flow data for as many positions as practicable in order to identify future areas for improvement in attracting diverse talent, with particular attention to senior and management positions. The collection of data may be implemented in a phased approach commensurate with agency resources. Agencies shall include such analysis, including the percentage and level of positions for which data are collected, and any resulting policy changes or recommendations in the report required by section 1(a) of this memorandum.

(c) *Identify additional categories for voluntary data collection of current employees.* The Federal Government provides minimum reporting categories for agencies collecting race and ethnicity information in the Office of Management and Budget's (OMB) Statistical Policy Directive ''Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity.'' That standard also encourages agencies to collect more detailed data, which can be compared by aggregating such data into minimum categories when necessary. Further, agencies may also collect additional demographic data, such as information regarding sexual orientation or gender identity. No later than 90 days after the date of this memorandum, agencies shall determine whether they recommend the voluntary collection of more detailed demographic data on additional categories. This process shall involve close consultation with internal stakeholders, such as employee resource or affinity groups; clear communication with the workforce to explain the purpose of, legal protections related to, and anticipated use of such data; and adherence to relevant standards and guidance issued by the Federal Government. Any determinations shall be submitted to OMB, the Office of Personnel Management (OPM), the Equal Employment Opportunity Commission, and the Department of Labor for consideration.

Sec. 2. *Provision of Professional Development Opportunities and Tools Consistent with Merit System Principles.* An inclusive work environment enhances agencies' ability to retain and sustain a strong workforce by allowing all employees to perform at their full potential and maximize their talent. Professional development opportunities and tools are key to fostering that potential, and each agency should make it a priority to ensure that all employees have access to them consistent with merit system principles. Agencies in the national security workforce shall therefore:

(a) *Conduct stay and exit interviews or surveys.* Agencies shall conduct periodic interviews with a representative cross-section of personnel to understand their reasons for staying with their organization, as well as to receive feedback on workplace policies, professional development opportunities, and other issues affecting their decision to remain. They shall also provide an opportunity for exit interviews or surveys of all departing personnel to understand better their reasons for leaving. Agencies shall include analysis from the interviews and surveys—including if and how the results of the interviews differ by gender, race and national origin, sexual orientation,

gender identity, disability status, and other demographic variables—and any resulting policy changes or recommendations in the report required by section 1(a) of this memorandum.

(b) *Expand provision of professional development and career advancement opportunities.* Agencies shall prioritize resources to expand professional development opportunities that support mission needs, such as academic programs, private-public exchanges, and detail assignments to relevant positions in private or international organizations; State, local, and tribal governments; or other branches of the Federal Government. In addition, agencies in the national security workforce shall offer, or sponsor employees to participate in, an SES Candidate Development Program (CDP) or other programs that train employees to gain the skills required for senior-level agency appointments. In determining which employees are granted professional development or career advancement opportunities, agencies shall ensure their SES CDP comports with the provisions of 5 C.F.R. part 412, subpart C, including merit staffing and assessment requirements. Agencies shall also consider the number of expected senior-level vacancies as a factor in determining the number of candidates to select for such programs. Agencies shall track the demographics of program participants as well as the rate of placement into senior-level positions for participants in such programs, evaluate such data on an annual basis to look for ways to improve outreach and recruitment for these programs consistent with merit system principles, and include such data in the report required by section 1(a) of this memorandum.

(c) *Institute a review process for security and counterintelligence determinations that result in assignment restrictions.* For agencies in the national security workforce that place assignment restrictions on personnel or otherwise prohibit certain geographic assignments due to a security determination, these agencies shall ensure a review process exists consistent with the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, as well as applicable counterintelligence considerations. Agencies shall ensure that affected personnel are informed of the right to seek review and the process for doing so.

Sec. 3. *Strengthening of Leadership Engagement and Accountability.* Senior leadership and supervisors play an important role in fostering diversity and inclusion in the workforce they lead and in setting an example for cultivating talent consistent with merit system principles. Toward that end, agencies in the national security workforce shall:

(a) *Reward and recognize efforts to promote diversity and inclusion.* Agencies are strongly encouraged to consider implementing performance and advancement requirements that reward and recognize senior leaders' and supervisors' efforts in fostering an inclusive environment and cultivating talent consistent with merit system principles, such as through participation in mentoring programs or sponsorship initiatives, recruitment events, and other opportunities. They are also encouraged to create opportunities for senior leadership and supervisors to participate in outreach events and to discuss issues related to diversity and inclusion with the workforce on a regular basis, including with employee resource groups.

(b) *Collect and disseminate voluntary demographic data of external advisory committees and boards.* For agencies in the national security workforce that have external advisory committees or boards to which their senior leadership appoints members, they are strongly encouraged to collect voluntary demographic data from the members of committee and boards, and to include such data in the information and report required by section 1(a) of this memorandum.

(c) *Expand training on unconscious bias, inclusion, and flexible work policies.* Agencies shall expand their provision of training on implicit or unconscious bias, inclusion, and flexible work policies and make implicit or unconscious bias training mandatory for senior leadership and management positions, as well as for those responsible for outreach, recruitment, hiring, career development, promotion, and security clearance adjudication.

The provision of training may be implemented in a phased approach commensurate with agency resources. Agencies shall also make available training for bureaus, directorates, or divisions whose inclusion scores, such as those measured by the New IQ index, consistently rank below the agency-wide average 3 or more years in a row. Agencies should give special attention to ensuring the continuous incorporation of research-based best practices, including those to address the intersectionality between certain demographics and job positions.

Sec. 4. *Reporting on Progress.* No later than 120 days after the date of this memorandum, and on an annual basis thereafter, the Assistant to the President for National Security Affairs, in consultation with the Directors of OMB and OPM, shall report to the President on the progress of the national security workforce in implementing the requirements of this memorandum, based on information provided by relevant departments and agencies.

Sec. 5. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof, or the status of that department or agency within the Federal Government; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law, and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Director of OPM is hereby authorized and directed to publish this memorandum in the *Federal Register.*

THE WHITE HOUSE,
Washington, October 5, 2016

[FR Doc. 2016–24582
Filed 10–6–16; 11:15 am]
Billing code 6325–01–P

Reader Aids

Federal Register

Vol. 81, No. 195

Friday, October 7, 2016

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **www.ofr.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, OCTOBER

67901–68288	3
68289–68932	4
68933–69368	5
69369–69658	6
69659–69998	7

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
9504 68285
9505 68287
9506 68289
9507 69369
9508 69371
9509 69373
9510 69375
9511 69377
9512 69379
9513 69383
9514 69991

Executive Orders:
13741 68289

Administrative Orders:
Memorandums:
Memorandum of April 12, 2016 68931
Memorandum of September 30, 2016 69367
Memorandum of October 5, 2016 69993
Determinations:
No. 2016-05 of January 13, 2016 68929

5 CFR

Proposed Rules:
2634 69204

9 CFR

317 68933
381 68933
412 68933

10 CFR

72 69569

Proposed Rules:
50 69446
72 69719
Ch. I 69010
430 69009
609 67924

11 CFR

Proposed Rules:
100 69721
102 69722
104 69722
106 ..... 69721, 69722
109 ..... 69721, 69722
110 69722
9008 69722
9012 69722

12 CFR

600 69663
602 69663
603 69663
606 69663

13 CFR

121 67091
123 67091

Proposed Rules:
107 69012
121 69723
134 69723
300 68186
301 68186
302 68186
303 68186
304 68186
305 68186
307 68186
309 68186
314 68186

14 CFR

23 69663
39 ..... 67904, 69666

Proposed Rules:
39 ..... 67937, 68371, 68373, 68376
61 69908
71 69729
91 69908
121 69908
135 69908
382 67939

17 CFR

Proposed Rules:
240 69240

18 CFR

Proposed Rules:
35 69731

21 CFR

216 69668
314 69580
320 69580
862 ..... 68293, 68295

Proposed Rules:
73 69740

24 CFR

570 68297

Proposed Rules:
100 69012

26 CFR

1 ..... 68299, 68934, 69282, 69291

Proposed Rules:
1 ..... 68378, 69301

29 CFR

Proposed Rules:
1904 68504
1910 ..... 68504, 69740
1915 68504

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List October 5, 2016

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.